Docket #0187 Date Filed: 11/18/2013

**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| In re: | |
| RESIDENTIAL CAPITAL, LLC, et al., | Chapter 11<br>Case No. 12-12020 (MG) |
| 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., | Adv. Proc. No. 13-01343 (MG) |
| Defendants. | |
| OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estate of the Debtors, | |
| Plaintiffs, | |
| v. | Adv. Proc. No. 13-01277 (MG) |
| UMB BANK, N.A., AS SUCCESSOR INDENTURE TRUSTEE UNDER THAT CERTAIN INDENTURE, dated as of June 6, 2008, et al., | |
| Defendants. | |

**SECOND CONSOLIDATED DEPOSITION DESIGNATIONS**



1212020131119000000000014

TO THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), the Official Committee of Unsecured Creditors (the "Committee"), UMB Bank, N.A. ("UMB"), in its capacity as indenture trustee for the 9.625% Junior Secured Guaranteed Notes due 2015 issued by Debtor Residential Capital, LLC (the "Junior Secured Notes"), Wells Fargo Bank, N.A. ("Wells Fargo"), and the Ad Hoc Group of holders of Junior Secured Notes (the "Ad Hoc Group" or "JSNs" and, with UMB and Wells Fargo, the "Defendants"), hereby submit the following designations of deposition testimony, objections, and counter-designations in connection with the above-captioned adversary proceedings and in connection with the Court's hearing to confirm the Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Committee.

In addition to the following objections, the Parties reserve the right to object to any attempted use of deposition transcripts, or any portion thereof, to the extent such use falls beyond the allowances of Rule 32 of the Federal Rule of Civil Procedure, as incorporated by Bankruptcy Rule 7032. The Parties further reserve the right to serve errata in accordance with Rule 30(e) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rule 7030, such that the errata will included as part of the designations or counter-designations.

The Debtors, the Committee, and the Defendants will continue to meet and confer to resolve outstanding objections and will advise the Court of their progress, if any, as soon as practicable.

| JAMES ARETAKIS<br>November 6, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 9:06 – 19 | | | |
| 15:18 – 19 | Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802) | | |
| 16:06 – 017:15 | Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802) | 18:5-19:17 | |
| 20:17 – 022:13 | Irrelevant (FRE 401, 402)<br>22:7-13: Lack of personal knowledge (FRE 602), inadmissible hearsay (FRE 802) | 22:15-19 | |
| 22:20 – 023:05 | Lack of personal knowledge (FRE 602), inadmissible hearsay (FRE 802)<br>23:4-5: Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 22:15-19 | |
| 24:13 – 14 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903) | | |

| JAMES ARETAKIS<br>November 6, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 24:17 – 025:04 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 25:11-21<br>26:3-8<br>28:16-29:7<br>32:2-11<br>66:10-67:13<br>69:3-17 | Irrelevant (FRE 401, 402) |
| 32:25 – 033:18 | Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802) | 35:9-15<br>37:20-38:7 | |
| 38:25 – 039:20 | Irrelevant (FRE 401, 402) , inadmissible hearsay (FRE 802) | 39:21-40:6 | |
| 41:08 – 17 | Irrelevant (FRE 401, 402), incomplete (FRE 106) , inadmissible hearsay (FRE 802) | 42:2-13 | |
| 42:21 – 043:18 | Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802) | 43:19-44:10 | |
| 45:13 - 16 | | 45:16-46:6 | |
| 46:10 – 15 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 46:16-19 | |

| JAMES ARETAKIS<br>November 6, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 46:24 – 048:12 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 48:12-49:10 | |
| 51:10 – 18 | | 51:20-52:16 | |
| 53:13 – 20 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), impermissible lay opinion | 53:22-54:4 | |
| 54:12 – 055:18 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion | | |
| 58:13 – 059:06 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903) | | |
| 59:18 – 060:02 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602) | 60:9-13 | |

| JAMES ARETAKIS<br>November 6, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 60:17 – 063:12 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion | | |
| 70:03 – 071:20 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion | 71:21-72:6 | |
| 74:06 – 077:08 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion | | |

| JAMES ARETAKIS<br>November 6, 2013 Deposition Transcript | | | |
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| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committees' Objections to Counter Designations** |
| 5:21-23 | | | |
| 45:13-46:6 | | 12:10-14:21 | Beyond the scope of affirmative designation; irrelevant (FRE 401, 402). |

| JAMES ARETAKIS<br>November 6, 2013 Deposition Transcript | | | |
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| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committees' Objections to Counter Designations** |
| 77:17-80:16 | | | |

| CONOR BASTABLE<br>November 1, 2013 Deposition Transcript | | |
|---|---|---|
| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 6:8-23 | | 11:25 – 12:24 |
| 21:6 – 23:13 | FRE 402 (Not relevant) | |
| 25:13 – 27:25 | | 31:15 – 32-7 |
| 49:3 – 20 | FRE 402 (Not relevant) | |
| 60:23 – 62:10 | 61:14-18:<br>FRE 611(a) (Compound) | 158:4 – 162:21 |
| 62:18 – 64:21 | 64:2-12:<br>FRE 611(a) (Vague and ambiguous)<br><br>64:13-21:<br>FRE 611(a) (Compound) | 64:22-65:7<br>90:12 – 91:10<br>154:2 – 155:6 |

| CONOR BASTABLE<br>November 1, 2013 Deposition Transcript | | |
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| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 67:16 – 68:4 | | 66:4 – 67:15<br>68:5-6<br>68:18 – 69:24 |
| 68:7 – 17 | | |
| 69:25 – 70:21 | | |
| 130:17 – 132:13 | 130:20-24:<br>FRE 1002 (Best evidence)<br><br>131:19-22:<br>FRE 611(a) (Compound) | |
| 132:20 – 133:6 | 132:23 – 133:6:<br>FRE 611(a) (Vague and ambiguous)<br><br>132:20 – 133:6:<br>FRE 602 (Lacks personal knowledge, calls for speculation) | 129:6 – 130:11 |
| 133:21 – 134:7 | FRE 402 (Not relevant) | 134:8-9 |
| 134:10 – 135:15 | FRE 402 (Not relevant)<br><br>FRE 602, 701, 702 (Lacks foundation, calls for expert opinion) | |

| **CONOR BASTABLE**<br>**November 1, 2013 Deposition Transcript** | | |
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| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 135:22 – 136:6 | FRE 402 (Not relevant)<br><br>FRE 602, 701, 702 (Lacks foundation, calls for expert opinion) | 136:7 |
| 136:8 – 136:25 | FRE 402 (Not relevant)<br><br>FRE 602, 701, 702 (Lacks foundation, calls for expert opinion) | |
| 143:25 – 148:13 | FRE 802 (Hearsay)<br><br>FRE 1002 (Best evidence)<br><br>146:11-17 & 147:3-6:<br>FRE 611(a) (Compound) | 141:13 – 143:24 |

| **MICHAEL CARPENTER**<br>**November 12, 2013 Deposition Transcript** | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 16:9-17:17 | | | |
| 19:20-21:18 | Irrelevant (FRE 401, 402)<br><br><u>19:20-21:7</u><br>Inadmissible hearsay (FRE 802) | 18:10-19:7 | |
| 23:10-24:20 | | | |

| MICHAEL CARPENTER<br>November 12, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 25:7-16 | | | |
| 26:24-27:5 | | | |
| 29:25-30:8 | | | |
| 33:14-22 | Inadmissible hearsay (FRE 802) | | |
| 36:3-37:12 | Inadmissible hearsay (FRE 802) | 37:13-14 | |
| 37:15-21 | Inadmissible hearsay (FRE 802) | | |
| 41:4-42:23 | | 39:15-40:21 | |
| 43:5-15 | | | |
| 46:6-23 | | 45:16-46:5 | Irrelevant (FRE 401, 402), lack of foundation (FRE 602, 901, 903) |
| 48:19-22 | | 48:23-24 | |
| 48:25-49:18 | Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602)<br><br><u>49:15-18</u><br>Objection to form: vague and ambiguous | 49:19-50:4 | Irrelevant (FRE 401, 402), Inadmissible hearsay (FRE 802) |
| 50:20-51:10 | Irrelevant (FRE 401, 402) | | |
| 60:3-11 | | | |

| MICHAEL CARPENTER<br>November 12, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 61:4-62:5 | Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion | | |
| 63:19-21 | | | |
| 64:2-6 | | | |
| 64:8-13 | | | |
| 66:5-68:16 | 67:9-22; 68:6-16<br>Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion | | |
| 69:3-19 | Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion | | |
| 70:20-25 | Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion | 71:2-4 | |

| MICHAEL CARPENTER<br>November 12, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 71:5-7 | Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion | 71:2-4 | |
| 81:5-11 | | | |
| 82:14-83:5 | Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion | | |
| 84:14-85:21 | | | |
| 86:3-6 | | 86:7-87:7 | Inadmissible hearsay (FRE 802) |
| 87:8-13 | | 87:14-16 | |

| AL CELINI<br>November 8, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 14:20-15:7 | | 15:8-14 | |
| 16:2-18:7 | | 15:15-25 | |
| 18:11-19:18 | Irrelevant (FRE 401, 402) | | |

| AL CELINI<br>November 8, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 19:23-20:8 | 22:17-23:15: Irrelevant (FRE 401, 402) | | |
| 20:17-21:16 | | | |
| 22:17-24:15 | | | |
| 25:18-26:24 | 26:12-24: Irrelevant (FRE 401, 402) | | |
| 27:14-28:9 | Irrelevant (FRE 401, 402) | 28:10-29:11 | FRE 611(a) (Non-responsive) |
| 31:13-20 | | 31:21-32:5 | |
| 32:6-23 | Irrelevant (FRE 401, 402) | 35:9-36:12 | |
| 36:23-38:25 | | | |
| 42:10-13 | | 41:23-42:9; 42:14-42:24; 43:13-44:6 | |
| 51:6-54:20 | | 54:21-56:12; 74:22-75:17 | |
| 73:10-74:4 | Lack of foundation (FRE 602, 901), lack of personal knowledge/speculative (FRE 602) | 74:5-75:17 | |
| 90:19-91:12 | | | |
| 92:23-93:25 | | | |
| 95:22-96:10 | | 105:8-106:16 | |
| 104:9-25 | Lack of personal knowledge/speculative (FRE 602); calls for legal conclusion | 96:11-98:11 | |
| 117:21-118:12 | | 118:21-119:18 | |
| 121:25-122:7 | | 121:6-24 | |
| 122:22-123:25 | Irrelevant (FRE 401, 402) | | |

| AL CELINI<br>November 8, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 127:2-16 | | | |
| 130:18-133:23 | Lack of personal knowledge/speculative (FRE 602) | 133:24-134:13 | |
| 134:14-19 | Lack of personal knowledge/speculative (FRE 602); calls for legal conclusion | | |
| 148:3-149:3 | | 145:20-146:5;<br>146:11-23 | |
| 150:20-151:5 | | | |
| 152:20-25 | | | |

| AL CELINI<br>November 8, 2013 Deposition Transcript | | |
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| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 41:5-22 | | |
| 42:25-43:8 | | 43:9-12 |
| 43:13-21 | | 43:9-12 |
| 47:4-8 | | |
| 71:16-72:8 | FRE 611(a) (Non-responsive) | 70:19-71:10<br>72:9-23 |
| 91:20-92:17 | | 92:18-22 |
| 97:2-22 | 97:17-22:<br>FRE 611(a) (Non-responsive) | |
| 98:20-99:2 | | 99:3-18 |
| 100:18-25 | | |

| AL CELINI<br>November 8, 2013 Deposition Transcript | | |
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| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 149:14-151:21 | | |
| 152:4-155:23 | 154:14-18:<br>FRE 611(c) (Leading) | |
| 156:6-159:10 | | |
| 159:21-160:10 | 159:21-25:<br>FRE 602, 802 (Lacks personal knowledge; calls for hearsay)<br><br>160:2-10<br>FRE 611(c) (Leading) | 160:11-15 |

| JOE CORTESE<br>October 30, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 010:24 – 011:08 | | | |
| 012:24 – 013:14 | | | |
| 018:23 – 019:14 | | | |
| 026:07 – 13 | Irrelevant (FRE 401, 402) | 26:14 - 17 | |
| 033:22 – 036:04 | Irrelevant (FRE 401, 402) | 36:05 - 37:02 (in the event 33:22 – 36:04 is admitted over Plan Proponents' objection) | |
| 037:03 – 039:06 | Irrelevant (FRE 401, 402) | | |
| 048:13 – 20 | Lack of personal knowledge (FRE 602) | | |

| JOE CORTESE<br>October 30, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 050:18-051:13 | | | |
| 051:14 – 053:16 | Lack of personal knowledge (FRE 602); irrelevant (FRE 401, 402); calls for legal conclusion | 53:17 - 53:22 | |
| 056:2 – 056:23 | Lack of personal knowledge/speculative (FRE 602); irrelevant (FRE 401, 402) | | |
| 064:24 – 065:9 | | | |
| 065:25 – 066:22 | Impermissible lay opinion (FRE 701, 702) | | |
| 066:23 – 068:18 | Calls for legal conclusion; impermissible lay opinion (FRE 701, 702) | | |
| 068:19 – 071:15 | Calls for legal conclusion; impermissible lay opinion (FRE 701, 702) | 71:16 - 21 | |
| 071:22 – 072:03 | | | |
| 072:4 – 073:19 | | 73:20 - 73:25 | |
| 075:11 – 077:20 | | 74:10 - 75:10 | |
| 077:21 – 078:6 | | | |
| 078:07 – 079:21 | | | |
| 082:04 – 20 | | 81:6 - 82:03 | |
| 083:17 – 84:22 | Irrelevant (FRE 401, 402) | | |
| 097:02 – 098:11 | | 95:14 - 96:25; 98:12 - 99:05 | |

| JOE CORTESE<br>October 30, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 099:06 – 100:09 | Lack of personal knowledge (FRE 602) | 100:10 - 22; 100:24 - 101:10 (in the event 99:06 – 100:09 is admitted over Plan Proponents' objection) | |
| 103:14 – 104:20 | | | |
| 105:20 – 105:25 | | | |
| 106:07 – 110:17 | Lack of personal knowledge (FRE 602); impermissible lay opinion (FRE 701, 702) | | |
| 110:25 – 111:25 | | | |
| 113:21 – 115:05 | | | |
| 119:14 – 121:08 | | | |
| 125:02 – 126:17 | | 121:17 - 122:09; 122:11 - 124:25 | |
| 127:15 – 128:09 | | | |
| 130:10 – 131:12 | | | |
| 133:05 – 08 | | | |
| 133:09 – 134:20 | | | |
| 136:02 – 137:02 | | | |
| 137:03 – 139:08 | | | |
| 139:9 - 140:15 | | | |
| 140:16 – 22 | | | |
| 142:17 – 143:06 | | 143:7 – 143:16 | |
| 144:07 – 146:09 | | | |

| JOE CORTESE<br>October 30, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 149:18 – 150:06 | | | |
| 150:7 – 150:16 | | | |
| 151:02 – 07 | | | |
| 152:09 – 25 | | 153:2 - 10; 153:12 - 14 | |
| 153:15 – 154:03 | | | |
| 155:19 – 156:06 | | 161:7 - 162:6; 162:8-20; 162:22 - 163:10; 164:2 | |
| 157:06 – 09 | | | |
| 171:05 – 16 | | | |
| 171:21 – 174:03 | | 171:17 - 20 | |
| 176:19 – 177:02 | Irrelevant (FRE 401, 402) | | |
| 177:03 – 178:15 | Irrelevant (FRE 401, 402) | | |
| 183:24 – 185:07 | | | |
| 185:08 – 186:05 | | 186:6 - 7; 186:9 - 25 | |
| 189:05 – 191:04 | | 187:2- 4; 187:6 - 7; 187:9 - 188:10; 188:12 - 189:4; 191:5 - 192:11; 192:13 - 19; 193:6 - 16; 193:18 - 23 | |
| 196:12 – 197:06 | | | |
| 197:07 – 203:10 | | | |
| 203:21 – 210:06 | | 210:18 - 20; 210:23 - 211:2 | |
| 212:03 – 25 | | 213:2 - 8; 213:10 - 23 | |

| JOE CORTESE<br>October 30, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 216:10 – 217:04 | Calls for speculation (FRE 602); calls for legal conclusion | | |
| 228:07 – 231:18 | | 217:19 - 227:25 | |

| CATHY DONDZILA<br>October 17, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 013:11-14:16 | | | |
| 111:14-112:18 | | | |
| 115:15-22 | | | |
| 117:25-118:18 | | | |
| 119:2-11 | | | |
| 125:3-13 | | | |
| 129:19-130:16 | | | |
| 134:4-16 | | | |
| 135:14-136:24 | | | |
| 14:25-15:4 | | | |
| 15:7-15 | | | |
| 152:25-153:9 | | | |
| 18:23-22:3 | | 22:4-15 | |
| 18:8-10 | | | |
| 22:16-23:20 | | | |
| 24:18-25:17 | | | |

| CATHY DONDZILA<br>October 17, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 24:3-8 | | | |
| 26:10-14 | | | |
| 30:13-33:21 | | | |
| 35:10-36:2 | | | |
| 36:17-37:22 | | | |
| 41:23-43:25 | | | |
| 46:16-47:20 | | 47:21–48:08 | |
| 49:13-51:16 | | | |
| 54:18-57:10 | | 57:11–16<br>57:23–58:04<br>58:12–19 | |
| 61:19-62:21 | | | |
| 65:15-67:16 | | | |
| 68:11-70:5 | | | |
| 70:17-71:4 | | | |
| 71:23-74:7 | | | |
| 79:6-80-21 | | | |
| 81:4-19 | | | |
| 84:13-86:6 | | | |
| 86:17-89:10 | | | |
| 91:5-9 | | | |
| 94:4-97:8 | | | |
| 97:22-98:25 | | | |
| 99:17-100:4 | | | |
| 111:14-112:18 | | | |
| 115:15-22 | | | |

| CATHY DONDZILA<br>October 17, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 117:25-118:18 | Objection to form; vague and ambiguous | | |
| 119:2-11 | | | |
| 125:3-13 | | | |
| 129:19-130:16 | | | |
| 134:4-16 | | | |
| 135:14-136:24 | | | |
| 152:25-153:9 | | | |

| CATHY DONDZILA<br>October 17, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committees' Objections to Counter-Designations** |
| 8:11-9:22 | | | |
| 11:7-9 | | 11:10-16 | |
| 11-20-14:16 | | | |
| 18:23-20:22 | | | |
| 26:2-14 | | | |
| 32:12-33:17 | | | |
| 35:5-36-2 | | | |
| 36:17-37:22 | | | |
| 43:14-44:21 | | | |
| 53:16-24 | | 53:12-15<br>53:25-54:15 | |

| CATHY DONDZILA<br>October 17, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committees' Objections to Counter-Designations** |
| 58:25-59:20 | | | |
| 60:17-24 | | | |
| 61:19-62:3 | | | |
| 70:17-72:20 | | | |
| 77:22-78:6 | | | |
| 81:4-85:10 | | | |
| 92:11-94:3 | | | |
| 94:19-97:4 | | 97:9-21 | |
| 100:5-101:8 | | 101:9-17 | |
| 106:7-107:16 | | 107:17-21 | |
| 111:14-112:4 | | | |
| 113:3-10 | | 112:23-113:2 | |
| 125:3-13 | | 125:14-19 | |
| 125:20-126:4 | | 126:5-11 | |
| 134:4-16 | | 133:3-134:3<br>140:5-7 | Beyond the scope of affirmative testimony (133:3-134:3) |
| 144:17-148:24 | | | |
| 149:17-24 | | 149:9-16 | |
| 150:17-156:19 | | 149:25-150:16<br>156:20-157:13 | |
| 157:18-25 | | | |
| 158:5-13 | | 158:2-4<br>158:14-16 | |
| 158:17-159:11 | | 159:12-15 | |

| CATHY DONDZILA<br>October 17, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **Debtors' and Committees' Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committees' Objections to Counter-Designations** |
| 159:16-160:14 | | 160:15-161:15 | |
| 161:16-162:23 | | | |
| 163:21-164:19 | | 162:24-163:20<br>164:20-22 | |
| 164:23-25 | | | |
| 165:9-23 | | 165:2-8 | |
| 166:23-167:23 | | | |
| 168:5-175:17 | | | |
| 176:4-19 | | 176:20-177:6 | |
| 177:7-23 | | 177:24-178:5 | |
| 178:6-16 | | | |
| 179:2-17 | | 179:18-25 | |
| 180:2-182:8 | | | |
| 183:10-22 | | 183:23-184:16 | |
| 184:17-185:4 | | 185:5-187:16 | Beyond the scope of affirmative testimony |
| 187:17-191:4 | | 191:9-21<br>192:2-193:4 | |

| TERESA RAE FARLEY<br>September 18, 2013 Deposition Transcript | | |
|---|---|---|
| **Wells Fargo's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Objections Counter-Designations** |
| 191:7-214:14 | | |

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|---|---|---|
| 221:21-225:8 | | |
| 229:11-23 | | |

| **ADAM GLASSER**<br>**November 13, 2013 Deposition Transcript** | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 11:8 – 18 | Irrelevant (FRE 401, 402) | | |
| 12:9 – 19 | Irrelevant (FRE 401, 402) | 87:11-88:6 | |
| 14:8 – 17:12 | Irrelevant (FRE 401, 402) | | |
| 17:13 – 19:23 | | | |
| 20:22 – 21:12 | | 21:15-22:9 | |
| 22:11 – 14 | | 22:15-23:10 | Irrelevant (FRE 401, 402) |
| 26:07 – 27:07 | | | |
| 28:08 – 29:06 | | | |
| 29:10 – 31:24 | 29:22-31:24<br>Irrelevant (FRE 401, 402) | | |
| 31:25 – 32:13 | | | |
| 32:14 – 21 | | 32:22-33:21 | Irrelevant (FRE 401, 402) |
| 34:16 – 24 | | | |
| 36:05 – 42:12 | 41:6-42:12<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901) | 34:25-36:3 | Irrelevant (FRE 401, 402); incomplete question and answer |
| 45:05 – 46:03 | | | |
| 46:06 – 13 | | | |

| ADAM GLASSER<br>November 13, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 47:04 – 48:18 | | 46:6-47:3; 48:19-49:2 | |
| 49:03 – 50:02 | | | |
| 50:22 – 60:02 | 50:22-15<br>Objection to form: vague, ambiguous<br><br>52:14-24; 53:5-18<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion<br><br>55:7-15; 55:24-56:7; 56:9-16<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901) | 60:3-5 | |
| 60:06 – 67:06 | 65:25-66:15<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion | 67:7-21 | |

| **ADAM GLASSER**<br>**November 13, 2013 Deposition Transcript** | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 69:03 – 76:18 | 71:19-72:13<br>Irrelevant (FRE 401, 402), lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901)<br><br>72:15-73:6<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion | 100:17-103:9 | |

| ADAM GLASSER<br>November 13, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 76:22 – 83:21 | 77:15-78:17<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion<br><br>78:19-23<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901)<br><br>79:2-7; 79:16-80:9; 80:16-20; 80:25-81:3<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901)<br><br>81:4-16; 81:25-82:7<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion<br><br>82:20-83:21<br>Lack of personal knowledge/speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion | | |
| 84:21 – 86:15 | | | |

| ADAM GLASSER<br>November 13, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 87:21 – 88:03 | | 87:11-20; 88:4-6 | |
| 88:11 – 89:05 | | | |
| 92:04 – 93:25 | | 89:6-17; 91:8-92:3 | |
| 94:07 – 23 | | 94:2-6; 94:24-95:7 | |
| 95:09 – 96:10 | | 97:23-98:7 | |
| 98:14 – 19 | | | |
| 99:20 – 100:16 | | | |

| TAMMY HAMZEHPOUR<br>October 18, 2013 Deposition Transcript | | |
|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** |
| 14:5-25 | 14:12-16: objection to form; vague and ambiguous<br>14:17-25: lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903) | |
| 15:12-17:21 | 15:23-16:12: lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903)<br>17:3-11: lack of personal knowledge (FRE 602) | |
| 18:8-19:5 | | |
| 20:18-25:23 | Lack of personal knowledge (FRE 602) | 25:24-26:16 |
| 28:3-21 | 28:12-21: lack of personal knowledge (FRE 602). | 27:12-28:2 |

| **TAMMY HAMZEHPOUR**<br>**October 18, 2013 Deposition Transcript** | | |
|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** |
| 29:21-34:11 | 31:3-16: objection to form; vague and ambiguous<br>31:20-25: lack of personal knowledge (FRE 602); objection to form; vague and ambiguous<br>32:2-10: lack of personal knowledge (FRE 602)<br>33:11-18: lack of personal knowledge (FRE 602); unduly prejudicial (FRE 403) | |
| 35:11-37:20 | 35:11-36:3: lack of personal knowledge (FRE 602) | |
| 038:06 – 038:13 | | |
| 38:19-39:9 | Irrelevant (FRE 401, 402) | |

| **SUSHEEL KIRPALANI**<br>**November 14, 2013 Deposition Transcript** | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 9:3 – 5 | | 9:6-19 | |
| 9:20 – 23 | | | |
| 11:21 – 12:4 | Lack of personal knowledge/speculative (FRE 602) | 12:5-6 | |
| 13:22 – 14:15 | | 14:15-15:8; 16:12-17 | |

| LEWIS KRUGER<br>October 30, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Objections Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 17:17-20 | | | |
| 18:13-22:12 | | 22:13-23:16 | |
| 23:17-24:13 | | 24:14-25:10 | |
| 25:11-18 | | 25:19-26:4 | |
| 28:17-24 | | 27:21-28:16, 28:25-29:15 | |
| 29:19-33:12 | | | |
| 34:2-36:21 | | | |
| 37:8-43:19 | 42:13-43:2: Objection to form; misleading; confusing. | | |
| 45:17-46:3 | | 45:5-16 | |
| 47:5-48:15 | | | |
| 49:2-51:13 | | 51:14-52:2 | |
| 52:18-55:7 | 52:18-53:4: Lack of personal knowledge/speculative (FRE 602).<br>54:5-18: Lack of personal knowledge/speculative (FRE 602). | 55:8-25 | |
| 56:2-23 | | 56:24-25 | |
| 57:2-62:15 | 57:2-14: Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106).<br>58:13 - 17: Irrelevant (FRE 401, 402) | | |

| LEWIS KRUGER<br>October 30, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Objections Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 64:4-71:23 | 67:16-68:8: Lack of personal knowledge (FRE 602).<br>69:8-71:4: Inadmissible hearsay (FRE 802). | 62:16-64:3, 71:24-72:8 | |
| 78:4-84:18 | 82:14-16: Objection to form; misleading; confusing; unduly prejudicial. | 84:19-21, 85:2-19 | |
| 89:9-90:5 | | | |
| 95:5-98:6 | 96:18-97:5: Lack of personal knowledge/speculative (FRE 602). | 98:7-13 | |
| 98:14-20 | | | |
| 100:2-19 | | | |
| 101:18-102:5 | | 102:6-14 | |
| 103:17-104:9 | | 103:6-16 | |
| 105:12-106:7 | | 104:10-105:11, 106:8-107:15 | |
| 108:6-23 | | | |
| 112:15-113:25 | | | |
| 114:17-115:5 | | 114:2-16 | |
| 116:13-117:18 | | 117:19-119:20 | |
| 119:21-121:13 | | | |
| 123:11-125:13 | | | |
| 125:23-126:20 | | | |
| 128:8-11 | | 128:12-19, 128:24-129:11 | |

| LEWIS KRUGER<br>October 30, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Objections Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 130:5-23 | | | |
| 132:4-7 | | | |
| 133:6-12 | | 132:16-133:5, 133:13-19, 134:11-136:2 | |
| 139:24-141:25 | | | |
| 147:17-148:11 | | | |
| 150:25-151:13 | | | |
| 151:23-152:6 | | 151:14-22 | |
| 153:7-154:8 | | | |

| TOM MARANO<br>November 11, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 10:7-11:16 | | | |
| 12:19-13:23 | 12:19-22: Inadmissible hearsay (FRE 802)<br>13:15-23: Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602) | | |
| 14:18-24 | Lack of personal knowledge (FRE 602) | | |

| TOM MARANO<br>November 11, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 16:15-17:8 | Lack of personal knowledge (FRE 602) | | |
| 48:5-8 | Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903) | | |
| 49:19-51:14 | Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion<br>51:9-14: objection to form; vague and ambiguous | 51:15-53:9 | |
| 57:13-60:15 | Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion | | |
| 62:10-63:12 | Irrelevant (FRE 401, 402) | | |
| 64:16-65:5 | | | |
| 66:3-9 | | | |
| 69:24-71:13 | Irrelevant (FRE 401, 402) | 71:14-20 | |
| 76:12-77:16 | | 77:17-78:14 | |

| TOM MARANO<br>November 11, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 82:10-23 | | | |
| 84:6-19 | Lack of personal knowledge (FRE 602) | | |
| 85:21-86:6 | | 86:7-17 | |
| 87:13-89:7 | | | |
| 97:12-101:19 | 97:12-99:7: Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)<br>99:8-100:17: lack of personal knowledge (FRE 602), inadmissible lay opinion | | |
| 102:3-104:4 | 102:3-103:20: Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), inadmissible lay opinion, irrelevant (FRE 401, 402) | | |

| WILLIAM MARX<br>October 18, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 9:2-16 | | | |
| 10:13-11:11 | | | |
| 13:24 – 014:12 | | | |
| 14:22-15:8 | | | |
| 17:3-18:2 | Irrelevant (FRE 401, 402) | | |
| 20:21 – 021:06 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 21:22-23:9 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 23:10-24:9 | |
| 24:10 – 21 | | | |
| 24:22-25:10 | | | |
| 25:11-24 | | | |
| 28:7-28:14 | | | |
| 28:15-30:2 | | | |
| 30:3-17 | Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), | | |
| 30:18-22 | | | |
| 30:23-31:4 | | | |

| WILLIAM MARX<br>October 18, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 31:5-9 | Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403) | | |
| 31:10-11 | | | |
| 32:2-12 | Irrelevant (FRE 401, 402) | | |
| 32:23-34:8 | | | |
| 34:9-21 | Irrelevant (FRE 401, 402), confusing (FRE 403), lack of personal knowledge (FRE 602) | | |
| 34:22-36:23 | Irrelevant (FRE 401. 402), unduly prejudicial (FRE 403) | 36:24-37:6 | |
| 37:7-12 | Irrelevant (FRE 401, 402), confusing (FRE 403), lack of personal knowledge (FRE 602) | 36:24-37:6 | |
| 40:18-41:15 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 41:16-19 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |

| WILLIAM MARX<br>October 18, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 41:20-42:15 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 42:16-43:16 | | | |
| 44:2-13 | | | |
| 44:14-45:25 | | | |
| 46:2-47:4 | Irrelevant (FRE 401, 402) | | |
| 49:24-50:20 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 50:21-52:11 | | | |
| 52:12-16 | | | |
| 52:17-54:2 | | | |
| 54:3-4 | Incomplete (FRE 106), lack of personal knowledge (FRE 602), confusing (FRE 403) | | |
| 54:5-12 | Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), calls for legal conclusion (FRE 701, 702, 703), lack of personal knowledge (FRE 602) | | |

| WILLIAM MARX<br>October 18, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 54:13-20 | Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), calls for legal conclusion (FRE 701, 702, 703) | | |
| 54:21-55:8 | Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge/speculative (FRE 602) | | |
| 55:9-56:4 | Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge/speculative (FRE 602) | | |
| 56:5-23 | | | |
| 58:7-61:3 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 23:10-24:9 | |
| 61:4-61:17 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 23:10-24:9 | |
| 62:08 – 063:06 | Incomplete (FRE 106) | | |
| 63:7-64:7 | | | |
| 64:17-24 | | | |

| WILLIAM MARX<br>October 18, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 66:6-67:14 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106), calls for legal conclusion (FRE 701, 702, 703) | | |
| 67:25-68:13 | Irrelevant (FRE 401, 402) | | |
| 68:14-72:3 | Objection to Page 68, Line 14 through Page 70, Line 16: Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 72:4-14 | |
| 73:11-24 | Incomplete (FRE 106) | | |
| 75:5-12 | Incomplete (FRE 106) | | |
| 76:12-77:22 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 23:10-24:9 | |
| 82:2-83:17 | Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403) | | |

| WILLIAM MARX<br>October 18, 2013 Deposition Transcript | | | |
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| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group's Objections to Counter-Designations** |
| 83:24-84:19 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 86:15-87:6 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 88:3-9 | Incomplete (FRE 106) | 88:10-24 | |
| 89:14-90:3 | | | |
| 93:9-95:13 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 92:19-93:8<br>95:14-96:23<br>23:10-24:9 | |

| WILLIAM MARX<br>October 18, 2013 Deposition Transcript | | |
|---|---|---|
| **Debtors' and Committee's Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |

| **WILLIAM MARX**<br>**October 18, 2013 Deposition Transcript** | | |
|---|---|---|
| **Debtors' and Committee's Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 6:12-15 | | |
| 8:24-9:8 | | |
| 9:17-11:11 | | |
| 24:10-25:17 | | |
| 27:7-28:14 | 27:25-28:6:<br>FRE 402 (Not relevant)<br>FRE 602, 701, 702 (Lacks foundation, calls for expert opinion) | |
| 30:18-31:4 | | |
| 37:13-25 | | |
| 44:11-16 | | |
| 44:19-22 | | |
| 50:24-52:16 | | |
| 56:5-58:6 | | |
| 63:15-64:16 | | |
| 64:22-65:9 | | |
| 65:18-66:3 | | 65:10-17 |
| 70:17-71:14 | | 66:4-5 |
| 72:15-76:5 | | |
| 78:2-6 | FRE 402 (Not relevant) | |
| 79:24-81:17 | 79:24-81:17<br>FRE 402 (Not relevant)<br><br>80:16-81:17<br>FRE 602 (Lacks personal knowledge; calls for speculation) | |

| **WILLIAM MARX**<br>**October 18, 2013 Deposition Transcript** | | |
|---|---|---|
| **Debtors' and Committee's Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 84:20-85:12 | 84:25-85:9<br>FRE 802 (Hearsay)<br>FRE 1002 (Best evidence) | |
| 88:3-14 | 88:10-14<br>FRE 402 (Not relevant) | |
| 88:18-22 | 88:18-22<br>FRE 402 (Not relevant)<br>FRE 602, 701, 702 (Lacks foundation, calls for expert opinion) | |
| 90:21-91:25 | FRE 602 (Lacks personal knowledge; calls for speculation) | |
| 98:6-11 | | |
| 98:14-19 | | |

| **MICHAEL PINZON**<br>**September 3, 2013 Deposition Transcript** | | |
|---|---|---|
| **Wells Fargo's Designations** | **Debtor's and Committee's Objections** | **Debtor's and Committee's Counter-Designations** |
| 7:8-10 | | |
| 11:8-12:13 | | |
| 13:2-17:23 | | |

| **MICHAEL PINZON**<br>**September 3, 2013 Deposition Transcript** | | |
|---|---|---|
| **Wells Fargo's Designations** | **Debtor's and Committee's Objections** | **Debtor's and Committee's Counter-Designations** |
| 23:8-14 | | |
| 38:17-39:20 | | |
| 58:7-66:5 | | |
| 68:11-18 | | |
| 69:9-20 | | |
| 70:3-16 | | |
| 71:12-79:8 | | |
| 80:6-83:5 | | |
| 83:11-84:17 | | |
| 85:5-9 | | |
| 85:25-86:10 | | |
| 88:10-89:24 | | |
| 92:8-94:8 | | |
| 95:9-13 | | |
| 95:25-99:19 | | |
| 100:3-103:12 | | |
| 103:22-104:1 | | |
| 114:3-115:8 | | |
| 115:21-116:16 | | |
| 117:2-124:25 | | |
| 125:9-127:10 | | |
| 127:14-128:3 | | |
| 128:6-10 | | |
| 128:17-134:19 | | |
| 135:3-16 | | |
| 137:19-138:14 | | |
| 138:21-139:4 | | |

| **MICHAEL PINZON**<br>**September 3, 2013 Deposition Transcript** | | |
|---|---|---|
| **Wells Fargo's Designations** | **Debtor's and Committee's Objections** | **Debtor's and Committee's Counter-Designations** |
| 139:7-19 | | |
| 140:9-146:9 | | |
| 147:6-148:19 | | |
| 148:23-149:5 | | |
| 149:18-150:10 | | |
| 151:5-152:22 | | |
| 157:11-159:3 | | |
| 159:12-160:9 | | |
| 160:19-161:3 | | |
| 161:17-163:7 | | |
| 163:20-25 | | |
| 164:15-165:6 | | |
| 165:22-166:18 | | |
| 167:16-168:13 | | |
| 169:22-170:123 | | |
| 171:7-11 | | |
| 171:18-172:16 | | |
| 173:2-174:5 | | |
| 175:4-11 | | |
| 177:2-25 | | |

| **MARK RENZI**<br>**November 6, 2013 Deposition Transcript** |
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| UMB and Ad Hoc Group Designations | Debtors' and Committees' Objections | Debtors' and Committees' Counter-Designations | UMB and Ad Hoc Group Objections to Counter-Designations |
|---|---|---|---|
| 12:24-13:20 | Irrelevant (FRE 401, 402); incomplete | 12:15-23 | |
| 148:5-151:19 | Irrelevant (FRE 401, 402); incomplete (FRE 106) | | |
| 152:16-23 | Irrelevant (FRE 401, 402); unduly prejudicial (FRE 403) | | |
| 153:9-23 | Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); incomplete (FRE 106) | 153:24-25 | |
| 155:6-25 | Irrelevant (FRE 401, 402); incomplete (FRE 106) | 156:8-157:4 | Impermissible lay opinion (FRE 701, 702) |
| 157:5-158:4 | Irrelevant (FRE 401, 402); incomplete (FRE 106) | | |
| 158:19-159:2 | Irrelevant (FRE 401, 402); incomplete (FRE 106) | 159:3-19 | |
| 167:9-15 | Incomplete (FRE 106); lack of personal knowledge (FRE 602) | 166:18-167:8 | |
| 168:5-11 | Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903); incomplete (FRE 106) | 168:12-20 | FRE 611(a) (Non-responsive) |
| 169:5-170:7 | Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903) | | |
| 170:13-171:9 | Incomplete (FRE 106) | 170:3-12 | Hearsay (FRE 802) |
| 181:24-182:6 | Incomplete (FRE 106) | 181:4-23 | |

| MARK RENZI<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committees' Objections** | **Debtors' and Committees' Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 182:20-184:3 | Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903); incomplete (FRE 106) | 184:4-23 | |
| 186:6-187:11 | Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); incomplete (FRE 106) | 185:19-186:5 | |

| REID SNELLENBARGER<br>November 8, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 224:5-226:2 | | | |
| 296:5-24 | | 289:7-12<br>290:14 - 291: 6<br>295:6 - 296:4 | |
| 352:12-353:2 | | 352:5-11<br>353:3-354:13 | |
| 355:4-12 | | | |
| 391:24-395:6 | | 395:14-398:21 | 397:14-398:7<br>FRE 611(c) (Leading) |

| REID SNELLENBARGER |
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| November 8, 2013 Deposition Transcript | | |
|---|---|---|
| **Wells Fargo's Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** |
| 362:2-365:5 | 362:2 – 391:18<br>FRE 601, 611 (Outside the scope of 30(b)(6) topics) | |
| 367:12-389:11 | 367:15-16<br>FRE 611(a) (Vague and ambiguous)<br><br>368:23-369:4<br>FRE 611(a) (Vague and ambiguous)<br><br>369:21-370:2<br>FRE 402 (Not relevant)<br><br>373:2-379:25<br>FRE 402 (Not relevant) | 389:12-395:6 |

| REID SNELLENBARGER<br>November 8, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **Debtors' and Committee's Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committee's Objections to Counter-Designations** |
| 132:25-133:3 | | | |
| 136:21-145:14 | | | |
| 147:17-149:25 | | | |
| 151:7-155:5 | 152:18-153:8<br>FRE 611(a) (Vague and ambiguous) | | |
| 155:14-159:11 | | | |
| 160:11-165:5 | | 165:6–166:18 | |
| 166:19-168:24 | | | |
| 169:3-172:8 | | | |

| REID SNELLENBARGER<br>November 8, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **Debtors' and Committee's Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committee's Objections to Counter-Designations** |
| 174:21-179:17 | | | |
| 180:2-7 | | | |
| 181:22-183:25 | | 184:2–186:18 | Beyond the scope of affirmative testimony |
| 188:12-190:10 | | 187:6–18 | Beyond the scope of affirmative testimony |
| 190:16-193:25 | 193:15-194:3<br>FRE 602 (Lack of foundation) | 194:2-3<br>195:13–197:3 | Beyond the scope of affirmative testimony (195:13-197:3) |
| 200:13-202:3 | | 198:15 – 200:3 | Beyond the scope of affirmative testimony |
| 202:22-210:6 | | | |
| 210:12-214:19 | | 214:24–216:11 | |
| 216:12-224:4 | | 224:5–226:2 | |
| 226:8-229:9 | | | |
| 236:14-240:22 | | 234:7–235:24<br>240:23–242:22 | |
| 242:23-246:7 | | | |
| 248:2-11 | | | |
| 248:16-257:14 | 255:4-6<br>FRE 602 (Calls for speculation) | | |
| 258:8-267:16 | 258:8-259:2<br>FRE 611(a) (Vague and ambiguous, misstates witness's testimony) | 269:21 – 270:6<br>270:15 – 25<br>274:21 – 275:13 | Beyond the scope of affirmative testimony; incomplete (FRE 106) |
| 278:16-287:13 | 279:13-23<br>FRE 611(a) (Vague and ambiguous) | 296:5 – 24<br>308:23 – 310:7<br>317:13 – 318:13 | |

| REID SNELLENBARGER<br>November 8, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **Debtors' and Committee's Designations** | **UMB and Ad Hoc Group Objections** | **UMB and Ad Hoc Group Counter-Designations** | **Debtors' and Committee's Objections to Counter-Designations** |
| 349:3-8 | | | |
| 349:14-351:5 | | 351:6-353:2 | |
| 354:14-355:12 | 354:14<br>FRE 611(a) (Vague and ambiguous) | 353:3-354:13 | |

| BARB WESTMAN<br>October 15, 2013 Deposition Transcript | | |
|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** |
| 11:18-14:22 | | |
| 15:13-18 | | |
| 21:5-20 | 21:8-15: objection to form; vague and ambiguous | |
| 22:8-23:13 | | |
| 24:24-26:8 | Incomplete (FRE 106) | 26:9-27:10 |
| 27:11-28:5 | | |
| 28:9-14 | Incomplete (FRE 106) | |
| 35:17-36:7 | Lack of foundation (FRE 602, 901, 903); incomplete (FRE 106) | |
| 37:12-42:7 | 38:18-22: objection to form; vague and ambiguous.<br>39:24-40:7, lack of personal knowledge (FRE 602); impermissible lay opinion | |
| 43:9-22 | Incomplete (FRE 106) | 42:24-43:8 |
| 44:15-46:5 | | |

| **BARB WESTMAN**<br>**October 15, 2013 Deposition Transcript** | | |
|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** |
| 46:14-47:24 | | 56:25-58:2 |
| 61:20-62:10 | | |
| 70:4-23 | Lack of foundation (FRE 602, 901, 903); incomplete (FRE 106) | 70:24-25 |
| 75:2-80:6 | Lack of personal knowledge (FRE 620); lack of foundation (FRE 602, 901, 903) | |
| 83:16-24 | Incomplete (FRE 106) | 83:2-15 |
| 86:4-87:23 | | |
| 89:8-25 | | |
| 90:6-20 | | |
| 97:3-10 | Lack of foundation (FRE 602, 901, 903) | |
| 98:19-99:10 | 99:6-10: lack of personal knowledge (FRE 602) | 99:11-24 |
| 99:25-100:20 | 99:25-100:8: lack of personal knowledge (FRE 602) | |
| 103:4-104:25 | 104:19-25: Lack of foundation (FRE 602, 901, 903) | |
| 106:23-107:8 | | |
| 110:6-112:2 | | 112:3-6 |
| 112:7-113:12 | 112:7-15: lack of personal knowledge (FRE 602) | |
| 114:4-123:8 | 117:3-16: objection to form; vague and ambiguous; lack of personal knowledge (FRE 602)<br>119:2-11: lack of personal knowledge (FRE 602)<br>119:12-24, lack of personal knowledge (FRE 602) | |

| **BARB WESTMAN**<br>**October 15, 2013 Deposition Transcript** | | |
|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** |
| 129:15-21 | Lack of foundation (FRE 602, 901, 903) | |
| 130:10-131:17 | 130:10-131:4: objection to form; compound; vague and ambiguous | |
| 134:21-135:16 | 135:10-16: hearsay (FRE 802), lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402) | |
| 139:24-140:9 | Lack of personal knowledge (FRE 602) | |
| 140:23-141:22 | | |
| 143:2-7 | | |
| 143:12-144:3 | Lack of foundation (FRE 602, 901, 903) | |
| 144:25-145:24 | 145:19-24: lack of foundation (FRE 602, 901, 903) | |
| 146:15-147:8 | | |
| 148:11-14 | | |
| 152:22-157:18 | | |
| 158:19-159:8 | | 158:10-18 |
| 159:13-160:4 | Incomplete (FRE 106). | 159:9-12<br>160:5-9 |
| 160:19-162:25 | | |
| 163:5-10 | | |
| 163:15-25 | | |
| 164:21-165:23 | | |
| 166:8-13 | | |
| 166:21-25 | | 167:2-8 |
| 167:22-169:10 | | |

| **BARB WESTMAN**<br>**October 15, 2013 Deposition Transcript** | | |
|---|---|---|
| **UMB and Ad Hoc Group's Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** |
| 170:20-171:12 | 170:25-171:12: lack of personal knowledge (FRE 602) | 169:17-170:6 |
| 171:23-173:10 | | |
| 174:4-179:12 | 174:22-175:5, lack of personal knowledge (FRE 602)<br>177:13-23: objection to form; vague and ambiguous; lack of personal knowledge (FRE 602) | |
| 179:25-180:11 | | |
| 183:4-190:11 | 189:25-190:4: lack of personal knowledge (FRE 602), hearsay (FRE 802) | |
| 196:12-197:19 | Lack of foundation (FRE 602, 901, 903) | |
| 200:9-16 | | |
| 205:24-206:10 | Incomplete (FRE 106). | 206:11-16<br>228:13-230:2 |
| 208:4-22 | | |
| 214:15-215:22 | 215:16-22: lack of personal knowledge (FRE 802), hearsay (FRE 802) | |
| 218:16-220:6 | | 220:7-221:16 |
| 227:7-23 | Incomplete (FRE 106) | |

| **JAMES YOUNG**<br>**November 6, 2013 Deposition Transcript** |
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| UMB and Ad Hoc Group Designations | Debtors' and Committee's Objections | Debtors' and Committee's Counter-Designations | UMB and Ad Hoc Group Objections to Counter-Designations |
|---|---|---|---|
| 7:12-15 | | | |
| 21:15 – 24:9 | Inadmissible hearsay (FRE 802)<br>21:15-23:3: irrelevant (FRE 401, 402) | 17:8-21:14 | |
| 26:22-33:5 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | 33:6-7 | |
| 34:9-36:3 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 36:20-37:2 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |

| JAMES YOUNG<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 37:7-13 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 38:11-39:17 | Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106) | | |
| 40:5-18 | Inadmissible hearsay (FRE 802) | | |
| 45:22-47:16 | Inadmissible hearsay (FRE 802) | | |
| 48:7-50:12 | Inadmissible hearsay (FRE 802) | 50:13-25 | |
| 51:5-59:19 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402) | | |
| 61:18-64:19 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402) | | |
| 66:22-25 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402) | | |

| JAMES YOUNG<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 67:6-68:17 | Inadmissible hearsay (FRE 802) | | |
| 69:3-72:9 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402) | | |
| 73:13-75:18 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602) | | |

| JAMES YOUNG<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 76:5-103:20 | Inadmissible hearsay (FRE 802) (except for 94:24-101:21)<br>76:5-80:9: irrelevant (FRE 401, 402), waste of time (FRE 403)<br>80:10-88:11: irrelevant (FRE 401, 402), lack of foundation (FRE 602, 901, 903)<br>88:25-89:5: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)<br>89:6-90:19: lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402), improper lay opinion<br>91:2-92:10: lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402), improper lay opinion, lack of foundation (FRE 602, 901, 903)<br>92:21-93:19: lack of personal knowledge (FRE 602)<br>94:24-101:21: no objection<br>101:22-103:20: lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402), improper lay opinion | | |
| 104:10-106:24 | | | |

| JAMES YOUNG<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 107:6-122:18 | Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), improper lay opinion, lack of foundation (FRE 602, 901, 903) | | |
| 123:5-128:20 | Inadmissible hearsay (FRE 802)<br>123:5-11: lack of personal knowledge (FRE 602)<br>126:2-127:4: lack of personal knowledge (FRE 602), improper lay opinion | | |
| 130:4-134:23 | 133:24-134:23: irrelevant (FRE 401, 402) | | |
| 135:4-136:25 | | | |
| 137:22-139:2 | 137:22-138:15: irrelevant (FRE 401, 402) | | |
| 139:13-20 | | | |
| 140:5-22 | | | |
| 141:9-149:22 | | | |
| 151:19-24 | Lack of personal knowledge (FRE 602) | | |
| 153:9-165:15 | | | |

| JAMES YOUNG<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 166:25-177:18 | 166:25-167:8: inadmissible hearsay (FRE 802)<br>169:13-25: inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602)<br>170:2-16: inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602)<br>170:17-171:6: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>174:16-175:17: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>176:13-25: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>177:11-18: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802) | | |

| JAMES YOUNG<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 178:12 – 197:12 | 178:12-181:8: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>184:6-185:18: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>188:15-189:18: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>189:24-190:13: Inadmissible hearsay (FRE 802)<br>190:25-191:8: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>192:22-197:12: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802) | | |

| JAMES YOUNG<br>November 6, 2013 Deposition Transcript | | | |
|---|---|---|---|
| **UMB and Ad Hoc Group Designations** | **Debtors' and Committee's Objections** | **Debtors' and Committee's Counter-Designations** | **UMB and Ad Hoc Group Objections to Counter-Designations** |
| 198:10-205:3 | 198:10-199:25: Inadmissible hearsay (FRE 802)<br>203:12-204:9: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)<br>204:15-205:3: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802) | | |
| 205:17-210:7 | 205:17-208:23: Inadmissible hearsay (FRE 802)<br>208:24-210:7: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802) | | |

Dated: November 18, 2013

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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

DEPOSITION OF MICHAEL PINZON
September 3, 2013
New York, New York
9:36 a.m.

Reported by:
ERICA L. RUGGIERI, RPR, CSR, CLR
JOB NO: 31423

Purple Highlighting = Wells Fargo Bank, N.A. Designation

**The Debtors and Committee object to the use of the deposition of Mr. Pinzon on the ground that this deposition may not be used under Bankruptcy Rule 7032.**

September 3, 2013
9:36 a.m.

Deposition of MICHAEL PINZON, held at the offices of Kramer, Levin, Naftalis & Frankel, LLP, 1177 Avenue of the Americas, New York, New York, pursuant to Notice, before Erica Lynn Ruggieri, RPR, CSR, CLR and Notary Public within and for the State of New York.



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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.





MICHAEL PINZON, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. MORRIS:

**Q. Can you please state your name for the record.**

A. Michael Pinzon.

**Q. Good morning, Mr. Pinzon. My name is John Morris. I'm with Pachulski Stang Ziehl & Jones, co-counsel to the unsecured creditors committee. We are here today for the deposition of Wells Fargo, and I just want to go over some simple ground rules for the depositions.**

**I will ask questions, and I would ask that you wait until I have completed my question, before beginning your answer, and I will attempt to do the same, that is, to allow you to finish your answer, before I begin my next question.**

**Every answer of yours has to be verbal, so no nods of the heads or shakes**





**or anything like that. If you do that, I will simply ask you to articulate your answer; is that fair?**

A. Yes.

**Q. If you need a break at any time, just let me know and I'll be happy to accommodate you. Okay?**

A. Okay.

**Q. We are going to mark as Wells Exhibit 1 a series of definitions that we have prepared. There's a lot of language and a lot of words that we will be using today that may be complex, and from time to time I may simply refer to the list of definitions to help us both.**

**Is that okay?**

A. Okay.

(Wells Exhibit 1, series of definitions, marked for identification, as of this date.)

**Q. We will refer to this document as needed, Mr. Pinzon; is that okay?**

A. Okay.

MR. SCHLECKER: Can I ask you





where, can you make a representation about where these definitions came from?

MR. MORRIS: Sure. They largely come from either the complaint or some of the operative documents. But I wanted there to be a clear understanding as to what the committee means, when it uses each of these terms.

MR. SCHLECKER: Okay.

**Q. Mr. Pinzon, are you currently employed?**

A. Yes.

**Q. By whom?**

A. Wells Fargo bank NA.

**Q. Do you have a title at Wells Fargo?**

A. A functional title and, you know, a designation title.

**Q. What's your functional title?**

A. Relationship manager.

**Q. And what is your designation title?**

A. Vice president.
**Q. Are your duties and responsibilities as the relationship manager the same as your duties and responsibilities as a vice president?**
A. Yes.
**Q. Can you describe for me your duties and responsibilities as the relationship manager and vice president at Wells Fargo?**
A. I am responsible for the review and on boarding of documents that come in to Wells Fargo. I am responsible for working with the salespeople to review new deals that come in to Wells Fargo. I am responsible for the ongoing administration of transactions that we sign up to. And I'm responsible for the relationships of the various parties that are our clients.
**Q. How long have you been employed by Wells Fargo?**
A. Eight years.
**Q. When did you first become a vice president at Wells Fargo?**





A. I was a vice president when -- before I came to Wells Fargo.
**Q. So upon your arrival, you were given the title of vice president; is that right?**
A. Yes, I believe so.
**Q. Does part of your duties and responsibilities concern the issuance of lien releases?**
A. I don't understand the issuance. What do you mean by "the issuance"?
**Q. Do you know what a lien release is?**
A. Yes.
**Q. So as part of your duties and responsibilities, are you involved with the process by which Wells would execute a lien release?**
A. Yes.
**Q. Are you the primary person at Wells responsible for executing and reviewing lien releases, with respect to ResCap and its affiliates?**





A. Yes.
**Q. With respect to ResCap, has Wells served as the first, second and third priority collateral agent?**
A. Yes.
**Q. And has that been the case since around June of 2008?**
A. Yes.
**Q. Does Wells also serve as the collateral control agent, with respect to certain ResCap financings?**
A. Yes.
**Q. Can you describe generally the function that Wells plays as the first, second and third priority collateral agent?**
MR. SCHLECKER: Object to the form of the question.
MR. ZENSKY: Object to the form of the question.
**Q. Do you understand the question, sir?**
A. It's a broad question. You have to be more specific.





**Q. What does Wells do, as the first, second and third priority control agent?**
MR. ZENSKY: Objection.
MR. SCHLECKER: Same objection.
**Q. Does it have a defined role in those capacities?**
A. It's whatever, you know, whatever the documentation states.
**Q. And is the same true with respect to Wells' role as the collateral control agent?**
A. Yes.
**Q. Is there a business unit within Wells that provides services as the collateral control agent?**
A. Corporate trust.
**Q. And is that the same unit that Wells provides services through, with respect to its role as the first, second and third priority collateral agent?**
A. A subdivision of that division.
**Q. And what is the subdivision?**
A. Corporate municipal escrow

solutions. It's known as CMES.

**Q. Is there a particular person at Wells who is responsible for overseeing its role as collateral agent and collateral control agent, with respect to the ResCap financings?**

A. I don't know what you mean by that. I'm the person responsible, you know, for this particular transaction, so.

**Q. Okay. And when did you first become responsible for those transactions? Has it been since the outset?**

A. No.

**Q. So when did you first become responsible for those transactions?**

A. Around 2009, I believe. I'm not quite sure.

**Q. Do you know who was responsible for those transactions at Wells before you?**

A. From looking at the documentation, its Nick Tally; and I believe another person was Jeff Rose.

**Q. Prior to taking on the**





**responsibility of overseeing the ResCap transactions for Wells, did you have any conversations with Mr. Tally or Mr. Rose, regarding those responsibilities?**

A. No. They were gone before I came.

**Q. Did anybody at Wells explain to you what your duties and responsibilities were, with respect to the Wells transactions?**

A. Alfia Monastra, my manager.

**Q. Do you recall what he told you?**

A. She.

**Q. She.**

A. We had discussions about the transaction, like we do any, at the beginning of, you know, any transaction I'm given by any manager.

**Q. Do you recall anything about those discussions? Did she tell you what you were expected and required to do?**

A. Yes. She explained the transaction documents that were involved.





She explained the roles, the first priority, second and third priority in the collateral control agent. She explained whatever -- at the time there was a release going on, she explained, you know, the documents at hand to be released, to show me an example of how the process worked. And she introduced -- what else? -- introduced me to counsel, our external counsel, Seward & Kissel.

**Q. What services did Seward & Kissel provide to Wells, with respect to your duties and responsibilities on the ResCap financings?**

A. It provided counsel for any questions I may have, in reference to the transaction, broadly speaking; and specifically, any release, any document that I would sign, Seward & Kissel would review, for the most part, the majority of the documents that I signed.

**Q. Was it your practice to have Seward & Kissel review any documents, before you signed them?**





A. Yes.

**Q. Can you think of any document today that you signed on behalf of Wells that Seward & Kissel did not review in advance?**

MR. SCHLECKER: You are talking about in connection with this deal?

MR. MORRIS: Yes.

A. I can't think of anything at the moment.

**Q. And the documents that Seward & Kissel reviewed, would they include the lien releases?**

A. Yes.

**Q. Can you think of any lien release that you signed on behalf of Wells that Seward & Kissel did not review in advance?**

A. No.

**Q. Was there anybody at Wells involved in the process of reviewing and executing lien releases besides yourself?**

MR. ZENSKY: Objection to form.

MR. SCHLECKER: You are talking

about on this deal?

MR. MORRIS: Um-hmm.

A. If I was out on vacation, for coverage, my colleague Julius Zamora likely released it, or my manager herself might have released documents early on in the transition.

**Q. But other than that, you were the primary person responsible at Wells for reviewing and issuing or executing lien releases, with respect to the ResCap transactions; is that right?**

A. Yes.

MR. MORRIS: I'd like to mark as Wells Exhibit 2 the 30(b)(6) deposition notice.

(Wells Exhibit 2, 30(b)(6) deposition notice, marked for identification, as of this date.)

**Q. Was there a particular attorney or attorneys at Seward & Kissel with whom you dealt in the ordinary course, with respect to lien releases on the ResCap transactions?**





A. Gregg Bateman, Sagar Patel.

**Q. Can you please take a look at Wells Exhibit 2.**

**Have you seen this document before?**

A. There's another name, I can't remember the last name, Dmitri and I just can't recall last name right now.

**Q. So Mr. Bateman, Mr. Patel --**

A. And Dmitri.

**Q. -- and Dmitri. And those are the three people at Seward & Kissel with whom you regularly communicated about lien releases; is that right?**

A. Yeah.

**Q. Can you take a look at Exhibit 2?**

A. Yes.

**Q. Have you seen this before?**

A. Yes.

**Q. When did you first see this?**

A. When it came across, when you issued this. I don't know.

**Q. What is your understanding of**





**what this document is?**

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

**Q. Do you know what this document is?**

A. It's a 30(b)(6) notice.

**Q. And have you personally been designated as Wells' representative to answer questions about each topic in this notice?**

A. Yes.

**Q. Can you please take a look at topics 1 through 13 on pages 2 and 3.**

A. Okay.

**Q. Is there any topic for which you do not intend to answer questions on behalf of Wells today?**

MR. SCHLECKER: Objection. I'm not sure what you are talking about, that he intends to answer. He'll answer questions to the best of his ability.

**Q. Are you the designated representative to answer questions**





**about --**

A. Yes.

**Q. -- each of the 13 topics?**

MR. SCHLECKER: He's the designated 30(b)(6) representative at Wells Fargo. To the extent he can answer questions under the 30(b)(6) notice, he will.

**Q. Did you do anything to prepare for this deposition?**

A. I met with counsel a couple of times.

**Q. When did you meet with counsel?**

A. Over the last couple of weeks.

**Q. And when you use the term "counsel," are you referring to the two lawyers to your left?**

A. Yes.

**Q. Is there any other counsel that you met with to prepare for this deposition?**

A. Sarah Kam.

**Q. She's also employed by Reed Smith?**

A. Yes.
**Q. Did you meet with any lawyers for UMB Bank?**
A. No.
**Q. Did you meet with any lawyers for the ad hoc group of junior secured noteholders?**
A. No.
**Q. Did you review any documents in preparation for this deposition?**
A. I looked at the indenture.
**Q. Do you recall looking at any other documents?**
A. Intercreditor agreement.
**Q. Do you recall looking at any other documents?**
A. Yes.
**Q. What other documents do you recall looking at?**
A. Third priority collateral security agreement, I think it's called.
**Q. Anything else?**
A. The loan agreement.
**Q. Did you look at the committee's**





**complaint in this action?**
A. Yes, when it was initially issued.
**Q. Did you look at Wells Fargo's answers to the complaint?**
A. Yes.
**Q. Did you look at any lien releases that were executed by Wells, with respect to ResCap?**
A. Yes.
**Q. Do you recall which lien releases you reviewed?**
A. No, not particularly.
MR. MORRIS: I'd like to mark as Wells Exhibit 3 the committee's complaint.
(Wells Exhibit 3, copy of the committee's complaint, marked for identification, as of this date.)
MR. MORRIS: And then we will mark as Wells Exhibit 4 a document that is titled Schedule Two.
(Wells Exhibit 4, document titled Schedule Two, marked for





identification, as of this date.)
**Q. Taking a look first at the complaint, can you please turn to page 16?**
A. Okay.
**Q. Is this the complaint that you referred to earlier, that you had seen prior to today's deposition?**
A. Without reading the whole thing, on the face of it, yes, that appears to be the case.
**Q. And do you understand that, in count 2, the committee alleges that none of the property owners, as defined in that count, granted or signed any mortgage or deed of trust, with respect to what's defined as the unencumbered real property?**
A. Well, it says here this is unencumbered real property, and it's quoted, so it's a defined term.
**Q. So now take a look at what we have marked as Wells Exhibit 4. And you'll see in the lower right-hand corner it says "Schedule Two."**
**Do you see that?**





A. Yes.
**Q. I represent to you that this is the schedule that's referred to in count number 2.**
A. Okay.
**Q. Do you know whether Wells ever received a mortgage or deed of trust, with respect to any asset listed on Schedule Two?**
A. I don't know that.
**Q. Do you know whether Wells ever took any steps to perfect any security interests in any asset listed on Schedule Two?**
MR. ZENSKY: Object to the form of the question.
A. I don't know that.
**Q. Do you know whether --**
MR. MORRIS: Withdrawn.
**Q. Does Wells know whether anyone acting on behalf of any of the secured parties took any steps to perfect any security interest in any of the assets listed on Schedule Two?**

MICHAEL PINZON

MR. ZENSKY: Objection.

A. I don't know.

**Q. Do you understand if you -- if you'd take a look at Exhibit 1, "Secured Parties." I'm using the term Secured Parties to mean, individually or collectively, Wells as the collateral agent, the indentured trustee and the junior secured noteholders.**

**So with the understanding that that's the definition of Secured Parties that we are using, does Wells know whether any of the secured parties took any steps to perfect a security interest in any of the assets listed on Schedule Two?**

MR. ZENSKY: Objection.

A. I don't know.

**Q. Has Wells made any effort to determine whether any property owner, as defined in count 2, has granted or signed a mortgage or deed of trust, with respect to any asset on Schedule Two?**

MR. ZENSKY: Objection.

A. Again, I do not know.



MICHAEL PINZON

**Q. You don't know whether Wells has made any effort?**

MR. SCHLECKER: Objection.

MR. MORRIS: I just want to make sure he understands the question.

A. I don't know whether -- you are giving me a list of properties.

**Q. Correct.**

A. I can't tell you -- we did releases; and if you showed me a release and said, this property is attached to this release, I could confirm that for you.

You are just showing me a list of properties. It's like showing me -- it could be anything here. I wouldn't know in a vacuum like this, just listing a list of properties.

**Q. Okay. But the question doesn't pertain to lien releases. It pertains to whether or not any property owner granted or signed a mortgage or deed of trust, with respect to any assets on Schedule Two.**



MICHAEL PINZON

MR. ZENSKY: Objection.

MR. SCHLECKER: I object to the form, but if you can answer.

A. I don't know if they did or didn't.

**Q. And now the next question is whether Wells has made any effort to find out the answer to that question.**

MR. SCHLECKER: Object to the form.

MR. ZENSKY: Objection.

A. I don't know.

**Q. Does Wells know whether anyone acting on behalf of any of the secured parties has made any effort to determine whether a property owner issued or signed a mortgage or deed of trust, with respect to any asset on Schedule Two?**

MR. ZENSKY: Can you read the question back?

(Whereupon, a portion of the record was read.)

A. I wouldn't know that.

MR. ZENSKY: Objection.



MICHAEL PINZON

**Q. To the best of Wells' current knowledge, has any property owner granted or signed a mortgage or a deed of trust, with respect to any asset listed on Schedule Two?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Just note my objection.

You can answer.

A. I wouldn't know that.

**Q. Do you know whether Wells intends to make any effort prior to trial to determine whether any property owner has signed or executed a mortgage or deed of trust, with respect to any asset on Schedule Two?**

MR. SCHLECKER: Just don't -- let me first get my objection.

I'm going to object to the form of the question. It also is way beyond the scope of the 30(b)(6) deposition. It calls for -- you are essentially asking him his lawyer's intent to do something.

MR. MORRIS: I'm not asking anything about the lawyer. I'm asking whether or not, as set forth in topic 2 of the 30(b)(6) notice, whether the secured parties have any mortgages or deeds of trust with respect to any of the unencumbered real property, which is the subject of count 2. So I think it's --

MR. SCHLECKER: You can answer it, but --

A. I can't tell you that now.

**Q. Can you turn to page 19 of the complaint, please.**

A. Sure.

**Q. I apologize, 18. We are going to talk about count 3.**

A. Count --

**Q. 3.**

A. 3, page 18.

**Q. And as set forth in paragraph 114, do you understand that the committee alleges that the secured parties do not have a security interest in or**





**liens, either perfected or unperfected, on any assets of nonobligor's debt -- nonobligor debtors, as defined in count 3?**

MR. SCHLECKER: I'll object to the form, but you can answer.

MR. ZENSKY: Counsel, do you have the schedule referenced in this count to show the witness?

MR. MORRIS: I'm about to get to that.

A. Okay.

MR. MORRIS: I'd like to mark as the next exhibit the declaration of John Morris in support of the committee's opposition to partial motion to dismiss, which is docket number 29.

(Wells Exhibit 5, declaration of John Morris in support of committee's opposition to partial motion to dismiss, marked for identification, as of this date.)

MR. SCHLECKER: Is there a question?





A. Go ahead.

MR. MORRIS: I'm just being patient for the witness.

**Q. Have you seen Exhibit 1 attached to my declaration before?**

A. I don't recall.

**Q. Do you know whether Wells has taken any step to perfect a lien or a security interest in any asset owned by any entity on Exhibit 1?**

MR. SCHLECKER: Objection to the form.

MR. ZENSKY: Objection.

A. I couldn't tell you, because those names, they are all similar to other names, you know, to the parties of the transaction. So I can't tell you.

**Q. Do you know whether any entity on Exhibit 1 is a guarantor of the junior secured notes?**

A. I don't know.

**Q. Has Wells made any effort to determine whether any entity listed on Exhibit 1 is a guarantor of the junior**





**secured notes?**

MR. SCHLECKER: Note my objection. You are talking about in connection with this deposition?

MR. MORRIS: Or otherwise.

MR. SCHLECKER: Well, it's a broad period of time that you are talking about. It's since 2008.

Okay, answer as best you can.

A. Can you repeat the question again.

**Q. Has Wells made any effort to determine whether any entity listed on Exhibit 1 is a guarantor under the junior secured notes?**

A. I don't know.

**Q. Do you know whether any entity on Exhibit 1 owes any obligations or has any duties, with respect to the junior secured notes?**

MR. SCHLECKER: Objection to the form, but you can answer.

A. I do not know.

**Q. Has Wells made any effort to**

**determine whether any entity on Exhibit 1 owes any duties or has any obligations under the junior secured notes?**

MR. SCHLECKER: Same objection, but you can answer.

A. I don't know.

**Q. To the best of Wells current knowledge, is any entity on the list a guarantor under the junior secured notes?**

MR. ZENSKY: Objection.

MR. SCHLECKER: It's asked and answered, but you can answer.

A. I don't know.

**Q. To the best of Wells' current knowledge, does any entity on the list have any obligations under the junior secured notes?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Objection to form, but you can answer.

MR. ZENSKY: Counsel, can you hold your questions for 30 seconds?

MR. MORRIS: Sure.

(Brief recess.)





MR. MORRIS: I'd like to mark as Exhibit 6 a document that in the lower right hand corner says schedule three.

(Wells Exhibit 6, document titled Schedule Three, marked for identification, as of this date.)

**Q. If you could just turn to page 19 and take a look at count 4 of the complaint.**

A. 19.

**Q. So now we are turning to count 4.**

A. Okay.

**Q. Have you seen what's been marked as Wells Exhibit 6 before?**

A. I don't, specifically, recall this list.

**Q. Do you know whether Wells has made any effort to determine whether the assets listed on Schedule Three were the subject of the pledge release described in count 4?**

A. Can you repeat that again, please.





**Q. Has Wells made any effort to determine whether any of the assets listed on Exhibit 6 were the subject of the pledge release that's described in paragraph 120 of count 4?**

A. I don't think so.

**Q. Does Wells know whether the assets listed in Exhibit 6 were the subject of the pledge release described in paragraph 120?**

A. Can you say that again, please.

MR. MORRIS: Can you read the question back.

(Record read.)

MR. SCHLECKER: Just note my objection to the characterization of Exhibit 6.

A. Was this document attached to something before it?

**Q. It was attached to the complaint.**

A. And to any other documents other than the complaint?

**Q. I have no idea.**





MR. SCHLECKER: Are you able to answer his question?

THE WITNESS: No.

A. I don't know.

**Q. Do you know of any documents that you could review to enable you to answer the question?**

MR. SCHLECKER: Just note my objection. Calls for speculation.

**Q. I don't want you to speculate. I'm asking you for your knowledge.**

A. It says there that on May 17th the collateral agent signed a partial release, dated May 17, 2010, a pledge release.

**Q. So is the partial release referred to in paragraph 120 the place you would look to, in order to determine whether or not the assets on Schedule Six -- I apologize, on Schedule Three were the subject of that lien release?**

A. It says that there we signed it, so if you show me something that we signed.

**Q. Is there any other place that you know of that you could look to, in order to determine whether or not the assets on Schedule Three were the subject of the partial release identified in paragraph 120?**

A. The signed partial release itself.

**Q. Anything else?**

A. No.

**Q. There's also a reference in paragraph 123 to certain termination statements.**

**Do you see that?**

A. Yes.

**Q. Do you know what a UCC 3 termination statement is?**

A. Yes.

**Q. What is your understanding of what a UCC 3 termination statement is?**

A. In the Uniform Commercial Code, once a UCC 1 is filed, the UCC 3 is the form used to terminate whatever part of the UCC, original UCC 1 needs to be





released; and it's filed with whatever count the original filing was filed with.

**Q. And in the ordinary course of Wells' business, was a UCC 3 prepared and filed in connection with each of the lien releases that Wells executed?**

MR. SCHLECKER: Object to the form of the question. Assumes facts.

A. When you say "you" or "they," who are you referring to?

**Q. From time to time Wells reviewed and executed lien releases with respect to the ResCap transactions; is that correct?**

A. Yes.

**Q. And in connection with each of those lien releases, were UCC 3s also prepared and filed?**

A. They were prepared and filed, yes.

**Q. Has Wells made any effort to determine whether the assets listed on Schedule Three were the subject of the termination statements referred to in paragraph 123?**





A. When you say, has Wells Fargo made a determination, what do you mean by that?

**Q. I'm asking if any effort was made to try to determine whether the assets listed on Schedule Three were subject to the termination statements referred to in paragraph 123.**

A. I don't know.

**Q. Do you know whether anyone, acting on behalf of any secured party, has attempted to determine whether any asset listed on Schedule Three was subject to the termination statements described in paragraph 123 of count 4?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Objection to the form of the question. I'm not sure what you mean by "secured party."

MR. MORRIS: I'm using the same definition that's been referred to earlier, and I will continue to use that definition.

MR. SCHLECKER: No, no, you are





now referring to Exhibit 1?

MR. MORRIS: Correct, number 31.

MR. SCHLECKER: Okay. So let's take a look.

THE WITNESS: Collateral agent... I understand now.

**Q. So you understand what I mean by the term "Secured Parties"?**

A. Yes.

**Q. And have you understood that since the first time we looked at Exhibit 1?**

MR. SCHLECKER: Well, objection.

A. You pointed it to me before, so yes.

**Q. With that understanding, do you know whether anybody, on behalf of a third party, has attempted to determine whether any asset on Schedule Three was the subject of the termination statements in paragraph 123?**

A. I don't know.

**Q. To the best of Wells' current knowledge, was each asset listed on**

**Schedule Three the subject of the pledge release described in paragraph 120?**

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

MR. ZENSKY: Objection.

A. Can you please repeat the question.

(Record read.)

MR. SCHLECKER: Same objection.

A. I don't know.

**Q. To the best of Wells current knowledge, was each asset listed on Schedule Three the subject of the termination statements described in paragraph 123?**

A. By just showing me a list, I don't know. I can't tell you if that's connected on a particular release or not.

**Q. And Wells hasn't made any effort to make that determination as of today; is that right?**

A. As far as I know, no.

**Q. And Wells hasn't made any effort to determine whether any of the assets on**





**Schedule Three were also the subject of the termination statements referred to in paragraph 123, correct?**

MR. SCHLECKER: Objection. Asked and answered.

A. I don't know.

**Q. You don't know?**

A. No.

**Q. Can you turn to count 6, please, which is page 25 of the complaint.**

A. Yes.

MR. MORRIS: And we will mark as Wells Exhibit 7 Schedule Five that was attached to the complaint.

(Wells Exhibit 7, document entitled Schedule Five, marked for identification, as of this date.)

**Q. Have you seen the document marked as Exhibit 7 before?**

A. Yeah, I believe so.

**Q. And do you recall when you saw it?**

A. When this complaint was filed, when the court documents came across. I





don't know the exact title of the document.

**Q. Do you have an understanding of what is reflected on Schedule Five?**

A. Yes.

**Q. What is your understanding of what is reflected on Schedule Five?**

A. It's a list of deposit accounts that are not subject to control agreements.

**Q. Does Wells know whether any account on Wells Exhibit 7 is subject to any control agreement?**

MR. ZENSKY: Objection to form.

MR. SCHLECKER: Note my objection to the form, but you can answer.

A. We signed many deposit account control agreements, DACAs. I can't you from just looking at this list.

As you can tell, also the account numbers are blurred out. I couldn't tell you which ones are the ones we signed and which ones aren't ones we





signed, from just looking at this list.

**Q. Can you describe for me your understanding of what a control agreement is?**

A. Yes. It's, a control agreement is pledged to a party, so that the debtor or the original company is not able to use those funds or release those funds, without the release of the lien by the bank that accepted -- that signed the deposit control agreement, so.

**Q. Has Wells made any effort to determine whether or not there is a control agreement, with respect to any account identified on Wells Exhibit 7?**

MR. ZENSKY: Objection.

A. I don't know.

**Q. Does Wells maintain control agreements in one particular either computer file or other place, in the ordinary course of business?**

A. In the ordinary course of business, yes.

**Q. And is there a particular file**

**name in which the control agreements for the ResCap financings are held?**

A. Well, the closing documents themselves I know had a number of deposit account control agreements, so the file that contained the closing documents and any subsequent deposit account control agreements or changes to the deposit control agreements would also be saved, you know, under the ResCap GMAC file.

**Q. If Wells had the account number for a particular ResCap deposit account, could Wells do a search to determine whether or not a control agreement exists, with respect to that account?**

A. If we were given a -- yeah, if we knew the bank that it was from and the account number, we could look to see if we had that particular -- what do you call that? -- deposit account control agreement with that designated account number from that bank.

**Q. But as of today, Wells has not done the type of search that you just**





**described, with respect to the deposit accounts listed on Schedule Five; is that right?**

A. I don't believe so.

**Q. And as you sit here today, do you have any knowledge --**

MR. MORRIS: Withdrawn.

**Q. As you sit here today, does Wells have any knowledge that any account listed on Schedule Five is the subject of a control agreement?**

MR. ZENSKY: Objection.

A. Say that again, please.

**Q. As you sit here today, does Wells know whether any account listed on Schedule Five is the subject of a control agreement?**

MR. ZENSKY: Objection.

A. I wouldn't know that, just from this list you presented.

**Q. Can you turn to page --**

MR. MORRIS: Withdrawn.

I'd like to mark as the next exhibit Wells' partial answer to the





complaint.

Just so the record is clear, the document is amended answer and affirmative defenses of Wells Fargo, dated August 27th, bearing docket number 91.

(Wells Exhibit 8, amended answer and affirmative defenses of Wells Fargo, dated August 27th, docket number 91, marked for identification, as of this date.)

**Q. Have you seen this document before, sir?**

A. Yes.

**Q. Do you know what this document is?**

A. It's an affirmative, Wells Fargo's affirmative defense.

**Q. Can you please turn to page 31. I'm directing your attention to the 241st paragraph, the second affirmative defense. Just take a moment to read that to yourself.**

A. Okay.





**Q. Does Wells know of any facts that concern or relate to its second affirmative defense, that the committee's claim are barred by unclean hands?**

MR. SCHLECKER: Just note my objection.

I know you couched it in terms of facts, but I think this really, these types of questions you are now asking the witness, about affirmative defenses that have been alleged, really touch, really go to the heart of what the judge's rule, in terms of what's really beyond the scope of a 30(b)(6) witness.

MR. MORRIS: I'm only asking for facts, and you can --

MR. SCHLECKER: You can ask for facts.

MR. MORRIS: That's all I want.

MR. ZENSKY: Let me just add to counsel comments the discussion we had last week, which I don't believe Reed Smith was on, about not asking legal

contentions. I understand the way you are posing the question.

MR. MORRIS: I'm trying to be sensitive to all of those concerns. And I really want to be clear that I'm not asking for legal conclusions, legal contentions. It's just any facts that might support any of the affirmative defenses, if he knows of any.

MR. SCHLECKER: Sure. You can answer the question.

**Q. So does Wells know of any facts that concern or relate to its defense that the committee's claims are barred by unclean hands?**

A. I don't know.

**Q. Looking at the third affirmative defense, does Wells know of any facts that concern or relate to its defense that the committee's claims are barred under the doctrine of equitable estoppel?**

A. Those are legal things that counsel will address.





**Q. So is it fair to say the answer is no?**

A. No.

**Q. Looking at the fourth affirmative defense, does Wells know of any facts that support its affirmative defense that the committee's claims are barred by the doctrine of unjust enrichment?**

A. Same thing, no. I don't know.

**Q. Looking at the fifth affirmative defense, does Wells know of any facts that support its defense that the committee's claims are barred by the doctrine of res judicata?**

MR. SCHLECKER: Just note my objection.

A. I don't know what that Latin term means.

**Q. Does Wells have any knowledge of any facts that support its sixth affirmative defense that the committee's claims are barred by the doctrine of collateral estoppel?**





A. It's legal in nature. Counsel will address that. I don't know.

**Q. So you have no facts to Wells' knowledge; is that right?**

A. Right.

**Q. Turning to the seventh affirmative defense, does Wells have any knowledge of any facts to support its defense that the committee's claims are barred by waiver?**

MR. SCHLECKER: Same objection.

A. I don't know.

**Q. Does Wells have knowledge of any facts to support its affirmative defense that the committee's claims are barred by estoppels?**

A. Wasn't that the sixth?

No.

**Q. Does Wells have any knowledge of any facts to support its affirmative defense that the committee's claims are barred by latches?**

A. Again, legal in nature. That's something that counsel can -- we would





review with counsel.

**Q. I'm just asking if you, as Wells's 30(b)(6) witness today, have knowledge of any facts.**

A. No.

**Q. Does Wells have any knowledge of any facts that would support its affirmative defense that the committee's claims are barred by ratification?**

A. No.

**Q. Does Wells have any knowledge of any facts that would support its affirmative defense that the committee's claims are barred by acquiescence?**

A. No.

**Q. Does Wells have any knowledge of any facts that the committee's claims are barred by accord and satisfaction?**

A. No.

**Q. Does Wells have any knowledge of any facts that the committee's claims are barred by setoff?**

A. No.

**Q. Does Wells have any knowledge of**

**any facts that the committee's claims are barred by the statute of limitations?**

A. No.

**Q. Turning to the 12th affirmative defense, does Wells know the identity of the party referred to in paragraph 251?**

MR. SCHLECKER: Note my objection.

You can answer.

A. This is, again, legal in nature. I wouldn't know offhand.

**Q. And the 14th affirmative defense, does Wells have any knowledge of any facts that would support its contention that the remedies claimed by the committee are barred, to the extent that they are inequitable?**

A. No.

MR. MORRIS: Let's just take a short ten-minute break.

THE WITNESS: Sure.

(Whereupon, there is a recess in the proceedings.)

**Q. Sir, I want to go back --**





MR. ZENSKY: Can I just note an objection? In the break I was looking at your Exhibit 1, and your Exhibit 1, which you really didn't take the witness through, has a definition for the collateral agent that includes the first priority collateral agent, second priority collateral agent or third priority collateral agent. And the problem is that your 30(b)(6) notice in footnote 1 tells the witness and Wells itself to look at the definitions in your complaint, and in your complaint you define the collateral agent solely as Wells in its capacity to a third priority collateral agent. So I don't know if that's a misstatement because two different people prepared the documents or in an effort to trick the witness but I think it's inappropriate to use a different set of issues definition in something you hand the witness at the outset of a deposition





and the definitions that you give them in the 30(b)(6) notice.

So I object to any question that incorporates and has incorporated or attempted to incorporate the definition in item 8 of Exhibit 1, which I believe was implicated in several questions you asked this witness already. Any other definition here, I haven't reviewed them all, that differs from the definitions that were identified in the 30(b)(6) notice.

MR. MORRIS: Thank you. There's no attempt at all to trick the witness. People use different definitions for different purposes all the time and I just want to make sure that you understand as the witness that the definitions we are using today of the terms that I ask you about are those that are set forth in Exhibit 1.

MR. ZENSKY: I object to that as





being completely beyond the scope of your notice then.

MR. MORRIS: Okay. You have your objection.

MR. SCHLECKER: I'll actually join in the objection but continue.

MR. ZENSKY: Will you give me a running objection or you want me to object every time you ask a question?

MR. MORRIS: I don't give running objections so you'll need to preserve the record as you think it appropriate.

MR. ZENSKY: No problem.

**Q. I want to go back to a phrase you used earlier in describing your duties and responsibilities, and that was onboarding of documents. Do I have that term right?**

A. Okay, yes.

**Q. What did you mean by the phrase, "onboarding of documents"?**

A. The review of the documents by the relation -- whoever was responsible

for reviewing them. I did not review the originals so I can't tell you exactly what the predecessor's exact process was as individuals. But I can tell you what the Wells Fargo process is in general.

**Q. Can you tell me what the Wells Fargo process is in general?**

A. Yes. Upon winning of the bid, the new business, the relationship manager needs to do some administrative review of the debtor party known as -- in the industry as KYC, know your customer. That process entails a review of, you know, articles of formation, certain basic documentation that establishes they are who they are, they say who they are through these.

In addition to that process, it's the process of review of the actual agreements presented to us and in that process we review the documents with the engaged counsel, Seward & Kissel in this case, and go through, you know, a process of putting forth our comments as we see to





the documentation presented. Those are discussed with our counsel Seward & Kissel.

Seward & Kissel then presents those or any counsel would present those comments to the other parties to the agreements. And through their counsels, comments are made back and forth until a final arrival at all parties agreeing to the terms of the agreement. And after that they are executed.

**Q. And that process for the ResCap transactions is one that occurred prior to your assuming responsibility on behalf of Wells for overseeing the ResCap transactions; is that correct?**

A. That is correct.

**Q. Do you understand that that process was followed by your predecessor?**

MR. ZENSKY: Objection.

A. I don't know -- I didn't speak to those individuals. But that's the process that the manager described, which is the process in any corporate trust shop





I have worked with.

**Q. Are you aware that in June 2008 ResCap and certain affiliates issued what came to be known as the junior secured notes?**

A. I was aware of the document, yes.

**Q. And what document are you referring to, the indenture?**

A. The indenture.

**Q. And I think you testified earlier that you've seen the indenture before today?**

A. Yes, that's right.

**Q. And did you see that indenture at the time you assumed responsibility for Wells' role in the ResCap transactions?**

A. Yes.

**Q. That's one of the documents you familiarized yourself with at the time?**

A. Yeah. The indenture, more specifically the pledge agreements, which are the ones that in trying -- are the document we signed up to and the





Intercreditor Agreement.

**Q. We are going to spend some time now looking at each of those documents.**

A. Okay.

MR. MORRIS: I'd like to mark as the next exhibit the indenture.

**Q. Is this the indenture that you referred to moments ago?**

A. I believe so.

**Q. If you take a look at page 3, the definition of collateral agent. Did Wells know and understand that it was designated as the collateral agent under the indenture in its capacity as the third priority collateral agent?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Objection to the form.

A. Well, I didn't sign the original agreement but, yes, from taking over the duties when I did there's a designation of a collateral control agent and that's one of our capacities.

**Q. Can you describe for me**

**generally Wells's understanding of its duties and responsibilities as the collateral agent under the indenture?**

A. Basically to hold whatever physical collateral was provided to Wells Fargo in a vault. And with reference to any collateral that is listed as collateral in the agreements, that would be the collateral that would be taken and most of that is not physical but just documentation. It's documentation by the debtor saying this is the collateral.

**Q. What documentation did the debtor use to say this is collateral?**

A. They could have been various exhibits listing the entities that were involved in the collateral listing deposit account control agreements for example.

**Q. Was there a practice by which the debtors delivered the information you've described to Wells?**

MR. SCHLECKER: Objection to the form. You can answer.

A. It would be whatever they





delivered at the time of closing. And it would be reflected in the closing documents more specifically.

MR. ZENSKY: Can you read that answer back, please.

(Record read.)

**Q. Since the closing, have any of the debtors delivered to Wells any of the documents -- any documents or exhibits of the type you described earlier?**

A. You mean additional collateral? Like from time to time something could be delivered in terms of saying this is the collateral in reference to this transaction and that would be the collateral for that transaction for the --

**Q. Since the time that you assumed the responsibility for the ResCap transactions, would the delivery of those documents and exhibits go to you?**

A. Yes. Counsel and -- yes.

**Q. Can you describe for me generally how Wells maintains the documents that it receives from any of the**





**debtors?**

A. It would either be maintained in a shared drive, and if a CD was produced and delivered, that would be saved as well in a physical form capacity.

**Q. And is that shared drive and CD or CDs available to you in your capacity as a vice president of Wells Fargo?**

A. Yes.

**Q. Did any of the debtors ever provide to Wells Fargo a regular collateral report?**

MR. SCHLECKER: Objection to the form. If you can understand it, you can answer it.

A. Yeah, I don't know what you mean by regular collateral report.

**Q. Have you ever seen a report prepared by any of the debtors that purports to list all of the collateral under the indenture?**

A. I wouldn't qualify it as a report. It's whatever collateral is delivered to us or listed would be part of





closing, part of the ongoing subsequent list of information. There was no report that I recall in a vacuum just saying here's a report. It's always part of the process of, you know, taking on the collateral, releasing the collateral, whatever it may be.

**Q. So is it your understanding that the practice was that debtor would deliver to Wells a list of any assets that were being added to the collateral pool at the time each transaction closed?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Objection to the form. But you can answer.

A. I can only answer to the fact of whatever was delivered to me. I don't know if there was other collateral as part of the collateral, you know, to the obligators or whatever. If they had other collateral, I don't know.

**Q. Is it Wells' understanding that at the time the notes were issued U.S. Bank National Association was**

**designated as the trustee under the indenture?**

A. That's what it has in the documentation, yes.

**Q. Can you please turn to page 66 of the indenture.**

A. Yes.

**Q. And I would just ask you to read section 8.03 A to yourself.**

A. Okay.

**Q. Did Wells know and understand at the time the notes were issued that each holder of notes, as defined in the indenture, consented and agreed to be bound by the terms of the security document and the Intercreditor Agreement?**

MR. ZENSKY: Objection.

MR. SCHLECKER: I'll -- note my objection to the form of the question. If you can answer the question, you can answer the question.

A. I don't know about the trustee. I don't know what, you know.

**Q. I'm not asking about the trustee**





**right now. I'm just asking about Wells. Did Wells understand, and if I said trustee I made a mistake so let me withdraw it and start again.**

**Did Wells understand at the time the notes were issued that each holder of notes consented to be bound by the security documents and the Intercreditor Agreement?**

MR. ZENSKY: Objection.

MR. SCHLECKER: You are talking about at the time this document was executed?

MR. MORRIS: Yes.

MR. SCHLECKER: Just note my objection. Wells Fargo was not a signatory to this document. But you can answer.

A. I don't know.

**Q. Did Wells know and understand that each holder of notes authorized Wells as the collateral agent to enter into the security documents to which it was a party?**





A. I don't know.

**Q. Did Wells know and understand that each holder of notes authorized Wells as the collateral agent to enter into, execute and deliver the Intercreditor Agreement?**

A. In reference to the Intercreditor Agreement -- again with the question.

**Q. Did Wells execute the Intercreditor Agreement?**

A. Yes.

**Q. Did Wells know at the time that it did so that it was authorized by the holder of notes to do so?**

A. I recall specifically the holder of notes as defined here.

**Q. If you take a look at page 7, it has a definition of the term "holder" and it means the person in whose name a note is registered on the registration books kept for that purpose in accordance with section 2.03?**

A. I wasn't a party to the





indenture so I don't --

**Q. I understand, but Wells was; is that correct?**

A. A party to the indenture, no.

**Q. I apologize. I'm asking about the Intercreditor Agreement.**

A. Yes.

**Q. Is Wells a party to the Intercreditor Agreement?**

A. Yes.

**Q. And did Wells know and understand at the time that it signed the Intercreditor Agreement that it was authorized to do so by each holder of the notes?**

A. I don't recall specifically.

**Q. Do you recall anything generally about that?**

A. No.

**Q. Did Wells sign security documents in connection with the junior secured notes?**

MR. ZENSKY: Objection.

A. What security documents are you

referring to?

**Q. If you look at page 16 of the indenture.**

A. Yes, okay. So.

**Q. With that understanding of the security documents did Wells execute the security documents as defined?**

A. Yes.

**Q. And at the time Wells executed the security documents did it know and understand that each holder of notes authorized it to do so?**

MR. ZENSKY: Objection.

A. Again, I don't know specifically or generally.

**Q. At the time the notes were issued did Wells know and understand that each holder of notes authorized Wells as the collateral agent to bind the holders of the notes as set forth in the security documents?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Note my objection. It touches on legal





conclusions.

MR. MORRIS: Their understanding may be right, it may be wrong, I'm just asking for their understanding.

MR. SCHLECKER: You can answer the question.

A. Can you repeat the question, please.

(Record read.)

A. Not specifically.

**Q. Does Wells have any understanding today as to whether the holder of notes authorized Wells to do anything with respect to the ResCap transactions?**

MR. SCHLECKER: Objection to the form.

A. I don't know.

MR. MORRIS: Okay. Let's mark as the next exhibit the Intercreditor Agreement.

(Wells Exhibit 10, Intercreditor Agreement, marked for identification, as of this date.)





**Q. Have you seen this document before, sir?**

A. Yes.

**Q. And could you turn to the page immediately after the last numbered page 58.**

A. Yes.

**Q. You said you've seen this document before; is that right?**

A. Yes.

**Q. And did you see it at the time you assumed the responsibility for the ResCap transactions, as you described earlier?**

A. Yes.

**Q. And what is this document?**

A. The Intercreditor Agreement.

**Q. Now, turning back to the page I asked you. Is it your understanding as Wells' representative today that Wells Fargo executed the Intercreditor Agreement in its capacity as first priority collateral agent?**

A. Appears to be so. Nick Tally's





signature is here.

**Q. Can you turn the page, please.**

A. Yes.

**Q. Is it Wells' understanding that it signed the Intercreditor Agreement in its capacity as second priority collateral agent?**

A. Yes.

**Q. And the next page. Is it Wells' understanding that it signed the Intercreditor Agreement in its capacity as third priority collateral agent?**

A. Yes.

**Q. And if you turn the page, can you tell me if it's Wells' understanding that it signed the Intercreditor Agreement in its capacity as collateral control agent?**

A. Yes.

**Q. Do you have an understanding, irrespective of any definition used elsewhere, do you have an understanding of what first priority collateral agent means?**

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MICHAEL PINZON
A. Yes.
**Q. What is your understanding of that term?**
A. That as a priority lien over all junior liens to the collateral in question.
**Q. And what financing or transaction is it that has priority over the other liens as you've described it?**
MR. ZENSKY: Objection.
MR. SCHLECKER: Object to the form of the question.
A. Which transaction? You mean in general or do you mean this transaction?
**Q. In what transaction did Wells act as the first priority collateral agent?**
A. Oh. In the transaction, the ResCap junior transaction.
**Q. Can we refer to that as the revolver?**
A. The loan agreement?
**Q. Yes.**
A. Yes.

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MICHAEL PINZON
**Q. Is it your understanding that that's a revolver?**
A. Yes.
**Q. It's a line of credit, right?**
A. It's a loan agreement.
**Q. It's a loan agreement, okay. Do you know whether Wells has served as the collateral control agent under the Intercreditor Agreement from June 6, 2008 to the present?**
A. Yes.
**Q. Does Wells know whether any other person or entity ever served as the collateral control agent under the Intercreditor Agreement?**
A. I don't think anyone else has served other than Wells Fargo.
**Q. Can you please turn to page 30 of the document. Are you generally familiar with the provision 5.6 that contains what's described in the heading as special provisions relating to collateral control agreement?**
MR. ZENSKY: Objection.

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MICHAEL PINZON
**Q. I'm only going to ask you some very narrow and specific questions.**
A. Yes, I know this provision. I have seen this provision.
**Q. Can you turn to page 37.**
A. Okay.
**Q. And first we will look at 5.6(w) on page 37. If you could just take a look at that and let me know when you are done.**
A. Okay.
**Q. Did Wells understand that as the collateral control agent under the Intercreditor Agreement it was required to maintain accurate and complete books and records with respect to all matters directly related to the administration of collateral?**
MR. ZENSKY: Objection.
A. It appears on here, yes.
**Q. I know that it appears there. But I'm asking you if that was Wells's understanding?**
A. Yes.
**Q. And if you take a moment to look**

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**MICHAEL PINZON**
**at exhibit -- subparagraph X, 5.6(x).**
A. Yes.
**Q. Did Wells know and understand that as the collateral control agent under the Intercreditor Agreement it was required to make available to what's defined as relevant directing parties Wells' books and records in respect of the collateral?**
A. Yes.
**Q. Do you have an understanding of what the phrase "relevant directing party" refers to?**
A. Yeah. It's a defined term. In this case it would be a lender agent.
**Q. Can you take a look at page 8, please. And the definition of relevant directing party, if you could just read that to yourself.**
A. Yes.
**Q. With that definition in mind, do you know whether any relevant directing party ever asked to see Wells' books and records in respect of collateral under**

**section 5.6(x)?**

A. I don't specifically recall a specific instance that they requested.

**Q. Now, I have asked the broad question. I ask for your patience. I'm going to ask some specific questions about that.**

**Did the indenture trustee under the junior secured notes ever ask at any time to see Wells's books and records in respect of collateral?**

A. I don't recall any specific.

**Q. Did the lender agent ever ask at any time to see Wells' books and records in respect of the collateral?**

A. I don't, specifically, recall.

**Q. Did any junior secured noteholder or anybody acting on behalf of any junior secured noteholder ever ask to see Wells' books and records in respect of the collateral?**

A. I don't recall any such incident.

**Q. In the ordinary course of your**





**business, if a request was made by either the lender agent, anyone on behalf of any junior secured noteholder or the 2015 trustee under the notes would that request have been brought to your attention?**

A. The request would have been brought to my attention.

**Q. And in your capacity as a vice president responsible for the ResCap financing --**

A. Right.

**Q. -- financings, you are not aware of any request ever having been made by either the 2015 trustee, the lender agent or anyone on behalf of any junior secured noteholder; is that correct?**

MR. ZENSKY: Objection.

A. In reference to what?

MR. SCHLECKER: In reference to what?

**Q. The books and records of Wells in respect of collateral.**

MR. ZENSKY: Objection.

A. I don't recall any specific





incident.

**Q. You know what, I want to try and ask that question more cleanly because there was an objection.**

**Has the 2015 trustee under the notes ever requested to see Wells' books and records in respect of collateral?**

A. In respect of collateral, no.

**Q. Has anyone acting on behalf of any junior secured noteholder ever requested to see Wells' books and records in respect of collateral?**

MR. SCHLECKER: Just note my objection. I don't know whether anyone meaning lawyers on behalf of any of the parties requested -- he wouldn't know about requests other than what came into Wells Fargo. So if you keep it to that, that's fine.

MR. MORRIS: That's all I'm asking.

MR. SCHLECKER: Okay. That's fine.

A. Any requests would usually come





through counsel Seward & Kissel. I don't recall ever speaking to any junior nor would I because I would do that through the trustee.

**Q. Now I'm going to ask the broad question.**

A. Okay.

**Q. Prior to the petition date, did anyone ever ask to see Wells's books and records in respect of collateral?**

MR. SCHLECKER: Do you know what the petition date means?

THE WITNESS: I know it's date.

A. But what date is it, the specific date?

**Q. The petition date is May 14, 2012. So at any time prior to May 14, 2012, did anyone ever ask to see Wells books and records in respect of collateral?**

A. I don't recall any specific.

MR. MORRIS: All right. I'd like to mark as the next document the Note Security Agreement. That will be

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Exhibit 11.
THE WITNESS: Can I take a moment to go to the bathroom?
MR. MORRIS: Absolutely.
(Whereupon, there is a recess in the proceedings.)
MR. MORRIS: I would like to mark as Wells Exhibit 12 (sic) a document titled Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy.
(Wells Exhibit 11, Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy, marked for identification, as of this date.)
**Q. Have you seen this document before, sir?**
A. Yes.
**Q. Do you have an understanding of what it is?**
A. It's the security agreement in reference to, you know, sort of our main duties in reference to the transaction.



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**Q. Do you recall when you first saw this document?**
A. A little prior to the date that's stated here because I signed it.
MR. ZENSKY: Can I ask the report to read back the answer before this one because the witness's voice got lost.
(Record read.)
**Q. Is this security agreement related to the junior secured notes?**
A. Yes.
MR. SCHLECKER: Object to the form.
**Q. Do you understand the term "junior secured notes"?**
A. I believe -- is it in reference to the indenture you just showed me before?
**Q. Yes. With that understanding, is this security agreement executed in connection with the junior secured notes?**
A. Yeah. It's in -- yes.
**Q. Can you turn to the page with**



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**the Bates number in the lower right-hand corner of 3051, ending in 3051.**
A. Yes.
**Q. Is that your signature on the page?**
A. Yes.
**Q. And did you personally sign this security agreement on behalf of Wells Fargo Bank as the third priority collateral agent?**
A. Yes.
**Q. And did you personally sign this document on behalf of Wells Fargo Bank in its capacity as collateral control agent under the security agreement?**
A. Yes.
**Q. Was it your understanding that this -- withdrawn.**
**If I use the phrase "security agreement," I'm going to be referring to this particular document, is that fair?**
A. This amended and restated third priority pledge, right?
**Q. Correct. If I use the phrase**



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**"security agreement," this is the document I'm talking about, Wells Exhibit 11?**
A. Right.
**Q. Was it your understanding at the time you signed the security agreement that it governed the security interests of the notes?**
A. Yes.
MR. SCHLECKER: Can I just interrupt you? Is this Exhibit 11 or 12.
MR. HAMERMAN: I think we said 12 by accident but we corrected it.
MR. SCHLECKER: It's 11. Sorry.
MR. ZENSKY: Can you read the question back.
(Record read.)
MR. MORRIS: I'm going to withdraw the question.
MR. ZENSKY: There was colloquy in the middle of the question and answer.
MR. MORRIS: No problem.
**Q. If I use the term "notes," will**

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**you understand that I'm referring to the junior secured notes that were the subject of the indenture that we talked about earlier?**
A. Yes.
**Q. At the time that you executed the security agreement did you understand that it governed the security interests of the notes?**
MR. ZENSKY: Objection.
MR. SCHLECKER: Note my objection.
A. I don't know that. I just know the documents I signed -- the document I signed.
**Q. And what's your -- withdrawn. What's Wells' understanding of the purpose of the document that you signed on its behalf?**
MR. SCHLECKER: Objection to form.
**Q. This is Exhibit 11.**
MR. ZENSKY: Objection.
MR. SCHLECKER: I think he



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answered. But you can answer.
A. It's a security agreement in reference to the third priority pledge.
**Q. Can you please turn to page 24. Section 11 recites certain agreements of the grantors. Do you see that?**
A. Yes.
**Q. Do you have an understanding of the term "grantors" as used in the security agreement?**
A. Well -- yes. It's ResCap and its affiliates.
**Q. With that understanding, are you generally aware that the grantors made the agreements set forth in section 11?**
MR. SCHLECKER: Note my objection to the form. It states what it states. You can answer it.
A. The question again, please.
**Q. Are you generally aware that the grantors made the agreements set forth in section 11?**
A. It's what it states here.
**Q. Have you ever looked at section**



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**11 before today?**
A. Yes.
**Q. Can you please turn to page 25, which is section 11 A little 4. And I just ask you to read that to yourself and let me know when you are done.**
A. Wait, section 11 A Romanette 4?
**Q. Yes. On page 25.**
A. Yes, okay.
**Q. Did Wells know and understand that each grantor was required to keep its records concerning the collateral in a manner that would enable Wells to determine at any time the status of the collateral?**
A. I don't know what the grantor would do.
**Q. Did Wells ever ask the grantor to see any grantor's books and records relating to the collateral?**
MR. ZENSKY: Objection.
A. It's not my duty to do that.
**Q. I'm not asking you what is or isn't your duty. I'm just asking whether**



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**Wells ever inquired of any grantor to see their books and records in respect of collateral?**
MR. ZENSKY: Objection.
A. We would ask to see whatever collateral they presented us that we would be the collateral agent for.
**Q. And are you referring to particular transactions or more generally?**
A. No. Well this transaction. The transaction in question here.
**Q. Which transaction are you referring to?**
A. The ResCap GMAC transaction which entails this agreement, the intercreditor, the indenture, all the agreements we discussed.
**Q. But since the time that those agreements were executed, did Wells ever request of any grantor that it be given access to their books and records in respect of collateral?**
A. I don't recall any.
**Q. Did Wells know that each grantor**

**or was required to keep books and records in respect of collateral?**

A. Objection to the form of the question.

MR. ZENSKY: Same objection.

MR. SCHLECKER: It assumes facts.

A. What do you mean by know? What is that? I don't understand know.

**Q. I guess there's knowledge, which are facts that you are aware of. There's beliefs, right? On the spectrum of knowledge there's beliefs, something that you believe to be true even if I don't necessarily know it to be true. I'm asking for knowledge. Do you know whether or not each grantor maintained books and records in respect of collateral?**

A. I don't know that.

**Q. You could have asked somebody that question but, right?**

MR. SCHLECKER: Well -- don't answer that question.

**Q. If you look at subparagraph 5**





**for a moment. Tell me when you are done looking at that. You know what, before you do that let me ask some more specific questions.**

A. Okay.

**Q. Did anybody at Wells -- withdrawn.**

**Did Wells ever discuss with any grantor the records that the grantor kept concerning collateral?**

A. I don't recall.

**Q. Does Wells know of any assertion by anyone that any grantor's records were insufficient to allow Wells to determine the status of the collateral?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Objection.

A. I wouldn't know that.

MR. SCHLECKER: Give me time to object. Then you can answer.

**Q. Did Wells rely on the grantors to keep their records in a manner that would enable Wells to determine the status of collateral?**





A. I don't know.

**Q. Did Wells understand that it had the right under section 11 A-5 to request information concerning the collateral?**

A. Okay. Your question again now that I read it.

**Q. Did Wells understand that it had the right to ask of any grantor for information concerning the collateral?**

A. Yes.

**Q. Did Wells ever exercise that right?**

A. I don't recall, specifically.

**Q. Are you aware of the phrase "CFDR"?**

A. No.

**Q. Do you know whether any of the debtors kept information relating to the ResCap transactions on a database that's referred to as CFDR?**

A. I don't, specifically, recall, no.

**Q. Take a look at A-6 at the bottom of page 25. And read that to yourself and**





**let me know when you are done.**

A. Okay.

**Q. Did Wells understand that it had the right to inspect and audit all records pertaining to collateral?**

A. Yes.

**Q. Did Wells ever request the opportunity to inspect and audit all records pertaining to the collateral?**

A. What date? Prior to the petition?

**Q. Sure, if that's helpful. Let me rephrase the question in that context. Prior to the petition date did Wells ever request to inspect and audit all records pertaining to the collateral?**

A. I don't recall.

**Q. Do you know whether Wells has ever made that request since the petition date?**

MR. ZENSKY: Objection.

A. We asked for discovery information. That's all I know. In the general term that might relate to some of

the things that you are asking here now.
**Q. Do you know of any other request for the inspection and audit of records pertaining to collateral other than the discovery requests made in this litigation?**
A. I don't recall.
**Q. Now subparagraph little Roman 6 also refers to the trustee. Do you see that?**
A. 6?
**Q. Yeah.**
A. Yes.
**Q. Do you have an understanding of what the phrase "the trustee" refers to?**
A. Yes.
**Q. What's your understanding?**
A. The trustee at the time, U.S. Bank.
**Q. Prior to the petition date does Wells know whether the trustee ever requested the opportunity to inspect and audit all records pertaining to the collateral?**





A. I don't know.
**Q. Do you know whether any trustee since the petition date, other than in the context of the document requests, has sought to inspect or audit all records pertaining to the collateral?**
A. I don't know that.
**Q. Do you know whether any grantor at any time refused a request to inspect and audit records pertaining to collateral?**
A. I don't recall.
MR. ZENSKY: Objection.
MR. SCHLECKER: Objection.
A. I don't know.
MR. MORRIS: I'm just asking for their knowledge.
**Q. Can you please turn to page 36.**
A. Okay.
**Q. Have you seen section 15 of this document before?**
A. Yes.
**Q. Do you understand -- withdrawn. Is it Wells' understanding that**





**section 15 governs the third priority collateral agent's rights, powers, obligations and duties under the security agreement?**
A. Yes.
**Q. Can you please turn to page 44, subsection z.**
A. Okay.
**Q. Did Wells understand that it was required to maintain accurate and complete books and records with respect to all matters related to directly to the administration of collateral?**
A. Yeah.
**Q. Did Wells have customary procedures for fulfilling its obligations under this subsection?**
MR. SCHLECKER: Objection to the form of the question.
**Q. There's a reference to customary procedures in section 15 little z, do you see that?**
A. Yes.
**Q. Do you have an understanding of**





**what that phrase "customary procedures" means?**
A. It's a general description of what I guess a corporate trustee would do -- well, a corporate trus- -- agent in this case not a trustee.
**Q. Can you tell me what the customary procedures were for that agent with respect to the maintenance of accurate and complete books and records as set forth in 15(z)?**
A. It means that whatever we sign to we should have a copy of and that when we are asked to release a document, that we review that document from administrative point of view and in conjunction with counsel to review that prior to any release of any collateral that was pledged to us prior to its release to make sure that the proper documentation was provided prior to its release.
**Q. And to the best of your knowledge, did Wells follow its customary**

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**procedures with respect to its duties as the third priority collateral agent?**

A. Yes.

**Q. We may have covered this a little bit before but please bear with me. Can you describe how Wells maintained its books and records concerning the administration of collateral?**

A. Whatever physical collateral was delivered was deposited in a secure vault. Whatever document at the time of closing or subsequent providing of collateral from the same parties, that that documentation was kept also. If it's a physical copy of that documentation that was provided, we keep the physical copy. If there was an electronic copy that was provided, that would be saved in the shared drive as described before.

**Q. Prior to the petition date, did anybody on behalf of the 2015 trustee ever inquire as to how Wells maintained its books and records with respect to the administration of collateral?**



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A. I don't recall that.

**Q. Prior to the petition date, did anybody on behalf of the 2015 trustee ever inquire of Wells about the status of the collateral?**

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

**Q. Prior to the petition date, did anybody on behalf of any junior secured noteholder ask how Wells maintained its books and records with respect to the administration of collateral?**

A. I don't recall that.

**Q. Prior to the petition date, did anybody on behalf of any junior secured noteholder ever inquire of Wells about the status of the collateral?**

A. I don't recall that.

**Q. Prior to the petition date, did Wells ever discuss with anybody on behalf of the 2015 trustee the topic of lien releases?**

**That was a bad question. Withdrawn.**



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**We will get to that.**

**Take a look at subsection AA, please, and let me know when you are done?**

A. Okay.

**Q. Did Wells understand that as the third priority collateral agent it was required to make available to the trustee its books and records in respect of collateral?**

MR. SCHLECKER: Object to the form of the question. But you can answer.

A. It says make available.

**Q. Correct. I'm just asking whether Wells understood that it had the obligation as the third-party (sic) collateral agent to make available to the trustee its books and records in respect of collateral.**

MR. SCHLECKER: Upon request. That's why I objected to the form. You can answer.

A. If they asked of us -- of it, we would provide it.



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**Q. And did the trustee under the indenture ever make a written request of Wells for the type of information described in 15(aa)?**

A. They may have requested information. I don't know specifically. I can't tell you -- recall what exactly what agreement or document they requested.

**Q. Do you have any memory as to when any such request was made?**

A. No, not specifically.

**Q. Do you have any particular recollection of the trustee making a request or are you just allowing for the possibility that it may have happened?**

A. No, I think I made a request for some document, I just don't recall specifically what it was.

**Q. Do you recall if the request was made directly to you?**

A. Yeah, I think it was.

**Q. And did the direct -- withdrawn. Did the request come directly from the indentured trustee or did it come**

**through counsel? Do you have that --**

A. It came from the trustee I believe.

**Q. Do you recall if it was a written request or an oral request?**

A. I don't recall, specifically.

**Q. Do you recall ever having had a conversation with anybody at U.S. Bank concerning collateral?**

A. No.

**Q. Do you recall whether Wells received more than one written request from the trustee for information relating to collateral?**

MR. SCHLECKER: Just note my objection. If it's written or oral. You can answer.

A. I don't recall.

**Q. Do you recall anything at all about the request that you have in your mind?**

A. Just that they made a request and I would have -- I think I checked with counsel to see if I could provide the





information. That's it.

**Q. Did you provide the information?**

A. Yeah.

**Q. Do you recall what information you provided?**

A. Some documentation but it wasn't, as I recall, specifically in reference to collateral.

**Q. Do you recall whether the request related to any lien releases?**

A. No. No, it didn't.

**Q. Did the 2015 trustee ever make a request for information relating to any lien release executed by Wells Fargo?**

A. Not that I --

MR. ZENSKY: Are you asking prepetition, Counsel or?

MR. MORRIS: Yes. Thank you for the clarification. Let me ask the question again.

**Q. Prior to the petition date, did the 2015 trustee ever ask Wells for any information relating to any lien releases executed by Wells?**





A. I don't recall.

MR. MORRIS: Okay. We are going to mark the next and last document, the revolver of the loan agreement.

(Wells Exhibit 12, amended and restated loan agreement, marked for identification, as of this date.)

**Q. Have you seen this document before, sir?**

MR. ZENSKY: Can you just wait? We are just waiting for the exhibit.

**Q. Have you seen this document before, sir?**

A. Yes.

**Q. Do you have an understanding as to what it is?**

A. It's a loan agreement.

**Q. And do you know generally what this loan agreement relates to?**

A. To a loan that the borrower and the grantors entered into with Wells Fargo.

**Q. Fair enough. Can you please turn to page S-6.**





A. Is it towards the back or?

**Q. Yes.**

A. After the pagination?

**Q. It's actually in the middle, yes.**

A. Okay, got it.

**Q. Is that your signature on the document?**

A. Yes, it is.

**Q. And did you sign this document on behalf of Wells in its capacity as the first priority collateral agent under the security agreement?**

A. For purposes of 12.11(b), yes.

**Q. Thank you for the clarification. Do you know whether Wells also acted as the collateral control agent under this agreement?**

MR. ZENSKY: I'm going to object to questions on this as outside the scope of the 30(b)(6).

MR. MORRIS: Okay.

MR. SCHLECKER: Note my objection. You can answer the

question.
A. Yes.
MR. MORRIS: I just want to respond to the objection. I believe these questions and this agreement, while some background may be required for context, I believe that the questions will ultimately relate to 30(b)(6) topics 9, 10, 11.
Can we take a moment break.
(Whereupon, there is a recess in the proceedings.)
MR. MORRIS: I'm just going to note for the record, as I explained to Mr. Zensky during the break, we made a mistake. The 30(b)(6) notice that we had marked as, I think, Exhibit 2 is actually the original 30(b)(6) notice.
We had intended to mark as an exhibit the 30(b)(6) notice that was sent, I think, on August 15th. We are getting a copy of that. We will provide that to you as soon as it's available, which I hope will be before





the end of this deposition.
MR. ZENSKY: You can show him mine. I have the August 15th.
MR. MORRIS: Is there any handwriting on it?
MR. ZENSKY: Yes, there is.
MR. MORRIS: We will get the right one.
**Q. Looking at the -- can I refer to this as the loan agreement?**
A. Okay, that's fine.
**Q. And I believe you earlier testified that you signed this on behalf of Wells, for purposes of 12.11(b), in its capacity as first priority collateral agent?**
A. Yes.
**Q. Can you turn to page 20, please.**
**Are you generally familiar with this document?**
MR. ZENSKY: Objection.
A. I reviewed the document at the time that I signed it. It's some time ago, so I don't remember all the





provisions offhand.
**Q. Right. But you did review it before signing it; is that correct?**
MR. ZENSKY: Objection.
MR. SCHLECKER: You can answer it.
Did you review it, before you signed this document?
A. Yes.
**Q. And did Wells have the advice of counsel, before you executed this document on its behalf?**
A. Yes, they did.
MR. ZENSKY: Objection.
**Q. Are you generally aware that article 7 provides for certain covenants of the obligors?**
MR. ZENSKY: Objection.
MR. SCHLECKER: Note my objection to the form. If you want to look at the document --
**Q. Let me take a step back.**
**Do you have an understanding of the phrase "obligors," as used in the loan**





**agreement?**
MR. ZENSKY: Objection.
A. I can tell you by looking at it.
**Q. Why don't you tell me what your understanding is of the phrase "obligors."**
MR. ZENSKY: Objection.
A. Okay. ResCap and subsidiary pledgers, the guarantors and the borrower.
MR. SCHLECKER: What are you looking at?
THE WITNESS: I'm looking here at the, just from looking at the definitions of this agreement, of the loan agreement.
**Q. And turning back to page 20, if you will --**
A. Um-hmm.
**Q. -- did you have an understanding, at the time you signed this document, that the obligors had made certain covenants, as set forth in section 7.01?**
MR. SCHLECKER: Object to the form of the question.

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You can answer.
MR. ZENSKY: Objection.
A. It states here the obligors are making certain, or are performing certain obligations, and agrees to perform certain obligations.
**Q. I know that's what it says. I'm just asking you if that was your understanding at the time you signed the agreement?**
MR. ZENSKY: Objection.
MR. SCHLECKER: If you had an understanding at the time.
A. I don't recall thinking about my understanding or not understanding of what the obligors did at the time.
MR. MORRIS: Mr. Zensky, is your objection because you believe the questions of this particular document are beyond the scope of the 30(b)(6)?
MR. ZENSKY: Indeed it is.
MR. MORRIS: Okay. I am going to give you your standing objection for this limited purpose.



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MR. ZENSKY: I was having so much fun.
MR. MORRIS: You know what, then continue to object, if that really gets you excited.
MR. ZENSKY: I will accept your exception to your rule.
MR. MORRIS: I never want to be known as a party pooper.
BY MR. MORRIS:
**Q. Can you turn to page 25. And I'm looking at section 7.01(r), and I'm just going to ask generally whether it was Wells' understanding that each obligor --**
MR. MORRIS: Withdrawn.
Before we do that, I'd like to mark as Exhibit 13 the committee's 30(b)(6) notice to Wells Fargo dated August 15, 2013.
(Wells Exhibit 13, the committee's 30(b)(6) notice to Wells Fargo dated August 15, 2013, marked for identification, as of this date.)
MR. SCHLECKER: Do you want him



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to look at the new exhibit or go back to what you were talking about?
MR. MORRIS: Yeah. I want to deal with Mr. Zensky's objection.
**Q. And I want you to just put Wells Exhibit 2 alongside Wells Exhibit 13, because I'd like to just represent that the only difference between the two documents, I believe, are the, the only substantive differences are the addition of topics 12, 13, 14 and 15 in the Wells Exhibit 13.**
**And I want to know first whether or not you are here as Wells' representative to provide testimony with regard to topics 12, 13, 14 and 15.**
A. 12, 13 and 14?
**Q. And 15.**
A. And 15.
Yes.
MR. MORRIS: I don't know if this will satisfy your objection, but I believe all of the questions that I'm asking with respect to the



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revolver and the other operative documents are laying the foundation for questions concerning topics 9, 10, 11, 12, 13, 14 and 15.
MR. ZENSKY: I maintain the objection.
MR. MORRIS: Does everybody understand the difference between what we had marked as Exhibit 2 and what's now being marked as Exhibit 13?
MR. SCHLECKER: Um-hmm.
A. Yeah.
MR. ZENSKY: There's one other difference you didn't identify. You dropped a topic.
MR. MORRIS: Can you tell me which topic I dropped?
MR. ZENSKY: It appears you dropped topic 12 of the original one, based on the court's ruling.
MR. MORRIS: Correct. And I think I also lower-cased the word "concern."
I did drop that topic. Thank

you.

**Q. Let's go back to the revolver, and we are looking at (r), and I just want to know generally whether it was Wells' understanding that each obligor under this agreement was required to deliver to Wells, as the collateral agent and first priority collateral agent, such documents as Wells requested to evidence and describe the collateral.**

A. Yes.

**Q. And did Wells ever make any request for the information described in (r)?**

A. I don't recall, specifically, but in general, we always request -- if the documents are not attached with appropriate exhibits, because they are just execution copies, we would request the collateral that is marked as a certain exhibit, but it's blank; and then we would request that that exhibit that they are noting as the particular collateral is actually provided to us. We would have





done that at closing or at subsequent closing of these agreements.

**Q. Do you recall whether any obligor ever refused to comply with a request for the information of the type you are describing?**

A. I don't recall that, no.

**Q. Do you recall whether any obligor failed to provide the information that Wells was requesting, as you are describing?**

MR. SCHLECKER: Just note my objection to the form. If such advice had been made.

MR. MORRIS: I think he testified that requests were made, and that's what I'm following up on.

Let's clean it up. Let's clean it up.

**Q. Did Wells make requests of obligors for information of the type described in paragraph (r)?**

A. Only to the extent that they were identified in the original





agreements. Not beyond that.

**Q. And to the best of Wells' knowledge, did each obligor comply with such requests?**

A. Yes.

**Q. So you don't recall any instance where an obligor failed to provide information that was requested by Wells, do you?**

A. I don't recall.

**Q. Can you turn to page 32. And is it Wells' understanding that section 7.03 describes certain additional covenants by the obligors?**

A. Yes.

**Q. Can you turn to page 35, and let's look at section 7.03(q) at the bottom of 35 and continuing to the top of 36.**

A. Can you give me that section again?

**Q. Q.**

A. On 35?

**Q. Yes.**





A. Okay.

**Q. And was it Wells' understanding that each obligor, under this provision, was required to deliver to Wells such information with respect to collateral as Wells may have from time to time requested?**

A. Yes.

**Q. So Wells knew, at all times prior to the petition date, that it could request information of any obligor relating to collateral; is that right?**

A. Yes.

**Q. Let's put the documents aside for a moment. And I want to ask you questions generally about the process of lien releases.**

A. Okay.

**Q. Can you tell me again your understanding of what a lien release is, with respect to the ResCap transactions?**

MR. ZENSKY: Objection.

A. A lien release is when a company comes forth before us to request the

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release of collateral.
**Q. Did Wells understand that if it released collateral, in its capacity as the first priority collateral agent, that that release would be binding on the second priority collateral agent and the third priority collateral agent?**
MR. ZENSKY: Objection.
A. The collateral release was released as first priority collateral agent, and there was documentation at the time of the collateral release that addressed the second and third priority collateral release as well.
**Q. Let's go back to the security agreement, which is Exhibit 11.**
A. Okay.
**Q. I'm sorry, the loan agreement, Exhibit 12, page 50.**
MR. ZENSKY: Running objection back in force.
MR. MORRIS: You got it.
A. Page 50? Okay.
**Q. Are you familiar with**



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**section 12.11?**
A. Yes.
**Q. You've read that before; is that right?**
A. Yes.
**Q. Did Wells know and understand that each lender, under this agreement, authorized Wells to execute and deliver to the borrowers lien releases and termination statements, to the extent permitted by this document?**
A. Yes.
**Q. And if you turn now to Exhibit 11, page 24. I'm looking at section 10. Take your time.**
A. Okay.
**Q. I'm just asking generally whether it was Wells' understanding that as the first priority collateral agent and the collateral control agent, it was authorized to execute and deliver to the borrowers --**
MR. MORRIS: Withdrawn.
**Q. Did Wells understand that as the**



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**third priority collateral agent and the collateral control agent under the security agreement marked as Exhibit 11, that it was authorized to execute and deliver to any applicable grantor any documents the grantor may request to evidence a release of collateral?**
MR. ZENSKY: Objection.
MR. SCHLECKER: I'll object to the form, but you can answer the question.
A. Yes.
**Q. Wells was -- it was Wells' understanding that it was authorized to do that; is that right?**
MR. ZENSKY: Objection.
A. Yes.
**Q. Did Wells understand that it was allowed to conclusively rely upon an officer's certificate and an opinion of counsel delivered in connection with releases?**
A. Yes.
**Q. Did Wells from time to time**



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**execute lien releases?**
A. Yes.
**Q. And by executing each lien release, did Wells intend to release and terminate the liens and security interests covered by that particular lien release?**
MR. ZENSKY: Objection.
A. We released it.
**Q. And that was your intent; is that correct?**
A. Yes.
**Q. When you signed a lien release, the intent was to relinquish the lien and security interests on the assets referred to in the lien release; is that correct?**
A. Yes.
**Q. Was there a standardized process or practice by which Wells executed lien releases?**
A. Yes.
**Q. Can you describe that for me?**
A. Well, when I received the early lien releases -- excuse me, I'm just --
**Q. Do you want the question read**

**back?**

A. No, it's okay. I understand. When I received probably the original -- the earlier releases, because I hadn't come onto this deal in the beginning, I reviewed the documentation and reviewed, I guess, the requirements under the intercreditor and the pledge agreement. And I think there's ancillary prohibitions under the indenture, which stated you need an officer's certificate and an opinion of counsel, and I think those were under the indenture and the intercreditor.

Then under the loan agreement there would be a consent and direction to release, in reference to the first lien pledge agreements, and reviewed that they were in the same form as noted in those agreements, in reference to those three documents.

And upon review of those, any release sent was reviewed against those and subsequent releases. If I had done





the prior release, there were black lines against the prior release I had already reviewed, to see -- to note any differences in the subsequent releases and reviewed those.

If there were any comments that I had, in terms of something they were asserting in the release that was not true, in terms of -- or had any kind of typos or whatever, I would present those to counsel. Counsel would tell me what comments they had, in reference to the release, if any.

Those comments were then provided to the other counsel parties to the transaction, to the request for release, and we would need to receive -- I would provide counsel with my signature page in escrow until the time we received all the appropriate documents described, that I just described, in execution form and executed.

And in addition to those documents, there would be the actual UCC 1





that was originally filed and referenced to the collateral; and then there would be a collateral description within that UCC and I think within the officer's certificate, describing what the collateral in question to be released is and any defined terms in reference to that release.

In addition, the UCC 3, the termination or, in most cases, the partial release describing that collateral that was being partially released accompanied these documents. And upon that whole package presented to Wells Fargo and satisfactory to us and counsel, we would sign the release, the collateral release.

**Q. Do you remember ever signing a release that deviated from the practice you just described?**

A. No.

**Q. So Wells had an opportunity to review each lien release before you signed it; is that right?**

A. Yes.





**Q. And you had an opportunity to confer with counsel about the substance and form of each release, before Wells signed it; is that right?**

MR. ZENSKY: Objection.

A. You say "substance." What, specifically, are you referring to?

**Q. Wells had an opportunity to confer with counsel about the content of each lien release, before Wells signed it; is that right?**

A. Yes.

**Q. And Wells, in fact, did from time to time discuss with counsel the content of each lien release, before it signed it; is that right?**

MR. SCHLECKER: Note my objection to the form.

MR. MORRIS: Fine. Withdrawn.

**Q. Was there anybody within Wells who had to approve of a lien release, before you signed it?**

A. Unless I had a question about it, no.

**Q. Did Wells ever sign a lien release in accordance with the practice you described, without first receiving the officer's certificate and opinion of counsel that you referred to?**

A. I would have provided the signature like as I described to counsel, and the parties may have held the signature physically, prior to those documents being in hand, but they never were consented to be released, by myself or counsel, until we had indicated that our signatures were released; and hence, no.

**Q. Okay. I just want to make sure that I understand that.**

**You may have signed a lien release prior to receiving an officer's certificate or opinion of counsel, but your signature would have been held in escrow until your counsel received those documents; is that right?**

A. Well, I wouldn't have even sent the signature, if I hadn't seen the form





of it first. So it wouldn't have -- it would have been given to them, with the understanding that the form was there, it was just not an executed form, perhaps, and since a lot of parties have to deal with all the transaction documents. But we would have to have seen the form of any of these even before I would have sent my signature to counsel or to someone else.

**Q. And would your signature be released --**

MR. MORRIS: Withdrawn.

**Q. Was your signature ever released before receiving signed copies of the officer's certificate and opinion of counsel?**

A. Not that I ever recall.

**Q. I think you also mentioned that a written consent form was also part of the practice in executing lien releases; is that right?**

A. Consent and direction, yes.

**Q. And the consent and direction form came from the lender's agent; is that**





**right?**

A. Yes.

**Q. And the lender's --**

MR. MORRIS: Withdrawn.

**Q. Was your signature ever released without either Wells or its counsel having received a signed copy of the consent that you've described?**

A. No.

**Q. Now, when I asked you earlier about Wells' practice, you used the phrase with respect to "Earlier releases."**

**Did there come a time when the practice you've described changed at all?**

A. I'm not quite sure I understand.

**Q. You've described a practice for me whereby Wells reviewed and obtained documents before it executed lien releases; is that right?**

A. Yes.

**Q. Did that practice ever change over time?**

A. No.

MR. MORRIS: I'd like to mark as





the next exhibit a lien release package that was attached as Exhibit F to the committee's complaint.

(Wells Exhibit 14, lien release package attached as Exhibit F to the committee's complaint, marked for identification, as of this date.)

**Q. Have you seen this document before?**

A. Yes.

**Q. Did you look at it in preparation for this deposition?**

A. Yes.

**Q. Can you tell me what the first two pages are of the document entitled, "Partial Release of Collateral"?**

A. It's Wells Fargo's release of the collateral in question, and it attaches as exhibits all the documentation that gave us comfort to execute that release.

**Q. And is that your signature on the second page, with Bates number 768 in the bottom right corner?**

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A. Yes, it is, for all capacities indicated.

**Q. Was this document signed in the ordinary course of your duties as a vice president of Wells?**

A. For this transaction, yes.

**Q. Do you know who prepared this particular document?**

MR. ZENSKY: Objection.

MR. MORRIS: I'm referring only to the partial release of collateral.

MR. ZENSKY: Just the first two pages?

MR. MORRIS: Yes.

A. I don't recall exactly who prepared it, but it was a counsel; and our counsel reviewed it, and I reviewed it.

**Q. Do you remember this particular partial release of collateral --**

MR. MORRIS: Withdrawn.

**Q. Do you remember this particular transaction, the one that's reflected in Wells 14?**

A. When I saw it again, it's my



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signature, and I know I signed it. I can't tell you something from 2010. I can't recall what I signed back in 2010.

**Q. Based on your practice, do you know whether Wells had in its possession the officer's certificates referred to in the document, prior to the time your signature was released?**

MR. ZENSKY: Objection.

MR. SCHLECKER: I'll object to the form of the question, but you can answer it.

A. I believe so.

**Q. And based on your practice, do you know whether Wells had in its possession the legal opinions referred to in the partial release of collateral, prior to the time your signature was released?**

MR. ZENSKY: Objection.

A. I believe so.

**Q. Do you recall if this partial release of collateral was executed in connection with certain Goldman Sachs and**



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**Citibank repo transactions?**

A. I can't recall that. I'm sorry.

**Q. Let's take a look at schedule A -- I'm sorry, Exhibit A to your partial release of collateral.**

**Do you know what Exhibit A is?**

MR. SCHLECKER: Can you point to a Bates stamp number?

MR. MORRIS: Sure. It's the document with Bates number 70770 through 71.

MR. ZENSKY: I'm sorry, what was the Bates number again?

MR. SCHLECKER: There's several Exhibit As within the document.

MR. MORRIS: It's just the third and fourth pages, also known as 70770 through 70771.

MR. ZENSKY: That conforms to the exhibit.

**Q. Have you seen this document before?**

A. Yes.

**Q. Do you know what this document**



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**is?**

A. It's the consent and direction to release the collateral.

**Q. Is this one of the documents that would have been required by Wells, before your signature was released on the partial release of collateral?**

A. Yes.

**Q. Do you have an understanding of what this consent means?**

A. Yes. It's directing us to execute our partial release, based on the documents that they needed to provide, in order for me to sign that release.

**Q. And is it Wells' understanding that this consent was required, before it could issue the partial release?**

MR. SCHLECKER: Objection. Asked and answered.

Go ahead, you can answer.

A. Yes.

**Q. Now, this consent form contains its own Exhibit A, which is the next page, with Bates numbers 70772 through 73.**

**Do you see that?**

A. Yes.

**Q. In the ordinary course of Wells' practice, would Wells require some description of the released collateral to be accompanied by the content and direction form?**

A. I don't know what you mean by "required." If that was -- I can't recall offhand, but if that's part of the exhibit and would be required or is described in the documentation that would be required, then it would be required, and we would need to see it.

**Q. Okay. Well, in this instance, Exhibit A describes the collateral that's going to be released; is that right?**

A. Yes.

**Q. And that's something that Wells knew, at the time it executed and released your signature?**

MR. SCHLECKER: Note my objection to the form as to what he did. If it was present, it was





present.

**Q. Prior to the time your signature was released, do you know whether Wells had received Exhibit A?**

A. Yes.

**Q. And it had; is that right?**

A. I can't recall each instance, but if it was part of the documentation that was being reviewed, I wouldn't release it. If it was part of the original documents that we were shown, and then if they showed us the same documents without that exhibit, we wouldn't have accepted that. It would have had to have been the same as what was reviewed.

**Q. Now, is this form --**

MR. MORRIS: Withdrawn.

**Q. Looking at Exhibit A --**

MR. ZENSKY: Can you give us the Bates page?

MR. MORRIS: Yes, sir. No problem.

**Q. Looking at Exhibit A, with Bates number ending in 772 and continuing to**





**773, is that a form with which you are familiar, in terms of a recitation of released collateral?**

A. It's the recitation of this particular released collateral.

**Q. Looking at the beginning of the document, it refers to "All right, title and interests into and under, whether now or hereafter existing."**

**Do you see that?**

A. Yes.

**Q. Do you know why the description of released collateral refers to assets that are now or hereafter existing?**

MR. ZENSKY: Objection.

A. I don't know why they do that, but that's what they do.

MR. SCHLECKER: If you don't know, you don't know. That's the answer.

**Q. At the time that Wells executed the partial release of collateral, did Wells know which assets were being released?**





A. What is described here in Exhibit A, page 72 and 73.

**Q. So Wells relied on the description of the collateral in this exhibit at Bates number 772 to 773, in executing the partial release of collateral; is that correct?**

MR. SCHLECKER: I'll object. It mischaracterizes his testimony, completely. He never testified that he relied on this description for anything.

MR. MORRIS: Okay, so I'm asking him now.

MR. SCHLECKER: That's why I'm objecting.

MR. MORRIS: That's fine.

**Q. Let's take it in small pieces. Before your signature was released, did Wells receive a copy of this Exhibit A at Bates numbers 772 to 73?**

A. Yes.

**Q. Did Wells understand, prior to the time it released its signature on the**

**partial release of collateral, which assets were being released?**

A. Well, as described here and as described in the UCC 3, in conjunction. They are sort of together, they are repeated throughout the document, because they become exhibits of each other.

**Q. Did anyone, on behalf of the 2015 trustee, ever ask Wells, prior to the petition date, what assets were being released under the partial release of collateral in Exhibit 14?**

A. I don't recall being asked that.

**Q. At any time prior to the petition date, did anybody ask Wells on behalf of any junior secured noteholder, what asset --**

MR. MORRIS: Withdrawn. Let me start over.

**Q. Prior to the petition date, did anyone, on behalf of any junior secured noteholders, ask Wells what assets were released, pursuant to the partial release of collateral in Exhibit 14?**





A. I don't recall that, no.

**Q. Now you mentioned UCC 3s before.**

A. Yes.

**Q. What is Wells' understanding --**

MR. MORRIS: Withdrawn.

**Q. Does Wells have an understanding as to what a UCC 3 is?**

MR. SCHLECKER: Objection, asked and answered.

MR. ZENSKY: Objection.

A. A UCC 3 is a form filed with an applicable state or county in reference to a release -- or in reference to a termination or change in terms of the original information provided in the UCC 1.

**Q. What is Wells' understanding of the purpose of the UCC 3?**

MR. ZENSKY: Objection.

MR. SCHLECKER: I think we are getting into legal issues.

MR. MORRIS: Not at all.

MR. SCHLECKER: We are.

MR. MORRIS: Their understanding





may be right or wrong, but I want to know why Wells is doing this.

MR. SCHLECKER: I think it calls for a legal conclusion as to what it does.

But go ahead, you can answer the question.

A. A UCC 3 would be to denote some changes, as I indicated, from the original UCC 1. A termination, more specifically.

**Q. And was it Wells' understanding that the UCC 3 would put the public on notice that Wells was terminating the manner by which its liens and security interests were perfected?**

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

A. I don't know that.

**Q. The UCC 3s that you've referred to, were those supposed to be attached to the officer's certificates that you described?**

A. It was an entire package. So what was attached to what, I can't tell





you if it's the UCC attached to the officer's certificate or the officer's certificate to the UCC attached to something else, but there was one package.

**Q. And the UCC 3s were part of the package; is that right?**

A. Yes.

MR. MORRIS: I'd like to mark as the next exhibit --

**Q. Actually, before we do that, you testified earlier about a request that was made by the 2015 trustee for information. Do you recall that?**

A. Yes.

**Q. I think you testified that to the best of your recollection, that request for information had nothing to do with lien releases; is that right?**

A. That's correct.

**Q. Did that request for information have anything to do with collateral?**

A. No.

**Q. Do you have any memory as to what the request related to?**

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A. Some documentation, but I can't remember. I don't remember it being specific about collateral or any lien release.

**Q. Okay.**

MR. MORRIS: Let's mark as the next exhibit a document that's titled Exhibit 5, even though we are going to call it Wells Exhibit 14. And it's --

THE WITNESS: 15.

MR. MORRIS: 15. It is docket number 8-5.

(Wells Exhibit 15, document titled Exhibit 5, docket number 8-5, marked for identification, as of this date.)

**Q. I'm just going to go through another example or two of lien releases to make sure I understand your practice and the meaning of the documents that you reviewed.**

**Turning to the second and third pages, which are pages 2 and 3 of 34, respectively, if you look at the top.**

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**Do you see that?**

A. Yes.

**Q. Is that a copy of a UCC 3 that you were referring to earlier?**

A. Yes.

**Q. And is this the document that would be filed to establish that Wells had relinquished the lien and the assets described in the document?**

A. Yes.

**Q. Looking at Exhibit A, which is page 3 of 4, do you see that?**

A. Yes.

**Q. And, again, in the introduction there's the phrase "Whether now or hereafter existing," do you see that?**

A. Yes.

**Q. And do I understand that by Exhibit A, Wells was releasing its lien on what's defined as "Servicing rights collateral," in (a)?**

MR. SCHLECKER: Objection to form.

You can answer.

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A. That's what it states there.

**Q. And was that Wells' intention?**

MR. ZENSKY: Objection.

A. It's not an intention, it's whatever it was described to be released is -- in that exhibit is what was released.

**Q. So Wells did, in fact, release its lien on the assets described in this Exhibit A; is that right?**

MR. SCHLECKER: Object to the form.

You can answer the question.

A. It appears to be so, as described here in this exhibit, yes.

**Q. Now I'm just focusing on the servicing rights collateral.**

**That's a defined term in this document; is that right?**

A. Yes.

**Q. And prior to executing the lien release and the filing of the UCC 3, Wells understood what servicing rights collateral meant, in the context of this**

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**exhibit; is that right?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Objection to the form.

A. I don't know that.

**Q. Did Wells try to --**

MR. MORRIS: Withdrawn.

**Q. Did you review the definition of servicing rights collateral, before you signed your signature on the lien release?**

A. I read the document at the time, so I would have read that definition, along with all the others.

**Q. And if you had any questions about that definition, would it have been your practice to ask counsel or somebody else in your office?**

A. If I had a question about it, yes.

**Q. Did Wells understand that as the third priority collateral agent, it was, in this UCC 3, releasing its lien on all servicing rights, as defined in the exhibit?**

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MR. SCHLECKER: Objection to the form. The UCC 3 speaks for itself.
A. Repeat the question back, please.
(Record read.)
MR. SCHLECKER: Same objection. You can answer, if you can.
A. I don't know.
**Q. I may have covered this in bits and pieces before, but I want to cover the next topic kind of all at once.**
**Was there a practice whereby Wells notified the 2015 trustee of lien releases?**
A. No.
**Q. Did Wells ever provide --**
MR. MORRIS: Withdrawn.
**Q. Prior to the petition date, did Wells ever provide copies of any lien releases to the 2015 trustee?**
MR. SCHLECKER: You are talking about Wells Fargo, as opposed to counsel for Wells?
MR. MORRIS: Well, any -- no,



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this is actually Wells Fargo or anybody acting on behalf of Wells Fargo. We are talking about the period prior to the petition date.
**Q. So the question is: Prior to the petition date, did Wells Fargo, or anybody acting on behalf of Wells Fargo, provide to the 2015 trustee copies of any lien releases?**
A. The release documentation, the officer's certificate opinion is addressed to Wells Fargo and U.S. Bank as trustee. So they are the addressed party. I didn't myself provide them copies.
**Q. That's all I was asking, so thank you.**
**Did Wells Fargo, prior to the petition date, ever provide copies of any lien releases or UCC 3s to anybody acting on behalf of any junior secured noteholder?**
A. I don't recall us providing that information.
**Q. Did Wells ever speak with the**



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**lender agency about the assets that were covered by any particular lien release?**
A. I don't recall specific conversations. We spoke to them, I'm sure, over the course of the transaction, but I can't recall exactly, specifically what.
**Q. Did you have a contact person at the lender's agent with whom you spoke, in the ordinary course of your business, about lien releases?**
A. The contacts were usually through counsel first.
**Q. Did you ever speak with any employee of the lender's agent, with respect to any lien release?**
A. I don't recall that, specifically, no.
**Q. Did you ever speak with any obligor --**
MR. MORRIS: Withdrawn.
**Q. Did Wells ever speak directly to any obligor, with respect to the collateral that was subject to any**



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**particular lien release?**
A. I don't recall, specifically.
**Q. Do you recall generally?**
A. I don't recall.
**Q. Can you turn within Exhibit 15 to the document with Bates number ending in 70276?**
A. 70 --
**Q. 276.**
A. Okay.
**Q. Is this another partial release of collateral that you personally executed, on behalf of Wells Fargo?**
A. Yes.
**Q. I'm looking at the second paragraph of that document.**
**Did Wells understand that it could take directions from the lender agent to release and terminate liens on collateral, as long as it received the consent form, the officer's certificates and the legal opinions referred to in the release?**
MR. ZENSKY: Objection.

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MR. SCHLECKER: Objection to form, but you can answer the question.
A. Yes.
**Q. And what's the basis for that understanding?**
A. What I described before as the documents required to execute a release, which is what's described as what they are providing.
**Q. Now, I believe that you said that Wells needed have the consent, the officer's certificates and the legal opinions, before you would sign the lien release; is that right?**
MR. ZENSKY: Objection.
MR. SCHLECKER: I do have to object, because it's a big summarization of his testimony, and he talked about a lot.
MR. MORRIS: Fine.
MR. SCHLECKER: That's all right.
MR. MORRIS: I'll take it in pieces.



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**Q. Before you signed a lien release, Wells needed --**
MR. MORRIS: Withdrawn.
**Q. Before your signature on a lien release was released, Wells needed to receive an officer's certificate; is that correct?**
A. Yes.
**Q. And before your signature was released on any lien release, Wells needed to receive the legal opinion; is that correct?**
A. Yes.
**Q. And before your signature was released on any lien release, Wells needed to receive the consent form; is that correct?**
A. Yes.
**Q. And before your signature was released on any lien release, Wells needed to see the UCC 3s; is that correct?**
A. Forms in the UCC 3, yes.
**Q. Before your signature was released on any lien release, Wells needed**



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**to see a description of the collateral that was being released; is that correct?**
A. That was attached to the UCC, yes.
**Q. So those are five items that we have identified?**
A. The UCC 1 as well.
**Q. And the UCC 1 makes six. Are there any other documents that Wells required, before executing the lien release?**
A. I think those are the main ones. I don't know if there are others.
**Q. You can't think --**
A. I can't recall them right now.
**Q. As you sit here today, did Wells ever release your signature on a lien release, without having in its possession or in the possession of its counsel the six documents that you just identified?**
A. I don't believe so.
MR. MORRIS: Let me just get to the last exhibit. We have as the next exhibit a very, very voluminous set of



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documents. We are going to provide a copy of the exhibit to all counsel, as soon as the deposition is over, via e-mail. It's just way too big to copy and pull across town too many times.
I'm not asking any particularized questions, they will be just questions about authenticity. I mean if you want to come look at the documents, anybody is welcome to.
We are going to mark as the next exhibit a series of lien releases and UCC 3s that are in redwells marked sets 1 of 2 and 2 of 2. Copies of these documents will be delivered to all counsel immediately after the deposition, in the form of an electronic delivery.
MR. ZENSKY: What did you say they were?
MR. MORRIS: They are pretty much every lien release and UCC 3 that we found in the various document productions. So there won't be any

question, as soon as we send you this e-mail when we are done, about what the contents of the exhibit are.

MR. ZENSKY: Is it your intent to have the witness review every page there, as we sit here, even for just authentication purposes?

MR. MORRIS: No. Let me just ask some questions and see how we do.

(Wells Exhibit 16A-D, series of lien releases and UCC 3s in redwells, marked for identification, as of this date.)

(Wells Exhibit 17A-B, series of lien releases and UCC 3s in redwells, marked for identification, as of this date.)

**Q. I don't know if you are aware of this, but we sent electronically these documents to your counsel at about 2:00 Friday afternoon.**

**Have you had a chance to look at these documents?**

A. No.





MR. MORRIS: I would just ask that over the coming days or weeks prior to trial, I would ask Wells to let me know if these documents were prepared and maintained in the ordinary course of business.

I believe, for multiple reasons, they would be admissible in evidence, and I would ideally like to simply stipulate to their admissibility.

MR. SCHLECKER: Are they Bates stamped?

MR. MORRIS: Yeah, but not consecutively. We just went through the database and pulled.

MR. SCHLECKER: So this is a compilation of documents from multiple sources that you have put together to represent your understanding of all the UCC 3s?

MR. MORRIS: As it exists today, what I'm asking for is a stipulation, really, from all parties as to the admissibility of all of the lien





releases and UCC 3s that are the subject of Exhibit 16 and 17.

Everybody will have the exact electronic copy momentarily, as well as Creditors Committee Exhibit F and the Debtor's Exhibits 5 and 6.

We believe --

MR. ZENSKY: Are those included now?

MR. MORRIS: I don't think they're in this stack, they are separately. So it's Creditors Committee Exhibit F, Debtor's Exhibit 5, Debtor's Exhibit 6 and then Wells Exhibits 16 and 17 that are here on the table today. And we believe that that's the entirety.

If we have any further, we will certainly share them with you and ask for the same stipulation.

But whether it's business record, publicly filed document, admission of a party, on multiple levels I don't think ultimately there





will be any question about admissibility; but we certainly want to give you all an opportunity to look at the documents before even asking you to agree to that.

MR. SCHLECKER: Okay.

MR. MORRIS: I just have a few more questions, and I think we will be done.

**Q. Prior to the petition date, did the 2015 trustee ever object to any lien release that was executed by Wells?**

MR. ZENSKY: Objection.

A. I don't know that.

**Q. Prior to the petition date, did anybody, on behalf of any junior secured noteholder, ever object to any lien release executed by Wells?**

MR. ZENSKY: Objection.

A. I don't know that.

**Q. Prior to the petition date, did the 2015 trustee ever object to any UCC 3 that was filed by Wells, in its capacity as a collateral agent?**

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A. I don't recall ever being told that.

**Q. And prior to the petition date, did anybody, on behalf of any junior secured noteholder, ever object to any UCC 3 that was filed in Wells' name?**

MR. ZENSKY: Objection.

A. I don't recall ever being told that.

**Q. Has any person or party made any claim against Wells, that Wells was unauthorized to issue any of the lien releases in this case?**

MR. SCHLECKER: Note my objection. The pleadings in this case are a matter of public record. I'm not sure what you are getting at by asking him that.

MR. MORRIS: I want to know whether any particular claim has been made against Wells, with respect to the lien releases that it signed in connection with any ResCap financing.

MR. SCHLECKER: If you know the



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answer.

A. I'm not aware of any.

MR. MORRIS: Can we just take a very short break to let me consult with my counsel and see if there's anything that I missed.

(Whereupon, there is a recess in the proceedings.)

**Q. I just have, hopefully, just a few more questions.**

**Is there anything you wanted to clarify about any testimony you've given so far, particularly as it relates to UCC 3s?**

A. When describing the package of documents we would have received prior to signing my release, I would have received a form of the UCC 3, not necessarily the filed one. That would come subsequent, with the understanding that we would be provided copies of the filed UCC 3 afterwards.

**Q. And is that because the UCC couldn't be filed until your signature was**



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**released?**

A. Right. Chicken before the egg.

**Q. So at the time that you executed each lien release, you had the form of UCC 3, but it had not been filed yet; is that right?**

A. Right. I don't believe those were filed.

**Q. At the end of my questions I asked you a few questions about whether anybody objected to lien releases and UCC 3s. I just want to ask them again a little bit more clearly, to make sure that I get the information I want.**

**Is Wells aware of any objection by the 2015 trustee --**

MR. MORRIS: Withdrawn.

**Q. Is Wells aware that the 2015 trustee made any objection to any lien release that was signed by Wells Fargo?**

MR. ZENSKY: Objection.

A. No.

You mean Wells, meaning me, because I would be the officer?



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**Q. As a representative of Wells.**

A. Representative of Wells. No.

**Q. And prior to the petition date, was Wells aware of any objection by the 2015 trustee to any UCC 3 that was filed by Wells Fargo?**

A. Repeat that question again.

MR. SCHLECKER: Let me object to the form of that question, because it mischaracterizes his testimony.

MR. MORRIS: I'm not characterizing any testimony. I specifically said I'm asking a new question.

MR. SCHLECKER: Go ahead.

**Q. Prior to the petition date, is Wells aware of any objection by the 2015 trustee to any UCC that was filed on behalf of Wells?**

MR. SCHLECKER: Filed on behalf of Wells?

MR. MORRIS: Yes.

MR. SCHLECKER: I'll object to the form.

MICHAEL PINZON
You can answer.
A. I don't know of any.
**Q. Prior to the petition date, is Wells aware of any objection by anybody representing any junior secured noteholder to any lien release that was executed by Wells?**
A. I do not know. I do not know of any.
**Q. Prior to the petition date, is Wells aware of any objection by anyone acting on behalf of any junior secured noteholder to any UCC 3 that was filed in the name of Wells Fargo?**
A. I do not know of any.
**Q. Can you go back to Exhibit 14?**
A. Yes.
**Q. I'm going to ask you to turn to Exhibit A, "Released Collateral," which can be found on the documents that end in 772 to 773.**
A. Okay.
**Q. You'll see there's a reference to repo loans in (a)?**



**MICHAEL PINZON**
A. Yes.
**Q. And that term "repo loans" is defined later in this document; is that right?**
A. Let me check.
Okay, yes.
**Q. And is it fair to say that before signing the partial release of collateral at the beginning of this exhibit, that Wells understood the general category of assets that were being released?**
MR. SCHLECKER: Objection to form.
MR. ZENSKY: Objection.
**Q. Let me ask it a different way.**
**Did Wells know what assets --**
MR. MORRIS: Withdrawn.
**Q. Did Wells know, prior to the release of your signature on the lien release, what assets were being released, pursuant to Exhibit 14?**
A. Whatever was described in Exhibit A. Beyond that, I wouldn't know.



MICHAEL PINZON
**Q. Okay. If you wanted to know beyond that, if you wanted to know every specific asset that was being released, do you know whether you could have obtained that information?**
MR. SCHLECKER: Object to the form. Calls for speculation.
A. I don't really get that question.
**Q. Well, "repo loan," under this exhibit, means any mortgage loan.**
**Do you see that?**
A. Yes.
**Q. If you wanted to know each particular mortgage loan that was the subject of the release, how would you find that out?**
A. I don't know. I mean it's whatever is represented here, the debtor presented as repo loan is the repo loan, whatever they said it is is what it is. I didn't go beyond whatever it said on face value.
**Q. Okay. I appreciate that.**



**MICHAEL PINZON**
**And I'm asking you now to tell me if you know what you would do, if you wanted to go beyond that.**
A. If I wanted to know, I would ask counsel.
**Q. Okay. Fair enough.**
MR. MORRIS: I have no further questions.
MR. ZENSKY: I have a few questions. I don't know if anyone else does.
EXAMINATION BY
MR. ZENSKY:
**Q. Good afternoon, sir. I'm David Zensky from the firm of Akin Gump. I represent UMB Bank, the successors and indenture trustee. I have just a handful of questions to follow up on things you were asked today, earlier.**
A. Okay.
**Q. You testified that UCC 3 statements were filed from time to time, in connection with the collateral that formed part of this transaction?**

MICHAEL PINZON

A. Right.

**Q. Do you know who actually filed the UCC 3s?**

**And I don't mean the name of the person. I mean, was it the borrower or the obligors or Wells Fargo or someone else?**

A. It was not Wells Fargo.

**Q. Do you know who actually filed the UCC 3s?**

A. I think it was ResCap.

**Q. Okay. When UCC 3s were filed and termination statements were executed, do you know what ResCap or the other grantors would do with the assets that were being released?**

A. No.

**Q. By way of example. I don't mean every single transaction.**

A. No.

**Q. To the extent --**

MR. ZENSKY: Strike that.

**Q. You were shown by Mr. Morris a variety of the documents that governed**



MICHAEL PINZON

**this transaction --**

A. Yes.

**Q. -- and the collateral itself.**

**Do you recall that?**

A. Yes.

**Q. Do you know whether, in those documents, there are any requirements as to what ResCap or the other borrowers can do, once an asset is released, with the proceeds that they receive from selling or disposing of those assets?**

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

MR. ZENSKY: Let me reask it.

**Q. Let me represent to you that when assets were released from time to time, that one of the things that ResCap might do with the asset was to sell it.**

A. Right.

**Q. Do you know whether, in the transaction documents that you were shown today, there were any requirements as to what ResCap was supposed to do with the proceeds of such a sale, if it happened?**



MICHAEL PINZON

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

**Q. You can answer.**

A. I don't know.

**Q. Okay. So would it also follow that you don't know whether ResCap complied with any such requirements that might exist in the various transaction documents to that effect?**

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

A. I don't know.

**Q. Towards the beginning of the deposition, Mr. Pinzon, I think I heard you testify to the effect that outside the context of termination statements and that type of paperwork, that from time to time you would receive a report, and I don't think that was your word, but something like a report from ResCap that would list the collateral.**

**Do you recall that?**

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



MICHAEL PINZON

A. Yeah. Whether we received a report from the company from time to time, and I think I answered I don't recall ever receiving it.

**Q. You do not recall?**

A. I don't recall ever receiving. That's what I told Mr. Morris.

**Q. Okay. I'm sorry. It was a little hard to hear down there.**

**So is it your best testimony and recollection that Wells Fargo did not receive reports purporting to list all the loans and other assets that formed part of the collateral, from time to time, before the petition date?**

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

A. What do you mean by "reports"? Like what would be in these reports that you allege exist?

**Q. Did you ever receive -- did Wells ever receive, from the time you took over the relationship, lists of various mortgage loans or other assets that were**

**part of the collateral, as defined in the security agreement?**

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

A. We received notices from time to time, listing -- with an officer's certificate and opinion sent to us, listing certain mortgages being released.

**Q. Okay. So you would receive such lists but only in connection with a release request?**

A. Those were just information provided to Wells Fargo as to what was released.

**Q. Okay. So --**

A. And they were not -- I don't think they were cumulative. They were just, this is the report -- this the officer's certificate and opinion that I'm sending to you, in reference to these particular loans that are being released.

**Q. Okay. I now understand. Just to make sure it's clear, you did not --**





MR. ZENSKY: Strike that.

**Q. -- Wells did not receive a list or report at any time that listed all of the assets and loans that --**

MR. ZENSKY: Strike that.

**Q. Wells did not receive lists that showed all or some of the collateral that was not being released, but was remaining part of the asset base?**

A. Not that I recall, no.

MR. ZENSKY: I think that's all I had sir. Thank you.

MR. MORRIS: I have a few more questions.

EXAMINATION BY
MR. MORRIS:

**Q. You mentioned that ResCap filed the UCC 3s; is that right?**

A. I believe so.

**Q. Was that part of the customary practice for lien releases, with respect he to the ResCap financing?**

MR. SCHLECKER: Objection to the form. I'm not sure what you mean by





"ResCap financing."

**Q. Did Wells expect ResCap to be the entity that filed the UCC 3s?**

MR. SCHLECKER: Objection to the form.

You can answer.

A. Per the agreements, it was the responsibility of the company to file the UCCs.

**Q. And that was Wells' understanding at all times; is that correct?**

MR. ZENSKY: Objection.

A. We had the permissive right, but not the obligation.

**Q. And did Wells ever see a filed UCC 3 that differed in any respect from the form UCC 3 that you would have reviewed before signing the lien release?**

MR. SCHLECKER: If you can recall.

A. That's such a -- it's too broad. I can't -- you know.

**Q. I'll ask it the inverse.**





**Do you recall ever discussing with anyone a filed UCC 3 that differed from an UCC 3 that you would have reviewed before signing a lien release?**

MR. ZENSKY: Objection.

A. I don't recall specific instances.

**Q. Do you recall any general instance?**

A. No.

**Q. So to the best of Wells' knowledge, ResCap was authorized to file UCC 3s; is that correct?**

A. Yes.

**Q. And in carrying out that responsibility, ResCap did not file any UCC 3 that differed from those that you reviewed prior to signing a lien release; is that right?**

MR. ZENSKY: Objection, foundation.

A. I don't know if I would know of all they did, you know. I only can tell you in reference to the documents we

released and that we received --

**Q. That's all I'm asking about.**

A. -- UCC 3s that were filed that were the same.

**Q. At the end, Mr. Zensky asked you a couple of questions about reports, I guess, that weren't delivered to Wells, with respect to collateral.**

**Do you remember those questions?**

A. Yes.

**Q. Do you know whether any debtor or obligor had any obligation to deliver lists of collateral to Wells?**

MR. SCHLECKER: Note my objection to the form.

**Q. You can answer.**

MR. SCHLECKER: If you are able to answer, you can answer. There's a lot of transaction documents.

MR. MORRIS: David, you objected. You objected.

MR. SCHLECKER: You can answer the question.

A. The question, please.





(Record read.)

A. I don't know.

**Q. Did Wells ever ask any debtor or obligor for any lists of collateral, other than the lists that related to particular lien releases?**

A. Only what was delivered at the time of closing of whatever, the original transaction or the amended and restated transaction.

**Q. And Wells knew and understood that it had the right, under the documents as we looked at earlier, to ask ResCap or its affiliates for any information relating to collateral; isn't that right?**

MR. ZENSKY: Objection.

MR. SCHLECKER: Objection to form.

If you want to look at documents, feel free. I think these documents really speak for themselves as to what the obligations are.

A. What particular document are you referring to?





**Q. Can you please pull Exhibit 11.**

A. Sure.

**Q. And if you can turn to page 25. If you look at little four and little five, is it fair to say that each grantor had to keep records concerning the collateral in a manner that would allow Wells Fargo, as the third priority collateral agent, to determine the status of the collateral?**

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

You can answer.

MR. ZENSKY: Objection.

A. Yes.

**Q. And in five, is it fair to say that each grantor was required to furnish to Wells, as the third priority collateral agent, such information that the collateral agent may, from time to time, request?**

A. Yes.

**Q. And other than --**

MR. MORRIS: Withdrawn.





**Q. Wells Fargo never requested of any grantor a collateral report that specifically described and listed every asset that was subject to the note's collateral; is that correct?**

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

But you can answer that question.

A. We requested at the time, as I explained before, at the time of closing and at the time of subsequent closing. That's when we requested, to make sure we had what it was they were representing was the collateral package.

**Q. And every one of those requests was complied with; is that correct?**

A. As far as I know, yes.

**Q. So you are not aware, as you sit here today, of any requests for any information from any grantor, relating to the collateral, that wasn't positively responded to; is that right?**

A. I'm not aware of any.

MICHAEL PINZON

MR. MORRIS: No further questions.

MR. SCHLECKER: Thank you very much. We will read and sign.

(Time noted: 2:04 p.m.)



STATE OF NEW YORK )
) :ss
COUNTY OF NEW YORK )

I, MICHAEL PINZON, the witness herein, having read the foregoing testimony of the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____
MICHAEL PINZON

Sworn and subscribed to before me, this _____ day of _____, 2013.

_____
Notary Public



C E R T I F I C A T I O N

STATE OF NEW YORK )
ss.:
COUNTY OF NEW YORK )

I, ERICA L. RUGGIERI, RPR and a Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of September, 2013.

ERICA L. RUGGIERI, RPR



---------- I N D E X ----------


| WITNESS | EXAMINATION BY | PAGE |
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| | Mr. Zensky | 165 |


---------- EXHIBITS ----------


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| Exhibit 1, series of definitions | 8 |
| Exhibit 2, 30(b)(6) deposition notice | 18 |
| Exhibit 3, copy of the committee's complaint | 23 |
| Exhibit 4, document titled Schedule Two | 23 |
| Exhibit 5, declaration of John Morris in support of committee's opposition to partial motion to dismiss | 31 |
| Exhibit 6, document titled Schedule Three | 35 |
| Exhibit 7, document entitled Schedule Five | 43 |

2 2 ---------- EXHIBITS ----------

| WELLS | FOR I.D. |
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| Exhibit 8, amended answer and affirmative defenses of Wells Fargo, dated August 27th, docket number 91 | 48 |
| Exhibit 9, Indenture | 61 |
| Exhibit 10, Intercreditor Agreement | 72 |
| Exhibit 11, Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy | 82 |
| Exhibit 12, amended and restated loan agreement | 104 |
| Exhibit 13, the committee's 30(b)(6) notice to Wells Fargo dated August 15, 2013 | 111 |
| Exhibit 14, lien release package attached as Exhibit F to the committee's complaint | 129 |
| Exhibit 15, document titled Exhibit 5, docket number 8-5 | 142 |



---------- EXHIBITS ----------

| WELLS | FOR I.D. |
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| Exhibit 16A-D, series of lien releases and UCC 3s in redwells | 154 |
| Exhibit 17A-B, series of lien releases and UCC 3s in redwells | 154 |

*** EXHIBITS RETAINED BY KRAMER LEVIN ***



## INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.



## E R R A T A

I wish to make the following changes,
for the following reasons:

PAGE LINE
___ ___ CHANGE:_____
REASON:_____
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_____ _____
WITNESS' SIGNATURE DATE

# ERRATA SHEET TO DEPOSITION OF MICHAEL PINZON

I wish to make the following changes,

for the following reasons:

PAGE LINE

11 3 CHANGE: "before" to "after"

REASON: Error in transcript

39 3 CHANGE: "count" to "county"

REASON: Transcription error

44 20 CHANGE: "I can't tell you…"

REASON: Word "tell" is missing

65 21 CHANGE: "obligators" to "obligors"

REASON: Transcription error

74 5 CHANGE: "as" to "has"

REASON: Transcription error

81 3 CHANGE: "junior" to "junior noteholder"

REASON: Word "noteholder" is missing

101 17 CHANGE: "I" to "it"

REASON: Transcription error

104 2 CHANGE: "I don't recall" to "Not that I can recall."

REASON: Accuracy of response

104 21-23 CHANGE: "To a loan that the borrower and the guarantors entered into with the lenders."

REASON: Accuracy of response

122 11 CHANGE: "prohibitions" to "provisions"

REASON: Transcription error

135 9 CHANGE: "but if it was part of the documentation…" to "but if it was not part of the documentation…"

REASON: Word "not" is missing

148 2 CHANGE: "agency" to "agent"

REASON: Transcription error

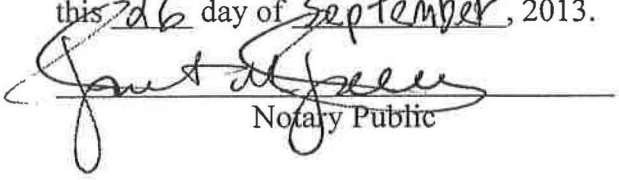


9/26/2013

MICHAEL PINZON DATE

Sworn and subscribed to before me,

this 26 day of September, 2013.



Notary Public

JANET M. JOLLEY
Notary Public, State of New York
No. 01JO6121000
Qualified in Kings County
Commission Expires Jan. 3, 2017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
In re: Chapter 11
RESIDENTIAL CAPITAL, LLC, et al., Case No.
Debtors. 12-12020 (MG)
Jointly
Administered
----------x
RESIDENTIAL CAPITAL, LLC, et al,
Plaintiffs,
Adversary Proceeding
v. No. 13-01343 (MG)
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,
Defendants.
----------x
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, on behalf of the estates
of the Debtors,
Plaintiff,
v. Adversary Proceeding
No. 13-01277 (MG)

UMB BANK, N.A., as successor
indenture trustee under that
certain Indenture, dated as of VIDEOTAPED
June 6, 2008; and WELLS FARGO DEPOSITION OF:
BANK, N.A., third priority TERESA RAE FARLEY
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,
Defendants.
----------x
September 18, 2013 - New York, New York
Mary F. Bowman Job No. 65729

Purple Highlighting = Wells Fargo Bank, N.A. Designation

September 18, 2013
9:35 a.m.

Deposition of TERESA RAE FARLEY, held at the offices of Akin, Gump, Strauss, Hauer & Feld, One Bryant Park, New York, New York, before Mary F. Bowman, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public of the State of New Jersey.



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Also Present: Steve Sanpietro, Videographer

THE VIDEOGRAPHER: This is the start of the tape labeled number one of the videotape deposition of Terry Farley in the matter of In re: Residential Capital, LLC, Chapter 11, Case Number 12-12020, in the United States Bankruptcy Court for the Southern District of New York.

This deposition is being held at One Bryant Park, New York, New York, on Wednesday, September the 18th, 2013, at approximately 9:44 a.m.

My name is Steve Sanpietro from TSG Reporting, Inc., and I am the legal video specialist. The court reporter today is Mary Bowman in association with TSG Reporting.

May I please have counsel introduce themselves for the record, starting to my right.

MR. ENGELHARDT: Stefan Engelhardt,



from Morrison & Foerster, on behalf of the debtors and the witness.

MR. BROWN: Judson Brown, Kirkland & Ellis, on behalf of Ally Financial.

MS. GOODMAN: Alissa Goodman, Kramer, Levin, Naftalis & Frankel, LLP, for the unsecured creditors committee.

MR. HAMERMAN: Natan Hamerman, also from the creditors committee.

MR. ROSELL: Jason Rosell, Pachulski, Stang, Ziehl & Jones, for creditors committee.

MS. KAM: Sarah Kam, Reed Smith, on behalf of Wells Fargo.

MS. DeKRAKER: Hailey DeKraker, Milbank, Tweed, Hadley & McCloy, for the junior secured lenders.

MS. SODERBERG: Vanessa Soderberg, White & Case, for the junior secured noteholders.

MR. BAUMSTEIN: Doug Baumstein, White & Case, for the junior secured noteholders.



MS. COHEN: Julia Cohen, from Akin Gump, for UMB Bank.

MS. NEWMAN: Deborah Newman, also from Akin Gump, on behalf of UMB Bank.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

TERRY FARLEY,
called as a witness by the parties, having been duly sworn, testified as follows:

EXAMINATION BY
MS. NEWMAN:

Q. Good morning, Ms. Farley.

A. Yes.

Q. As I said, I am Deborah Newman with Akin Gump. We represent UMB Bank as successor indenture trustee to the junior secured noteholders, who I will refer to today as the JSNs. Do you understand that?

A. Absolutely.

Q. Thank you.

Are you represented by counsel today, Ms. Farley?

A. I am.



Q. Is that Mr. Engelhardt?

A. Yes, it is.

Q. Anyone else in this room representing you?

A. No.

Q. Have you been deposed before?

A. No.

Q. I am going to go over a few ground rules. It will just make everything go, I think, a little quicker and easier today.

The court reporter is going to be taking down our conversation, as you can see, so it is important that you let me finish my questions before you begin answering, and I'll try to do the same with you with respect to your answers. OK?

A. Um-hm.

Q. And the next one is that you have to answer my questions verbally, because the court reporter obviously can't take down a head nod or --

A. Right.

Q. Does that make sense?

A. Yes.

Q. If any of my questions are unclear, please let me know, and I will try to rephrase them in a way that's more easily understood. Does that make sense?
A. Sure.
Q. From time to time, your counsel or someone else in the room may object to a question that I ask. Unless your counsel instructs you not to answer the question, you can go ahead and answer. Does that make sense?
A. Yes.
Q. If you need a break at any time today, please let me know, and I will try to accommodate you. I would just ask if there is a question pending, that you go ahead and answer the question, and then we will take a break.
A. OK.
Q. Ms. Farley, do you understand that you are under oath today?
A. Yes, I do.
Q. Is there any reason, such as taking medication or anything like that, that you



would be unable to answer my questions to the best of your ability today?
A. No.
Q. Ms. Farley, what did you do to prepare for today's deposition?
A. Spent the last two days with my counsel at MoFo and various other attorneys.
Q. Can you tell me, please, what other attorneys were there?
A. I may need some help with that. Stefan was there. Samantha Martin was there from MoFo.
Q. Anyone else from MoFo?
A. No.
Alissa and Natan.
Q. From Kramer Levin?
A. From Kramer Levin.
And John was there for the first day as well.
Q. Is that John Morris?
A. I believe so.
Q. OK. Anyone else?
A. Mike was there, and I'm not going to recall the firm Mike was with.



Q. Do you know Mike's last name?
A. I don't recall it.
Q. Do you know who Mike represents in this matter?
A. I don't recall it. He was introduced, but --
Q. OK. You said you met for the past two days. So I am having trouble keeping track of what day it is, but I guess Monday would be the first day you met?
A. Right.
Q. How long did you meet on Monday?
A. We met approximately 20 hours over the past two days.
Q. Wow, OK. Were you shown documents?
A. Yes.
Q. Can you tell me what documents you were shown?
MR. ENGELHARDT: Objection, and instruct the witness not to answer.
MS. NEWMAN: What's the basis for the instruction?
MR. ENGELHARDT: Work product privilege.



MS. NEWMAN: I would note for the record we obviously dispute that there is any privilege that attends to communications between the debtor and the committee with respect to the committee complaint.
Q. Ms. Farley, about how many documents were you shown?
A. What is your definition of "documents"?
Q. I guess something that's reduced to paper.
A. In terms of executed documents, probably four or five.
Q. And when you say "executed documents," are you referring to agreements?
A. Yes.
Q. Were you shown documents other than agreements?
A. Yes.
Q. Such as e-mails?
A. Yes.
Q. And approximately how many?
A. Maybe a hundred, 75 to 100.

Q. OK. And who led the discussion?
A. Largely Stefan. John and Natan to a lesser degree.
Q. Other than the two meetings that you just told me about that lasted for approximately 20 hours, did you do anything else to prepare for this deposition?
A. I reviewed certain provisions of the revolver, and of the pledge and security agreement relating to the revolver.
Q. Any other documents?
A. No.
Q. Which provisions of the revolver agreement did you review?
A. Some of the definitions, the provisions relating to collateral, and the lien releases. I also quickly reviewed some of the covenants.
Q. When you say the definitions -- actually, strike that.
Which provisions of the revolver pledge and -- pledge agreement did you review?
A. Some of the definitions, the lien



release provisions and some of the granting provisions.
Q. Did you review the definition of "collateral" under the revolver pledge agreement?
A. I would have reviewed the definition -- the definitions relating to collateral also.
Q. OK. And then would that include the definition of "excluded assets"?
A. Yes.
Q. OK. What were the portions of, or what were the topics for which Mr. Morris or Natan led the discussion?
MR. ENGELHARDT: Objection. I instruct the witness not to answer.
MS. NEWMAN: OK. And I'll note for the record that we dispute that there is a privilege that would apply to that question.
Q. OK. Other than what you have told me about, did you do anything else to prepare for this deposition?
A. I had a brief conversation with



Barb Westman and a brief conversation with Joe Ruhlin.
Q. Anyone else?
A. No.
Q. Who is Ms. Westman?
A. Barb Westman works in the finance department of ResCap.
Q. What are her responsibilities in the finance department?
A. Well, I was just -- she is working with a lot of the financial reporting and with CFDR.
Q. OK. And CFDR is the debtors' collateral tracking database?
A. It is an Oracle database that is used for finance and some treasury functions. I discussed with her some of the financial components relating to that.
Q. Can you tell me what were the financial components of the CFDR that you discussed with Ms. Westman?
A. I discussed a little bit of the development. I discussed the reconciliation to the ledger. And I discussed -- discussed



I think CFDR a little bit generally.
Q. When you say "development," you mean the development of the CFDR?
A. She was involved with the development of the CDFR back in 2008.
Q. 2008. OK. Were you involved in that as well?
A. Tangentally.
Q. Who is Mr. Ruhlin?
A. Mr. Ruhlin is currently an employee of Green Tree.
Q. What's Green Tree?
A. It's a company in the -- it's a company in Minneapolis. No longer affiliated.
Q. No longer affiliated with ResCap?
A. Yes.
Q. What kind of company is Green Tree?
A. He works in a mortgage origination group.
Q. And what was Mr. Ruhlin's affiliation with ResCap?
A. At the time I started ResCap, Joe was responsible for the roll-forwards, which

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was really cash forecasting, and we worked very closely as it related to understanding the needs of ResCap from a financial perspective. Ultimately, Joe took over some of my managerial responsibilities within the treasury group.

Q. And what did you discuss with Mr. Ruhlin in connection with this deposition?

A. Joe actually called me, we talked just a little bit about the lien release process which he had taken over. And we discussed how well we worked together.

Q. Other than what you have told me, did you do anything else to prepare for today's deposition?

A. No.

Q. Ms. Farley, can you tell -- give me a brief description of your educational background, beginning with college?

A. I went to the College of St. Benedict, Saint John's University, in Minnesota. Graduated from there in 1982, and then I went to law school at the University

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of Minnesota until 1985.

Q. And can you please give me a brief description of your employment background, beginning with your first job after graduating from law school?

A. Started at Dorsey & Whitney, where I was in the corporate department. I went over to the business side in 1989, where I was at RFC. I ran -- I grew into various positions there. But over time, I ran the securitization group, including all of the sales and operations relating to that. I ran parts of master servicing. I ran the investor relations group.

I was involved in a number of new product developments, a number of board committees, particularly those relating to expansions into various business opportunities, and restructuring of the company.

After RFC, several of us left to establish a new conduit funded by DLJ that -- DLJ was subsequently acquired by Credit Suisse First Boston, and, you know, at that

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time, we implemented our business plan for CSFB. I basically was -- was involved with establishing an origination, mortgage loan origination platform there, established a warehouse lending platform there.

We brought the trading desk into a variety of new products. I was involved with some corporate finance activities. I was also involved with vendor diligence, vendor selection, and the creation of various service-level agreements to monitor and compensate vendors appropriately.

I went from there to Merrill Lynch, where I set up an asset-based lending company. I was at Merrill Lynch until the meltdown occurred, and then everything was pretty much closed at Merrill Lynch.

At that point, I received a phone call from several ResCap employees asking if I was interested in coming on board to help with the restructuring and, you know, what is known as the revolver now. They knew the right words to say. I came on for a two- to three-week engagement.

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I was there until -- with two small breaks, until this past November, as a consultant, and then in November, just before Thanksgiving, I recall, I came on board as a full-time employee.

Q. Thank you.

You mentioned RFC. What is RFC?

A. RFC is Residential Funding Corporation. It was the -- it was the original conduit established by Norwest Bank. At that point, it was owned by -- I think it was owned by Anchor Bank. Norwest had sold it to Anchor Bank. Anchor Bank subsequently sold it to Salomon -- no. Norwest sold it to Salomon, Salomon sold it to Anchor, and then Anchor Bank sold it to GMAC.

Q. When was -- was it owned by GMAC during the time that you were working there?

A. I started when it was owned by Anchor Bank, and then I was there during the acquisition by GMAC.

Q. What is a conduit?

A. The conduit was basically the entity that took originated mortgage loans

and basically securitized them, sold them into the secondary market.

Q. And you said that you left Merrill when the meltdown occurred. I think it could be interpreted to have been a series of meltdowns during a particular period in recent history.

What exactly was the time frame you were referring to when you said "meltdown"?

A. 2008. Wait, 2007, I'm sorry.

Q. 2007?

A. Um-hm.

Q. Just to make sure that we are on the same page as I'm going through and asking my questions today, I just want to make clear that I am going to be referring -- when I say "ResCap," I'm referring to Residential Capital, LLC, and its former and current -- and direct and indirect subsidiaries. So not the entities above ResCap -- Residential Capital, LLC.

A. OK.

Q. Does that make sense?

A. Yes.



Q. And when I say Ally or AFI, I am referring to the entity now known as Ally Financial Inc., formerly loan as GMAC Inc. Does that make sense?

A. Yes.

(Exhibit 1, notice of deposition marked for identification, as of this date.)

Q. Ms. Farley, you have just been handed what has been marked as Farley Exhibit 1, which is the deposition notice that was served on the debtors in this matter. Have you seen this document before?

A. No.

Q. Can you just take a minute -- I'm going to represent that the numbers that are highlighted are the topics for which you have been designated to serve as ResCap's corporate representative during this deposition. Can you please take a look at those highlighted topics and let me know if you have knowledge of each of the highlighted topics.

MR. ENGELHARDT: You want her to go



one by one through all 30-some-odd --

MS. NEWMAN: I want her to look at them and tell me if there are any that she does not have knowledge of.

MR. ENGELHARDT: Counsel, for the record, with respect to the topics, the variety of topics, listed communications with the committee and/or AFI, generally we designated two witnesses for those topics. Ms. Farley is here as a corporate designee on those categories with respect to communications with AFI only.

MS. NEWMAN: Thank you for the clarification.

A. As Stefan said, I did not have any communications with the committee on any of these.

Q. OK.

A. So that would not be appropriate to look to me for that.

With respect to 52, I did not have any communications with anyone about the notes collateral in a preferential transfer.



I have knowledge of what happened in the 90 days prior, but I don't know if there is another party or if any conversations occurred.

Q. So you do not know if anyone at ResCap, other than yourself, had such communications?

A. Correct.

And I don't have the listing Schedule 6 in items 56 and 57.

Q. Have you seen those schedules?

A. I don't know.

Q. Have you seen the committee complaint?

A. Very briefly.

I am familiar with transactions, categories of transactions and the assets that were on the revolver and pledged to the JSNs, however.

Q. Thank you.

You said that you were -- and I'm using my own language now -- lured back to ResCap in 2007.

MR. ENGELHARDT: Objection to form.

Q. Is that correct?
A. No.
Q. OK. What's incorrect about that?
A. I left Merrill in 2007. I joined ResCap in May of 2008.
Q. Understood.
And what was it that you were asked -- when ResCap contacted you to come back in or about May 2008, what was it that they were asking you to come -- or to come to ResCap as a consultant, what was it that they were asking you to do?
A. To help close the restructuring and negotiate and close the revolver.
Q. And what are you referring to when you say "the restructuring"?
A. The bond exchange.
Q. And what was the status of the bond exchange at that time?
MR. ENGELHARDT: Objection to form.
Q. You can answer.
MR. ENGELHARDT: You can answer.
A. I joined on the Monday after the offering memoranda had been printed.



Q. OK. So did you -- is it correct then that you did not participate in any negotiations with bondholders respecting the terms of the exchange?
A. I was on conversations including bondholders' counsel relating to the pledge and security agreements associated with the junior and senior bondholders. I was a -- I provided comments, and I suspect I was on conversations, again, with a variety of attorneys, including JSN attorneys, and likely business people, with respect to some of the indenture provisions.
I don't believe the indenture had been final at the time the offering memo was created.
Q. Did you have any involvement in discussions about the exchange of the existing notes for the JSNs and the terms of what that exchange would be, other than what you have just described?
A. No.
Q. So for example, you were not a participant in any conversations respecting



whether the principal amount of the existing notes would be reduced?
MR. ENGELHARDT: Objection to form.
A. I was aware those conversations were taking place. I don't recall being on or participating in any of those.
Q. OK. Who did participate in those?
A. John Peterson from ResCap. Laura Hall and Corey Pinkston from Ally. There may have been other individuals, but that's my knowledge.
Q. Do you know the terms of the exchange -- and again, I'm differentiating the exchange from the security agreement and indenture --
A. Right.
Q. How the terms of the exchange changed during the period between which the exchange was first envisioned and the time that it was consummated?
MR. ENGELHARDT: Objection to form.
A. I don't recall if I ever knew.
Q. OK. You don't know if you ever knew at one time?



A. Correct.
Q. But you do not know now; is that correct?
A. I do not know now.
Q. And would the same people that you named in response to my question about negotiations with bondholders be the people who would know about the way in which the terms of the exchange may have changed over time?
A. Yes.
Q. Anyone else?
A. Not that I can think of. Attorneys representing those business people, but --
Q. OK, thank you.
(Exhibit 2, Terry Farley's LinkedIn profile marked for identification, as of this date.)
Q. Ms. Farley, you have just been handed Farley Exhibit 2, which is your LinkedIn profile that I downloaded off of the LinkedIn website.
A. Um-hm.
Q. Looking at the information that's

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listed under Terry Farley's experience, was this information written by you?
A. Yes.
Q. And I'm particularly focused on the second blurb, which says, "Financial services professional consultant, GMAC ResCap." The first sentence says, "Involved with developing and implementing business strategies in order to manage GMAC ResCap's liquidity needs."
Can you explain to me what that entailed?
A. Sure. When I joined in 2008, obviously it was a crisis time for ResCap. And even before the revolver was executed, we realized there wasn't going to be enough cash coming off of that facility to maintain business operations. So everybody knew that we were going to need to continue to find ways to monetize assets, to put new lines in, to expand lines.
So after the -- well, as the revolver was closed, and the Resort was pulled out, separate financing happened

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there, I believe the factoring started about that time. I was very involved with Joe Ruhlin and some other senior management in looking at what the cash flow needs were going to be for the company moving forward. And we had roll-forwards which showed expenditures that were anticipated, you know, either by business units or because large payments were coming due. And we also were able to forecast revenues we expected to receive in.
We worked through lists of assets, you know, because we had lists of every asset in the company, pledged, unpledged, whatever, and we were looking to see where we could find value, where we could monetize assets to be able to meet the financial needs of the company.
That happened actually, you know, through the tenure there. Looking at the roll-forwards, figuring out what monies we would have available, what we would be short, and having a forecast like that, we would have some time to react and trying to figure

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out how we were going to manage to make the payments we needed to manage -- we needed to make.
So that's an overview of what that meant.
Q. Of that first sentence.
A. Um-hm.
Q. OK. Let's take a step back on this point. What was -- what were the sources of funding for ResCap's business prior to the implementation of the restructuring?
MR. ENGELHARDT: Objection to form.
A. There was obviously cash, although not that significant, and there were lines, there were financing lines. And ResCap also funded itself through the sale of assets, through the securitization and sale of loans, of servicing.
Q. OK. And what were the lines of financing that you referenced?
A. There were a number of them. When I came on, they were being consolidated into a single line, I believe led by B of A.
You're talking about before the

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revolver and the bond exchange?
Q. Yes.
A. So to my knowledge, there were a lot of lines out there.
Q. OK. And were they -- were those lines actually consolidated into a single line?
A. A number of them were, not all of them.
Q. And what about bilateral facilities? Were there bilateral facilities in place at that time?
MR. ENGELHARDT: Objection to form.
You can answer.
A. The bilateral facilities were the other lines.
Q. And what is a bilateral facility?
A. It is a lending arrangement between ResCap and a third party. The third party may be an individual party -- a named party acting on behalf of several banks or lenders, or it may be a single lender.
Q. OK. What were the -- what was the duration of the bilateral facilities that

were in place prior to the restructuring?
MR. ENGELHARDT: Objection to form.
A. I was not involved with the restructuring of those bilateral facilities, except as it related to incorporating that information in the revolver and working with the remaining facilities going forward. So I don't have an answer to that question.
Q. OK. To your knowledge, were those typically long-term facilities that lasted for a period of years?
MR. ENGELHARDT: Objection to form.
A. Typically facilities have approximately a one-year term, with the expectation that it would be renewed barring business changes, you know, either in the interest of the lender, exiting the business, or the needs of the borrowers.
Q. OK. Do you know if at the time of the restructuring, there was an expectation that the bilateral facilities then in place would be renewed?
A. There was an expectation that the bilateral facilities remaining in place after



the restructuring would exist for a period of time, and the expectation was that they would be renewed or that we would need to find alternative funding sources if they weren't.
Q. OK. Was part -- what was the impetus for putting the revolver in place?
MR. ENGELHARDT: Objection to form.
A. I was not involved with those discussions, so this is speculation based on my conversations of the time.
But ResCap was basically out of money and was not going to be able to meet its debts going forward, and this was a way of monetizing assets so that ResCap would get money coming in and it could pay down some of the debts which it knew were coming, and as well as to fund its ongoing business operations.
Q. OK. Was there a -- was the expectation that the revolver would exist coincident with the bilateral facilities?
A. Yes.
Q. So it wasn't the expectation that certain of the bilateral facilities would



terminate?
A. My understanding, and recollection of the time, is that some of the bilateral facilities terminated, some of the bilateral facilities were combined into a single facility managed by, it might have been B of A but I'm not sure, and some of the bilateral facilities would continue.
Q. OK. Looking back at the LinkedIn profile, the second sentence reads, "Manage structuring -- manage structuring, ops and compliance teams relating to secured funding facilities, domestically and internationally, and provide legal expertise relating to various business arrangements."
Can you give me a broad description of what that entailed?
A. Over time -- well, after the initial closing happened, which was the two to three weeks I came on board for, first they asked me to stay through the end of the summer to help operationalize the revolver and to work with them in terms of some of the assets and other funding needs.



And during that time -- let me see, what's it -- during that time, I was very largely involved in setting up a lot of the procedures and processes utilized by the company to fulfill the various obligations under the revolver, and that included training and working very closely with all of the structuring and operational individuals and people who led the various business units around, you know, the ResCap organization.
I eventually ended up -- I thought I was going to be gone, and then I was extended and asked to take on -- over time asked to take on management of the structuring and operational roles. So I managed those groups.
I managed -- I was subsequently asked to take on the internal treasury compliance group. So I managed that group. This was all happening as a consultant.
Q. OK.
A. And the secured funding facilities, domestically and internationally, the team I took over that I worked very closely with

before, during and after my management of them, you know, we managed facilities across the country. We managed the facilities in the UK, we managed the facilities in Europe.

Q. OK. And that would include the revolver?

A. That included the revolver.

Q. OK.

A. And it included the LOC and credit agreement and other docs.

Q. OK. You said -- you used the term "operationalize" the revolver. What does that mean?

A. It means taking legal constructs set out in the agreement and turning them into reality.

Q. OK. Can you give me an example of that?

A. We had to create a borrowing base on a monthly basis and provide that to Ally, Wells and U.S. Bank. So the document basically said, you are going to deliver information. That first month, there was a paper, actually a variety of papers that



actually needed to be delivered.

Operationalizing is basically taking the concept of a report being delivered and then working with the various people and systems inside the company to actually create a report that satisfies the provisions of the document. That would be an example.

Q. OK.

A. And another example would be needing to get BPOs on, you know, our properties every 90 days. Somebody needed to communicate that that was necessary, insure the business units set up that process, and then set up a process to make sure that the people that were supposed to do that, indeed were doing that.

But that's operationalizing.

Q. OK. What is a BPO?

A. Broker price opinion.

Q. Would that include -- this operationalizing the revolver, did that include the creation of the CFDR?

A. Not directly.



Q. I'm not sure I understand your answer.

A. The CFDR --

MR. ENGELHARDT: There is no question.

Q. Can you explain it for me further, please?

A. The CFDR is an Oracle database used within the finance world. It had been conceptualized before the revolver came into place. The creation of the revolver was the impetus for finance developing that particular database and that technology.

Q. Who are the people at ResCap who are the most knowledgeable of the way in which the CFDR works as far as tracking collateral?

A. Barb Westman.

Q. And you said she was involved in creating the CFDR; is that correct?

A. She was involved in creating the CFR.

Q. You are using the term "CFR." Is that how it is referred to?



A. CFDR. I'm probably just softly saying the D.

Q. OK, I missed it.

OK. Can you turn back to the LinkedIn profile, please. The third sentence in the section we have been looking at says, "In conjunction with GMAC ResCap senior management, strategized, negotiated and implemented multibillion debt restructurings."

What does that refer to?

A. It refers to the bond exchange, and it refers to other projects that never came to fruition within the company.

Q. And does that primarily relate to the indenture and pledge agreement relating to the restructuring?

A. Yes, as well as again operationalizing the provisions in the indenture that we needed to insure were followed.

Q. OK.

MR. ENGELHARDT: Which one do you have? Which one is that?

MS. NEWMAN: It is the original revolver agreement and the original pledge agreement. Do you have your own copy?
MR. ENGELHARDT: I might have my own copy. Original loan agreement and the what? I'm sorry.
MS. NEWMAN: Original revolver security agreement.
MR. ENGELHARDT: First priority or third priority?
MS. NEWMAN: First.
MR. ENGELHARDT: I have them. Thank you.
(Exhibit 3, first priority pledge and security agreement marked for identification, as of this date.)
(Exhibit 4, loan agreement marked for identification, as of this date.)
MR. ENGELHARDT: 3 is the revolver?
MS. NEWMAN: The loan agreement is going -- I believe the loan agreement is 3?
THE WITNESS: The loan agreement is



4.
MS. NEWMAN: Oh, OK. That's fine. I don't think it matters.
MR. HAMERMAN: Just for clarity, are we re-marking these as Farley 3 and 4?
MS. NEWMAN: Yes.
MR. HAMERMAN: That's what we are doing?
MS. NEWMAN: Yes.
MR. BAUMSTEIN: Apparently the loan agreement is Farley 4.
Q. Ms. Farley, you have been handed the loan agreement relating to the revolver, and the first priority pledge and security agreement relating to the revolver. Have you seen these documents before?
A. Yes.
Q. Let's start with the loan agreement. Were you involved in negotiating this agreement?
A. Yes.
Q. And who else, who else was involved in those negotiations?



A. John Peterson, and Joe Ruhlin would provide feedback on some aspects. He was not directly involved with the conversations for the most part.
Q. And those -- you, Mr. Ruhlin and Mr. Peterson were acting on behalf of ResCap in these negotiations?
A. Correct.
Q. Was there anyone else acting on behalf of ResCap in these negotiations?
A. There were other individuals likely involved and providing feedback on various sections as to which they may have some expertise, but no, no parties come to mind.
Q. OK.
A. Documents such as this are distributed fairly widely.
Q. OK.
A. Sue Bode probably was involved, but I don't have direct recollection of conversations with her.
Q. Who is Sue Bode?
A. Finance.
Q. Is she still with ResCap?



A. No.
Q. Do you know where she -- who she works for now?
A. I think that several years ago, she left to go to Marquette, but I could be wrong, and I'm not sure if she is still there.
Q. Who negotiated the loan agreement on behalf of Ally?
A. Laura Hall. She had an associate working with her out of the New York office whose name I do not recall. And Mary Fontaine, Mary Fontaine from Mayer Brown. The associate was working out of the New York Mayer Brown office.
Mary -- I'm sorry. Laura and Corey Pinkston were negotiating, and they may have had a junior analyst or they may not have. I don't recall.
Q. What was Ally's focus in these negotiations?
MR. ENGELHARDT: Objection to form.
MR. BROWN: Objection to form.
A. Ally largely wanted to be secured

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by as many assets as was feasible, and Ally also wanted a great deal of control over the business and the operations of ResCap.

Q. OK. So just to be clear, you are talking about security. So turning to the secured -- the pledge and security agreement, were these -- these negotiations that you told me about, did they relate to that agreement as well?

A. Yes. The revolver really happened first. The PSA happened towards the closing, if you will -- the end of the revolver negotiations in terms of timing.

Q. OK, OK. And it would be the same people who you told me --

A. Yes.

Q. -- participated in the negotiations --

A. Yes.

Q. -- were involved in negotiations relating to the security?

A. Yes.

Q. What was ResCap's response to Ally's desire to be secured by as many assets as possible?

MR. HAMERMAN: Objection to form.

A. ResCap largely appreciated Ally's need to have their lines secured, but ResCap also wanted to retain the flexibility in its business management so that it could make intelligent and efficient business decisions relating to collateral to continue to fund its operations. We obviously were trying to protect the collateral to the extent we could, so that it would be available for future use should that be necessary, as we all expected it would be.

We were trying to make the facility operationally workable. This is a very, very complicated facility, and it was a very difficult facility, you know, to manage, both to set up operationally and from a business perspective with all of the business restrictions here.

So we were continuing to try to ease what was going to be a very significant burden on the company to comply with this.

Q. And what was the ultimate solution or resolution -- strike that.

What was the ultimate agreement with respect to the scope of the collateral that was granted to Ally in connection with the revolver?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: I join in the objection.

Q. You can go ahead and answer.

MR. ENGELHARDT: You can answer.

A. There were two sets of collateral associated ultimately with the revolver. One was designated as primary collateral. That was collateral as to which a lien was given. It was listed initially on an exhibit to the pledge and security agreement. It was the collateral that became the source of the borrowing base.

The value of that collateral came into play to determine the commitment amounts and, you know, whether the loan amounts were adequately collateralized. That primary collateral was the collateral that was subject to the terms of the revolver relating to everything from requirements associated with collateral disposition to the cash flows.

There was a second group of collateral that was subject to what we refer to as the blanket lien. That was collateral that was not primary collateral, but collateral which was -- which grantors, parties to the pledge and security agreement gave a security interest. It wasn't excluded collateral. And over time, primary collateral would change, and that would be reflected on the borrowing base.

Over time, the blanket lien also -- that collateral also changed as assets as to which an interest was granted, liens were released with respect to that collateral, and you had new assets being originated, coming in, that if it was subject to the grant, it would become new blanket lien collateral, and then of course you had the "excluded assets" definition, which at times that changed, as

collateral subject to the excluded assets could change as well.
Q. OK.
A. It was a complicated concept.
Q. Just one second, please.
So you just identified, I think, three categories of assets: the primary collateral, the blanket lien and the excluded assets. Were there any other -- were there any assets of ResCap that did not fall into one of those three categories?
MR. ENGELHARDT: Objection to form and object to the extent it calls for a legal conclusion.
MR. HAMERMAN: Join in the objection.
A. Yes. To the extent that there was collateral that a security interest had not been granted in that collateral under the pledge and security agreement, and it was not covered under the definition of "excluded assets," those assets were not subject to the blanket lien.
So that would be another category



of assets that's not definitionally -- doesn't have a sound bite definition.
Q. OK. And can you give me an example of an asset like that?
A. The South American and Central American assets.
Q. OK. So was that -- is that because the South American and Central American entities who owned those South American and Central American assets were not obligors or guarantors under the revolver agreement?
MR. ENGELHARDT: Objection to form and objection to the extent it calls for a legal conclusion.
MR. HAMERMAN: Same.
A. To the extent that any party, including some of the South and Central American parties, were not parties to the pledge and security agreement and providing an assignment of a specific asset, that asset would not be covered.
Q. OK.
A. And so the South and Central American assets were not parties to this



agreement who gave a security interest in the assets they owned.
Q. OK. Understood.
Let me clarify my question. Are there assets owned by entity -- by ResCap entities who were obligors, guarantors or pledgors under the revolver agreement or pledge and security agreement that do not fall into the three categories of assets that you identified, which are primary collateral, assets subject to the blanket lien, or excluded assets?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: I join in that objection.
A. It's possible.
Q. OK, it's possible. And how would that -- what would the circumstances be that would make that possible?
A. If you had a party giving a security interest, for example, a FAS-B grantor, or whatever that term is, they would



have just provided a security interest under the document in those specific assets. There are three different provisions here where grantors are given an interest in specific assets, specific delineated assets.
If that entity happened to own assets beyond the assets which it gave the interest in, that would be a circumstance in which you would have an asset that a grantor owned that would fall outside the blanket lien.
Q. Understood, thank you.
Can you turn to page 7 of the pledge and security agreement, please. I'm going to ask the same question that I just asked with respect to guarantors, borrowers and pledgors in connection with the revolver with respect to only the entities listed in the title to Section 2. So that's borrowers, guarantors and model home.
MR. ENGELHARDT: Objection to form. I don't understand it.
MR. HAMERMAN: I don't understand the question.

MS. NEWMAN: Let me see if the witness does.
MR. ENGELHARDT: There is not a question on the record.
MS. NEWMAN: I said I'm going to ask the same question with respect to -- that I asked, but now I'm limiting it with respect to these three entities.
MR. ENGELHARDT: Can you get on the record what that question is so we have clarity first?
MS. NEWMAN: I will, but first I want to ask the witness another question.
Q. Which is, Ms. Farley, do you understand what it is that I am trying to get at with the question that I just attempted to ask that your counsel is objecting to?
A. I'm not entirely sure.
Q. OK.
A. I would like a chance to look at this.
Q. Sure.
A. And then if you could restate the question, that would be great.



Q. Sure. Why don't you let me know when you're ready.
A. OK.
Q. So my question is, could there be assets owned by the borrowers, guarantors or model home referenced in Section 2 that we are looking at, that are not -- that do not fall within one of the three categories that you listed for me or that you identified for me, which are primary collateral, collateral subject to the blanket lien or excluded assets?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
You can answer.
MR. HAMERMAN: Join in the objection.
Q. Getting the hang of it?
A. Starting to.
Yes, I think there are assets that could be in that fourth category.
Q. OK. And could you explain to me what those assets would be?



A. I can't think of any specific examples, but it would be assets owned by one of the borrowers or guarantors or model home, I guess, that don't fit within one of these delineated categories.
Q. OK. But sitting here today and having just looked at, reading through the definition, you can't think of an example of what that asset might be; is that correct?
A. Correct.
MR. ENGELHARDT: Objection.
Q. Can you turn please to page 9. And where it says in U, "to the extent not included in the foregoing, all other personal assets and property of any kind or description, together with all books, records, writings, databases, information and other property relating to, used or useful in connection with, or evidencing, embodying, incorporating or referring to any of the foregoing, all claims and/or insurance proceeds arising out of the loss, nonconformity or any interference with the use of or any defect or infringement of



rights in or damage to any of the foregoing, and all proceeds, products, offspring, rents, issues, profits and returns of and from, and all distributions on and rights arising out of any of the foregoing, provided that notwithstanding the foregoing, the collateral described in this Section 2 shall not include excluded assets."
I'm asking, can you think of any asset that -- other than excluded assets, that wouldn't be covered by this language?
MR. ENGELHARDT: Objection to form to the extent it calls for a legal conclusion and asked and answered.
MR. HAMERMAN: I join in the objection.
A. This was a very broad grant, but I do not know of any specific example. I cannot speak to whether legally every asset had been described here. I think it is possible there are assets that didn't fit within one of these categories that was owned by the borrower, the grantor or model home that wouldn't be covered, that also would not

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fit within the definition of "excluded assets."
Q. OK. But again, you can't think of an example?
MR. ENGELHARDT: Objection.
A. I cannot think of an example.
Q. OK. How was it determined what assets would be defined as excluded assets under the pledge and security agreement that we are looking at?
A. At the time of the creation of the agreement -- and as we said, there was a delineation of the assets which were included. In the delineation of these assets as defined, we realized that there were assets that basically if they were to be pledged, it would create some significant issues with respect to those assets or the business of ResCap at that time. And it was not in anyone's interest to basically eliminate assets or to create those significant economic problems.
Q. Were you involved in discussions with Ally about the scope --

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A. Yes.
Q. Let me finish my question. About the scope of the excluded assets?
A. Yes.
Q. Were there any discussions that -- with Ally in which it was discussed that excluded assets would include assets other than those which would cause significant issues for the company if the company pledged those assets?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
Q. To Ally?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
A. The "excluded asset" definition was heavily discussed.
Q. OK.
A. And it was, you know -- it was added in a way to over time, over the time of the negotiations, as ResCap and Ally started to understand what assets there were, that it would be -- that needed to be included in this "excluded asset" definition.

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And it was also understood that we might not be able to identify all of those assets at that time. This was happening very, very quickly. And so there was -- we tried to create a little bit of more general language to catch things where if something were discovered after the closing, that basically the asset would lose value or we would lose a line or there was a prohibition, that that asset would fit within one of the definitions.
Q. OK. Are you done with your answer?
A. I think so.
Q. OK, let me try to unpack that a little bit.
You said, I'm going to paraphrase a little bit here, that there was an understanding that you might not be able to identify all of those assets, and that's actually -- that's a direct quote. So when you were referring to identifying those assets, were you talking about assets that would lose value if they were pledged to Ally or that might cause ResCap to lose funding or

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for which there might be a prohibition on pledging to Ally?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: I join in the objection.
A. Yes. And those are my terms, of course, you know, in looking at the general types of assets that we were including under the "excluded asset" definition. We were trying to identify specific assets, but we knew we didn't necessarily know the universe or certainly have the time to uncover things.
Q. Understood.
My question is, other than those considerations, the potential loss of value, loss of funding or prohibition on pledging assets to Ally, were there any other considerations that would have led to an asset falling -- would have led to the parties determining that an asset should be deemed an excluded asset?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Join in the objection.

A. The excluded asset category is generally a category that removes assets from the grant which was otherwise given, right? And I think as we have already said before, once -- if an asset wasn't included in that grant to start with, the "excluded asset" definition really wouldn't apply to assets not included in that grant.

The "excluded asset" definition itself -- I'm sorry, I forgot the train of thought. Could you --

Q. My question was, you named three considerations that the parties discussed in trying to formulate the definition of "excluded assets," and that those are loss of value, loss of funding or prohibition on pledging.

A. Those are --

Q. Correct?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Objection.

A. Those are generally the -- those are generally the rationale that parties were OK with including them in the excluded



assets.

Q. Right.

A. I might have missed something that was in Ally or John's mind, but my recollection, those really were the reasons.

Q. And my question is, essentially, were there any other reasons that you can think of that would have led an asset to be -- to fall within this "excluded asset" definition?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Objection.

A. I can't think of any more at this time.

Q. You also said something like you tried -- the parties tried to give themselves some flexibility based on the understanding that they probably were not going to be able to identify all of the assets that could potentially lead to loss of value, loss of funding or prohibition on pledging. Can you point me to the language in the definition of "excluded assets" that provides that flexibility?



MR. ENGELHARDT: Objection to form --

MR. HAMERMAN: Objection.

MR. ENGELHARDT: -- and to the extent it calls for a legal conclusion.

Q. If you know.

A. Yeah. The way this came about was we at ResCap identified some of the assets that had challenges, right, like the Ginnie Mae, for example, or the bilat facilities, where there were clear prohibitions and certainly consequences if those prohibitions had been violated.

As I recall -- and this may not be entirely accurate, but Ally would have liked to have seen a listing of exact assets that were removed. We could not do that. We were not comfortable doing that.

And so when you look in the "excluded asset" definition, you look at A, "specific goods securing purchase money indebtedness or capital lease obligations existing as of the closing date," that's a general description of a category. It's not



specific assets that fall within that.

Tax.

You know the -- in B, you have got voting capital stock, you know, and there is "including without limitation."

In C, again, it's "any asset including." So that's what I mean by "general language." It was an asset category that was described as opposed to the specific assets.

Q. Understood.

You mentioned that -- you said we identified some of the assets that had challenges, and you gave as an example the bilateral facilities. Can you explain to me what the challenges were on pledging assets that were pledged under bilateral facilities to Ally?

MR. ENGELHARDT: Objection to form.

A. As I recall, the bilateral facilities generally -- and one would have to look at each of the bilateral facilities specifically, prohibited the granting of additional liens on the assets which secured

those facilities.
Q. And what was Ally's response when ResCap notified it that the pledges -- excuse me, that the assets that were pledged to the bilateral facilities might not be able to be pledged to Ally?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: I join in the objection.
A. They clearly weren't happy. There was a provision put into -- or I recall there was a provision put into the revolver of 2008 which required us to use reasonable efforts to go to the various bilateral counterparts and see if we could get that restriction lifted. And we did do that over the course of, you know, the required time frames, and that was a direct response by Ally.
Q. Can you please turn in the loan agreement to page 24, and read Section Q that's listed there, and that's in the -- that's in covenants. The heading of that section, the section that Q is in, is on page 21, just for your reference, if you want



to take a look.
A. OK.
Q. Is this the provision -- actually, let me point you to the language that I'm focused on, which is, it says -- the heading is "Structuring for Eligible Collateral Acquisition, Excluded Assets, non-UCC Assets," and then it goes on to say, "Such obligor will use commercially reasonable efforts to," and I'm skipping now to two, (ii). Do you see that?
A. Um-hm.
Q. That says, "cause any excluded assets, other than assets that were excluded assets pursuant to Clauses B, C, D, F or G of the definition thereof on the closing date, to become eligible for inclusion in the collateral."
Was there discussion with Ally on including the bilateral facilities in this provision?
MR. ENGELHARDT: Objection to form.
A. There was discussion with Ally about approaching the bilateral counterparts



to allow for a second or third or fourth, as the case may be, lien on the assets in their bilateral facilities, and that was done.
Q. OK. And what were the lenders to the bilat- -- what was the response of the lenders to the bilateral facilities to that request?
MR. ENGELHARDT: Objection to form.
A. "No."
Q. OK. And that was in advance of the execution -- those conversations took place in advance of the execution of the revolver?
A. No.
Q. No?
A. They did not.
Q. When did they take place?
A. They took place over the, probably, you know, three- to four-month period after the close of the revolver. We had discussed the time frames around that approach with Ally at the time the revolver was executed.
Q. OK. And you said then that you thought that there might have been something that related to this put into the amendment.



A. No.
MR. ENGELHARDT: Objection to form.
A. Sorry, no. I don't.
I should also add that there may have been conversations with the bilats at the time of the bond restructuring and closing by some of the other individuals within treasury working with those bilats as to allowing, and I don't think those were successful.
Q. OK.
A. But that is a shadowy recollection.
Q. OK. And when you say "allowing," you mean allowing a secondary or tertiary interest in the --
A. A second interest.
Q. A secondary interest in the assets securing the bilateral facilities; is that correct?
A. I mean liens behind the liens that they had -- that the bilateral facilities had.
Q. Understood.
I think you did say something, and

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I'll draw an objection, and you can correct me if I am incorrect, but I thought you said something about talking to Ally about trying to terminate the bilateral facilities. Did you say something like that? No?

MR. ENGELHARDT: Objection to form.

A. No.

Q. All of it was about setting the secondary -- trying to get the secondary interest; is that correct?

MR. ENGELHARDT: Objection, objection to form.

MR. HAMERMAN: Objection to form.

A. The conversations with Ally related to being able to put liens behind the liens they had. We all understood that the bilateral facilities were critical to the ongoing survival of ResCap, and that assets would be added to those, we would probably have new lines in place.

They had an interest obviously in insuring -- in, in encouraging those bilateral counterparts to allow for liens behind it. But obviously, we were not in the

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driver's seat, Ally was not in the driver's seat. The party providing the money under those bilats made that determination.

Q. If there had not been a restriction under the bilateral facility to providing a security interest to Ally in the assets securing the bilateral facility, would ResCap have granted the security interest to Ally?

MR. ENGELHARDT: Objection to form --

MR. HAMERMAN: Objection.

MR. ENGELHARDT: -- and to the extent it calls for a legal conclusion.

A. To the extent that the assets on the bilats fit within the grant of the assets provided by the grantors, the answer would be yes.

MS. NEWMAN: We are just about to run out of tape. Why don't we take a break, and then we can reconvene.

THE VIDEOGRAPHER: That is the end of tape number 1. The time is now 11:07 a.m. We are now off the record.

(Recess)

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THE VIDEOGRAPHER: This is the start of tape number 2. The time is now 11:20 a.m. We are now back on the record.

(Exhibit 5, document Bates stamped Note Trustee 0000001 through 139 marked for identification, as of this date.)

BY MS. NEWMAN:

Q. OK. Ms. Farley, you have just been handed what has been marked as Farley Exhibit 5. Have you seen this document before?

A. Yes, I have.

Q. And can you identify it for the record for me, please.

A. This appears to be the offering memorandum relating to the bond exchange from May of 2008.

Q. OK. Do you know who drafted this document?

A. I think the lawyers associated probably with Ally, ResCap and the bondholders drafted it.

Q. Did you review it while it was

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being prepared?

A. No.

Q. Did you have any role in its preparation at all?

A. No.

Q. Have you read it?

A. It was the first thing handed to me when I walked in the door as a consultant. So I read it at that time.

Q. Are you aware of any statements that are not correct in the offering memorandum?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Objection.

A. I've not read it since May of 2008, except perhaps for individual sections to refer to as we were operationalizing. So while I'm not aware of anything, I cannot answer yes or no.

Q. Well, you are not aware of any, but I guess you're saying you can't say definitively --

A. I can't say definitively.

Q. -- whether there are or there are

not; is that correct?
MR. ENGELHARDT: Objection to form.
A. I cannot say definitively.
Q. Can you please turn to page 2, which is about this far back (indicating). I'm looking at the first bullet and the last sentence of the language in that bullet, which is discussing the notes that would be issued in connection with the exchange offer, and it says, "The new notes would be secured by a second or third priority lien on the assets that would secure the proposed senior secured credit facility with GMAC."
Is that a correct statement?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: I join in that objection.
A. Yes, I think that's a correct statement.
Q. Was the collateral that was granted to the JSNs identical in scope with the collateral that was granted to AFI in



connection with the revolver agreement?
MR. ENGELHARDT: Objection to the extent it calls for a legal conclusion.
MR. HAMERMAN: Same objection.
A. That is my understanding.
Q. Are there any exceptions to that?
MR. ENGELHARDT: Objection to the extent it calls for a legal conclusion.
MR. HAMERMAN: Same.
A. No. Not to my knowledge.
Q. And did that remain true throughout the life of the revolver?
MR. ENGELHARDT: Objection to the extent it calls for a legal conclusion.
MR. HAMERMAN: I join in the objection.
A. Yes. Our understanding was that the JSNs had a second and third interest in the collateral as to which Ally had a first security interest.
Q. Also on page 2 of the offering memorandum, in this second bullet, is a statement relating to the revolver. And I am reading the last sentence of this paragraph,



which says, "Such facility," referring to the revolver, "would be secured by a first-priority lien, and substantially all of our existing and after-acquired unencumbered assets remaining available to be pledged as collateral, as more fully described under collateral for the proposed senior secured credit facility and the new notes."
Is the language that appears before the comma, which says, "Such facility would be secured by a first-priority lien, and substantially all of our existing and after-acquired unencumbered assets remaining available to be pledged as collateral," is that consistent with your understanding of the collateral that was pledged to AFI in connection with the revolver?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form and to the extent it calls for a legal conclusion.
A. There is no question that the grant was a very broad grant. And while it didn't cover everything, it covered an awful lot.



And so I think that is consistent with this statement.
MS. NEWMAN: Can we mark this as 6, please.
(Exhibit 6, document Bates stamped RCUCCJSN10831851 through 876 marked for identification, as of this date.)
Q. All set?
A. A lot of e-mails here.
Q. Yes.
A. Not quite.
Q. Take your time.
A. OK.
Q. Can you turn back, please, to the page that ends with 1874. It's, let's see, three pages from the end.
Actually, before we do that, I want to ask, do you remember sending and receiving the e-mails that are reflected in this exhibit?
MR. ENGELHARDT: Objection to form. You can answer.
A. I don't.
Q. Do you have any reason to believe

that you -- let me make sure you're on the top one. I think you may not be on...
Who is Terry@redrocklake?
A. That's a home e-mail address for myself.
Q. So it looks like the last e-mail that you appear on is on the page that ends with 1856. Do you see that?
A. I see on 1857 -- oh, there I am. Yes, I see that.
Q. Do you have any reason to believe that you did not send and receive the e-mails that -- the bottom e-mail that appears on 1856 and those that appear below it in this exhibit?
A. I have no reason to believe.
Q. OK. Now, can you please go back to the page that ends in 1874.
Who is Matthew Rosen?
A. Matt Rosen, I believe he is an analyst in ResCap's capital markets division.
Q. Mr. Rosen, in the bottom e-mail on the page, is sending an e-mail to William Tyson. Who is that?



A. Bill Tyson is an employee of ResCap in the asset disposition group.
Q. Is he still -- is Mr. Tyson still with ResCap?
A. Yes, he is.
Q. So Mr. Rosen says to Mr. Tyson that "Mark Schaffer was about to send the loan list to Randy Newman per Heather Anderson's direction to bang against the facilities to see which, if any, loans are pledged."
Do you know why that exercise that he is describing was being undertaken?
MR. ENGELHARDT: Objection to form.
A. That exercise was undertaken every time there was a sale. The business units selling the assets, in this case it would have been -- looks like charged-off first-lien mortgage loans was sent to treasury. Treasury would then take the list of the assets being sold, and they would compare it to the list of assets within the CFDR to see if CFDR had it marked as being pledged to any facility, and with that knowledge, the pledges -- I am sorry, with



that knowledge, treasury would then go about the lien release process as required, and it would perform all of the operational activities necessary to update the records, the reporting associated with those assets and the facilities.
So this is a standard process.
Q. OK. What is this sale? This is a sale of CO first liens; is that correct?
MR. ENGELHARDT: Objection to form.
A. According to the e-mails, the subject line is "CO First Liens," so I would assume that means charged-off first liens.
Q. And would you also assume that this work was being done in connection with a sale of charged-off first liens?
A. Yes.
MR. ENGELHARDT: Objection to form.
Q. And that's based on your understanding of the way in which this business works in the ordinary course; is that correct?
A. That was common practice, yes.
Q. And what does "charged off" mean?



A. A loan is charged off typically when there is no more value associated with it. A good example would be if it is a second lien defaulted, the value of the property is in -- is not enough to cover even the first lien, let alone the second lien.
So the asset then would be charged off. There would be no more work done. It would not be included in the accounting or financial records any longer, because it had zero value.
Q. So how do you sell a lien like that? Or excuse me, a loan like that?
A. You sell it as you would sell defaulted, unsecured credit card charge-offs. There are a few purchasers out there who will take assets like that for 3 to 5 cents on the dollar, and if they get lucky and a borrower will actually make a payment, you know, that's what they are betting on.
This is a 2012 e-mail, so they were clearly trying to sell charged-off loans.
Q. Was it ever the case over the course of the time that the CFDR existed that

a lien would be -- or excuse me, a loan would be considered charged off and then for some reason or another it would no longer be categorized as charged off, meaning it would be categorized as having value at a later date?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Objection to form.

A. Are you speaking categorized within the financial and accounting records as having value?

Q. I'm referring to categorized in the CFDR.

MR. ENGELHARDT: Same objection.

MR. HAMERMAN: Same objection.

A. Not to my knowledge.

Q. Is there -- would the answer be different if I was asking categorized from -- within the financial and accounting records?

MR. ENGELHARDT: Objection to form.

A. No. If something was changed in the -- or re-added, if you will, to the financial and accounting records, it would show up on the general ledger. The general



ledger was uploaded to CFDR on a monthly basis, and on a monthly basis, the businesses also -- and there were a number of different businesses -- would upload their entire asset list, and then there was a process to insure that the general ledger and the business asset lists matched.

So no. If it was update -- updated in a ledger, it would be updated in the CFDR.

Q. OK.

A. To my knowledge, charged-off loans did not come back on the books as loans with value. Possible there were some circumstances, but I can't think of any.

Q. Why don't we take a step back. I would like to ask how the CFDR worked in the period initially after -- in the period after the revolver was initially entered into to track loans and what the CFDR actually did track.

MR. ENGELHARDT: Objection to form, just because I think there is two questions in there, but --

A. The CFDR was put in place at the



time the revolver was put in place. This had been, as I mentioned earlier, an initiative that finance had wanted to do for quite some time. It became important at the time of the revolver, because the revolver, unlike any other facility we had, was based on carry value. And the various tools and places within the businesses and the other areas that treasury could go for data didn't have carry value in an easy way. We had to go to the ledger for that.

So CFDR was put in place with the -- to basically report on loans, servicing advances. They were both on initially, and then the other assets relating to the revolver were added very quickly thereafter.

On a monthly basis, the business units would upload their asset -- their total asset lists, so we would have -- and there would be a -- you know, the checks and balances that usually took place associated with that.

On a monthly basis, the treasury



group would, you know, go through the process with finance of the monthly reporting. And we would pull down the data from the CFDR, and the financial teams had prepared, these would also pull down the data from the CFDR, and we would come up with an updated borrowing base based on the assets and the values in the CFDR for the assets marked as primary collateral at that time.

We would then sit down with finance, and early on it was -- it was myself, Melissa White, who ran the group, the head of the ops groups or head of the ops team within the treasury group, and then a couple of individuals from finance, and we would compare the last month's borrowing base with primary collateral to this month's borrowing base with primary collateral, and we would like to see what the differences are.

Over the course of the month, actions happened, of course, with respect to the loans. Not just, you know, a carry value change perhaps, because UPBs came in,

prepayments came in, markets may have changed, because "carry value" was a financial concept, and there was -- there were markings of the loans to the extent required under FAS-B and in the financial practices.

But over the course of the month, if there had been a sale of assets, the business units would have uploaded a template with respect to the loans that were being sold. Structured finance and ops within treasury were also aware of that. You know, so we were usually watching for that.

But that would have been uploaded. At the time the template was uploaded, CFDR, which is an Oracle database, would have updated the files of all these individual assets with respect to the sale, and CFDR would have marked it as a sale, and we would expect that those assets would have come off for the purposes of the next month report.

We also used that information to track where the sales proceeds were going and insure that the proceeds were going to the



appropriate accounts within the appropriate time frames.

If there were loans added to the facility, we would identify the loans that were added to the facility. That included the work we needed to do with GMAC and the different groups. We would send -- within the treasury group, we would send a listing off to the business units, so they knew what assets were now subject to the various facilities, that was revolver, but that could also be other funding facilities.

And we within treasury would upload a template to indicate and update CFDR as it related to those assets. Those templates basically triggered an automatic update, so that again, any loans which were added to the revolver or another facility would be reflected in the CFDR as of the time the template was uploaded.

There was also on a monthly basis a file called a POCO, paid-off/charge-offs. So as loans over the course of the month were paid off or charged off, obviously they were



removed. They had no value for the charge-offs, but payoffs, we had received payment in full, those templates were also uploaded to CFDR, and that would have also gone -- all this would also eventually flow through the ledger as well.

And so those assets, again, would be updated within the CFDR as having no value, and they would come off the CFDR at that point.

So as we sat down every month to look at the current borrowing base facility as it related to primary collateral, because that's all we were required to report on, we would compare what we reported last month to what we were reporting this month, and we would go through all of the actions that had happened with respect to the assets on the facility to make sure it tied out.

So that the numbers at the end -- the new numbers, you could look and say this much was POCO and it was these assets, this much was charge-off, this was -- you know, in terms that is POCO. This much was



reinvested, this much was sold.

And so every single month we had a tie-out. If for some reason there was -- there were some glitches, because, you know, things happen, particularly early on in the development, as a matter of practice, we would discover what the issue was, reconcile it. We would go back to the businesses where we saw the issue and we would resolve it.

And so by the time the reports -- typically by the time we sat down, the issues had all been identified and resolved. At the time -- if not, at the time we sat down, the issues were identified, and then they were quickly resolved, because obviously we had borrowing base reports that had to go out and had to be correct.

Q. I want to make sure that I understand what assets were listed in the CFDR. So I think you said -- well, let me ask you, loans were reflected in the CFDR; is that correct?

A. Yes.

Q. And servicing advances were also

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tracked; is that correct?
A. Yes.
Q. What the company refers to as real estate owned was also -- or REO, was also tracked; is that correct?
A. Yes.
Q. OK. And what is that, REO?
A. REO is -- it is the changing of an asset form, if you will. REOs are real estate owned. It is basically when a loan goes into foreclosure, at the time of a foreclosure, the loan is extinguished and you get the property back, typically.
So REO is what the loan becomes after it has gone through foreclosure, to the extent it has not been sold to a third party.
Q. OK. So if I was going -- so when you see "REO" in the CFDR, is it the case that that REO at some point was reflected as a loan in the CFDR?
A. That REO is the property that secured a loan in the CFDR.
Q. So would you see -- if you were tracking, if you went historically and looked

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at the REO, as it had been reported in prior months, eventually would you get to a place where it was a loan?
MR. ENGELHARDT: Objection to form.
Q. Where it was reflected as a loan, or would it always be REO?
A. No. You should be able to go to historical records and find the loan to which that REO related. And you should be able to find that.
Now, please understand, there are businesses of REO, right, buying and selling of REO. ResCap was not in that business, but it's possible somebody bought some asset at some point.
Q. OK. So that would be an exception to the general rule --
A. And those were not pledged on as primary collateral on the revolver.
Q. OK. Other than loans, servicing advances and REO, what other types of assets were tracked in the CFDR?
A. All of the assets on the revolver, and then when the LOC was put in place, all

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of those assets were in the CFDR.
Q. The CFDR didn't track cash, did it?
MR. ENGELHARDT: Objection to form.
A. At some point, and I think it was relatively early on, cash in the sale proceeds or restricted accounts was tracked through CFDR. Other cash accounts were not.
Q. So it's not -- there are -- it's not the case that all assets that were pledged under the revolver were reflected in the CFDR, is it?
MR. ENGELHARDT: Objection to the form and to the extent it calls for a legal conclusion.
A. My understanding, that all of the assets, including the cash that was sale proceeds accounts, so therefore kind of primary collateral, and cash to which Ally was entitled, those were tracked in the CFDR.
Q. And how would that be listed? How would I locate that if I was looking for cash in the CFDR?
A. I think it's called cash.
Q. OK. How was it reflected in the

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CFDR which facility an asset was pledged to?
A. In the underlying data, there was a code for the facility, be it revolver, be it LOC, be it Lehman, and if it didn't -- was not pledged to a facility, it would be unpledged, and in the reporting that was created to come out of the revolver, by asset, you could go by asset grouping or you could go into the individual asset, and it would show what facility that belonged to. And you could group assets by facility or you could group by assets.
Q. And what did it mean if an asset was categorized as unpledged?
MR. ENGELHARDT: Objection to form.
A. It simply meant that it was not pledged as primary collateral to the revolver or pledged on any other facility.
Q. So does the unpledged category mean that those assets, those assets listed in the unpledged category fell under the blanket lien for the revolver?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal

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conclusion.
MR. HAMERMAN: I join in the objection.
A. No.
Q. Did the assets that were listed as unpledged fall under the blanket revolver?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: Join in the objection.
A. Now I have forgotten the question. Can you restate?
Q. Yes.
Did the assets in the unpledged category fall under the blanket lien?
MR. ENGELHARDT: Same objection.
Q. In connection with the revolver?
MR. ENGELHARDT: Same objection.
MR. HAMERMAN: Same. And I think we also need a time frame.
Q. I am sorry, this whole line of questioning, as I said at the outset, is the period after the execution of the revolver.

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But I think that's good to remind you.
A. Can you restate that one more time. I'm sorry. I'm bouncing.
Q. Sure.
Did the assets in the unpledged category fall under the blanket lien?
MR. ENGELHARDT: Repeat the objection.
MR. HAMERMAN: Same.
A. To the extent that those assets were pledged under the pledge and security agreement and weren't excluded assets and weren't subject to a lien release, yes.
Q. OK. If the assets were subject to a lien release, would that be reflected in the CFDR?
A. To the extent the assets were subject to a lien release, no.
Q. No, it would not be reflected in the CFDR?
A. It would not be reflected as being subject to a lien release from the revolver in the CFDR.
Q. Were assets released from the

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revolver -- let me ask you this. Why were -- why would assets be released from the revolver?
A. Assets would be released from the revolver for a sale, and assets would be released from the revolver to go on to another bilateral facility.
Q. Any other reasons?
A. I can't think of one.
Q. OK. So if an asset was released for a sale, that -- I think you said before, that the sale would be reflected in the CFDR, you would be able -- what I mean by that is you would be able to tell by looking at the CFDR that the asset had been sold; is that correct?
A. That's correct. That's correct. The asset would no longer be reflected in the CFDR after it had been sold.
Q. OK. And if an asset had -- if the lien in an asset had been released so that the asset could be pledged to another facility, wouldn't you also be able to tell that by looking at the CFDR?

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A. You would --
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
Q. Well, actually, you know what? Strike that. Let me restate the question.
If the asset -- if AFI's lien in an asset had been released so that the lien could be pledged to another facility, wouldn't you see when looking at the CFDR that the asset was recorded as being pledged to another facility?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
A. Yes. The CFDR would have been updated to reflect the new facility. The historical records, because there is -- there is history kept, would reflect that it had previously been on the revolver. But you would have to go back into history.
Q. OK. So if an asset was categorized as unpledged, that meant that it was not pledged to a facility other than the revolver, didn't it?
MR. ENGELHARDT: Objection to form

and to the extent it calls for a legal conclusion.

MR. HAMERMAN: I join in that objection.

A. No. Any asset that was subject to a facility, including assets which were primary collateral on the revolver, were reflected as belonging -- or not belonging, being financed or subject to that particular facility. So you would see revolver, LOC, Lehman, GSAP. If it was unpledged, it simply meant that it was not pledged to a financing facility.

Q. Other than potentially the revolver, correct?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: Join in the objection.

A. "Unpledged" was not synonomous with "blanket lien." The unpledged assets could be subject to the blanket lien. They might not be subject to the blanket lien.



Q. Right.

A. So --

Q. Understood. I'm sorry, I didn't mean to cut you off. But that was the point of my clarification, because you said, you said -- you said if it was unpledged, it simply meant that it was not pledged to a financing facility. And I think that there is a distinction that you failed to draw, which is except that it may be pledged to the revolver; isn't that correct?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: Join in the objection.

A. We might be talking semantics here.

Q. OK.

A. Because pledged to the revolver is primary collateral. The blanket lien is also a pledge to the revolver. So if it was primary collateral, it would have been reflected as being pledged to the revolver. If it was called unpledged, it may or may not



have been subject to the blanket lien. That was not captured in CFDR.

Q. And I think we have established that it also meant that it was not pledged to any financing facility other than the revolver, because if it had been, the CFDR would have noted it; isn't that correct?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: Join in the objection.

A. That's correct, but it may or may not have been subject to the lien of the revolver.

Q. OK. And I think you also said that if it had been sold, that if the asset had been sold, then it wouldn't have been reflected in the CFDR any longer; is that correct?

MR. ENGELHARDT: Objection to form.

A. After the updating of the CFDR, it would have been no longer reflected in the CFDR.



Q. OK. And --

A. Or the ledger.

Q. So I think the only thing that's left is if the asset was unpledged, it was either pledged to no facility or pledged to the -- pledged under the blanket lien; is that correct?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

A. Not exactly. It was -- it could have been pledged to no facility, it could have been pledged to the blanket lien, and it could have been no facility and no blanket lien. Are we saying the same thing?

Q. Yes. I understand what you are saying. It could have been pledged to no facility and not included within the blanket lien, or it could have been included within the blanket lien?

MR. ENGELHARDT: Objection to the extent it calls for a legal conclusion.

Q. Is that correct?

A. Yes.

Q. And those are really the only two options; isn't that correct?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Join in the objection.
A. No facility --
Q. Including the blanket lien?
A. Including the blanket lien. Subject to the blanket, subject to the blanket lien. Let me think. I think that's right. I just want to make it clear that just because it was labeled unpledged didn't mean it was subject to the blanket lien.
Q. OK. I understand that.
But you and I had discussed earlier this morning that at least with respect to the borrowers and guarantors listed in Section 2 of the pledge and security agreement relating to the revolver, that you could not think of an example of an asset that wouldn't either be an excluded asset, primary collateral or pledged to the blanket lien. Do you remember that discussion?
MR. ENGELHARDT: Objection to form.



MR. HAMERMAN: Objection.
A. I remember the discussion. I remember saying that I thought it was possible there were assets, but I couldn't think of any asset types. And that was at the inception of the revolver.
But going forward, if liens had been released from the revolver to go on to another bilat and -- the lien release was a broad lien release, and so when the liens -- if the bilat terminated or the loan came off the bilateral agreement, that would be an example on a go-forward basis where a loan or an asset would not be subject to the blanket lien because there had already been a release of that asset.
Q. OK. Let's -- did you have any discussions with Ally about what would happen -- whether -- strike that.
Did you have any discussions with Ally about whether a loan that was pledged to a bilateral facility would be subject to the blanket lien or become primary collateral once that bilateral facility terminated or



the lien, the loan was released from the bilateral facility?
MR. ENGELHARDT: Objection to form.
MR. BROWN: Objection to form.
A. I don't recall.
Q. Do you have any understanding of what Ally's expectation was with respect to such loans?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
A. I do not.
Q. OK. I think you testified earlier that Ally was unhappy when it was told that it could not obtain a lien in the assets pledged to the bilateral facility. Is that correct?
A. That's correct.
MR. BROWN: Objection to form.
MR. HAMERMAN: Objection.
Q. And that -- and you also told me that the only reason that Ally was not obtaining a lien in those assets was because it was -- because ResCap could not grant such a lien to Ally without putting at risk the



bilateral facility to which that loan was pledged; is that correct?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
MR. BROWN: Objection.
A. Mostly. I think what I also said was, one, if that asset was of a type that was from -- that the grantor had granted an interest in.
And the second point I would make is, just because Ally wasn't happy didn't mean they had or thought they had a legal right to those assets, even after the lien would have been released, unless it was otherwise described in the documents.
Q. OK. But isn't a loan described in the documents as an asset in which Ally was taking a lien?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
A. If it was -- if it was owned by one of the grantors and it wasn't otherwise excluded, it had a lien on it, unless and until that lien was released.

Q. OK. So in the situation where at the inception of the revolver agreement, a lien -- a loan was subject to a bilateral facility, and then that bilateral facility terminated, what happened to the loan that had been subject to the bilateral facility? Did it become part of Ally's collateral?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: I join in the objection.

A. Once a bilateral was terminated, if the assets and loans, as you say, were an asset that was -- an interest was granted in under the security agreement by some of the grantors, if the grantor owned that loan and it had not been released to go on the bilat, if it came off the bilat and fit within the grant, then there was a lien on it.

If it had been released to go on the bilat, then there would have been a release of that asset, and that lien release was very broad in perspective.



Q. Let me ask you something else. Let's go back and look at the pledge and security agreement that we were looking at before. I think it's 4.

MR. ENGELHARDT: 3.

Q. 3. And let's go back to Section 2. And I'm on page 7. And I'm looking at the language -- well, please read, actually, the paragraph that comes after 2 but before the little A, and then I'm going to focus on some specific language in that paragraph.

A. OK.

OK.

Q. So I am focused on the language at the end of the paragraph that says -- well, actually, let me try to put this -- selectively quote, so I can get across the question I'm trying to ask.

The paragraph begins, "As security for the prompt payment in full in cash and performance of all obligations, each of the borrowers and guarantors and model home and each other grantor (other than a grantor that is an equity pledgor, a FABS grantor or an



additional account pledgor), hereby pledges to the first-priority collateral agent for the benefit of the lender parties and hereby grants a continuing" -- I guess I am just going to read the whole thing -- "and hereby grants a continuing security interest to the first-priority collateral agent for the benefit of the lender parties in all of each such borrower's or guarantor's or model home's or any such grantor's right, title and interest in, to and under," and here is the focus -- the language I was particularly focused on, "whether now or hereafter existing, owned or acquired, and wherever located and howsoever created, arising or evidenced."

Was your business understanding of this -- of this language that if a loan was released but then subsequently -- excuse me, let me ask this a little more carefully -- that if a loan subject to Ally's security interests was released from that security interest, pledged to another entity, and then the pledge was terminated to the other



entity, that this language is not broad enough to then grant Ally a new lien in that asset?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: I join.

A. To really answer that question, you would have to look at the language in the UCCs and the lien releases that were generally filed. But our understanding, as those releases were always very broad and forward looking, is that the lien release was good, going forward. If a loan was released to go on a bilat, that bilat was no longer in existence, the loan would come off the bilat, but the lien would not then reattach. It had already been released.

Q. OK. And was that always your understanding since the inception of the revolver?

A. Yes. We had conversations, I had conversations with our internal and external counsel around --

MR. ENGELHARDT: Don't, don't, don't state the substance of your conversations with counsel.

Q. And I am going to ask a similar question but with a bit of a twist, which is what about a lien -- a loan that was originally pledged to AFI, that the AFI's lien was released so that the loan could be sold to a third party, and then that loan was subsequently reacquired by one of the guarantors, borrowers, or grantors, as it is defined in this Section 2 here? Was your understanding -- what was your understanding as to whether -- excuse me, Ally's lien -- Ally would have a lien in the asset once it was reacquired by ResCap?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Join in the objection.

A. If the --

MR. HAMERMAN: And to the extent it calls for a legal conclusion.

A. If the loan fit within the grant, which I think you're describing it is fitting



within the grant and not being an excluded asset, that was a new legal ownership, and yes, the lien would reattach to assets that were acquired even if it was a reacquisition.

Q. And the lien that you're talking about that would reattach would be Ally's lien; is that correct?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: Same.

A. It would be Ally and the JSNs' liens, yes.

MS. NEWMAN: Can we just take a five-minute break?

MR. ENGELHARDT: Sure.

THE VIDEOGRAPHER: The time is now 12:14 p.m. We are now off the record.

(Recess)

THE VIDEOGRAPHER: This is the start of tape number 3. The time is now 1:12 p.m. You are now back on the record.

BY MS. NEWMAN:



Q. Ms. Farley, before we broke for lunch, I was asking you a series of questions about whether certain assets would or would not be subject to Ally's lien in connection with the revolver.

Now, did you understand when I was asking those questions that I was asking your opinion based on your experience as a business person who was involved in the negotiation of the pledge and security agreement relating to the revolver?

A. Yes.

MR. ENGELHARDT: Objection to form.

A. Yes.

Q. Is that how you answered the questions, based on that understanding?

A. Yes.

Q. Thank you.

MS. NEWMAN: This is going to be 7 and 8.

(Exhibit 7, document Bates stamped RCUCCJSN 11712385 through 90 marked for identification, as of this date.)

(Exhibit 8, document Bates stamped



RCUCCJSN 11864412 through 20 marked for identification, as of this date.)

A. I should clarify that, negotiating and implementing the revolver.

Q. Negotiating and implementing the revolver, I am sorry?

A. How I was answering the questions, someone who was involved with negotiating and implementing the revolver.

Q. Thank you for the clarification.

MR. ENGELHARDT: Counsel, which is which?

MS. NEWMAN: The one with the Bates number ending in 12385 is Farley Exhibit 7. Bates Number 64412 is Farley Number 8.

MR. ENGELHARDT: Thank you.

Q. Ms. Farley, you have been handed what has been marked as Farley Exhibits 7 and 8. If you could take a minute to familiarize yourself with the e-mail chain. I will give you time to take a more detailed look if I am going to ask you a specific question.

A. OK.

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Q. All set?
A. I am set.
Q. So I will start with the one that's marked Farley Exhibit 7. And you are on the e-mail at the top of the first page, and do you remember sending and receiving the e-mails that are reflected in this chain?
A. No.
Q. Do you have any reason to doubt that you did send and receive them as reflected on the page?
A. I have no reason to doubt that.
Q. Or let me -- as reflected on the pages. Is it the same answer?
A. Same answer.
Q. And with respect to Farley Exhibit 8, which is another e-mail chain, and you are the sender of the e-mail at the top of the chain, do you remember sending and receiving the e-mails that are reflected in this e-mail chain?
A. No.
Q. Do you have any reason to doubt that you did not send and receive them as is

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reflected in the e-mails?
A. I have no reason to doubt.
Q. Ms. Farley, at some point in time -- strike that.
Did there come a time when ResCap began changing the way assets coded as unpledged in the CFDR were categorized?
MR. ENGELHARDT: Objection to form.
A. The unpledged assets, shortly before the filing, were marked blanket lien if they were subject to the blanket lien, and remained unpledged if they were not subject to the blanket lien.
Q. And who made the -- how -- I apologize, let me take this in pieces.
How was the determination of whether an asset categorized as unpledged should be recategorized as blanket lien or should remain unpledged?
MR. ENGELHARDT: Objection to form.
You can answer.
A. I was not involved in those conversations or those decisions. My understanding of the way this worked was that

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the people marking the assets generally marked loans as belonging to the blanket lien and servicing advances as belonging to the blanket lien without independent investigation as to whether that was the case. They would have had to go back into the historical archives.
With respect to the other assets, my understanding is there was more of a diligence done with respect to those assets and then they were marked.
There was some back and forth, as there were a lot of people involved, to insure the markings were correct, as I recall it. But ultimately everything was marked in the system.
Q. OK. And why -- do you have an understanding -- well, strike that.
I think you testified that with respect to loans and servicing advances, those were recategorized as blanket without any independent verification; is that correct?
A. That is my understanding.

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Q. And do you have an understanding as to why it was done in that way?
A. No.
Q. Assuming that your understanding is correct?
A. No.
Q. How did you come to gain that understanding?
A. Through conversations with Barb Westman. I can speculate, but I don't know.
Q. OK. There was -- is it correct that you are testifying that there was diligence performed around whether assets, other than loans and servicing advances, marked as unpledged should continue to remain marked as unpledged or should be converted to be listed as blanket lien?
MR. ENGELHARDT: Objection to form.
A. That is my understanding.
Q. And did you also gain that understanding from Barb Westman?
A. Yes.
Q. Other than Barb Westman, who was involved in this process?

A. To my knowledge, Joe Ruhlin may have been a bit involved. Randy Newman may have been a bit involved. I suspect there were other individuals, largely within finance and treasury, who may or may not have had history with the revolver, involved.

Q. OK. Can you turn back to Farley 7, please. Do you have it there right in front of you?

A. I do.

Q. Great.

I'm looking at the e-mail at the top, and you say, "Just remember, any U.S. loan that is owned by ResCap family and that is not GNMA" -- does that mean Ginnie Mae?

A. Um-hm.

Q. "And is not pledged to LOC (or any other facility) is subject to the revolver."

A. Um-hm.

Q. "Any loan asset subject to the revolver also is subject to a second lien by the junior bondholders."

Are those statements accurate?

A. Please keep in mind that this was a



very complex business -- complex facility. And we communicated to the various business groups, both domestically and internationally, what we needed to communicate to insure that we were accurately able to do what we needed to do with respect to the revolver.

We routinely told various business groups -- and there were many of them -- that if it wasn't marked to the revolver, they had to assume it was blanket lien. So that way they would communicate to us everything that was going and not make assumptions that things didn't need to be released, things didn't need to be reported, that things didn't -- that they were free to do with the collateral what they will, because the experts really were in a very small group that managed the facilities.

So we would routinely tell people in the business units in our training, assume blanket lien. Things are blanket lien unless they are primary or pledged to a facility.

So anytime you have a sale of any



sort, you have got to tell us about it. And then the work as to whether it needed to be released or what the releases were, and I mean it went beyond just the collateral, it went to business obligations as well, that was then determined.

So this is a business communication to somebody whom at this point in time I had probably had numerous conversations about the revolver, and I was always try -- continuing to remind him in easy terms that the blanket lien was something that needed to be dealt with. You couldn't assume that if it wasn't listed to primary, that it was -- and just because it said unpledged, there weren't obligations.

So is it true? No, it's not particularly true. But is it shorthand we used in our business communications? Absolutely.

Q. Thank you.

Ms. Farley, are you aware that the pledge agreement related to the revolver was amended in 2009?



A. Yes.

Q. And were you involved with that amendment?

A. Yes.

Q. Can you explain to me what your involvement was, please?

A. This was at the time of the amendment and restatement of the revolver, and so I would have reviewed the documents and negotiated the documents, along with other individuals within the firm. But I would have taken lead.

Q. So I -- is it safe to assume then that you have an understanding of the way in which that pledge and security agreement works and the obligations that it imposes?

A. Yes.

(Discussion held off the record)

MS. NEWMAN: Let's go off the record.

THE VIDEOGRAPHER: The time is 1:25 p.m. We are now off the record.

(Discussion held off the record)

THE VIDEOGRAPHER: The time is

1:26 p.m. We are now back on the record.
Q. Ms. Farley, I think you mentioned John Peterson earlier. Can you tell me who Mr. Peterson is?
A. Mr. Peterson was in finance, responsible when I joined for the treasury group within ResCap. I'm not sure of his official title. And he actually was the one who hired me.
Q. OK. Was Mr. Peterson -- did Mr. Peterson have an understanding of the way in which the revolver pledge and security agreement worked?
MR. ENGELHARDT: Objection to form.
Q. To your knowledge?
A. To my knowledge, he did.
Q. Did he understand the way in which the blanket lien worked?
MR. ENGELHARDT: Objection to form.
A. To my knowledge, I would expect so.
(Exhibit 9, document Bates stamped RCUCCJSN 10063316 through 328 marked for identification, as of this date.)
Q. Ms. Farley, you have just been



handed what has been marked as Farley Exhibit 9, and you are a recipient of the e-mail -- the second e-mail on the first page.
Do you recall receiving that e-mail?
A. No.
Q. Do you have any reason to doubt that you did receive it?
A. I have no reason.
Q. Do you recall having a meeting or a conference call to discuss -- and I'm reading now from the second page of the e-mail -- where the subject of the meeting or the call was to begin to understand the revolver and the flow of information needed, impact on asset sales and where the cash goes with the cash-forecasting process?
A. I don't recall this specific meeting.
Q. If you look at the document behind the e-mail, it's in a -- like a meeting summary with an agenda. Under the agenda section, it says, number 1, "How revolver



works, general categories," and then there is some additional language that I think are referencing documents. And to the right of that, it says, "Discussed by John Peterson."
Do you remember participating in either a call or a meeting where Mr. Peterson discussed this subject?
MR. HAMERMAN: Objection, form.
MR. ENGELHARDT: Objection to form.
Any call or meeting at any time?
MS. NEWMAN: Yes.
A. I recall participating in regular -- and this was, I think, the start of weekly meetings -- regular meetings to discuss the revolver business happenings with the business people. I recall John being on some of those meetings and generally providing an introduction. I don't recall John going through detail with respect to any of these schedules.
Q. OK.
MS. NEWMAN: Why don't we just go off the record for a second.
THE VIDEOGRAPHER: The time is



1:32 p.m. We are off the record.
(Discussion held off the record.)
(Exhibit 10, Adversary Complaint for Declaratory Judgment, Avoidance of Liens and Disallowance of Claims with Schedules 1 through 5 marked for identification, as of this date.)
THE VIDEOGRAPHER: The time is now 1:36 p.m. We are now back on the record.
BY MS. NEWMAN:
Q. OK. So Ms. Farley, you have just been handed what has been marked as Farley Exhibit 10, which is a copy of the complaint that has been filed in this action, along with the schedules to that complaint, but omits the exhibits to the complaint.
Have you seen the committee complaint before? I think I asked you that earlier. I apologize for repeating, but can you refresh my recollection, please?
A. No. I may have been handed it during prep, but I don't know this document.
Q. And is the same -- would you give the same answer with respect to the schedules

behind the text of the complaint?
A. No. I saw the schedules in my prep.
Q. In your prep. Had you seen them before that time?
A. No.
Q. So I assume you did not see any part of the committee complaint before it was filed?
A. That's correct.
Q. And I think you testified earlier that you have not had any communications with any of the committee members or committee advisors with respect to the committee complaint other than the prep session; is that correct?
A. That's correct.
Q. What about conversations with AFI? Have you had any conversations with anyone at AFI in connection with the committee complaint?
A. No.
Q. OK. Can you turn to Schedule 1, please. All set?



A. Yes.
Q. When was the first time that you saw this schedule?
A. Yesterday.
Q. Do you know how this schedule was prepared?
A. I believe it was prepared by the unsecured creditors committee or their advisors. This was not prepared by the company.
Q. OK. Can you tell by looking at it how it was prepared?
A. This looks like it would have come from CFDR information.
Q. OK. Looking back to the summary page on the first page -- or the first page, underneath the text, there are some numbers that are labeled 1, 2, 3, 4, 5. And 5 is "BMMZ former bilateral." Do you know what that means?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Object to the form.
A. I don't know what BMMZ stands for, but my understanding is this was the facility



that took the collateral that came off of the Goldman and Citi lines when they expired.
Q. There is something called a BMMZ repo facility, correct?
A. Correct.
Q. And is that the facility that you are referring to?
A. Yes.
Q. Is that a bilateral facility?
A. I don't know how it was characterized at the time.
Q. Have you ever seen the term "BMMZ former bilateral" before? Before viewing this yesterday.
A. The complete term, no.
Q. Have you seen some form of that term?
A. BMMZ.
Q. OK. Have you or anyone at the company done any work to determine whether the loans and other assets listed in this Schedule 1 are loans and assets that were at one time pledged -- or excuse me, were at the inception of the revolver pledged to a



bilateral facility and that were then subsequently released from that bilateral facility at a time prior to the petition date?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
A. I don't know.
Q. You don't know if anyone at the company has done that work?
A. I don't know.
(Exhibit 11, spreadsheet marked for identification, as of this date.)
Q. All set?
A. OK.
Q. Ms. Farley, I will represent to you this is an abstract that we took from the CFDR with -- and the only revisions that we made to it was to add the highlighting.
Does this look familiar -- is this the format of the CFDR that you are familiar with?
MR. ENGELHARDT: One moment. Could we have a representation as to the date on which this snapshot was taken?

MS. NEWMAN: I can tell you that it was -- no, actually, because it comes from the debtor information, and so I don't know if that's a live database that was produced, so that -- I mean, I can tell you that it was pulled by us this week. But I don't know when the debtors pulled it to give it to us.

MR. ENGELHARDT: OK.

Q. This is -- I will also represent to you that this is one of the loans that -- that the loan ID here, which is the -- let me ask you a question before I make that representation.

In the second column from the right, there is a heading that says "Mortgage Loan Sequence ID." Do you see that?

A. Yes.

Q. Is that a unique identifier that is given to assets in the CFDR?

A. It is, from my understanding, a unique identifier for groups of assets in the CFDR. Each asset also has a unique number that can be tracked back. This is only one



view and one report that can be pulled from that database.

Q. So there would be another number associated with a particular loan; is that correct?

A. That is correct.

Q. OK. My understanding -- and you are more familiar with this database by far than I am, but my understanding is that this shows the way in which one particular loan was recorded in the CFDR from July 31, 2008, through May 13, 2012. Can you tell if that understanding is correct?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Objection to form.

A. That appears to be the case.

Q. OK. So now I'm looking at the "Fund Facility Name" column, which is a little bit more than center towards the right of the page. Do you see that? Another of the highlighted rows.

What is the -- what does that column show?

A. That shows to which facility the



asset would have been pledged, if any.

Q. And what does "FB" in that first row mean?

A. I am speculating. So I am thinking that might have been one of the facilities that paid off. I don't really know.

Q. OK. This shows, does it not, that the particular loan reflected on this page was either listed as -- was either unpledged or pledged to the revolver throughout the life of the revolver?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Objection.

Q. Is that correct?

MR. ENGELHARDT: And to the extent it calls for a legal conclusion.

MR. HAMERMAN: Objection.

A. To the extent that this report is accurate, which you have represented it is, it does show that.

Q. So can you think of why the committee would have thought -- is there anything -- is there anything reflected on this page suggesting that this loan was



pledged to a bilateral facility at the time that the revolver was executed?

MR. ENGELHARDT: Objection.

Q. You can answer.

MR. HAMERMAN: Objection.

A. FB may relate to a facility. I do not know. If it does, then the answer would be yes.

Q. OK. Is there -- other than that, is there any other indication that this loan was pledged to a bilateral facility?

MR. HAMERMAN: Objection.

MR. ENGELHARDT: Objection.

A. There is no other indication.

Q. Do you know, Ms. Farley, whether there was a bilateral facility that terminated between 7/31/2008 and 8/31/2008?

A. I don't recall.

Q. You don't know. We are done with that, you can set it aside.

Can you please turn to Schedule 6.

MR. HAMERMAN: Was this marked, this chart that we have been talking about? Has it been marked as an exhibit?

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MR. ENGELHARDT: 11.
MR. HAMERMAN: 11, thank you.
Q. I misrepresented something to you. Can we actually -- I am actually going to ask another question about Farley Exhibit 11.
The GMAC revolver notation that is listed under the fund facility name, beginning as of 9/30/2008, what is the -- what does that -- what is that intended to convey respecting whether or not this loan is pledged to the revolver?
MR. ENGELHARDT: Objection to form.
A. It is intended to convey that this particular asset was pledged as primary collateral to the revolver and thus would be subject to all of the reporting and other provisions within the revolver document.
Q. OK. Thank you.
Have you seen Schedule 6 before?
A. I may have seen it in the last two days.
Q. Did you see it prior to that time?
A. No.
Q. Do you know as you sit here today

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whether the assets reflected on Schedule 6 -- excuse me, strike that.
Do you know sitting here today whether the JSNs were granted a lien in the assets reflected on Schedule 6 during the 75 days preceding ResCap's bankruptcy filing?
MR. ENGELHARDT: Objection to the form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: I join in that objection.
A. I am not aware of any new liens granted to the JSNs or to Ally during that period of time. Unless there were new assets which had come into the company which were granted under the PSAs and hadn't been otherwise excluded. Or subject to the lien releases.
Q. Well, if there were new assets coming in, they wouldn't be subject -- I'm just a little confused about something you said. If there were new assets coming in, they wouldn't be subject to the lien releases at that point, would they?

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MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: Join in the objection.
A. The only situation I can think of is if there had been a bilat expiring to which there had been a lien release executed to place it onto that bilat.
Q. Understood. Thank you.
Do you know whether the assets listed on Schedule 6 were acquired by ResCap during the 75 days preceding the bankruptcy?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Join in the objection.
A. I do not know.
Q. Would it be reasonable -- consistent with ResCap's ordinary course of business that these assets would have been purchased by ResCap during the 75 days preceding the petition date?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Join in the

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objection.
A. To my knowledge, we were not doing a lot of purchases before the preference date, within that time period.
Q. Not doing a lot of purchases --
A. I don't know as we were doing purchases of mortgage loans. There may have been FHA or VA loans created or modifications done, but we were not purchasing packages of loans during that time.
Q. OK. Can you think of any reason why the committee would think, for example, that ResCap purchased 137 approximately -- actually, 138 million HFS loans during the 75 days preceding the petition date?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Objection.
THE WITNESS: I can respond?
MR. ENGELHARDT: You can respond.
A. The unpledged assets, whether or not they were subject to the blanket lien, were simply marked as unpledged in the CFDR facility. That was because we had no other obligations with respect to those assets from

a reporting standpoint or really a cash management standpoint.

Shortly before the filing date, the decision was made, since we were going to have to start reporting on all assets which had been subject to the blanket lien at the time of the filing date, there was an effort undertaken to label all of the assets which were in our view, and based on the processes I described, subject to the blanket lien.

And so the CFDR reporting with respect to those assets would have gone from unpledged to, you know, blanket lien, and I speculate that perhaps the unsecured creditors committee may be looking at that change in the facility as moving from unpledged to a pledged status.

Q. Do you know if anyone at ResCap has had conversations about the committee's allegation that new liens were granted to the JSNs in the assets listed on Schedule 6 during the 75 days preceding the petition date?

MR. HAMERMAN: Objection to form,



and can you clarify whether you're talking about during prep or when you're -- when these conversations might occur -- might have occurred that you are asking about?

Q. Other than in prep sessions. Do you remember -- do you recall the question?

A. Could you restate it, please.

Q. Yes.

Do you know if anyone at ResCap has had conversations about the committee's allegation that new liens were granted to the JSNs in the assets listed on Schedule 6 during the 75 days preceding the petition date, other than conversations that have taken place in preparation for depositions in this matter?

A. I do not know.

Q. You mentioned that although the debtors were not doing a lot of purchasing of loans in the 75 days preceding the petition date, they did do some purchasing of FHA/VA; is that correct?

A. The primary business, as I recall,



in the 75 days, was the continuation of the origination business. So the loans weren't really being purchased, they were being originated.

And there was a relationship between the bank and ResCap where one originated, you know, and one brokered the loans. And I consider that as part of the origination activity. So those were done as they had always been done.

Q. OK.

A. Modifications were done as they had been done. But we were not, to my knowledge, actively going out and looking for pools of loans to purchase.

Q. And the loans, pools of loans would be reflected in the -- is it correct that pools of loans would be reflected in the HFS category?

MR. ENGELHARDT: Objection to form.

A. I believe everything that was a loan as of year ended at the time of filing was designated for accounting purposes as HFS.



Q. OK. And what is FHA/VA?

A. FHA/VA is a designation that refers to loans which are eligible for sale because they meet the parameters described by FHA and VA, respectively.

Q. OK. And what is -- can you explain to me the distinction, I'm not sure I follow it, between HFS and FHA/VA?

A. HFS is an accounting designation which means held for sale, and that designation means you have to do certain things and follow FAS-B pronouncements as it relates to carrying those assets on your books and updating the values for financial purposes. So HFS revolver here, and I'm speculating, means those loans on the revolver that were in the HFS category.

Number 2 would relate to those loans subject to the blanket lien that were -- or they're alleging are removed subject to the blanket lien that were, again, in the HFS accounting category.

The 212 -- again, I'm speculating -- are FHA/VA loans that were not

included in 1 or 2.
Q. OK. And what would be the reason that a loan would be categorized as FHA/VA rather than HFS?
A. FHA/VA typically had an accounting designation of HFS as well, so this, I speculate, just has to do with the breakout of the categories here.
The revolver and the blanket lien had a number of different loan types associated with them, including FHA/VA. So whomever prepared this schedule just decided to break those out in that manner.
Q. Did the CFDR list loans as either HFS or FHA/VA or another designation that I'm not aware of? Let me try to ask this in a more artful way.
Would the CFDR note whether a loan that was one of FHA or HFS or both, would it have a label of either HFS or FHA/VA?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
A. They are different designations. So within CFDR, a loan would have a



designation if it were FHA or VA or if it were a different sort of loan, to be able to bucket those loans appropriately. The loans should also have a designation of HFS, HFI. There were a couple of other accounting designations used primarily for some of the overseas collateral. And that would also be assigned on an asset level or on a loan level.
So a loan could have both designations. It would definitely have space for designations of the type that the field required.
Q. I understand, thank you.
If these loans -- if you turn to the next page, you can see that each of the loans listed on Schedule 6 have a mortgage loan sequence ID. Is that a unique identification for an individual loan?
MR. HAMERMAN: Objection to form.
A. I believe that is one of them, yes.
Q. Do you believe or is it consistent with your understanding that ResCap purchased approximately 213 million FHA/VA loans in the



75 days preceding the bankruptcy filing?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
A. Again, not purchase. Originate, as I kind of defined that within the family, including the relationship with the bank. Those numbers do not seem out of line to me with origination activity.
Q. How does originating work? Can you walk me through the process of how ResCap would originate a loan?
A. OK.
MR. HAMERMAN: Objection to form.
A. The way the origination process worked, which was only one of the channels within ResCap over the years to access mortgage loans, but the process of originating really begins with a person wanting to buy a house and approaching a broker or approaching a firm, in this case it would be a company or a correspondent owned by the ResCap family. There is an application entered into.
I'm going to be short here, just



because the origination process, as you may know from buying houses, is lengthy, with a lot of documents, but there are -- there is the application turned in, a lot of supporting documents turned in. There is disclosures made by the borrower -- by the lender to the borrower. There is a back and forth in terms of the various terms, the various product types that are worked on.
At some point you get to a closing table where all the appropriate disclosure documents have been laid out, all the appropriate loan documents are there, all the insurance policies and binders and, you know, everything that's required is there. The borrower is there. The borrower signs up, signs up the paperwork. The money is released for the purchase of the house, or, you know, if it is a refinancing or something, the money is basically released upon the execution of that document.
There are two ways that the lender basically funds that asset. One is wet funding, which basically is sending money to

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the closing table prior to the lender's receipt of the documentation, so basically there is no document in the control of the lender at that point in time.

The other way is basically waiting until the documents are there -- I take that back. The wet fundings either can be done of the lines with wet funding limits. Not every line had wet funding limits. Most lines don't. Those are very tightly controlled, as you can imagine, because of the risk associated with that. Or the company had to fund those out of its own cash.

And once the documents arrived at the designated spot, the custodian -- and were checked in, got the reporting, at that point in time, those loans became eligible to put on -- generally became eligible to put into other funding facilities and not in the wet category.

So then you have got the loan within ResCap, right, and either placed on a funding facility or not, depending on the asset type. If it had already been placed in

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a funding facility in the wet component, and when the documents came in, at that point, that loan would be moved into a different subcategory on the same facility. I don't think typically it came off that facility to move on to another facility, because generally that would not be that economic to do so.

Q. So what were the sources of funding for loan origination that ResCap accessed during the 75 days preceding the bankruptcy petition?

A. It would have been the BMMZ. I think at that point Goldman and revolver were -- I am sorry, Goldman and Citi were probably fully amortizing at that point.

I believe -- let me see. I believe the LOC could have still been used to fund loans. Not wet, but to fund loans. I think there was -- there is a servicing receivable asset created at the time there is a loan. The Citi receivable -- the Citi line would have been available to fund work associated with that particular asset.

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And then on a servicing front, GSAP would have been available to fund the advances associated with that loan that came in.

Q. And if those sources of funding that you just outlined were utilized to originate a loan, were there any limitations on whether the loan could then be pledged under the revolver?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MR. HAMERMAN: Objection to form.

Q. From an operational perspective?

A. If we had determined that we wanted to pledge loans on any given funding facility or bilat, we wanted to move them to the revolver, we could have done that, as long as we -- well, as long as several things, right? One, we paid out the funding facility to the extent required by removal of that asset. The asset itself met the eligibility requirements associated with the revolver. We got the necessary approvals, typically

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from Ally, to be able to place loans on the revolver.

At that point, the revolver -- the revolver became an amortizing facility at the time of the amendment and restatement, so it was not taking new loans at that point. We could have agreed with Ally to add loans, most likely.

And the other requirements associated really with the movement of collateral from one facility to the other, like movement of the custodial functions, things like that, would have had to occur.

Q. OK. I want to focus on something you just said, which is the necessary approvals to place loans on the revolver. I'm not sure I understand that. Are you saying that after the amendment to the revolver in 2009, ResCap needed to obtain approval from ResCap in order to -- excuse me, from Ally, in order to put a new loan, pledge a new loan under the revolver?

MR. ENGELHARDT: Objection to form.

A. As primary collateral.

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Q. Oh, as primary.
A. I'm talking about primary collateral. The revolver became an amortizing facility --
Q. OK.
A. -- and we would have needed to obtain approval to amend those terms to add new assets to that funding facility as primary collateral, and that really, when we speak of it, it wouldn't be added -- taken off a funding facility and added, if you will, to the revolver in any other way, because there was no money that we would get as a result of it from the blanket lien.
Q. So I'm trying to understand how it would be that there would be 2 -- approximately 213 million in loan originations that occur during the 75 days preceding the petition date, and that those loans become subject to the JSNs' liens.
MR. ENGELHARDT: There is no question there.
Q. Do you have a sense of that?
MR. ENGELHARDT: Objection to form

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and to the extent it calls for a legal conclusion.
MR. HAMERMAN: I join in that objection.
Q. Let me change the question. Do you have an understanding as to how that could be the case?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: I join that objection.
A. My speculation is that these loans were originated or modified, whatever, but these loans came in, were marked as unpledged, because they were not put on any particular funding facility, and then when the CFDR field was updated to reflect the blanket lien for those assets that the company in the processes I described were subject to the blanket lien, there was that conversion of approximately 213 million of assets that had come in, the 75 days that had been marked as unpledged, they were now marked as blanket lien.
Q. OK. Based on my review of certain

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filings that have been made by the debtors, I believe that cash collateral under the revolver decreased by approximately 93 million dollars between 2/29/12 and 3/15/12 -- I am sorry, I think I got my -- that's not right -- and 5/13/12. Does that -- do you know by how much cash collateral decreased during that period? Cash collateral under the revolver decreased during that period?
MR. ENGELHARDT: Objection.
You can answer.
MR. HAMERMAN: Join in the objection.
A. No.
Q. Assuming that it was 93 million, do you have an understanding of what -- actually strike that.
Do you have an understanding of what cash collateral pledged under the revolver was used for during the 75 days preceding the petition date?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Objection to form.

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A. I'm speculating. But I would expect that cash collateral under the revolver, to the extent that cash collateral related to sales proceeds of assets that were on the revolver, would have gone into the sale proceeds accounts. I don't know if whether prior to the petition date those sales proceeds accounts were being released to Ally as required or if the freeze had started at that time, but at the petition date, my understanding was anytime the cash went into the sale proceeds accounts, it was restricted and it stayed there.
Q. Is that the freeze you are talking about?
A. Yes.
MR. ENGELHARDT: Objection.
A. And that's sales proceeds.
To the extent that there was cash coming in on the assets subject to the revolver lien that were not related to sales proceeds account, they would be used for normal business purposes.
Q. And were sales proceeds -- strike

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that.
Are sales proceeds, proceeds derived from sales of collateral pledged under the revolver?
A. Sales proceeds are proceeds derived from the sale of primary collateral under the revolver.
Q. And were those sales proceeds placed in an account that was segregated from other cash?
A. That's a little longer answer than just that. It's a complicated facility, and it was a very complicated business model.
Again, there were various business units that were a piece of this. There were as few as eight, eight, 10, 12, 15 different business units with whom we were working and had sales. And the business units varied just a little bit in terms of the initial account the sales proceeds would come into. Those accounts were subject to account control agreements and were specified sales proceeds accounts.
Within a set period of time, they

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went to a common sales proceeds -- proceed account. In the U.S. that was designated as sale proceeds accounts. There may have been a stop at a business-level sale proceed account along the way. Internationally, there were a few more accounts than there were domestically. Those sales proceeds moved into that final sales proceeds account within 3 to 5 business days, depending on the type of asset and the business unit that was selling it.
And then at that point, when it hit the sale proceeds account, every account along the way, to my knowledge, was subject to an account control agreement, and I'm pretty aware of that, and then the account control agreement -- and then once it hit the sales proceeds account, the ultimate one, it was restricted in that we could not withdraw cash from that account once the sales proceeds hit that.
(Exhibit 12, spreadsheet marked for identification, as of this date.)
Q. I will represent to you that this

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is an extract that we took from the CFDR -- that these are both extracts that we took from the CFDR, and the only changes that we made was adding the highlighting.
This -- if you look at the acquisition loan -- I think it says acquisition -- I'm not sure what the full name is, but the second column on both documents is "Acquisition Loan" something. Do you see that?
A. Yup, "Acquisition Loan ID."
Q. "Acquisition Loan ID."
So let's look at the first row, for example. In the 2/29 set of pages, the first acquisition loan ID is 10723969. Do you see that?
A. Yes.
Q. And in the 5/13 set of pages, it's the same acquisition loan ID in the first row. Do you see that?
A. Yes.
Q. Does that mean that the first row for each of these sets of documents relates to the same loan?

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MR. HAMERMAN: Objection to form.
MR. ENGELHARDT: Objection to form.
A. Yes.
Q. Do you have any understanding of why the committee would think that a loan that was pledged or that was listed under -- as GMAC revolver in the fund facility column on 2/29/12, and it was also listed in the GMAC revolver fund facility column as of 5/13/2012, was added to the JSNs' collateral package during that period, during the time between 2/29/2012 and 5/13/2012?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Join in the objection.
A. I do not know.
Q. OK. Assuming that these are accurate extracts from the CFDR, do they show that the loans listed on these pages were pledged -- well, actually, let's focus on the first one.
Assuming that this is an accurate extract from the CFDR, does it show that the loan listed in the first row was pledged as

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collateral to the JSNs on February 29, 2012?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: Objection to the form and calls for a legal conclusion.
A. It shows that this particular asset was primary collateral under the GMAC revolver. The pledge actually in the REOs was indirect. The revolver and the JSNs had an interest in the SPV. But this doesn't show the pledge necessarily.
Q. OK. But does -- this shows there was a pledge as of February 29, 2012; isn't that correct, or no?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: Objection.
A. This shows that this asset was primary collateral under the GMAC revolver. It doesn't necessarily -- this particular column is just designed to show the facility to which that asset relates or if it's

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unpledged.
So I don't think you can use the term "pledged" or "not pledged" as it relates to this report, because it doesn't show kind of the -- everything that's pledged or not pledged in the sense that was there a lien or wasn't there a lien. We went through that conversation about what "unpledged" kind of meant or didn't mean before.
Q. Um-hm.
A. And it doesn't go through the distinctions between direct and indirect pledges, if you will, supporting collateral. You are probably familiar with that term.
In this case, the REO would not have been directly pledged, if you will, to the revolver. It would have been put into an SPV, that the SPV equity was pledged to the revolver. There is a distinction.
Q. Sure.
But the 2/29 page shows that the equity in the SPV was -- served as collateral for the revolver and the JSNs as of 2/29/2012, doesn't it?

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MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: What he said.
A. This shows that the REO was placed into an SPV that was subject to the lien of the revolver and was primary collateral.
Q. As of February --
A. As of February -- yes.
Q. Let me just ask the question. As of February 29, 2012; is that correct?
A. Yes. That REO was added value as primary collateral to the revolver. How about that?
Q. So the REO listed in column 1 -- excuse me, row 1, was not added -- does not appear from these pages to have been added to the revolver collateral package after -- after February 29, 2012; is that correct?
MR. HAMERMAN: Objection.
MR. ENGELHARDT: Objection.
A. It appears to be primary collateral on both days for the revolver.
Q. Is there any document you can think

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of other than these pages that would explain -- let me strike that.
Is there any document that the debtors would have that would explain why the committee would think that such an asset was added to the JSNs' collateral package between February 29, 2012, and 5/13/2012?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Objection.
A. This specific asset, no.
(Exhibit 13, spreadsheet marked for identification, as of this date.)
Q. This is -- I will represent that this is another extract, or these are two extracts that we took from the CFDR, and the only change or modification that we made was to add the highlighting.
I think you touched upon this a little bit earlier when we were speaking. This shows or these extracts show that there were certain loans reflected in the CFDR as of 2/29/2012 that appear to have been recharacterized -- excuse me, recategorized in the CFDR as REO as of 5/13/2012. Do you

see that?
A. Yes.
Q. OK. Can you explain to me what the process was that led to that, if you know?
A. This is a normal process of a severely delinquent loan that goes into foreclosure. At the time of foreclosure, the loan is extinguished and it becomes a real property. So no longer do we have a loan asset that's secured by real property. There has been a default under the loan documentation, and we have taken the real property.
And the REO is a representation of the property that we now have. It's really a change in form of the asset from a loan to a REO. REO stands for real estate owned.
Q. OK. So looking at the first -- let's focus on the first row in 2/29/2012. Does this row show that there was reflected in the CFDR a loan with a carrying value of approximately 394,000 dollars?
A. Yes.
Q. OK. And then if I look up to the



first row on 5/13/2012, that loan has now been -- is it fair -- is it accurate to say that that loan has now been extinguished for real property with a carrying value of 328,000 dollars?
MR. HAMERMAN: Objection to the extent it calls for a legal conclusion.
MR. ENGELHARDT: Object to the form.
A. The loan itself, you know, is no longer. In its place, there is this REO. The REO as of 5/13 has a different carry value than the loan had four months earlier, and that carry value would have been assigned to the REO property in accordance with the conventions that FAS-B requires for carry value on REOs.
Q. And it's the same with respect to the other REOs listed on the remaining columns on the spreadsheet?
A. That's correct.
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Join in the objection.



A. That's correct.
(Exhibit 14, spreadsheet marked for identification, as of this date.)
Q. All set?
I will represent again that this is an extract that we took from the CFDR with the sole modification that we added the highlighting. These are REO that we were able to locate in the CFDR as of 2/29/2012 that then disappeared from the CFDR after that time, and we weren't able to figure out what happened to them.
Would it -- if REO was sold, would you typically be able to tell from the CFDR that that REO was sold?
MR. HAMERMAN: Objection to the form of the question.
A. You would have to go into the history. But that really becomes in a way part of the pay-off/charge-offs. The REO is sold, we get cash, the property is gone, the collateral is there no longer.
Q. OK. So if I were trying to trace that, how would I go about doing it?



A. There should have been an upload from one of the servicing groups that reflected the sale of the REO. And that template upload should be reflected in the history of the CFDR.
Q. And would it be keyed to the specific loan sequencing ID?
A. It would be keyed to a -- the specific loan asset, which would go into the records relating to that specific asset.
(Exhibit 15, spreadsheet marked for identification, as of this date.)
(Exhibit 16, spreadsheet marked for identification, as of this date.)
Q. All set? So these are --
MR. ENGELHARDT: Excuse me, counsel, I don't have a copy of the document.
MS. NEWMAN: Oh, I think maybe they're a page or two pages behind -- yes. I think they're identical.
Q. So I will represent that these are also extracts from the CFDR, except that the two columns to the right we imported from

another section of the CFDR.
A. OK.
Q. These are -- excuse me, and there was another addition, which was that we added the totals at the bottom of the page.
These are assets that were reflected in the CFDR as of 5/13/2012. And not onto -- I don't believe onto 2/29/2012, but were reflected in the CFDR at an earlier date. And you can see the earlier date on the far right-hand column.
MR. ENGELHARDT: There is no question there yet.
Q. Do you see that?
A. I do.
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Objection.
Q. Do you know why these assets would have disappeared from the CFDR and then reappeared?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Join in the objection.
A. It would only be speculation, and



it might be an incomplete speculation at that.
It is possible that some of these loans were sold and then we repurchased them due to a breach of rep or warranty. I'm not sure. I think that's a possibility.
Q. OK. If they were -- assuming that that's correct, without knowing, if these loans were repurchased by ResCap, where would the funds for such -- what would the source of the funds for such repurchase be?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
Q. In the ordinary course of business?
A. The funds for the repurchase could have been out of just normal operating cash. We could have done a draw off the LOC.
Q. And if there was a draw off the LOC and the loan was repurchased, would the loan then be subject -- be categorized as primary collateral under the revolver?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.



MR. HAMERMAN: I join in the objection.
A. No, the LOC and the revolver were two completely different facilities and they operated in a different way.
So if a loan were repurchased out of the draw off the LOC, the loan would not necessarily be classified as an LOC asset, because they have not put -- it would not necessarily have been pledged to the LOC unless we'd have gone through the addition process there.
It would not have been put on the revolver as reinvestment collateral unless we had gone through the process there, and it would not be on any other facility unless we had pledged it to that other facility.
So it would go in, if it was funded -- if the proceeds were received from the LOC and it was not part of any pledge, it would just go in as unpledged, and it would be subject to the blanket lien to the extent that, you know, it fit the grant and the grantor under the PSA and it wasn't excluded.



That's the way a repurchase would typically work.
Q. OK.
MS. NEWMAN: I think we have to go off so that the tape can be changed.
THE VIDEOGRAPHER: That is the end of tape number 3. The time is 2:44 p.m. We are now off the record.
(Recess)
THE VIDEOGRAPHER: This is the start of tape number 4. The time is now 2:56 p.m. We are now back on the record.
MR. ENGELHARDT: Counsel, before you begin, the witness just mentioned to me that she would like to clarify one of her prior answers. I don't know which one.
MS. NEWMAN: OK.
A. I just wanted to say just because I don't remember why something would disappear and come back on doesn't mean there wouldn't be another reason for that to happen. This particular database was a SOX database.
So in connection with that, there

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would have been risks laid out. One of the risks would have been things removed and just that disappear and there have would have been controls put in place around that.

Just because that's a situation that I could think of, there may have been other explanations and there would have been controls put in place to identify and figure out things like this.

Q. Thank you, I appreciate that clarification.

If I wanted to try to get a better understanding of why that happened, who at the company, at ResCap do you think would have the most knowledge about that?

A. Barb Westman.

Q. Can you turn back to the summary page on schedule 6, the first page of schedule 6.

If I wanted to try to figure out -- well, let me ask you this first. Is it possible that 1, 2 and 3 of the summary page could all be originations that occurred during the 75 days preceding the petition

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date?

MR. ENGELHARDT: Objection, form.

A. I do not think 1 would have been originations.

Q. OK.

A. Two and 3 would have been originations.

Q. What's the distinction you're drawing between 1 and 2 and 3?

A. The revolver primary collateral was a static pool. It was amortizing. There were not loans added really much after 2008. It was an inefficient funding facility. So loans would not have been added to that facility because it was amortizing.

But with respect to the blanket, that would cover, you know, certain loans coming in as originations during that period unless they were pledged someplace else. With respect to the FHA/VA, those assets could well have come in in the origination channel.

Q. Are you drawing a distinction that you think it would be more likely that the

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FHA/VA would be originations than the amount listed under HFS blanket?

MR. ENGELHARDT: Objection to form.

A. No, I think 2 and 3 could equally be originations.

Q. OK.

A. And they could include modifications as well as the originations. And again, originations, the broad sense of that definition.

Q. How would a modification -- strike that.

Would there be a difference in the way the loans were reflected in the CFDR if the loan was a modification versus an origination?

A. Modification would be treated as a new loan.

Q. Would the modification have or be associated with an asset that had existed in the CFDR before the modification day?

MR. ENGELHARDT: Objection to form.

A. It is my understanding that there would be an association back, but that

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modification has new terms to it and those new terms are what would be reflected in CFDR.

Q. How would I -- how would I discern from the CFDR if this -- if the loan was a modification or an origination?

A. I think there would be a field you would need to look at and it would likely be historical.

Q. OK. And that field would show me if there had been an asset that existed prior to the loan modification in the CFDR associated with the same loan, is that correct?

A. It would -- it should show you -- this is my understanding -- an association to a previous loan, but then you have a new loan.

Q. OK, when you say they will be in historical -- this is probably because I don't really have an understanding of how the CFDR works -- but is there a tab I can click on in the CFDR that will show me the historical notes associated with a particular

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loan?
A. No, I think it is a bit more complicated than that, sadly. Sometimes you simply go back to a previous time, that is saved. Sometimes -- or you may be able to see it in a field like you saw in the previous funding facility. In a way, that's historical information associated with that asset, but there is -- but as with any system, a technical record of all changes made.
Q. And one who was looking at the CFDR should be able to access that, that historical record, is that correct?
A. Someone with technical abilities should be able to access that. I don't believe those are widely available to the casual user. They do exist.
Q. Other than looking at the historical information in the CFDR, are there other sources of information that I could look at to try to discern whether the loans listed here were modifications? And when I say here, I mean on the summary page of

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schedule 6?
A. They may be found in the detail to the ledger entries as of the time of the modification. I'm not certain as I have not looked for them myself, but I think that the ledger may have that detail.
Q. OK. And if a loan, if a loan was listed -- well, strike that.
If an asset was listed as, as revolver in the fund facility column of the CFDR on February 29, 2012, and is also listed in the -- as revolver in the fund facility column of the CFDR on May 13, 2012, can you think of any basis for the allegation that that asset was added to the revolver collateral between 2/29/2012 and 5/1/2012?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection, and to the extent it calls for a legal conclusion.
A. If it was listed as revolver in February, and it was listed as revolver in May, I don't know of any reason why the committee would be alleging a transfer.

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Q. OK. And if an asset was listed as unpledged in the CFDR -- in the fund facility column of the CFDR on February 29, 2012 and then as either revolver or blanket lien in the fund facility column of the CFDR as of 5/13/2012, can you think of any basis for the allegation that that asset was added to the revolver collateral package during the period between February 29, 2012 and May 13, 2012?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form and to the extent it calls for a legal conclusion.
A. I don't know why the committee would have alleged that it would have been added unless for some reason the work done at ResCap involving whomever else they included of marking the unpledged assets to the blanket lien improperly picked up some of the assets because, as we discussed before, the work done at the time of the filing in order to enable the company to report on unpledged assets and on blanket lien assets was to determine as of that date which of the

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unpledged assets were subject to the blanket lien.
And if they accidentally, inadvertently labeled an asset that was not subject to the blanket lien as subject to the blanket lien, that possibly may be a reason for the committee to think that.
If the labeling was accurate, however, and the identification of the assets is blanket lien -- is changing them from unpledged to blanket lien and that labeling was accurate, I cannot think of a reason.
Q. OK. And as you sit here today, are you aware of any instances where an asset was inaccurately or inadvertently labeled as blanket lien as of 5/13/2012?
MR. HAMERMAN: Objection.
A. I am aware that there were discrepancies in conversations around the original markings to insure that they were done appropriately.
My understanding is that all of the loans were marked, the servicing advances were marked as blanket lien without further

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diligence. So I don't know whether things were inadvertently picked up in that process.
Q. So you don't know one way or another whether or not there were inaccuracies in the relabeling, is that correct?
MR. HAMERMAN: Objection.
A. Given the confidence we have in CFDR, I would say the labeling is fairly accurate. I can -- I do not know if it was entirely accurate based on the interpretation of what the blanket lien related to.
(Exhibit 17, document entitled "Final Order" marked for identification, as of this date.)
Q. I'm only going to be asking you about Exhibit A to that document and I'll give you time to review it after I ask my specific questions.
I'm going to use that in tandem with the committee complaint, the text of the committee complaint, so if you want to just pull that out. Can you turn to page 17 of the complaint, please.

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Can you read paragraph 96, please.
MR. ENGELHARDT: That's not on page 17.
MS. NEWMAN: I'm on page 17.
MR. ENGELHARDT: Are you looking at the numbers at the top or the bottom?
MS. NEWMAN: On the bottom, are there numbers on the top of the complaint? I don't have a -- I don't have a docketed copy. So it is 17 on the bottom.
MR. HAMERMAN: I am sorry, where are we looking? Paragraph 96 or page 17?
MS. NEWMAN: Paragraph 96. I think it is page 17 on the bottom.
MR. HAMERMAN: Mine is page 17 at the top of the document.
MS. NEWMAN: I don't know why my numbering is different. As long as it is paragraph 96. OK.
Q. So this paragraph identifies certain -- or defines the term "unencumbered real property," do you see that?
A. Yes.

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Q. If you actually turn to schedule 2 -- I'm sorry, not in the DIP order. It should be in this pile right here, schedule 2 to the complaint. It lists the real property falling within the committee's definition of unencumbered real property. Do you see that?
A. Yes, I do.
Q. Do you know if anyone at ResCap has worked with the committee to identify the real property listed on 2?
A. I do not know.
Q. Do you know whether there are mortgages that exist in favor of the JSNs in connection with the real property listed on schedule 2?
A. I do not know. I could speculate on some of this.
Q. OK. Why don't you share with me what your speculation is.
MR. ENGELHARDT: Objection to form.
A. Real property -- I apologize, I was actually thinking of primary collateral as opposed to JSN possible blanket lien. So I withdraw.

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Q. OK. Do you know of any reason, as you sit here today, why there would -- why it would be the case that there are no mortgages in favor of the JSNs in connection with the real property listed on schedule 2?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
A. All right. Under the terms of the revolver, there was, there is primary collateral and there was blanket lien collateral. With respect to the -- and those documents, including the PSA, we granted liens on that collateral and we agreed to do as a company what was requested of us to perfect.
Just because a lien was granted didn't mean it was necessarily perfected. And in the course of -- case of real property, it doesn't necessarily mean that there was ever a request made to put a mortgage on it or to otherwise demonstrate that lien.
There was a brief period of time relating to some of the BCG which was really

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more the commercial construction groups to put mortgages on some assets in favor of Ally and of the JSNs, the second -- first, second, third liens. That was relatively short-lived, and it was quite cumbersome as properties were being sold.

But to my knowledge, there was no other request coming from Ally or the JSNs to put mortgages or do anything else other than the initial grant where the lien would automatically apply to the properties coming in if the assets were described in the granting clauses by the grantors and weren't subject to excluded assets or lien releases otherwise.

Q. Can you turn back to paragraph 103 of the complaint, please. Do you see that that paragraph references Exhibit A to the AFI DIP order?

A. Um-hm.

Q. And that is the document that you have in there in front of you. Do you know if the real property listed on schedule 2 to the complaint is reflected in the revolver or

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blanket columns on this Exhibit A to the AFI DIP order?

MR. ENGELHARDT: Objection, objection to form.

MR. HAMERMAN: Objection.

A. My understanding is that whatever real property the company had as of the filing date was reflected within CFDR, and so if this were created off of CFDR and that information had been back-dated to 2/29, then whatever property was out there at that time would be reflected here.

I don't know if that is a full listing of everything the committee put on or if that is not.

So you may have some timing differences between the two, and I do not know whether or not the statement that the assets -- that the real property are in the revolver and blanket categories. Even if they are in the revolver and blanket categories, again, doesn't mean there was a mortgage on it, doesn't mean it was perfected. It just means that the company

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believed that it was subject to it.

If it was Ally revolver, that property would have been primary collateral for the purposes of calculating the value of the facility, the reporting, things like that. And, you know, subject to the other requirements there.

If it was under blanket, it meant that the company believed as of the time it entered blanket that it was subject to the blanket lien. It not mean it was perfected.

Q. If you turn and look again at schedule 2, do you know if the -- well, first, let's look at the owned real property which are the two rows at the top of the page. Do you know if these two interests in property were reflected in the CFDR as Ally revolver or blanket?

A. I do not.

Q. And then with respect to the leasehold interests listed below, which carry on for a few pages, do you know if those leasehold interests were reflected in the CFDR as revolver or blanket?

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A. I do not.

Q. OK. If I wanted to find out the answer to that, those questions, who would I -- who at the debtors would be the most knowledgeable on that topic?

A. That again would be Barb. Please note that they would not be in the CFDR if they did not have any value associated with them, similar to pay-off and charge-offs.

Q. OK.

A. And --

Q. So how would I, I think you will notice that in schedule 2 there, I don't believe there are any values listed. How would I go about figuring out what the value attributed to these interests in property is?

A. I would speak to someone in finance or to Barb.

Q. And are there particular databases or documents that I could look at that might have that information?

A. It would be in a CFDR if these assets were in the CFDR and it would be in the ledger if not. Or frankly, it would be

in the ledger even if it was in the CFDR.
Q. Can you turn please to paragraph 110.
A. OK.
Q. 110 alleges that the rows entitled "cash" and "cash equivalents" and other assets in the blanket column on Exhibit A to the AFI DIP order includes asset or include assets owned by the debtors that -- for debtors that have not guaranteed the junior secured notes and it goes on. I think you read it before.
Do you know if it is true that the cash and cash equivalent and other asset column, other asset rows listed in the blanket column on Exhibit A to the AFI DIP order includes assets owned by what's defined as nonobligor debtors in paragraph 110 of the complaint?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: Objection to the form.
A. Would you restate that one more time.



Q. I can try and why don't we take it in pieces.
Paragraphs 110 and 111 identify what are alleged to be nonobligor debtors. Do you see that?
A. I do.
Q. And there is an allegation in paragraph 110 that assets owned by the nonobligor debtors are included or the value of assets owned by the nonobligor debtors are included in the blanket column of the -- of Exhibit A to the AFI DIP order. Do you know if that is true?
MR. ENGELHARDT: Objection.
MR. HAMERMAN: I join in that objection.
A. I do not know if that was true.
Q. Can you please turn to paragraph 166. I'm sorry, actually. Why don't you read first paragraphs 160 through 163.
A. OK.
Q. And paragraph 171.
These paragraphs allege that there are certain deposit accounts in which the



JSNs do not have or for which the JSNs do not have deposit account control agreements. Do you understand that?
A. Yes.
Q. And if you turn to schedule 5, that lists the accounts that are subject -- that are the subject of that allegation. Would you take a look at that and let me know when you're through, please.
A. OK.
Q. Sitting here today, do you know whether there are deposit account control agreements in favor of the JSNs with respect to the deposit accounts listed on schedule 5?
A. I don't know if there are control agreements in place of these specific accounts.
Q. Has anyone at ResCap had any conversations about whether this is the case -- about whether there are deposit account control agreements in favor of the JSNs with respect to the deposit accounts listed on schedule 5 with the committee or any of its advisors?



A. To my knowledge -- I don't know whether they have had conversations with the committee or any of their advisors outside of the two days I spent in prep.
Q. Thank you for the clarification.
Do you know if the funds listed on schedule 5 are reflected in either the Ally revolver or blanket columns on Exhibit A to the AFI DIP order?
MR. ENGELHARDT: Objection.
A. They would not be reflected in the Ally revolver. I am not sure if they are in the blanket or not.
MS. NEWMAN: OK. Let's just take a two-minute break. I don't think I have anything else, but I just want to confer.
THE VIDEOGRAPHER: The time is now 3:30 p.m. We are now off the record.
(Exhibit 18, notice of deposition of ResCap marked for identification, as of this date.)
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THE VIDEOGRAPHER: The time is now 3:38 p.m. We are now back on the record.

EXAMINATION BY
MR. BAUMSTEIN:
Q. Good afternoon, Ms. Farley. My name is Doug Baumstein. I am an attorney at White & Case. We represent the junior secured noteholders or ad hoc group of junior secured noteholders. Thank you for your patience today and hopefully we won't be too much longer.
I have handed you what has been marked as Farley Exhibit 18. It is a copy of the 30(b)(6) notice that my client, the ad hoc group of junior secured noteholders, served on the debtors.
MR. ENGELHARDT: Counsel, did I get a copy?
Q. First of all, have you seen this document before?
A. No.
Q. Could you take a look at -- do you understand that you are here to testify as to topics 3 and 16 as identified herein?
A. Yes.
Q. And did you talk to anyone at



ResCap with respect to either of the subjects in 3 or 16 of this Rule 30(b)(6) notice?
A. It's -- the only conversation I had was a very short conversation with Joe Ruhlin.
Q. And what was the topic of your conversation with Mr. Ruhlin?
A. Basically the fact that when he took over management of the group from me, that he assumed the processes for lien release as in place and didn't change them.
Q. And when did Mr. Ruhlin take over the processes for the lien releases?
A. That particular -- Joe assumed my managerial responsibilities sometime during -- gosh, I don't even remember, to be honest with you, 2010 or 2011. The processes were set at that point and there was no change.
Q. OK.
A. And I continued to work really closely with he and his group.
Q. With respect to lien releases, you said you were in charge of that process prior



to Mr. Ruhlin, is that accurate?
A. Yes. I established the lien release processes when the revolver initially took place. I worked with the operations and treasury group to insure they understood them. I handled the lien release processes until the structured people were up to speed. I handled a number of lien releases after the fact, but it became a very routine process done by operations people, at least as the automatic releases occurred.
And so Joe would have assumed responsibility of that role, but it wasn't like he was actually doing the releases, as I wasn't either, and if there were questions when he was managing that group about them, I was still there.
Q. OK. That's actually very helpful.
Why don't we go to the -- and actually, let's use the document as a talking point. Why don't we go to that talking point right here.
(Exhibit 19, document Bates stamped RCUCCJSN 10339000 through 9001 marked for



identification, as of this date.)
Q. Do you recognize what has been handed to you as Farley Exhibit 19?
A. I see it's an e-mail with an attachment to it.
Q. And is this an e-mail that you wrote to Joe Ruhlin on or about August 11, 2010?
A. It seems to be.
Q. And what is the subject of the e-mail?
A. It's basically a summary of the terms of the junior secured bonds as it relates to the collateral.
Q. This e-mail is dated August 11, 2010. Does this refresh your recollection when Mr. Ruhlin took over responsibility for lien releases?
A. No.
Q. In the attachment, is this an attachment that you prepared?
A. It appears to be.
Q. OK. And it says, under lien releases that, "Lien releases required for

the sale of both primary and supporting collateral, as well as collateral subject to the blanket lien."

First of all, did I read that correctly?

A. Yes.

Q. What do you understand to be the meaning of what I just read to you?

A. That when ResCap sold assets which were primary collateral or collateral used to support the value of the revolver and the liens and as to which there were a whole host of restrictions, that required a lien release under the junior bondholders, the junior and senior bondholders at the time.

The supporting collateral as defined in the revolver also required the -- the sale of supporting collateral also required lien releases, and if collateral were subject to the blanket lien, that also required lien releases under the JSNs.

Q. Did ResCap also understand that lien releases were required before there were any other dispositions of collateral?



A. I'm not sure I understand your question.

Q. Well, what are the circumstances where assets that are previously pledged to the JSNs would be released?

MR. HAMERMAN: Objection to form.

A. Every time that assets were primary, supporting, or blanket, and every time those assets were sold or moved to a bilat, a security release would have to be -- a lien release would have to be accomplished.

Q. OK. And could you describe the process -- when you said moved to another facility, does that also include the AFI letter of credit?

A. Yes.

Q. Could you describe the process by which lien releases would be effected by ResCap?

A. There were two different processes. There was a group of collateral that -- there were requirements under the revolver which allowed for the automatic lien release of the first lien in certain circumstances.



Largely those were sales to the agency, sales in normal practice under a hundred million. There were several categories there. So if that was the situation, what would happen would be within the treasury group, we would get -- we would have knowledge of all the sales occurring within the various business groups. And as those -- as the assets which were to be sold were identified, we would get the asset lists within the treasury group.

We would basically continue to monitor that because assets would sometimes fall out, there was movement of assets prior to the actual sale. But we would bounce that list up against the CFDR to determine if -- what facilities the assets were pledged to, and it might be the revolver, it might have been the Lehman facility. But we would determine that and we would determine what was unpledged.

We would also alert other people within the firm -- namely, the legal department -- that there was a release



coming. This -- at the time that the asset listing was final, we would basically take that asset listing, again, run it against the CFDR, determine what was on what facility.

If it was, if it was labeled the revolver, as primary supporting collateral, or if it was labeled unpledged, we would basically create a listing for that and then we had developed an officer certificate to which that listing was attached. That officer certificate was in the form required under the indenture.

It did have a requirement in there that the terms of the indenture be complied with. Whoever the structuring person or myself would basically insure that was the case, and particularly the fair value component by talking to the business individual, sometimes we got -- sometimes we had some, you know, very interesting conversations and a lot of documentation around that to insure it.

We would sign that certificate with the loans attached to it. That would then go

down to the legal department. The legal department had developed opinions based on the forms attached to the indentures. Those opinions would be created, reviewed.

When they were comfortable -- I mean, obviously if there were questions, we would address those, and then those would be sent off, e-mailed, faxed and then Fed-Ex'd to Wells Fargo and U.S. Bank.

Q. All right. And just for the record, who are Wells Fargo and U.S. Bank in this scenario?

A. U.S. Bank was a trustee. Wells Fargo was the collateral agent. So that's the automatic release process and that happened at times daily.

Q. And when you say that happened at times daily, does that mean that every day, there was a new listing sent off to Wells Fargo of specific loans to be released?

A. Yes.

Q. Why don't we mark -- I'm going to mark two things at once here.

A. At some point early on, the legal



department may have changed that to weekly, so that all of the asset sales happening during the course of that week were included in a single opinion.

Q. OK, why don't we mark these as Exhibit 20 and 21. 20 will be the one with Bates stamp 401 and 783 will be 21.

(Exhibit 20, document Bates stamped RCUCCJSN 11889401 through 11 marked for identification, as of this date.)

(Exhibit 21, document Bates stamped RCUCCJSN 11888783 through 858 marked for identification, as of this date.)

Q. I've marked for you two packages of -- well, I guess they are both really e-mails with attachments which seem to show some of the exhibits you just described.

I also will represent to you, based on our review of the CFDR database, some of the loans identified in the Exhibit As here were eventually repledged at some point to the AFI LOC.

So -- but having looked at this, are these the types of lien releases you just



described in your testimony that were executed in the ordinary course?

MR. ENGELHARDT: Objection to form.

MR. HAMERMAN: Objection to form.

Q. Strike that.

Were these the type of documents that were executed in the ordinary course to effectuate releases of collateral that was pledged to the revolver?

MR. ENGELHARDT: Objection to form.

A. These are examples of the lien releases effectuated in connection with these sales or movements to bilats that were automatically released from the first lien.

The other point I would like to make is what is attached as the exhibit of the assets being released, there is -- there may or may not be primary as the sale may not have included primary. And we decided, I decided early on as we set these processes up, that we would release -- we were tracking assets on the facility. Anything else that was not on a facility was unpledged.

In order to make this operationally



feasible, every time we had a sale, we would produce asset listings that included the primary collateral which would include supporting, but -- well, I don't -- take that back about supporting.

It would include primary collateral and it would include all assets in that sale that were labeled as unpledged. There was no independent investigation because unpledged didn't necessarily mean it was pledged. But we made the determination that we were better off releasing collateral that wasn't subject to the lien because it would have no effect than we were trying to set up even more complicated processes and not releasing liens on collateral that was subject to the blanket lien because that would have consequences.

So the attachments are all of the assets that were in the sale that were primary collateral or unpledged.

Q. OK.

A. And this is, again, this is the release process with respect to those asset sales as to which the revolver automatically

released its interest.
Q. And I'll talk to you about nonautomatic releases in a second, so I understand what that consequence is, but just looking at these then, these, the annex A is the listing by loan numbers of the specific assets that are either primary collateral or unpledged collateral which, as you said, likely but not definitely would have been pledged to the revolver, is that accurate?
MR. ENGELHARDT: Objection to form.
Which annex A are you referring to?
MR. BAUMSTEIN: Both actually.
A. I'm not sure. As with any given sale, I could say the unpledged was likely blanket lien. It could well have been, but I can't make that categorical statement.
Q. Now, earlier in your testimony today, you talked about how CFDR -- that then listings of loans would then be uploaded on a template and then reflected on the CFDR?
A. Yes.
Q. So would there be, with respect to the annex As that are set out here, would



these then be uploaded on a template and then loaded into the CFDR in the ordinary course?
A. Yes.
Q. And am I also correct that that reconciliation takes place within a month of each one of these lien releases being effectuated?
A. There was -- there was always a check at the time the lien release was done because we were getting the collateral lists directly from the business. So we had the final collateral lists. Generally they were the collateral lists that were attached to any sale documentation or that were, you know, kind of the evidence of the sale if you will. So we had that separately from the business unit.
If we were to go into the CFDR and it hadn't been uploaded yet, we would know that. Right. That was really more of a situation with the LOC. But we would know that. We had an independent check and monitored that.
At the end of every month, as part



of the month-end financial processes, there was a -- and the business was to have uploaded on a real-time basis.
At the end of every month, the business would upload its entire asset list and that would go up and then that is what was reconciled to the reporting that was done under the revolver during, you know, it was really the first probably five to eight business days after some of -- everything had been done from month end.
So it would have been within five days if the sale was at the end of the month. It would have been the full month if the sale was at the beginning.
So there were processes in the interim and then there were processes at the end.
Q. I understand. So -- or at least I think I understand.
So initially the business unit would identify with a specific list of loans which loans were to be shown as being released under the CFDR because of sale or



transfer or for whatever other reason, and then at month end, your group would then go in and check that that process accurately reflected the transaction. Is that a fair characterization of what you described?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
A. Not quite. If it was a sale, there was the relationship between treasury and business getting -- the asset list from the business group.
Upon completion of the sale, the business group would upload the template into CFDR and we would execute the lien releases, provide -- we would execute the documentation relating to the indenture lien releases and provide them to the lawyers who would then do their opinions and send that off.
At the end of the month, the businesses would upload the complete listing. That would go into the CFDR. There would be a comparison of the ledger to the -- to what the businesses uploaded to confirm that was the case. The work behind the monthly

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reporting would be done. We would sit down, and it would be myself, when Melissa ran the group, Melissa. When Melissa didn't run the group, just me, perhaps Mike, a structuring person I had as key on this and then the ops people and finance people.

And we would take what was showed as all the collateral on the revolver from the month before and what we had on all the collateral on the revolver that month and we would look to see what the differences were and there should have been a template uploaded to reflect any differences or reductions as a result of a sale because we could tell by just the various categories how the assets and why the assets had moved.

That process was a SOX process as well because -- so we had to identify the risks and controls. So it wasn't just us putting together the processes which were really very robust. It was that.

Q. And this process was undertaken in the ordinary course with respect to every automatic release of collateral during your

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time at ResCap, is that correct?

MR. ENGELHARDT: Objection to form.

A. Yes. One clarification being if it was movement to a bilat that somehow fell under an automatic release -- and I'm not sure that was the case -- the business unit would not have uploaded the template. We would have done that out of treasury.

Q. In that circumstance, would the template have been uploaded in more or less real time?

A. Absolutely.

Q. Were there ever any exceptions to following this procedure?

A. Not that I am aware of. The only exceptions which really aren't exceptions I'm aware of is there was consternation around the timing early in 2008 because sales, agency sales were happening every single day, and so there were some glitches in terms of sometimes it would happen a day or two later, the legal group may have ultimately determined just to do things once a month. But no, this was followed with respect to

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everything.

Q. And just to follow through, as I said, not necessarily all, but at least some of the mortgage loans identified in the two exhibits I just handed you, we have been able to identify as being subsequently pledged to the AFI letter of credit, are you aware of what the process is to have specific loans pledged to the AFI LOC?

MR. ENGELHARDT: Objection to form.

A. Yes.

MR. HAMERMAN: Join in the objection.

Q. What is that process?

A. The process of adding was basically the population of assets we wanted to add to the LOC was determined. If the asset group would have been provided to AFI, so Ally would have agreed that the loans could go on and given us an advance rate associated with that. There would have been a collateral addition notice created and executed.

Upon the execution of that and the addition of the collateral, we would have

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uploaded a template into CFDR which indicated the funding facility to be the LOC. We would also have sent off information to the business unit whom were responsible for the various assets, indicating to them that they were -- these assets were now subject to the LOC, and then that was done real time and the LOC reporting, we had daily reporting requirements. So we always insured that the documentation relating to that was uploaded to CFDR for that day's reports.

Q. Under the AFI LOC, did you just testify that AFI had to approve having collateral added to the LOC? Was that what you just testified to?

A. AFI had to price all of the collateral that went on. And then went on to the LOC in groups. So yes, AFI reviewed and in essence approved.

Q. OK. You talked about this with respect to automatic releases. What are -- what are nonautomatic releases? Could you describe what the process is that was gone through for any nonautomatic release of

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collateral that was securing the revolver?
A. Sure. Those were typically larger sales or sales that for whatever reason didn't fall within the release parameters.
At that point in time, as we learned about the sale, I would send off an e-mail to Ally and -- or maybe it was a phone call to Ally and to Mayer Brown telling them that we had an upcoming sale, giving them the details to the extent I knew it.
We would work with the business units with respect to that sale -- again, to confirm that all of the requirements around fair value were met and there typically were a number of questions that Ally and Mayer Brown would ask.
So once we got everyone satisfied that the sale met the terms of the revolver, Mayer Brown typically -- early on, it might have been Skadden as well -- but Mayer Brown typically would prepare the documentation associated with the approvals and lien releases.
In that documentation typically

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would be the directions to the collateral agent to release the collateral relating to the second and the third liens. Drafts of that would be sent around. Seward & Kissel and, you know, the -- I believe the Wells Fargo business folk were on, but Seward & Kissel really spoke for them, Mayer Brown and Skadden or whomever on our side was representing us would also get copies. I typically would get copies. I'm sure when Mike was doing it and Joe was his manager, Joe would also get copies.
Mayer Brown would prepare the UCCs. The lawyers would be responsible for getting the documentation including the UCCs signed up and those would be filed upon completion of the sale. Occasionally this process would be followed with the more automatic releases simply because the purchaser of the assets wanted evidence that the liens had been released.
With respect to putting new facilities up, which everyone knew we were going to do, that was the same process that

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was followed.
Q. So with respect to the documentation for these larger sales of assets you described, would that documentation include listings of individual mortgage loans to be released pursuant to the sale or sold in that process?
MR. ENGELHARDT: Object to form.
MR. HAMERMAN: Objection to form.
A. Perhaps. We always sent off the lists of the individual assets and a description of what they were. The attachments to the UCC were decided upon by Mayer Brown in -- possibly in consultation with the other law firms involved.
So we would not be involved with what the attachments were. We just would be to the extent we knew it was happening and were monitoring it's happening so we could effectively close the transactions within the firm and then we would upload, of course, the templates or confirm the templates were uploaded to CFDR and the normal process would take place there.

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Q. The templates that you are identifying in that circumstance, those would have individual loan detail, correct?
A. Yes.
Q. Are you aware whether Mayer Brown would have sent Wells Fargo or their representatives individual loan detail for any of these larger sales?
A. I do not know.
Q. Do you know whether -- when you're talking about larger sales, are you talking about sales for which a UCC3 was filed?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Join in the objection.
A. Not necessarily. When I say larger sale, sales, and it's, the bilats, it really means sales or transactions that did not meet the automatic lien release requirements of the revolver.
Typically they were larger sales, but not always. They might be sales of assets that don't fit within a nonordinary course type of sale. So it's not necessarily

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just the larger sales.
And I think I have lost my train of thought so what was your question?
Q. Whether each of these, what I'll call nonautomatic sales was accompanied by a UCC3 at the time of the transaction?
MR. HAMERMAN: Objection, again. Same objection.
A. I think they generally were, but that was not a decision the company was involved with. That was really again run by Mayer Brown and the lawyers associated with the transaction.
Q. Are you aware of any releases or pledged mortgage loans -- strike that.
Are you aware of any releases of loans that had been previously pledged to the AFI revolver that were not supported by an individualized schedule of mortgage loans to be released under the revolver?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to the form.
A. I'm not sure what you mean by

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"supported by." I am not aware of any transaction as to which an individual asset list was not either through the automatic release process attached to the business certificate or with respect to the other process which was not provided to the attorneys.
I am -- I am aware that often, Mayer Brown determined to put text on the UCCs and I don't think they necessarily attached the individual asset list to them. But again that was a Mayer Brown determination.
Q. And if --
A. And not ours.
Q. To the extent that a transaction result was consummated -- strike that.
To the extent that a transaction ultimately resulted in a UCC3 being filed, would any of the releases of collateral in connection with that transaction have taken place and been recorded on CFDR within a month of that transaction?
A. Yes.

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MR. HAMERMAN: Objection.
A. They should have been recorded within a few days. Obviously, the validation process would have happened at the end of the month with the close of the books.
Q. Was there any -- did anyone at ResCap have authority to change the markings of which facility assets were securing absent there being a specific lien release supporting that?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection, objection to the form and to the extent it calls for a legal conclusion.
A. Could you repeat that, please.
Q. Sure, did anyone at ResCap have the authority to change the markings in the CFDR of which facility certain assets secured absent there being a specific lien release with mortgage that identified the mortgage loans to be released?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Same objection.
A. The only method -- and this may

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have changed just before the filing date -- the only means by which an asset could be updated to reflect a sale or a new facility was through the templates.
Q. And does -- are those templates consistent with the documents used in connection with obtaining any releases, mortgage loans under -- that serve as collateral under the revolver?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Join the objection.
A. The data came from the same place. The data was consistent. The template had three to four fields for each asset. Minimally. That -- for each asset for which a template was uploaded.
With respect to the lien releases, again, it would be the same base source for the data having been used, but with the lien releases, we just put on typically the asset number.
Q. I got it. So there is actually more information in the template?
A. Yes. For the loan --

Q. Does ResCap maintain the lien releases in the ordinary course of its business?
A. No. John Ruckdaschel who is an attorney who executed a large number of the lien releases and a paralegal who worked for John, she, as a matter of course, maintained the automatic lien releases in a file and that was provided with the discovery.
She also, as a matter of course, more for John's personal back-up, once it was printed out, she would attach the Fed Ex receipt to it, staple it and throw it in a box. And that box was also provided.
Q. So to the extent there are releases that -- of collateral that was previously identified in the CFDR as being pledged to the revolver, is it your testimony that ResCap has turned such -- all such releases over to it's attorneys for production in this case?
MR. ENGELHARDT: Objection to form.
A. To my knowledge, yes.
Q. And are there any -- to the extent



that assets were previously identified as being pledged to revolver are not supported by a -- an identifiable lien release, is there a basis by which those such loans could have been released absent there being any documentation supporting it?
MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.
MR. HAMERMAN: Objection to form.
A. I think I'm confused by your question. Could you please restate.
Q. Sure, let me take a step back.
A. OK.
Q. There are certain, as you know, the CFDR is -- do you agree that the CFDR contains data on individual loans?
A. Yes.
Q. And those -- that, those loans either identify sometimes primary collateral, sometimes it says unpledged, which I understand is assumed to be secondary collateral but may not be, and sometimes it says AFI LOC as the case may be or some other



facility. Is that right?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
A. That's correct.
Q. We identified certain -- for example, I handed to you certain lien releases that you talked about as being part of the automatic releases and there were lengthy releases there and those identified mortgage loans that I believe in the CFDR were indicated as having previously been pledged to the revolver?
A. At the time this would have been created, each of these asset numbers would have been in the CFDR with a notation that it either was the revolver collateral which was primary or it would have been noted as unpledged.
So this is a list of all assets in the sale that were either revolver or unpledged at the time of its -- the creation.
Q. And in addition to those loans, there were lots of assets that are identified in the CFDR as being pledged, either



unpledged or primary collateral to the revolver, is that right?
MR. ENGELHARDT: Objection to form.
A. That's correct, but they would not have been the subject of this particular sale.
Q. Of course. And then some of those assets, some assets that, over time, by looking at the CFDR, we have identified some loans that have been -- were showed at one time to have been either unpledged or to have been primary collateral and at a subsequent time are shown to be pledged to the AFI LOC. Do you understand that?
A. Um-hm.
MR. ENGELHARDT: Objection to form.
MR. BAUMSTEIN: It wasn't a question. I guess do you understand, that is a question.
Q. In order for a loan to be pledged to the AFI LOC that had been previously pledged to the revolver, is it your understanding that there would have been a lien release identification by loan number

executed with respect to such loan?
A. Yes.
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
A. Yes.
Q. And that's how ResCap managed the lien release process in its ordinary course, is that correct?
MR. HAMERMAN: Objection.
A. The entire conversation, but yes.
Q. Exactly, you would take the release, it would be uploaded through a template, you would then, at month end, make, do your reconciliations?
A. The lien release process --
MR. ENGELHARDT: Is that a question?
A. Sorry.
Q. Is there anything else that you would like to explain about the lien release process?
A. I just wanted to clarify what you just said. The lien release process itself was the matching of the asset list that was



being sold or transferred to a bilat, comparison of that final asset list to determine what facilities from which liens needed to be released or the unpledged assets, and then it was the creation of the business certificates attaching the list of those assets that we determined, using the CFDR, delivering it to the legal group, the legal group sending the e-mail or the fax followed by the Fed Ex to Wells Fargo and to the trustee.
With respect to the nonautomatic sales, the process was really Mayer Brown running it, getting the signatures, doing whatever filing they determined was necessary in conjunction with the other lawyers associated with it. That was the process.
Everything else we discussed was how to insure that the CFDR accurately reflected the happenings and that the business units knew what was happening so that they could continue to let us know and keep us involved as they did things so that we could insure that things were being



complied with.
Q. OK.
A. And to insure we could satisfy our own obligations.
Q. And when you say the CFDR is reflected -- the happenings, those -- if we didn't have the CFDR, could you reconstruct the happenings by looking at the loan releases themselves?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection.
A. I think you could reconstruct it going to the ledger. I think it would be difficult but not impossible to deal with the loan releases themselves.
Q. But that's -- but the loan releases themselves would, in fact, have enough information to figure out what -- what -- if an asset had been pledged and it later moved over, it would show it had been released prior to such repledging, is that correct?
MR. ENGELHARDT: Objection to form.
MR. HAMERMAN: Objection to form.
A. If you had a complete listing of



the lien releases which the collateral agent should have and U.S. Bank also should have because they were always party to them or they were always being sent them, you should be able to, asset by asset, go through and determine every single asset that was released.
MR. HAMERMAN: If you are moving on to the next topic, this is where I will jump off.
MR. BAUMSTEIN: I am. I may have things that touch on it, but I think it is going to be different.
MR. HAMERMAN: Regrettably, I have to leave. I guess the record will reflect that I'm gone at this point. The committee's attorneys, other committee's attorneys are still here.
(Exhibit 22, document Bates stamped RCUCCJSN 10292807 through 808 marked for identification, as of this date.)
Q. I've handed you what has been marked as Farley Exhibit 22 which appears to be an e-mails between you and Sue Bode. Do

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you recognize this document at all?
A. I saw it during my prep.
Q. Is it correct that ResCap did not have the ability to track the value of the revolver collateral in the ordinary course?
MR. ENGELHARDT: Objection to form.
MS. GOODMAN: Objection.
A. That's incorrect.
Q. In the first e-mail you asked Ms. -- I am sorry, you asked Ms. Bode, "Do we know what the value of all the collateral including that covered by the blanket lien is under the revolver"?
A. Um-hm.
Q. Do you know why you were asking Ms. Bode that question?
A. It appears from this e-mail, Monday, June 29, it appears from this e-mail that they were looking to see the aggregate of all collateral covered by the blanket lien including what the primary collateral was.
I knew we could go back into the ledger and construct that which would be possible. Not always an efficient easy

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process, this is being done at the end of the month. So I suspect I was looking to see if they had set up a process whereby that information could be easily and readily obtained.
Q. So is it true that CFDR doesn't allow for the readily ascertainment of the value of all the collateral that supports the revolver, is that correct?
MR. ENGELHARDT: Objection to form.
A. At this point in time, it did not have the ability to break out the blanket lien collateral and its value, as you recall, the CFDR, it had the LOC collateral, it had the revolver primary and supporting collateral. It had unpledged, but what was unpledged was not necessarily blanket lien, and the unpledged collateral, some of the blanket lien assets were not in categories relating to revolver categories.
The grants you saw earlier were some asset groups that we did not get value for on the borrowing base on which we were not primary collateral.

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So some of those particular asset groups at that time, since they were not part of primary or supporting collateral, they were not on any other facilities, they may not have been added at that point to the CFDR.
Q. At that time, how would you have gone about determining all the nonprimary collateral at -- maintained by ResCap?
MS. GOODMAN: Objection to form.
MR. ENGELHARDT: Objection to form.
A. I would have basically taken what I could out of the CFDR, including anything marked as unpledged at that time, I would have gone to the general ledger, looked at the complete asset list including asset level detail.
I would have looked to see if the assets in unpledged and any assets in the ledger which were not reflected in CFDR were covered by the blanket lien. And then I would have looked to the value of those assets as reflected in the detailed back-up to the financial statements.

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MR. BAUMSTEIN: Why don't we take a minute to change the tape.
THE VIDEOGRAPHER: That is the end of tape number 4. The time is now 4:29 p.m. We are now off the record.
(Recess)
THE VIDEOGRAPHER: This is the start of tape number 5. The time is 4:36 p.m. We are now back on the record.
Q. Were all loans maintained by ResCap tracked in the CFDR?
A. As of the time the revolver closed, yes. Loans were there and servicing advances were there.
Q. Was there any circumstances where there would be loans that were not tracked in CFDR?
A. I can't think of any. The only situation might be a timing difference where loans had been originated or purchased and CFDR hadn't been updated during a week or two period.
(Exhibit 23, document Bates stamped RCUCCJSN 10721290 through 304 marked for

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identification, as of this date.)
Q. I'll direct you toward the end, you don't have to look at the whole document, although you're -- there is a fair amount in here. I'm actually going to direct you toward the last four or five pages of this document.
A. OK.
Q. So you can just tell me when you have had a chance to review this.
A. If we are just going to the last three or four pages, I've looked at that.
Q. Do you recognize the document that that's been marked as Farley Exhibit 23?
A. I think we looked at this earlier today.
Q. We looked at -- there are a lot of similarities. It is hard to tell if it was identical, but in the e-mail, it looks like Randy Newman was sending at the end says, "Here is a breakdown Matt found in the CFDR."
Do you see that, the July 17 e-mail on Bates stamped 300?
A. Yes.

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Q. And the first category says "not in CFDR."
A. Um-hm.
MR. ENGELHARDT: Counsel, could you tell me the Bates number, please?
MR. BAUMSTEIN: I am sorry, Bates page 300 and 301.
Q. Do you know what was -- what "not in CFDR" referred to?
A. From the subject, the sale related to charged-off first liens. They would have been removed from CFDR at the point in time that we determined there was no longer any value with respect to those assets, and it would have come off of the accounting and finance records as well.
Q. OK, so essentially, the reason that these are, quote, not in CFDR is that they were marked down for accounting purposes to zero value?
MR. ENGELHARDT: Objection to form.
MS. GOODMAN: Objection to form.
A. That is correct, and there was no longer any work done any of the assets.

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(Exhibit 24, document Bates stamped AFI JSN 0000273 through 280 marked for identification, as of this date.)
Q. One document starting with Bates stamp AFIJSN 273. You can take a moment to review. Just so you know, I'm going to focus on the e-mail from Cecilia Laub dated February 9, 2010 at 9:33 p.m. That starts on page 278, and eventually, I will also ask you a question, an e-mail from April 7 from you.
But I'll start with the Cecilia Laub one from February of 2010. So take as much time as you want though.
Have you had a chance to review the document?
A. Yes.
Q. Do you recognize this document?
A. No.
Q. Having read it, there is the subject makes reference to a BCG intercompany. Do you understand what the BCG intercompany is?
A. I do understand what I think this reference is.

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Q. And what is the BCG intercompany?
A. BCG is a description of the business groups within ResCap relating to the commercial and construction business. It's a generic business label. For a number, a large number of entities within that world. It was very complex because -- let me just preface this by saying whenever -- the BCG world had a combination of properties, loans, joint ventures, the list kind of goes on.
Whenever something went south and it ended up being converted to an REO property or a property owned, there was a new SPE, if you will, created to hold that. And monies within the BCG group transferred ultimately up to the parent, but for -- we had to basically establish a legal means which by which monies could go because you just don't send monies between different entities.
So there was a whole series of intercompanies created with monies flowing up and back between all of the business group -- business -- legal business entities within

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BCG.
So the intercompany refers to the fact that you had all of these intercompany lines in that business unit.
Q. By intercompany, you mean intercompany credits and receivables among these various SPVs and other entities that were part of the BCG group?
A. Amounts paid and amounts owed.
MR. ENGELHARDT: I will give you a little leeway on this intercompany, but I think it is a phase two issue.
MR. BAUMSTEIN: I don't think there is an issue on -- the valuation, we are not getting into a valuation issue here, I assure you. But certainly whether there is a lien on them is part of this case.
MR. ENGELHARDT: I think it is an issue that affects more than just JSNs.
Q. Could you, by the way, looking at the February 9 e-mail from Cecilia Laub, who is Ms. Laub?
A. CeeCee was an individual who worked

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in the ResCap treasury group. She was one of the structuring individuals and I had given her primary responsibility for the international and BCGS banks of the line.
Q. On point one, it says, "The intercompany debt that would not fit with the current definition of excluded debt is strictly caused by our operational (BCG systems) to move cash around various BCG entities."
First of all, do you know what excluded debt refers to there?
A. Excluded debt, I believe, is a defined term within the revolver.
Q. Do you know what the operational constraints were that Ms. Laub was referring to?
A. These were really cash management or, you know, the cash operations constraints. It's the cash system.
Q. By the way, what did you understand excluded debt to be?
A. Without looking at the revolver at this point, I couldn't give you a good

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definition.
Q. Do you want to look at the revolver? Would that help refresh your recollection?
A. Do I want to?
Q. Well, let's see where we go first, we may be able to avoid that. I really want to focus on point 3.
MR. ENGELHARDT: I am sorry, with what page are you on again?
MR. BAUMSTEIN: Page 279.
MR. ENGELHARDT: OK.
Q. It says, "Under our proposed solution," Ms. Laub writes to you among others, "we understand that the rationale for the above restriction is to insure that the intercompany, quote/unquote, lender has encumbered the intercompany receivable in favor of GMAC."
Did I read that correctly?
A. Yes.
Q. Did ResCap understand in February of 2010 that the blanket lien under the GMAC revolver would encumber intercompany

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receivables?
MR. ENGELHARDT: Objection, I will instruct the witness not to answer. I think we need to go and check -- I would like to see the statement of issues as to whether this is covered specifically.
MR. BAUMSTEIN: I would -- well, first of all, I don't think there is any basis to instruct the witness not to answer because she is also here in her personal capacity.
I also think part of the what we were discussing was ways not to have to bring witnesses back more than once so we could ask them questions.
MR. ENGELHARDT: No. What was discussed specifically in court was that the debtors in their electronic production would make -- would include phase two issues in that production.
However, with regard to depositions, because the depositions specifically -- because the intercompany issue could affect the rights of other

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creditors other than the JSNs and those other creditors were not participating in these depositions, those topics were not to be covered in phase one depositions. Those were specifically reserved for the depositions in phase two.

MR. BAUMSTEIN: And I think -- and I'm sure someone will pull it up momentarily -- that for phase one was the existence but not the value of any intercompany obligations that may --

MS. NEWMAN: How does the question of whether the JSNs have liens and intercompany balance differ from the question of whether the JSN have any other assets that --

MR. ENGELHARDT: I would like -- I would like to see the statement of issues first.

MS. NEWMAN: We are having it brought.

MR. BAUMSTEIN: Why don't we go off the record then while we wait.

MR. ENGELHARDT: Sure, if I am

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incorrect, I'm incorrect. I just want to see the statement of issues.

THE VIDEOGRAPHER: The time is now 4:53 p.m. We are off the record.

(Recess)

THE VIDEOGRAPHER: The time is now 5:21 p.m. We are now back on the record.

MR. ENGELHARDT: Counsel, with respect to the issue that you are discussing, I'll allow some limited examination into this document. I will note that whether or not the JSNs have a lien on intercompany claims is a matter of law. So there will be a standing objection that any such questions call for legal conclusions.

I will also note that the witness is not designated as a 30(b)(6) witness on this topic, and in fact, there are no 30(b)(6) topics listed in the notices, I believe, on this topic.

I will not allow any examination or inquiry into the topics of valuation of intercompany claims, and to the extent

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that any of the documents that you show the witness discuss that valuation, I will not allow testimony on those portions of the documents.

MR. BAUMSTEIN: OK. Well, obviously the witness is here in a personal capacity as well which I will point out for the record, I will now ask the court reporter to reread the previous question and republish it in the transcript because I'm sure it has been long enough that no one here to state it exactly.

MR. ENGELHARDT: I would like to apologize to the witness for the extended break and thank her for her forbearance during the past half hour.

(Record read as follows: "Did ResCap understand in February of 2010 that the blanket lien under the GMAC revolver would encumber intercompany receivables?")

MR. ENGELHARDT: I am going to object to the form of the question to the

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extent it reads "ResCap," as the witness is not a designated witness for ResCap on this topic.

Q. You can answer.

A. We understood intercompany receivables to be subject to the lien only if they were part of the collateral that was pledged by the grantor under -- the applicable grantor, there were a number of liens under the PSA and not otherwise subject to an exclusion or prior release.

Q. And Ms. Laub wrote that, "We understand that the rationale for the above restriction" -- and she was talking about a rationale. Did you understand it was an intentional feature for the revolver to create the lien on intercompany claims with respect to guarantor, to grantors or pledgors?

A. No.

MR. ENGELHARDT: Hold on, if I can get a reference on that. I am sorry, I lost the page where you were --

MR. BAUMSTEIN: It was on page 279.

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A. OK.
Q. Did you ever correct anything Ms. Laub said here about her understanding of the rationale -- do you understand what Ms. Laub meant by the rationale for the above restriction?
MR. ENGELHARDT: Objection to form.
A. This was a very complex topic, particularly because the number of BCG entities that were associated with this.
You also have to know that CeeCee was not a native English speaker. So oftentimes her wording was not all that precise, and so I suspect that I did probably correct her.
Obviously, as she is talking in here, she says, "Our proposal is to amend the current definition to include any entity subject to a blanket lien." That's not really a concept. Our proposal was really something different which is more clearly articulated in one of these subsequent e-mails.
So now that being said, I don't

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think -- the restrictions really -- and the conversations in there were -- many were really around the excluded debt, and at what point you could include intercompany in excluded debt. And to my knowledge, the conversations with Ally at that time in August, of these starting that October, had to do with insuring cash was in blocked accounts.
Q. Going to your April 7, 2010 e-mail, on the front of the document, I want to direct you to the second point three that says, "The accounting treatment is changed, the intercompany lines and the Cerberus entities would be reduced to zero so there would be no issue under the revolver."
First of all, did I read that correctly?
MR. ENGELHARDT: Hold on a second.
A. Yes.
Q. Did you understand if intercompany claims were reduced to zero through an accounting process, there would be no intercompany claims subject to the blanket

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lien under the revolver as a result of such change?
MR. ENGELHARDT: Objection to form.
MS. GOODMAN: Objection to form.
MR. ENGELHARDT: Objection to the extent it calls for a legal conclusion and objection to the grounds that it is not 30(b)(6) topic.
MR. BAUMSTEIN: I asked did you understand.
MR. ENGELHARDT: I know. I just want to make my position clear as well.
A. Could you plead please repeat that.
(Record read)
A. The question assumes that the intercompany line was subject to the blanket lien and I don't think that we necessarily agree that it was. We have already talked about that.
If an intercompany line was reduced to zero through an accounting change and there happened to be a blanket lien which there may or may not have been, then the value of that lien would be zero.

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Q. Did you personally have an understanding whether the blanket lien covered intercompany obligations?
MR. ENGELHARDT: Objection to form and objection to the extent it calls for a legal conclusion.
MS. GOODMAN: Same objection.
A. Only if that would have been specified in the GSA and the grantor would have been a grantor or the PSA and the grantor would have been a grantor.
Q. And when you say only if specified, does -- do you understand that an intercompany receivable is an asset?
A. Yes.
Q. And do you understand that -- and we can go to the document there, that the grant of security extends to all assets less excluded assets?
MR. ENGELHARDT: Objection to form. Objection to the extent it calls for a legal conclusion.
A. I'm not --
MS. GOODMAN: Same objections.

A. I'm not sure if the definition of intercompany receivables falls within the definitions you are referring to. I understand it is an asset, lower cased, not defined term.

I can't, sitting here, tell you if that is an asset within the meaning of the PSA and I can't, sitting here, tell you that the intercompanies that we are referring to are owned by parties which gave an interest in their assets.

Q. Would you just go to Farley Exhibit 3 for a moment.

MR. ENGELHARDT: Which document is that, Counsel?

MR. BAUMSTEIN: That's the first priority pledge agreement.

Q. In discussing whether intercompany claims would be an asset, do you agree that if an intercompany claims falls under the definition of assets on page 7, that it would be covered for the entities covered under paragraph -- section 2 on page 7?

MR. ENGELHARDT: Objection to form.



Objection to the extent it calls for a legal conclusion.

MS. GOODMAN: Same objections.

A. Are you looking at subparagraph A?

Q. Yes.

A. I think that it -- this is my interpretation. I think that if an intercompany was owned by borrowers, grantors or the mobile home and the intercompany were same type of asset as described on schedule 6 to this agreement, then it's possible that it would be covered.

Q. Are you thinking specifically the second number three here?

A. In the e-mail you pointed me to.

Q. Yes. Well, I'm now not pointing to the second number three.

By the way, did you understand that the first priority and pledge agreements, that everything that follows "all assets" was meant to limit the scope of the assets?

MR. ENGELHARDT: Objection to form. Objection to the extent it calls for a legal conclusion.



MS. GOODMAN: Join in that objection.

A. I think that is the way I interpret it given there is this long litany of other assets.

Q. OK. Can I just direct your attention to the words that follow "assets" which says "including without limitation." Does that cause you to question whether, in fact, those assets, those lists were not supposed to be limitations on what "all assets" applied to?

MR. ENGELHARDT: Objection to form. Objection to the extent it calls for a legal conclusion.

MS. GOODMAN: Same objections.

A. Not necessarily, but that I think is a matter of law.

Q. New topic so you can put that away.

Were you involved at all in negotiating the cash collateral order?

A. No.

Q. Did you ever have any discussions with anyone concerning the terms of the cash



collateral order as it was being negotiated?

A. No.

(Exhibit 25, document Bates stamped RCUCCJSN 10828362 through 65 marked for identification, as of this date.)

Q. I'm just going to direct you to the e-mail that you wrote here on -- it really is the text is on the third page, but it is dated September 6, 2012 at 5:38 p.m.

A. OK.

MR. ENGELHARDT: I am sorry, what number exhibit is this?

THE REPORTER: That was 25.

Q. Ms. Farley, I want to direct your attention to the middle of your September 6, 2012 e-mail where you wrote, "Periodically, when GMAC/Ally (as our owner) wanted ResCap to change accounting treatment or take some action that would have a negative impact on the revolver, they would, quote/unquote, 'revalue' certain assets on the revolver."

Did I read that correctly?

A. Yes.

Q. What did you mean by that sentence?

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A. We were a wholly-owned subsidiary of Ally, and within the finance group, they reported all the way up through Ally.

If the finance group at Ally determined that they were making some sort of an accounting change, that would impact the ResCap financials, they would obviously have the ability to tell the finance groups reporting up to them that a financial change was necessary.

To the extent that Ally or GMAC -- or GMAC, same thing, determined to make a finance -- an accounting adjustment that then would impact the carry value of the assets on the revolver or something else having to do with the assets that was material would generally have noticed that that was happening through our own finance folk and Ally would typically revalue -- look at the collateral through their trade desk, and they may well revalue so that the advance rates came in higher on those assets and there was not a borrowing base issue.

Q. And how would that negatively

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impact the revolver?

A. Some of the accounting treatments like, for example, when loans moved from HFI to HFS, the value of those loans, the carry value of those loans dropped relatively significantly. In fact, very significantly.

On a stand-alone basis, if you took what that adjustment was going to do to those assets and then multiplied it by the existing advance rates, there would be been a borrowing base shortfall. We knew that was coming.

So that's the type of accounting change that then would create a negative impact because you would have a borrowing base shortfall.

Q. And Ally would direct those things, is that correct?

A. Ally as our parent had ultimate financial control over the workings of the finance department and the interpretations of FAS-B, CBS.

It is not to say within the finance department they didn't have some push-back or

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dialog or things happened within our own finance department that didn't necessarily impact Ally. But Ally needed to be aware of it.

But the situation I'm talking about here is situations where Ally accounting treatments changed. They determined that they wanted a different interpretation of FAS-B, something was coming into play in the accounting world and they would direct its business units, including ResCap, to take that into account.

Q. And what is your understanding why Ally may have wanted ResCap to have taken actions that would have a negative impact on the revolver?

MR. ENGELHARDT: Objection to form.

A. I don't think that Ally was taking actions that would create borrowing base shortfalls because it would create borrowing base shortfalls or have a negative impact.

I think they were taking actions because they thought, from a finance standpoint, that that was the prudent thing

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to do, or in the case of -- there was a very large write-down within the BCG world and that was mandated by the government as a part of their -- the government investment, when Ally received the money from the government in January of 2009.

So I don't think it was intentionally to hurt the revolver, but -- I think that there were consequences.

Q. In the sentence you wrote, you put the world "revalue" in quotes. Is that because you questioned the legitimacy of such valuations?

MR. ENGELHARDT: Objection to form.

MS. GOODMAN: Objection to form.

A. You have to ask Ally what exactly they did whenever they looked at the collateral as they changed their advance rates. We didn't have visibility into what exactly they were doing. We would send them off their tapes and they would come back with numbers.

It's the nature of a borrower to be a bit suspicious in terms of the work that

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was done in terms of valuation and whether or not advance rates were changed independent of valuations. But we don't know -- I don't know exactly what they did. You would have to address that with them.

Q. But you were suspicious?

MR. ENGELHARDT: Objection to form.

MS. GOODMAN: Same objection.

A. It was in our nature to be suspicious.

Q. Why was it in your nature to be suspicious?

MR. ENGELHARDT: Objection to form.

A. We always thought the advance rates were little low. We always thought the valuation was a little bit low, and we were always trying to protect our capital, protect our assets and increase the capital we could get or money we could get for them.

They were always trying just the opposite. You know, that's the natural give and take of a lender and a borrower.

Q. In the penultimate sentence, you said, "I don't recall any revolver debt being

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forgiven. Ally preferred to forgive other debts first because by writing down the revolver debt, the assets securing the debt would more quickly benefit the bondholders."

Could you explain what you were referring to in that sentence?

A. I think I was just responding to the question and giving some context to Heather as to why I don't recall any Ally write-downs.

Q. Why do you believe that Ally preferred to forgive other debts first?

A. At the time I wrote this, I must have been aware of other debt that had been forgiven.

Q. What is the consequence to the JSNs of other debt being forgiven other than the debt under the revolver?

MR. ENGELHARDT: Objection to form and to the extent it calls for a legal conclusion.

MS. GOODMAN: Same objection.

A. To the extent that the revolver was paid -- was -- debt was forgiven on the

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revolver and the collateral was not released, which it very likely would not have been, there would have been -- that there would have been more over collateralization of the revolver debt as a result of the forgiveness, and accordingly, after the revolver was paid off, there would be more assets left to support the payments on the senior and junior bank holders.

(Exhibit 26, document Bates stamped RCUCCJSN 11714493 through 97 marked for identification, as of this date.)

A. I should say, Doug, that note there was a blanket lien there and people were certainly cognizant there were blanket lien assets, but the value of the borrowing base and how we looked at all the collateralization was really associated with the primary collateral and how we reported on that and the blanket lien collateral could be used without restrictions in the normal course of business and the primary could not.

So in essence that was more out of -- reliable or secure collateral for both

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the revolver and the bondholders.

Q. I'm going to direct your attention, really, I guess, to the top e-mail, but if you need to read a little bit more context, I understand as well.

Do you recognize this document, Ms. Farley?

A. I don't remember sending this. I mean -- I have not seen this document.

Q. OK. Do you have any reason to doubt that in October of last year, you sent an e-mail to Bill Tyson?

A. No reason at all.

Q. Do you recall what the issue being discussed here was?

A. It was really, I think, two issues. One just related to the RF -- the population of loans held by RFOC serviced by MCAP, and the second is related to a tax liability that would -- that will come about should an intercompany loan not be paid by the end of this year.

Q. And do you recall what the concern was that you, in the second paragraph --

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let's start with the first paragraph of the top e-mail, you talk about how, with respect to certain funds, about that were at issue, RFC doesn't have the ability to use those funds for other reasons unless both Ally and the bondholders agree. What did that refer to?

A. In order to -- in order for RFOC to avoid this tax liability, RFC would have to pay the amount it owes to RFOC. If it is not repaid by December 31, 2013, taxes of approximately 550,000 dollars will accrue because that lending receivable, if you will, will be converted into a dividend and then taxes will apply. This is an issue that's floated around.

What we did in December of 2012 with respect to the same type of issue, basically, there was an RFC -- RFC owed money to RFOC, the timing requirement was up as of 12/31/2012. The debt would be converted to a dividend, taxes would accrue. What we did was RFC sent out money to RFOC in the amount of the receivable. RFOC, on the next

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business day, sent money in the amount of that paid, the amount paid back to RFC. And that came back as a return of capital. And so it was a cash neutral transaction to RFC. It was a manner by which RFOC did not -- was able to maintain more money because it didn't end up having this tax liability.

So the proposal here was basically -- or what we were discussing is RFC sending money to RFOC out of, you know, U.S. bankrupt cash, the cash in the various accounts, to a nondebtor entity in Canada. And that's really what we were talking about in terms of -- that's what I was talking about. In terms of RFC, to my knowledge, in the bankruptcy scenario last fall could not send money to nondebtor entities in payment of intercompany debt.

Q. Right. And your understanding is that if they were to make such a payment, that would hurt Ally who, at that point, there had been no settlement reached and was I guess in the first lien position and the bondholders by reducing their recovery by

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550,000 dollars?

MR. ENGELHARDT: Objection to form and to the extent it would call for a legal conclusion.

MS. GOODMAN: Same objection.

MR. BROWN: Objection to form.

A. I'm not sure whom it would hurt without thinking about that a little bit more right here.

But basically what it would do is it would reduce the estate by 550,000 dollars because those taxes would be paid and, ultimately, in the RFOC liquidation, the monies coming back up into RFC and into the bankrupt -- into the ResCap estate would be less than 5 -- 550,000 dollars. Whether who it would hurt if this were not paid would really be a legal interpretation of where the money came from.

Q. Well, in the --

A. Or who would be entitled to get it.

Q. In the middle paragraph, you have a proposal and you say that would be cash neutral to ROC, not impact Ally or junior

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bondholders, and increase the eventual return to the unsecured creditors. What did you mean by that?

A. I think that I probably thought that RFOC -- I guess I still think this -- RFOC assets are not assets that are subject to the -- as primary collateral or subject to the blanket lien.

If they are not subject to the blanket lien or part of primary collateral, then the cash would come up into the unsecured creditors silo. It wouldn't impact Ally, wouldn't impact the junior bondholders because it is not assets that you would have otherwise gotten or they would have otherwise gotten.

Q. OK. Then just so I'm -- now I'm a little bit confused. In the first paragraph, you said that RFC is contractually obligated to send the monies related to a sale of pledged assets to a revolver account?

A. I'm probably talking about whatever Bill is doing down here, but let me look.

I know what he is talking about.

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His proposal is basically -- OK, the RFOC assets that were sold, basically the economics of those assets were pledged as primary collateral, and so because they were pledged as primary collateral, the sale proceeds needed to be deposited in the various accounts and ultimately would go to the benefit of Ally and the junior bondholders. OK.

His proposal was let's just carve out the 550 dollars -- 550,000 dollars from the sale proceeds. And so we will send up the sale proceeds related to these loans, include, you know, the economic interest in these loans into the Ally and bondholder accounts, but it will be short the 550,000 dollars, and that way, we will cover the taxes, and that way, everyone is happy, and my response to him is really there are two different things. We can't take the 550,000 dollars out of the sale proceeds. We just can't. That would hurt obviously Ally. It would hurt the junior bondholders and you would actually have to agree to that before

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we could do that.

So this was basically saying can't, can't short the sale proceeds. We have to come about it a different way.

Q. Were you trying to come up with ways that would ultimately benefit the unsecureds but would also result in a potential reduction of the recovery of the secured bondholders?

MR. ENGELHARDT: Objection to form.

MS. GOODMAN: Objection.

A. Not at all. This would be neutral to Ally and the junior bondholders. Ally and the junior bondholders interest was in the assets that were sold, the sale proceeds came through to them.

To the extent that RFOC can maximize its value by not paying taxes which it would not need to pay, then that's good for the estate and the unsecured creditors, but there is no impact on this.

MR. BAUMSTEIN: I have nothing further. I think Ms. Newman had a couple questions she wanted to follow up.

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MS. NEWMAN: I have a few.

MR. ENGELHARDT: I don't understand procedurally how you can do that.

MS. NEWMAN: Are you telling me I can't?

MR. ENGELHARDT: I don't know why you can.

MS. NEWMAN: Why wouldn't I be able to?

MR. ENGELHARDT: You ended your examination. He continued the examination. You are not --

MS. NEWMAN: Well, I didn't intend to foreclose our ability to ask additional questions. I don't know how the prior depositions have been handled. Have they been not doing it --

MR. BAUMSTEIN: I have only been in one.

MR. ENGELHARDT: They haven't been done by this method.

MS. NEWMAN: Are you going to tell us we can't have --

MR. ENGELHARDT: I am not going to

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tell you but I am not going to sit here for another 20 minutes. If you have got a few follow-up questions --

MS. NEWMAN: I don't know what the basis to end the deposition in advance of seven hours and I don't believe we have gone more than seven hours. With all the breaks, so I don't know what the basis would be for you to tell us we are not entitled to our seven hours.

MR. ENGELHARDT: The basis would be is that you concluded your examination. You said you have no further questions. You're done. He had his questions, he is done. That's the end of UMB's examination. That's the end of the ad hoc group's examination.

MS. NEWMAN: Are you taking the position that the ending the deposition and the deposition won't go on for 20 minutes because I think that's something we would have it an objection to.

MR. ENGELHARDT: I said I will allow you to ask questions --

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MS. NEWMAN: Then I think we should stop having this colloquy.
MR. ENGELHARDT: I am going to get the colloquy on the record. I think this is a not the proper way doing it.
MS. NEWMAN: You have gotten your colloquy on the record.
MR. ENGELHARDT: One moment, please.
EXAMINATION BY
MS. NEWMAN:
Q. Ms. Farley, thank you for your time. I think it has been a long day for everyone.
I have a few follow-up questions. The first, were you involved in the negotiation of the intercreditor agreement?
A. Yes.
MR. ENGELHARDT: Objection.
MS. NEWMAN: And you have -- what's the objection to when you --
MR. ENGELHARDT: Withdrawn, withdrawn.
Q. And do you have an understanding of

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the terms of the intercreditor agreement?
A. Yes, I have an understanding of the terms.
Q. I can't remember if you said this earlier today, I apologize if I am repeating myself, were you also involved in the negotiation of the pledge and security agreement relating to the junior secured notes?
A. Yes.
Q. And you have an understanding of the terms of that agreement, is that correct?
A. Yes.
Q. Ms. Farley, are you familiar with the way ResCap operated its business during the 75 days preceding the bankruptcy filing?
A. Generally, yes.
Q. Do you still have schedule 6 in front of you?
A. OK.
Q. Schedule 6 to the -- I am sorry, not Exhibit 6. It was --
A. The preference assets.
Q. Yes, exactly, I think that is it, I

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believe. Great. Would there be any way for me to tell if cash collateral under the revolver was used to fund loan originations during the 75 days preceding the bankruptcy filing?
A. You aren't talking about cash from sale proceeds, you're talking about cash subject -- what -- what cash are you thinking of?
Q. So let me ask you first, would it be possible that cash from sale proceeds -- first of all, is cash from sale proceeds cash from the proceeds of the sale of primary collateral?
A. Yes.
Q. And would it be possible under the terms of the revolver and the pledge and security agreement relating to the revolver for such cash proceeds to be used to fund loan originations?
A. No.
Q. OK. So would it be possible for other cash subject to the security interests of AFI in connection with a revolver to be

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used to fund loan originations?
A. Prior to the bankruptcy, yes.
Q. And if that took place during the 75 days preceding the bankruptcy filing, how would I figure that out?
A. We would basically have to go into the cash system and see where the wires had been sent and we would be able to track it that way.
Q. Would that depend on determining which deposit accounts the cash used to fund the originations was derived from?
A. It would be easiest if we knew the dates and the amounts. But we have cash records that show every withdrawal from every account and so I think it would be possible to go into the cash management system on a daily basis and look at all of the accounts and see the monies which came out of each account and to where they had been sent. And based on that information, you could probably tell.
Q. OK. And based on your understanding of the way in which the debtors

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operated their business in the 75 days preceding the bankruptcy filing, is it likely that loan originations were funded with this type of cash collateral that we are talking about now?

MR. ENGELHARDT: Objection to form.

MS. GOODMAN: Objection to form.

A. It's likely that the fundings occurred out of accounts with collateral, the control agreements on them. And whether or not those particular accounts were subject to the blanket lien is something, you know, I can't really say right now.

But under the revolver, we were allowed to use all cash except for sale proceeds for business purposes. And this clearly was an ongoing business purpose.

Q. Would there be a source for these loan -- for loan originations that occurred in the 75 days preceding the bankruptcy filing other than deposit accounts that were subject to control agreements in favor of AFI in connection with the revolver?

MR. ENGELHARDT: Objection to form.

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MS. GOODMAN: Objection to form.

A. We would be able to tell when loans were originated by going into the origination systems and the servicing systems of the various businesses.

Once loans were originated, they were also put in the general ledger, they would have been uploaded to the CFDR. There would have been an origination date associated with them.

Q. My question is just was there another source of funding other than the accounts that were subject to control agreements in favor of AFI?

A. I am not sure if the BMMZ facility would have been used for that or not. But other than that particular facility, I think everything likely came out of the accounts. the accounts subject to collateral control agreements which were not the sale proceeds accounts.

Q. OK. Looking now at schedule 6, number 4 on the summary page, it lists approximately 14 million dollars of REO. And

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I think we discussed earlier that REO is real property that ResCap acquires as a result of foreclosure, is that correct?

A. Yes.

Q. Would there be any REO coming into the estate in the 75 days preceding the bankruptcy filing as a result of something other than a foreclosure?

MR. ENGELHARDT: Objection to form.

MS. GOODMAN: Objection to form.

A. I can't think of one.

Q. Now I want to ask you a question about the loan modifications we talked about earlier and we talked a little bit about how I would try to figure out, based on the debtor's information, whether a loan with a new ID number is a modification. Do you remember having that conversation?

A. Um-hm, yes.

Q. Is there any identifier associated with a modified loan that would be the same as the loan identifier associated with the loan that was modified?

A. I'm not sure.

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Q. OK. Again, it is hard for me to understand what's really associated with this because I'm not that familiar with the CFDR. But if I were going to try to figure out if a new loan ID was the result of a modification, how would I tell someone how to do that?

MR. ENGELHARDT: Objection to form.

A. Using the -- in the CFDR, if you can explain it.

MS. GOODMAN: Same objection.

A. I think there is probably an identifier of some sort or something that links it back in the CFDR. I'm not sure what that is. But if there is something there, you could look up -- you could do a sort, really by that identifier. If it is not in the CFDR, I would expect that there would be something in the business unit, probably the servicing systems that would create a link or perhaps the origination system. At the time of the modification, the servicing system was updated for the new terms of that loan by -- I think there may be something there as well.

Q. What is the servicing systems?

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A. Each business group has its own or had its own systems that all fed in in various ways, shapes and forms to the ledger and to CFDR. The servicing systems would be the systems used by the servicing groups that serviced the loan.

There were different servicing systems and there were different groups within ResCap that serviced assets. That could be determined by the loan number.

MS. NEWMAN: OK. Stefan, we are going to request the facilitation of another conversation between Zolfo Cooper and Ms. Westman to try to figure out how we would acquire or access this information and we will follow that up with a written request.

MR. ENGELHARDT: Certainly.

MS. NEWMAN: Now that is all I have. And Ms. Farley, thank you again for your time today.

THE WITNESS: You're welcome.

MR. ENGELHARDT: Anybody else?

MS. GOODMAN: I have some

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questions.

MS. NEWMAN: I did not realize the committee was going to ask questions, so I will have to reserve my right to ask some questions in response to any questions that are asked.

MR. ENGELHARDT: I don't think you have to reserve your right to do that, I agree you would be entitled to do that so long as it is within the scope of the committee's examination.

MS. NEWMAN: Great.

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EXAMINATION BY
MS. GOODMAN:

Q. It is Alissa Goodman from Kramer Levin Naftalis & Frankel on behalf of unsecured creditors committee.

Earlier this afternoon, Ms. Newman showed you Farley Exhibit 10 which is a copy of the creditors committee complaint and the schedules to that complaint. Do you remember that?

A. Yes.

Q. She also asked you some questions about the committee's complaint and those schedules. Do you remember that?

A. Yes.

Q. And I think that you testified earlier that you had never seen the committee's complaint before, correct?

A. Except for the last two days.

Q. And until the past two days -- and I assume you are referring to your preparation for your deposition?

A. Yes.

Q. You also had never seen the

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schedules attached to the committee's complaint, correct?

A. That is correct.

Q. Ms. Farley, you were not involved in preparing the committee's complaint, correct?

A. Correct.

Q. You were also not consulted by the committee or any of its advisors when they were drafting the committee complaint, right?

A. Correct.

Q. And you were not involved in preparing any of the schedules to the committee complaint, correct?

A. Correct.

Q. You were also not consulted by the committee or any of its advisors when they were preparing the schedules to the committee's complaint, correct?

A. Correct.

MS. NEWMAN: I want to clarify, for the record, you are asking in an individual capacity, not as a representative of ResCap?

MS. GOODMAN: Yes. Or any capacity.
Q. You personally were not consulted, correct?
A. Correct.
MS. NEWMAN: I guess my question when you is say you, your question is Ms. Farley, correct?
MS. GOODMAN: Yes.
Q. And Ms. Farley, you do not know what the committee or its advisors looked at in preparing the committee's complaint, correct?
A. Correct.
MR. BAUMSTEIN: Objection.
Q. And you also do not know what the committee or its advisors looked at in preparing the schedules to the committee's complaint, correct?
MR. BAUMSTEIN: Objection to form.
A. Correct.
Q. You did not have any discussions with the committee members or the committee's advisors regarding the preparation of the



committee's complaint, is that correct?
MS. NEWMAN: Objection.
MR. BAUMSTEIN: Objection to form.
A. Correct.
Q. And you also did not have any discussions with the committee members or the committee's advisors regarding the preparation of the schedules to the committee's complaint, is that correct?
MS. NEWMAN: Objection.
MR. BAUMSTEIN: Objection to the form.
A. Correct.
Q. So when you were answering Ms. Newman's questions earlier today about the committee's complaint and the schedules to the committee's complaint, you were speculating, correct?
MS. NEWMAN: Objection.
MR. BAUMSTEIN: Objection to form.
A. I don't recall what all the questions were. But I suspect that it was based on my review here and my knowledge of the business and some speculation, yes.



MS. GOODMAN: No further questions.
MS. NEWMAN: I have nothing in response.
MR. BAUMSTEIN: Nothing. Thank you very much, Ms. Farley.
MR. ENGELHARDT: Thank you.
THE VIDEOGRAPHER: That concludes the video record for today. The time is now 6:15 p.m. We are now off the record.

_____
TERESA RAE FARLEY
Subscribed and sworn to
before me this day
of MO , 2013.

_____



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CERTIFICATE

STATE OF NEW JERSEY )
)ss:
COUNTY OF UNION )

I, MARY F. BOWMAN, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within and for the State of New Jersey, do hereby certify:

That TERESA RAE FARLEY, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 18th day of September, 2013.

_____



* * *ERRATA SHEET* * *

NAME OF CASE: In Re Residential Capital LLC
DATE OF DEPOSITION: September 18, 2013
NAME OF WITNESS: Teresa Rae Farley
Reason codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page ____ Line ____ Reason____
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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

DEPOSITION OF CONOR BASTABLE
November 1, 2013
New York, New York
9:42 a.m.

Reported by:
ERICA L. RUGGIERI, RPR, CSR, CLR
JOB NO: 32297

Yellow Highlighting = JSN Designations
Pink Highlighting = Plaintiff's Designations
Orange Highlighting = Joint Designations

November 1, 2013

9:42 a.m.

Deposition of CONOR BASTABLE, held at the offices of Curtis, Mallet-Prevost, Colt & Mosle, LLP 101 Park Avenue, New York, New York, pursuant to Notice, before Erica Lynn Ruggieri, RPR, CSR, CLR and Notary Public within and for the State of New York.

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ALSO PRESENT:

TRAVIS TROYER, Davidson Kempner

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

BASTABLE

C O N O R B A S T A B L E, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. WALSH:

Q. Good morning. Could you state your name for the record.

A. Conor Bastable.

Q. Good morning, Mr. Bastable. You understand, Mr. Bastable, that you are attending this deposition as both an individual and also as a corporate representative for the Davidson Kempner companies, correct?

A. I do.

Q. And you have been selected as well as the corporate representative on select topics that were addressed to the ad hoc group. Do you understand that as well?

A. Yes, I do.

Q. When I refer to the ad hoc group you understand that that refers to the ad

hoc group of junior secured noteholders --

A. Yes.

Q. -- in this case?

Have you ever been deposed before?

A. I have.

Q. Just a few ground rules for my benefit and the court reporter's. Let me finish my question before you give your answer. I will try to do the same. If at any point you don't understand my question, let me know and I'll rephrase. If at any point you need to take a break, just let us know. I only ask that you finish the answer to my question before we take a break.

A. Sure.

Q. Mr. Bastable, can you start with your educational background.

A. Yeah. I went to undergrad at Princeton University. Graduated in 1995 and business school at Harvard Business School. I graduated in 2002.

Q. Where did you go to work after

Harvard?

A. I joined Davidson Kempner.

Q. In what position?

A. As an associate in their distress investments area.

Q. And can you just briefly overview your promotion or positions?

A. Yeah. From 2002 to 2007 -- sorry, excuse me. From 2002 to 2005 I was an associate there. From 2005 to the end of 2007 I was a managing director. And since two thousand, the beginning of 2008 I have been a partner at the firm.

Q. Is Davidson Kempner a hedge fund for lack of a better word?

A. Yes.

Q. And how many funds are under the Davidson Kempner name?

A. As a legal matter, there's, I believe, nine funds but there's really three different strategies, I guess, that we would invest in.

Q. Can you give us an overview of those three investment strategies?

A. When I say three investment, we have a large multistrategy fund that invests in a variety of different strategies, including distressed, equity long/short, convertible arbitrage, risk arbitrage. Then we have a distressed only fund that invests in distressed opportunities. And then we have two sort of longer duration funds that also pursue opportunities in the distressed space.

Q. Which of those fund areas are you employed?

A. I oversee the distressed or one of three portfolio managers who oversees the distressed component of the multistrategy fund. And then I am one of the three portfolio managers who is directly responsible for managing the distressed only funds that I mentioned.

Q. Would you give us the name of the multistrategy funds and then the names of the distressed only funds?

A. Yeah. There's -- well, entity wise, I may not be stating these, the

exact legal names. There's four funds in the multistrategy fund: MH Davidson & Co., Davidson Kempner Partners, Davidson Kempner International, Limited, and Davidson Kempner Investment Partners, I believe. So those are the four primary funds that invest in -- that are part of the multistrategy fund.

Q. Would you give us the name of the funds that are involved in the distressed strategy?

A. There's basically. Reason these exist, there's onshore/offshore funds. So there's an onshore distressed opportunities fund and then an offshore distressed opportunities fund. And then similarly for longer duration funds it would be the same thing, where there's an onshore and an offshore fund for each of those.

MR. RENENGER: I'm just going to interject here to designate this deposition confidential under the protocol.

BASTABLE

Q. Would you just go through the names of the funds for the distressed area.

A. One would be these may not be -- we can get the exact legal title but the Davidson Kempner Distressed Opportunities Fund, LP, Davidson Kempner Distressed Opportunity, Limited, would be the two distressed funds. And then similarly for what we call our drawdown funds, it would be Davidson Kempner Long-Term Distressed Opportunities Fund, LP, and similarly named fund, which is I think an Ltd. or another offshore entity.

MR. WALSH: Let me mark a few exhibits, including our deposition notices.

(DK Exhibit 1, deposition notice, marked for identification, as of this date.)

(DK Exhibit 2, deposition notice, marked for identification, as of this date.)

Q. Mr. Bastable, I have handed you

DK-1 and DK-2. Do you recognize those as the deposition notices under rule 30(b)(6)?

A. I do.

Q. And we will go through this in a little bit more detail. But am I correct, sir, that you are the witness that will address topics in each of these notices. With respect to the ad hoc group, we have identified the specific topics.

MR. RENENGER: The exhibit you handed out for the ad hoc group has all 45 topics on it.

MR. WALSH: Right. If you look at page 2, you'll see Mr. Bastable is designated, per our discussions with counsel for topics 21, 22, 23, 34 and 35.

Q. And you understand, Mr. Bastable, that you are here today to testify as a corporate witness for the ad hoc group for those topics?

A. I do.

Q. Can you tell us what you did to

prepare for today's deposition, please?

A. Yeah. I would have spent time reviewing certain documents related to the case. I spent time consulting with counsel. And I spent some time in, having discussions with several colleagues of mine who would have worked on the ResCap matter.

Q. Let's start with the documents. Do you recall which documents you reviewed in preparing for today's deposition?

A. Well, I prepared -- you know, we reviewed a number of the documents that I believe were delivered as part of the discovery relating to this deposition. And then I would have reviewed, you know, the PS -- the PSA I think was included in that and, you know, several other documents. I believe I looked at the summary of the examiner's report in the case. And probably a few other documents.

Q. When you refer to the PSA, that's the plan support agreement?

A. That's right.

BASTABLE

Q. And that's the plan support agreement from May 2012?

A. Yes.

Q. Did you have an opportunity to look at the security agreement that was prepared in connection with the notes?

A. I did not review that in advance of this discussion.

Q. Have you reviewed any of the filings in the case besides the examiner's report in preparing for today's deposition?

A. I looked at the ad hoc group's plan objection and then there were -- I think there were a couple of other filings that we looked at in preparation for the deposition.

Q. Do you recall which?

A. Not specifically. I mean, we were looking at, yesterday we were looking at, you know, something that was filed in association with the sale of the, both the servicing and HFS assets. You know, I don't remember exactly what number on the

docket it was. But it was items like that.

Q. You also mentioned that you met with counsel. Is that Mr. Renenger?

A. Yeah. Mr. Renenger, Mr. Uzzi, and those were the two primary.

Q. And when was that?

A. That was two days ago.

Q. And how long did you meet?

A. Probably met for three hours.

Q. Anyone else in attendance?

A. Yes. There was three of my colleagues were there at various points. Sara Tirschwell, Kunal Shah and Ephraim Diamond. Those are the three individuals at DK who would have been involved in the ResCap transaction most directly. In addition, at one point Dan Groper from Aurelius Capital Management joined for a period of time.

Q. Anyone else?

THE WITNESS: You were there. And that's I think it.

Q. You are referring to Erin?

A. Erin, yeah.

Q. Was anyone from Houlihan in attendance?

A. No.

Q. Were there any other meetings in connection with this deposition besides the one 2 days ago, any other meetings with counsel?

A. There were no other actual meetings, no.

Q. You referred to discussions with people within DK, the same people you mentioned would have attended?

A. Yeah, it would have been those three.

Q. When would that have occurred?

A. We would have had conversations on Tuesday.

Q. On Tuesday. And what was discussed in those meetings?

A. It was, you know, general issues relating to what we were going to be -- what I was going to be addressing in the deposition.

BASTABLE

Q. Did you review the topics in the 30(b)(6) notice?

A. Yes.

Q. Did you review any documents with your colleagues at DK?

A. We did in conjunction with the meeting on Wednesday. Not separate from that.

Q. Did you review any e-mails, historic e-mails with your colleagues in connection with your deposition?

A. Sorry, let me -- just to be clear, we did meet -- I guess we did meet this morning prior to this depo.

Q. I'll include that as well. Going back to the meetings with people at DK, did you review any historic e-mails?

A. We did.

Q. Do you recall which e-mails?

A. There was a number of e-mails. Most of which you probably would have.

Q. Let me ask you about the document collection. Were you involved in the document collection in response to our

document request?

A. Not directly, no.

Q. How were you involved?

A. Well, I wasn't really involved.

Q. Do you know who was involved in that collection?

A. Yeah.

Q. Who was that?

A. Travis Troyer who is here today.

Q. And I'm sorry, the last name is Troyer?

A. Troyer, yeah.

Q. Did Mr. Troyer collect your documents in connection with that document collection?

A. He did.

Q. How did he go about doing that?

A. I believe he did it by scanning, primarily scanning e-mails and collecting hard copies of documents that we would have delivered to him.

Q. And do you know if he did that for other people who worked on the ResCap matters?

A. He did.

Q. How many other people?

A. Well, I'm sure he did it for the three people I mentioned before. An e-mail would have gone out to a broader group, which probably would have included the other partners in the distressed group, specifically Tony Yosilov and Avi Friedman. I'm not sure if anyone else would have received anything. But the idea obviously would have been to collect any documents we would have had relating to ResCap.

Q. And all of those documents were delivered to counsel?

A. Yes.

Q. For their review and production?

A. Yes.

Q. Do you recall roughly how many documents were produced to counsel?

A. I don't.

Q. Do you use Bloomberg messaging at DK?

A. Occasionally.

Q. Did you use it in connection with ResCap?

A. I don't recollect.

Q. Let me ask you, when did DK first become involved in ResCap?

A. We have been involved in ResCap since, I believe, 2009.

Q. How did that happen?

A. You know, following the financial crisis ResCap and at that time what was GMAC were in financial distress and as a result securities that they had issued started trading as a discount. And the primary -- one of the primary strategies of our firm is to look at and invest in distressed corporate bonds. So as result, we started to do work to understand what was going on in the combined kind of ResCap GMAC corporate entity.

Q. Had DK invested in any ResCap securities prior to that time?

A. No.

Q. How did DK initially invest in

ResCap?

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

MR. WALSH: Let me rephrase.

Q. What was DK's first investment in ResCap?

A. I'd have to go back and get the specifics but at various points prior to the petition date we would have owned both unsecured bonds issued by ResCap and junior secured -- and the so-called JSNs.

Q. And when we refer to JSNs, you understand that to be the 9 and 5/8ths notes that are at issue in this case?

A. That's right.

Q. So if I refer to them as JSNs throughout the deposition --

A. Yes.

Q. -- you understand what I mean?

A. Yes.

Q. Roughly when was your first investment in JSNs?

A. I'm going to say we were first involved in them sometime in 2011. We

JSN Objection 21:6–23:13 FRE 402 (Not relevant)

would have that information. I'm not sure that -- I don't remember the exact date, but it would have been, I think, in 2011.

Q. Do you recall the amount of JSNs that you purchased, that DK purchased at that time?

A. Our initial investment would have been relatively small, which is, you know, order of magnitude might have been 10 or 20 million face value. It may have been early 2012.

Q. So either late 2011, early 2012. And do you recall what price you paid?

A. I believe the initial purchase would have been around $0.65 on the dollar.

Q. And were there any subsequent purchases of JSNs by DK?

A. Yes.

Q. What were they?

A. Again, a combination of JSNs and unsecured notes.

Q. And when were they, when were these purchases?

A. We would have made significant additional purchases of JSNs throughout the first half of 2012. And then at that point I think we owned a small amount of unsecured notes. And then our position -- our position may have moved around a little bit after the company filed for bankruptcy but has remained somewhat constant, although there has been some trading activity in addition. And more recently we did increase our exposure on the unsecured notes.

Q. I'm going to show you some of the Rule 2019 statements that are filed in the case. You are familiar with those documents?

A. Yes.

MR. WALSH: This will be DK 3.

(DK Exhibit 3, verified statement of White & Case, marked for identification, as of this date.)

Q. Sir, if you turn to the first page on corrected Exhibit A, that's page 3 of the document. You'll see a reference

to Davidson Kempner Capital Management, LLC?

A. Yes.

Q. Does that accurately reflect the holdings of notes, JSNs, as of June 11, 2012?

A. It does.

Q. And is Davidson Kempner Capital Management, LLC, for the funds you discussed earlier?

A. Yes, it is. Correct.

Q. Do you recall, roughly, the breakout of fund's holdings of the 115 million of notes that are reflected here as of this time?

A. All of these notes would have been held in funds that are under our, what I described before as our multistrategy fund. I wouldn't know the breakdown. However, the allocation would simply be based on the relative size of each of those funds.

Q. Do you recall if there were any sales of JSNs prior to this date, June 11,

2012?

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

Q. Were there any sales of JSNs?

A. I do not believe that there were prior to this date.

Q. Has DK or any of DK funds ever sold any of the JSNs that it holds?

A. I would have to look. It is possible that we have, although I'm not sure that we have actually sold them.

Q. What information did DK review in connection with its initial investment of JSNs?

A. At the time, we would have relied on public financial information. You know, ResCap filed 10-Ks and 10-Qs. We would have used that information. We would have reviewed whatever public information was available with regard to the notes themselves including, you know, evaluating the security package associated with those notes. We would have looked at other debt instruments in the company's

capital structure. We would have obviously evaluated what we thought was likely to happen to ResCap over the subsequent period of time. We would have been aware that there was some risk that ResCap might be forced to file for bankruptcy. And we would have evaluated the implications of that.

Q. You said you would have evaluated the security package. What did you mean by that?

A. Meaning that there would be -- there would have been some amount of public information related to the JSNs, including the collateral that was associated with those notes, you know, what entity obviously issued the notes, what entities were guarantors on the notes. And we would have used that to inform our investment decision.

Q. What was DK's understanding of the collateral that was secured by these notes?

A. Well, we knew that there was a

direct -- there was direct blanket security lien that the notes were entitled to. We also understood that there were intangible assets that were part of the company's collateral package. We believed that there were intercompanies that existed between various entities within ResCap and that the notes were potentially, could be potentially beneficiaries of that from a collateral perspective.

Q. What do you mean by that, intercompanies?

A. Meaning it's very typical in a large corporate organization that has various entities that there would be money flowing back and forth between those entities. And it would not be unusual for a secured creditor to take a lien over those to ensure that if money left one of the entities that we were a direct guarantor from or the entity that was our borrower, that we would still have a claim on that value.

BASTABLE

Q. Were you aware that a noteholder actually had a lien on intercompanies at ResCap, JSN noteholder?

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

Q. And were you aware of that at the time of the purchase?

MR. RENENGER: Same objection.

A. I would have to go back and look at our analysis at that time. So I don't recollect what exactly we were aware of when we made our initial -- when we made our initial purchase.

Q. When you say you'd have to go back and look at your analysis, what are you referring to?

A. We would have prepared an investment memorandum. And some of the individuals who would have worked for me might have done other work to evaluate the investment opportunity.

Q. Did you look at that investment memorandum in connection with this deposition?

A. I don't know if I went back and looked at that one specifically. There would have been a number of different -- a number of different types of material prepared during the time that we were invested in securities of ResCap. I believe I did go back and look at some of that material.

Q. Did DK prepare an investment memorandum for each of its purchases of JSNs over the time period?

A. No.

Q. Did it prepare more than one investment memorandum?

A. Yes.

Q. Do you recall how many?

A. I don't.

Q. More than two?

A. Probably, yeah.

Q. What type of information is discussed in the information -- I'm sorry -- in the investment memo? What is the review?

A. The review would be the

individuals I described before, Sara Tirschwell, Kunal Shah, Ephraim Diamond would have put together this memo which would be, you know, a number of pages in length outlining the investment opportunity, specifically addressing some of the things we talked about before, financial analysis, security package, other relevant considerations relating to the investment. And that would be presented to myself, Tony Yosilov and Avi Friedman, who were the three portfolio managers for the strategy.

Q. Do you recall any of the investment memoranda with respect to ResCap specifically mentioning intercompany balances as part of the collateral?

A. I don't. But I believe at some point that those would have been included in the analysis that was provided.

Q. At which point?

A. I would have to go back and look.

Q. Do you know if it was 2012 or 2013?

A. It would very likely have been 2012.

Q. Do you recall if it was the beginning of 2012 or the end of 2012?

A. I don't recall.

Q. What other collateral was considered by DK in connection with its initial investment of JSNs?

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

A. Would you like to repeat.

Q. Yeah, I'm happy to. You mentioned that one of the pieces of the analysis was an analysis of the collateral and you mentioned the intercompany balances. What other collateral was considered by DK in connection with its initial investment of ResCap JSNs?

A. We would have considered the direct collateral that we believe the JSNs were entitled to, which was, again, our read of the documents at that time would

have led us to conclude that we had, you know, a blanket lien, although which was subordinated to an ally revolver over the vast majority of the assets of ResCap. And that analysis would have been done to evaluate the asset coverage on the JSNs.

Q. Anything else?

A. Not that I specifically recollect at that time.

Q. We were looking at the 2019, and listing for DK is 115 million of notes. That's face value I presume?

A. Yes.

Q. Do you recall if these funds are proprietary accounts of DK or if they are held for investors?

A. No, they are held for investors.

Q. All of the funds are held for investors?

A. Yes -- yeah, all of the funds at least in part. And in most cases in their entirety are held for investors.

Q. And when I say all of the funds, I'm referencing all of the DK funds?

A. That's right.

Q. And I assume the same answer for all of the DK funds that specifically invested in JSNs?

A. That's right.

Q. They are held for investors?

A. That's correct.

MR. WALSH: Next exhibit.

(DK Exhibit 4, Rule 2019 statement, marked for identification, as of this date.)

Q. Mr. Bastable, are you looking at the 2019 that is docket entry 488? Do you see that at the top?

A. Yes.

Q. Do you recognize this as the Rule 2019 statement filed by the ad hoc group in June of 2012?

A. Yes.

Q. If you turn to page 1, page 3 of 9, is it correct, you'll see at the top of the page it references to page 3 of 9.

A. Yes.

Q. There was no increase or

decrease in the holdings of DK and JSNs from the prior 2019?

A. This is as of the same date as the prior one so.

Q. Just a correction as with respect to other holders; is that right? If you turn to the back of the page, there's other ones that have been corrected.

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

A. Yeah.

Q. For example, page 7.

A. Yes.

Q. Did you have any involvement in the preparation of these Rule 2019s?

A. No.

Q. Do you know if anyone at DK provided the information to counsel to prepare these 2019s?

A. Yes. Someone would have provided that information.

MR. WALSH: I'm going to mark the next two DK 5 and 6.

BASTABLE

(DK Exhibit 5, May 7, 2013 2019, marked for identification, as of this date.)

(DK Exhibit 6, May 17, 2013 2019, marked for identification, as of this date.)

Q. Sir, I have given you the 2019s from May 7, 2013, and May 17, 2013. Just quickly, if we look at page 4 of 6 of DK 5, it reflects holdings by Davidson Kempner Capital Management, LLC, of 157 million of notes. And just to jump ahead, it appears that shortly after that the ad hoc group submitted, this is DK 6, page 4, a second 2019 reflecting an increase in the value of the DK holdings to 191 of notes.

A. Right.

Q. Was there an increase in value of the two dates or was the initial report inaccurate?

MR. RENENGER: I'm going to just object that this is beyond the scope of the 30(b)(6) topics. I'll give you

a little bit of leeway. The topic in the notes have to do with decisions made in 2012 and now we are in 2013.

MR. WALSH: This will be quick.

Q. I just want to find out what your holdings were.

A. I'm sorry. The only thing I'm looking at is the May 2, 2013, report that has the 157 million.

Q. And was that the holdings of DK at the time?

A. I believe so.

Q. And then if you look at the next document, which is May 17th. It's DK 6.

A. I have the same document twice.

Q. Page 4 reflects 191 million face value notes?

A. Right.

Q. Was there an increase in value over the week period?

A. No.

Q. So as of May 2013 DK's holdings of JSNs was approximately or was 191 face value, 191 million face value?

A. Yes.

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

Q. Has Davidson Kempner increased its holdings of JSNs since May of 2013?

MR. RENENGER: Again, object as beyond the scope. Go ahead.

A. I believe we were about to file an additional 2019. I think the number has maybe increased very modestly, although I'm actually not sure. It is very close to this figure.

Q. Going back to 2012. You said the initial investment in JSNs was late 2011, early 2012. When did DK first become involved in the ad hoc group as it relates to the JSNs?

A. That would have been in the spring, late spring of 2012.

Q. And how did DK become involved in the ad hoc group?

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

A. The ad hoc group would have

formed as a result of a number of large or a low number of JSN holders becoming increasingly concerned about the prospect of ResCap having to file for bankruptcy. It's very common in our market that holders would at that time retain counsel and begin to work in what is typically called an ad hoc group. And we would have gone out, and likely there was conversations probably with a couple different law firms, I don't recollect who else we spoke to at the time other than what was, would have been White & Case. And a decision was made to hire, to retain White & Case as counsel to the ad hoc group for purposes of representing us in the scenario that the company would file for bankruptcy or that there would be other out of court discussions.

Q. When was that decision made to hire White & Case?

A. I would estimate in March or April of -- March or April of 2012. But that would be someone could provide that

information to you. I'm sure there's a --

Q. DK-6 is previously marked as PX 355. This is the Houlihan engagement letter.

MR. RENENGER: Would it be DK-7?

MR. WALSH: DK-7.

(DK Exhibit 7, Houlihan engagement letter, marked for identification, as of this date.)

Q. Do you recognize this document?

A. I do.

Q. And this is dated February 17, 2012. Does that refresh your recollection roughly --

A. Yes.

Q. -- when White & Case was hired?

A. Well, this is obviously Houlihan Lokey, but this retention letter relates to Houlihan Lokey but White & Case is referenced here. So I would have assumed we would have retained them prior to this call.

Q. Do you recall how much earlier White & Case was retained?

BASTABLE

A. I would imagine it was in the month prior to this. So we will call it either early February or late January of 2012.

Q. If you flip through the signature pages at the end, it starts at page 11 of 25, are the entities that are identified in the signature pages from page 12 through, I guess they are the same on each page, page 12, for example, the entities that are involved in the ad hoc group?

A. As of this date, yes.

Q. You see that Davidson Kempner is one of the members?

A. I do.

Q. Was Davidson Kempner one of the first members of that ad hoc group?

A. Yes.

Q. Were all of these entities the first members of the ad hoc group?

MR. RENENGER: I'm going to object to the form of the question. And just say there's another page with

other members on it. If you look at page 18 of 25, for example.

A. I was going to say the group that I recollect included a broader group. Now that I'm looking at the subsequent signature pages, this, I think, covers all the initial members of the ad hoc group.

Q. Just for clarity, would you just list out the members as of this time period?

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

Q. You can do it quickly.

A. The signature pages?

Q. Yes.

A. AllianceBernstein, LP; Appaloosa Management, LP; CQS Global Services, Limited; Davidson Kempner Capital Management, LLC; Loomis, Sayles & Company, LP; P. Schoenfeld Asset Management, LP; Paulson & Co., Inc.; Pentwater Capital Management, LP, Silver Point Capital, LP; York Capital Management Global Advisors, LLC.

BASTABLE

Q. Thank you. Was there any written document with respect to the ad hoc group? Was there a charter, for example?

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

A. No. I don't believe there was a charter, as you would describe it.

Q. Any document that reflected the relationship amongst the ad hoc group?

A. There would have obviously been an engagement letter with White & Case and that might have provided for some governance as it were. I don't think there was anything specifically along the lines of what you are describing.

Q. With respect to the decisions that the ad hoc group made, was there any written document regarding how decisions would be made?

MR. RENENGER: Are you referring to any particular point in time?

MR. WALSH: At this time period. Early 2012.

A. Not that I recollect.

Q. At any later point?

A. I don't believe so.

Q. How were decisions made in early 2012 by the ad hoc group?

A. You know, generally speaking, there would have been -- well, again, I'm not sure the chronology of this. At some point the group broke -- the larger members of the group formed a steering committee. So that was formed in order to facilitate communications with counsel. It's unwieldy to have as many members on calls as would be listed on these documents. So a smaller group would have been a steering committee. We would have had regular calls with counsel and financial advisors to discuss relevant issues.

Q. At what point was the steering committee formed?

A. I believe the steering committee would have been formed in the spring of 2012.

Q. And who were the members of the steering committee at that time?

A. I believe the steering committee would have consisted of ourselves, I believe Silver Point, I think Paulson was on the committee at the time. May have been -- I would have to go back and look to see what other members were on that, on it at that point in time.

Q. Has the membership of the steering committee changed over time?

A. Yes, it has.

Q. And can you quickly go through the changes as you recall?

A. Over time other security holders would have acquired positions. For example, Marathon Asset Management became a large holder and joined the steering committee at some point. I believe Paulson dropped off the steering committee at some point because they had sold out of their position. Those are examples of how the committee -- Appaloosa was also participating in the committee. I believe

both in the committee, certainly in the steering committee. They also dropped off at some point.

Q. Did Loomis drop off at some point?

A. Loomis dropped off. They would have sold their position.

Q. Did anyone join at that time period, spring 2012 through the present?

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

Q. Did anyone join the steering committee?

A. As I mentioned before, at some point I believe Marathon did. And then --

Q. And then anyone else -- thank you. Anyone else besides Marathon?

A. Aurelius Capital, A-u-r-e-l-i-u-s.

Q. And when did Aurelius join?

A. That would have been in the fall of 2012.

Q. Do you recall which month?

A. I believe on November of 2012.

BASTABLE

Q. Anyone else join the steering committee?

A. Not that I recollect. But again, there were enough changes in the composition of the committee that I wouldn't be able to tell you everyone.

Q. Who currently is in the steering committee?

A. Well, the participants right now, I believe ourselves, Aurelius are still involved, Silver Point, Marathon I believe is still involved. But we could get you that list if you want the exact composition.

Q. Going back to 2012. Do you recall if it was a group decision to retain White & Case or if it was the steering committee's decision?

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

A. Yeah, I think the retention of White & Case would have been prior to the forming of the steering committee. So it would have been the group's decision.

Q. How was that decision made, do you know?

A. There would have been conversations with White & Case about their qualifications to advise the group and very likely conversations with one or two other law firms who were being considered. And then based on those conversations, the group would have discussed the best firm to retain and the decision was made to retain White & Case.

Q. Let me ask you the same question about Houlihan. How was the decision to hire Houlihan made?

A. Yeah. It was a similar process. At that point I think White & Case was involved but it was based on the experience that the principals and that Houlihan as an institution brought to the table. And we decided they were best qualified to represent us.

Q. What was your understanding of what Houlihan's role would be going forward from February 2012?

A. It wasn't clear from the -- exactly what their role would be. But again, the idea of hiring a financial advisor to represent a group of creditors is a very conventional one. And, you know, broadly speaking, we felt like it was very likely that we were going to need to do some financial analysis on ResCap to evaluate their position, our rights as creditors, the potential recoveries, I guess, for us as creditors. And in many cases the information that we might get would not be public. So we could use, potentially use Houlihan as an intermediary and also they could do, even if it was public information, they could be helpful in supplementing our own financial analysis of the company.

Q. Let me ask, before Houlihan was retained, what information, if any, besides public information, did DK have with respect to ResCap?

A. Well, I mean I think we only had access to public information. I guess can

you be more specific.

Q. Sure. I want to get into any discussions that DK alone would have had with the debtors, with ResCap. Were there any discussions between DK and ResCap or any ResCap representative prior to February 2012?

JSN Objection 49:3-20 FRE 402 (Not relevant)

A. I'm sure there were. Again, it would be very typical for us as part of our due diligence process to try to contact a company to verify or ask questions about some of the conclusions that we had reached doing our own independent analysis. And we would have had -- we would have reached out to them in an attempt to clarify those. And they would either have investor relations or other members of ResCap's management would have addressed those issues for us.

Q. Do you recall when the first instance of DK contacting debtors?

A. I don't.

Q. Do you recall if it was prior to February 2012?

A. I don't.

MR. WALSH: This will be DK-8. It's the security agreement.

(DK Exhibit 8, Security agreement between ResCap, U.S. Bank and Wells Fargo, marked for identification, as of this date.)

Q. Do you recognize DK-8?

A. Yes, I do.

Q. What is that?

A. It's the Amended and Restated Third Priority Pledge Security Agreement and Irrevocable Proxy between ResCap and U.S. Bank and Wells Fargo.

Q. Is this the security agreement that reflects the JSNs security interest in ResCap?

A. Yes.

Q. When was the first time that DK saw this document?

A. I don't know.

Q. When was the first time you saw the document?

A. I don't know if I have seen this

document. There would certainly be individuals at DK who would have reviewed this document.

Q. Do you know with respect to the initial investment by DK in JSNs, whether anyone at DK reviewed this document?

A. I think it is extremely likely that someone reviewed this document.

Q. Again, I'm referring to the period before Houlihan was retained. Do you know what financial information DK received from ResCap for that time period?

MR. WALSH: Let me fix the time period.

Q. So there was an initial investment?

A. Correct.

Q. Fair to say you didn't have any contact with ResCap before that initial investment?

A. No, it's not safe to say that.

Q. You did have contact?

A. I don't know. We would have -- again, I think it's actually likely that

we would have reached out to them before making the initial investment.

Q. Do you know who at DK would have done that?

A. It was probably Sara Tirschwell and/or Kunal Shah.

Q. Do you know for a fact whether either one of those individuals did speak to ResCap?

A. I don't know.

Q. Do you know whether they spoke to ResCap after the initial investment?

MR. RENENGER: Object. Any time between then and now.

MR. WALSH: Let's fix it.

Q. Any time between the initial investment and the Houlihan engagement letter of February 2012.

A. Right. Again, I can't say definitively, but I think it's very likely that they would have had contact with someone at ResCap.

Q. I assume you are basing this testimony on custom and practice by DK in

connection with their investment?

A. Yes.

Q. You don't know one way or the other whether they actually did?

A. I can't definitively say, but I think it's extremely likely that they did.

Q. Let me just fix on the custom and practice of DK because it appears you don't know exactly whether these individuals spoke to ResCap. Is it the custom and practice for DK to receive additional financial information besides 10-Ks and 10-Qs from companies?

A. No.

Q. Do you know if -- what type of information DK obtains from companies in connection with its investments. I mean, is it analyst reports? I'm trying to understand besides --

A. Companies don't typically provide us with any information directly. The companies are willing to discuss public information and answer questions about their business. Those are the types

of discussions that we would typically have.

Q. Just give me again examples based on custom and practice of the types of questions that DK would ask the question?

MR. RENENGER: Object to the form of the question. Go ahead.

A. Yeah. I mean, we would -- we would review the company's financial statements. A company like ResCap is very complicated. There's a certain amount you can learn by looking at those financials. And -- but that inevitably leads to a lot of questions and the company can be helpful in clarifying questions that we might have about the financial condition of the company.

Q. It's your position that the custom and practice you are only discussing publicly available information?

A. That's right.

Q. Let me ask you this. Do you know if at any point before Houlihan was

retained whether DK received any nonpublic information from ResCap?

A. We would not have received any nonpublic information.

Q. Let me ask the same question about the ad hoc group. Before February 2012, did the ad hoc group receive any public information from ResCap?

MR. RENENGER: Object to the form of the question. Beyond the scope.

A. No, I do not believe the ad hoc group received any nonpublic information.

Q. Was there a point in time when the ad hoc group entered a nondisclosure agreement with ResCap?

A. Yes.

Q. When was that?

A. That would have been for purposes of negotiating the PSA so I believe we would have signed that agreement in May of 2012.

Q. That was the first NDA between the ad hoc group and ResCap?

A. Yes.

Q. And is it your understanding that prior to that date the ad hoc group, no member of the ad hoc group was privy to nonpublic information of ResCap?

MR. RENENGER: Object to the form of the question. To the extent you can speak to whether any member of the ad hoc group had information, of course feel free to speak to it.

A. Yeah. I mean, I can't -- I obviously can't address what any of other firms would have received. The group was never provided any information directly and Davidson Kempner was never provided any information directly.

Q. Nonpublic?

A. Yeah, nonpublic.

Q. The group was provided public information?

A. I'm not even sure the group was necessarily provided public information. Again, are you talking about from the company?

BASTABLE

Q. From the company, yes --

A. There would have been some correspondence between our counsel and our financial advisors in the company. Whether or not that resulted in them providing us anything, I actually don't recall.

MR. RENENGER: Can I just interject? I think maybe this will be a clarification on this. When you say the ad hoc group, are you talking about the members of the group as forming the group or are you also including information that may have been received by advisors. Because I'm just concerned that if Houlihan or Milbank got information, I just don't want there to be an implication that they did or didn't. That wasn't intended to be in the scope of your answer.

MR. WALSH: I am referring to both, either members of the ad hoc group or advisors to the ad hoc group.

A. Give me the time frame again.

Q. At any point in early 2012.

A. Prior to the --

Q. The NDA?

A. Prior to the NDA being signed. I don't recall. Again, there may have been some information in that time frame provided to Milbank or Houlihan, but that information would not have been provided to the ad hoc group.

Q. I just want to clarify for the record we are going to be taking the ad hoc group's 30(b)(6) next week and that is something we will want to address with that witness.

Let me ask you, you are familiar with something called Interlinks?

A. Yes.

Q. What is Interlinks?

A. Intralinks.

Q. Intralinks. Thank you.

A. Intralinks is kind of an online portal that is used in the financial services business that allows for

information to be posted onto a secured website. And in many cases there would be a public and private portion of an Intralink site. And to the extent you want to get access to the private information, you would have to make an election on the site. So it allows -- it sort of provides effectively sort of a digital record of who is seeing private information relating to a specific company or whatever the situation that people are involved in.

Q. Do you know if in this time period, early 2012, whether ResCap had an Intralink system?

A. Prior to signing the NDA, I don't.

Q. And same question for 2011. Do you know if in 2011 ResCap had an Intralink system available?

A. I don't. But it is possible that they did.

Q. Let me ask the same question after the NDA was signed. After the NDA

was signed, were you aware whether ResCap made an Intralinks system available?

A. I specifically don't. Again, at DK I would not be the person accessing Intralinks' site directly. So it is -- again, it's quite possible they used that in some way to provide information, but I just don't specifically know.

Q. Who at DK would have accessed Intralinks?

A. Again, I think it would be the individuals I referenced before Sara Tirschwell, Kunal Shah, Ephraim Diamond.

MR. WALSH: Is now a good time for a break?

MR. RENENGER: Sure.

(Whereupon, there is a recess in the proceedings.)

(DK Exhibit 9, plan support agreement, marked for identification, as of this date.)

Q. Sir, I have handed you Exhibit 9. It's the plan support agreement. Do you recognize this?

A. No, I don't actually have that in front of me.

Q. Sorry. Handing you Exhibit 9.

A. Okay. Yes, I do.

Q. And if you turn to the back of the documents and flip through the signature pages. The fourth signature page, is that your signature?

A. Yes, it is.

Q. This was the plan support agreement from May 14, 2012?

A. Correct.

Q. Do you recall when it was signed, at least when you signed it? Did you sign it on May 14th?

JSN Objection 61:14-18: FRE 611(a) (Compound)

A. If I didn't sign it that day, I would have signed it prior to.

Q. You see that some of the signature pages are May 11th, May 13th. Does that refresh your recollection whether you signed it either May 11th or May 13th?

A. I'm sure I signed -- where is it?

BASTABLE

MR. RENENGER: Back a couple pages.

Q. For example, AllianceBernstein is dated May 11th.

A. Yes. Sure. We all would have signed within a few days of the --

Q. Is it fair to say you signed before May 14th?

A. Yes.

Q. We were talking about the ad hoc group and how decisions were made by the ad hoc group. How was the decision made by the ad hoc group to enter this PSA?

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

A. I guess I can --

Q. Let me rephrase just to make sure I can address the objection. Was there a decision by the ad hoc group that signed, at least the members of the ad hoc group, that signed this plan support agreement to enter this plan support agreement?

A. There was a decision made by

each individual firm to sign up to this PSA and obviously we all reached the same decision. So as a result the group was full supportive of signing the PSA. But those, Davidson Kempner made an independent decision to sign the PSA.

Q. How did Davidson Kempner come to its decision to sign the PSA?

A. The PSA provides certain benefits for process holders and in exchange for that we were providing certain benefits to both the debtor and Alli. And at its core it was, I would say it was sort of a business decision for us informed by what we believed were our rights as creditors, and we thought it was a favorable economic deal that increased both the speed with which we would get repaid on our notes and increased the certainty that we would get repaid on those notes. And we were willing to accept some of the terms that are included in the PSA in exchange for that, for those benefits.

Q. What was your understanding as of this time period what you would be paid on the notes?

JSN Objection 64:2-12
FRE 611(a) (Vague and ambiguous)

A. We believed -- we believed we would be paid par, plus all of our prepetition interest, plus to the extent that we would have not been repaid by the end of 2012, then we would have received -- we would have begun to receive post petition interest on whatever that residual claim was.

Q. Did DK calculate what, in fact, the payments would be to DK on the notes on par and as of accrued interest?

JSN Objection 64:13-21
FRE 611(a) (Compound)

A. Yes.

Q. And what was that amount?

A. The amount for all bondholders, and I'm quoting this on a kind of cents on the dollar basis, was just under 105 cents on the dollar as of the petition date.

Q. Was there any calculation what the post petition interest would be if the plan was not confirmed by the end of 2012?

MR. RENENGER: Object to the

form of the question.

A. Yes, there would have been some calculation of that as well.

Q. Do you recall what that calculation resulted in?

A. No.

Q. You said that in connection with signing the PSA you provided certain benefits to the debtors and to Alli. What were those benefits?

A. Primarily releases to both the debtor and Alli. But in addition to that, you know, I think the -- having the plan support agreement presumably in general was viewed by certainly the debtor and I believe Alli as a positive step towards the ultimate restructuring of the company.

Q. Did you understand that Alli was making a contribution to the bankruptcy, prepetition bankruptcy, in connection with this PSA?

A. We did.

Q. What was your understanding of the amount of the Alli contribution?

A. We understood that they were going to be contributing $750 million.

Q. And did DK do an analysis of that $750 million to determine whether that was an adequate contribution by Alli?

A. We did not.

Q. Did the ad hoc group do an analysis like that?

A. Not in that form, no.

Q. What type of analysis, if any, did the ad hoc group do to determine whether the Alli contribution was adequate?

A. Well, we weren't particularly focused on the adequacy of that number. We didn't have enough information at that time to evaluate it. That was obviously satisfying a number of potential issues that related to intercompany transactions that existed between Alli and ResCap prior to the petition date. And it was a very complicated analysis and we didn't have enough information to evaluate it. And the, part of the reason we entered into

the PSA was we felt like -- one of the benefits we got from the PSA was Alli was going to be subordinating a portion of their revolver which would have had a senior claim to us on collateral proceeds. So we kind of viewed everything as a comprehensive transaction. And we felt that if $750 million came into the estate, that would be sufficient under the terms of the PSA to pay us off at par plus our prepetition interest and plus, to the extent there was still debt outstanding after the end of 2012, post petition interest on that amount.

Q. If the plan was confirmed consistent with the PSA in 2012, however, you understand that the noteholders would not receive post petition interest?

A. If the plan had been confirmed and all of our debt had been extinguished as of that date, we would not have been entitled to subsequent post petition interest.

Q. That was one of the benefits

that you were providing to the debtors in connection with signing the PSA?

A. Yes.

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

Q. You were waiving your rights to post petition interest accrued from the date of the petition through the end of 2012 if those events you mentioned occurred in 2012?

A. That's right.

Q. You also understood that in signing the PSA you are waiving at least some portion of your right to liens on intercompany balances, correct?

A. That's right.

Q. What analysis did DK do with respect to the intercompany balances prior to signing the PSA?

A. We would have tried to do some analysis. However, the public disclosure before the company filed was relatively limited vis-‡-vis the amounts -- the size of the intercompanies and the value

attributed to those. However, we were aware that we had potential collateral value from those intercompanies and we believed that there was likely substantial value associated with those intercompany assets. However, there wasn't deconsolidating financial statements until the company filed for bankruptcy that would have given us enough information to evaluate those figures with a high degree of certainty.

Q. What was your belief that there was substantial value in the intercompany balances based upon?

A. We did have some information relating to guarantor and nonguarantor entities. So you could look at those balance sheets and that could inform your decision. And then I believe there was some incremental disclosure about specific, at least the book value of certain intercompany assets that we did use to inform that opinion.

Q. Did you have an understanding of

the value, the approximate dollar value of those intercompany balances prior to the PSA?

A. We had an estimate of those values.

Q. What was that estimate?

A. I'd have to go back and look. But it was not an immaterial amount relative to the recoveries or the size of the debt outstanding.

Q. Was it more or less than a billion dollars?

A. I believe we thought it was less than a billion dollars.

Q. Was it more or less than $500 million?

A. I think we thought it was less. I'd have to go back. We may have believed in certain scenarios that it was in excess of $500 million.

Q. You reference certain balance sheets of guarantors. Do you recall which guarantors?

A. These were the guarantors under

the JSNs.

Q. These are the GMAC guarantors or specifically who are you referring to?

A. Yeah. These would be -- no, these are ResCap entities.

Q. ResCap entities?

A. Yeah.

Q. And is it your understanding that prior to the PSA date, May 14, 2012, that Houlihan had done an analysis of the intercompany balances?

A. They -- yes. They had looked at that.

Q. And do you know what information Houlihan received in connection with the intercompany balances prior to May 14th?

A. Yeah, they -- I believe they would have been provided more specificity in terms of the exact size of those intercompany loans. And then they would have presumably had individual balance sheets for all the ResCap entities which could help inform that analysis.

Q. And where did they receive those

individual balance sheets?

A. They would have received those from ResCap.

Q. And those -- that would have been nonpublic information?

A. That's right.

Q. Provided pursuant to the NDA?

A. Correct.

Q. Do you recall when that information was provided?

A. I don't recall the specific date, but it was in this, you know, general time frame that we are talking about.

Q. May of -- April, May of 2012?

A. Correct.

Q. And was there any other information that either Houlihan -- well, any other information that Houlihan received in connection with the intercompany balances besides the items that you've listed?

A. Relating to the intercompanies specifically?

Q. The analysis.

A. Yeah. I'm sure that it's possible there was other supplemental information provided to them. I'm sure they would have attempted to get as thorough a picture as possible regarding the intercompanies but I don't specifically know.

Q. We looked at the Rule 2019 report that reflected increased holdings by DK from 2012 to 2013. I can't remember if I asked. Do you recall specifically when that increase occurred, which month in the time period?

A. No.

Q. Do you recall if it was 2012 or 2013?

A. It would have been both in 2012 and 2013.

Q. And you mentioned these investment memos. You did review some of those investment memos in connection with today's deposition?

A. Yes. I looked at least one

investment memo that we had put together.

Q. And did that document help refresh your recollection about some of the items that we are talking about today?

A. Yes.

Q. Do you recall any of these investment memos actually addressing intercompany balances?

A. I believe -- and there would have been different information provided, I don't want to just -- at DK we would have specific -- an investment memo is sort of a specific document. There might be other documents provided to me by Kunal or Sara that would have addressed the intercompany issue. Whether or not it made it into an investment memo, I don't know.

MR. WALSH: I'm going to mark the Houlihan presentation.

(DK Exhibit 10, Houlihan presentation, marked for identification, as of this date.)

MR. WALSH: Just for the record,

DK-10 was previously marked as PX 169.

Q. Do you recognize this document?

A. Yes, I do.

Q. And when was the first time you saw this document?

A. This would have been, I'm looking at it, it's, you know, labeled May of 2012, it would have been presented to us in May of 2012 prior to signing the PSA.

Q. Do you recall in what context it was presented to you? Was there a meeting?

A. I may not have been at the meeting where this was presented, if there was one. It would have either been at a meeting or on a call. But certainly there would have been representatives from DK party to that meeting or call.

Q. When you met with your colleagues at DK to prepare for the deposition, did you review this document with them?

A. We did not review this document.

Q. Do you know if the document was presented in early May?

A. I don't.

Q. Do you recall who else was, if you know, who else was present for this presentation?

A. Again, I mean it would have been certainly members of the steering committee at that time. So representatives from those firms and I'm sure counsel was also involved in that meeting.

Q. What is your understanding of the purpose of this presentation?

A. You know, this is what we have been talking about, which is Houlihan had gone in, done an analysis of the company's, you know, financial position and, you know, the purpose of that was to help our due diligence process and inform our decision as to whether or not we should sign up to the PSA.

Q. And by this time the ad hoc group had signed the NDA with debtors,

correct?

A. Yeah. This has -- yeah, subject to the NDA, sure.

Q. And this presentation contains information that was provided by the debtors that was not public?

A. At the time, yes, this would have been nonpublic information.

Q. If you turn, for example, to page 5 of the document. I'm using the Houlihan Lokey numbers there at the bottom right. Do you know if this adjusted balance sheet information was public information or nonpublic?

A. I believe this would have been nonpublic information.

Q. And if you keep turning the pages, there is a page 10 of the document that is entitled Summary of Estimated Recovery. Is it your understanding that the presentation included an estimate of recovery for JSNs? Part of the presentation was Houlihan providing an estimated recovery of JSNs?

A. Yeah. Part of this has been redacted but, yes. I mean, yes, in looking at the subsequent slides clearly part of this was an attempt to estimate recovery of -- for the JSNs.

Q. If you look at the right side of the page, there's a reference to Alli contribution, 950 million. That is the 750 million contribution that we referred to earlier and an additional 200 million in connection with certain asset sales, correct?

A. Correct.

Q. The reference is to sold assets above Fortress and Alli. What does that refer to, if you know?

A. At the time that the company filed for bankruptcy, they had stalking horse bids for both their servicing assets and other loans that were on the company's balance sheet. And at that point Fortress and Alli were the stalking horse bidders for those assets.

Q. When it says percentage of book

value, what does is that referring to?

A. Sorry, where is that? I'm sorry, in parens. So that is, you know, the company would have accounted for those -- the company's books would have accounted for them at a certain value and the Fortress and Alli market value would have been a certain percentage, it would have allocated a certain percentage of that book value.

Q. So, for example, on mortgage loans the percentage of book value is 100 to 104. What does that mean?

A. Meaning if there was $100 of book value Fortress would have paid 100 to $104 for those assets.

Q. Is that true for the other items listed here, GNMA, MSRs, for example, is 26 percent?

A. Yes.

Q. So what that is reflecting is that the Fortress-Alli bid was 26 percent of book value for that asset?

A. Let me see if that's -- yeah, I

believe so.

Q. The items liabilities is blacked out, that's redacted. Is that your understanding?

A. Yes.

MR. WALSH: Counsel, that's redacted because of counsel's work product, is that the argument?

MR. RENENGER: It appears to me, I think it's not produced by DK. So I don't know specifically who redacted this or when.

Q. If you turn to the next page, 11, it appears to be redacted as well. If you turn to page 22 of the document, sir.

A. This is the Houlihan page 22?

Q. Yes. Thank you. You see that Houlihan has stated that the intercompany claims have been excluded from the analysis. Is that your understanding, that this analysis excludes the value of intercompany claims?

A. The analysis on this slide, yes, would have excluded intercompany claims.

Q. Is it fair to say that the analysis, and I'm not asking you to waive work product obviously, but the analysis that was provided to the JSNs at this time period, the recovery analysis excluded any recovery of intercompany claims?

MR. RENENGER: Object to the form of the question. You are talking about this analysis or any analysis?

MR. WALSH: This analysis. The analysis in Exhibit 10.

A. No, I'm not sure that's the case. I would say this slide in this analysis excluded.

Q. Which is redacted. Do you know if there was a subsequent analysis by Houlihan that did include the value of intercompany claims?

MR. RENENGER: I'm going to object to the form of the question and caution the witness that to the extent you are not aware -- you are talking about Houlihan work product. If it's public, you can talk about it. But if

it was done in the context of work product, we would instruct you not to answer that question.

A. With that advice taken, there is a specific reference even in this presentation to intercompany claims as being a part of our assets. So clearly this was something that we were running scenarios where we were including intercompany receivables as part of our asset recovery. And that's evident on page 12 of this presentation.

Q. So at least to page 12, and it's hard to do because it's redacted, but Houlihan performed an analysis of this recovery including intercompany receivables?

A. Correct.

Q. Let me show you one more document.

MR. WALSH: This was previously marked as PX 357. It will be DK-11.

(DK Exhibit 11, document entitled, Statement of Limiting

Conditions, marked for identification, as of this date.)

Q. Before we get to the document 11, the prior document, DK-10, do you know if that was shared with anyone outside of the ad hoc group?

A. Not --

Q. I include in the ad hoc group the representatives of Houlihan.

MR. RENENGER: At this time?

MR. WALSH: At any point.

MR. RENENGER: Let me just object to the question. I sort of lost the train on the question.

MR. WALSH: Let me make it clear.

Q. Initially this document was prepared for the benefit of the ad hoc group.

A. Right.

Q. It was prepared by Houlihan as FA to the ad hoc group. Do you know if an unredacted version of this was shared outside of the ad hoc group?

A. No, it was not. At some point there was a release of information that Houlihan had provided to us, of the nonpublic information that Houlihan had provided to us. So that would have been shared to anyone who wanted to look at it.

Q. To your knowledge, this document in unredacted form has not been shared in the ad hoc group?

A. That's correct.

MR. RENENGER: For the record, that document is DK-10.

MR. WALSH: Yes. Now on DK-11.

Q. Do you recognize this document?

A. Yes.

Q. What is this?

A. This is to, again, sort of summary analysis provided by Houlihan addressing the recoveries to JSNs under the PSA construct. And then that's what slide, the first page, which is I guess number 2 of 3 here. And then the one that's number 3 of 3 outlines the timing of recovery for the JSNs.

Q. And if you look at slide 2, the bottom right corner of the estimated waterfall recovery, you see total recovery 105 percent. Is that the 105 percent that you referred to earlier?

A. That's right.

Q. This was the estimate, at least at this time, of the JSN recovery under the PSA that was to be signed shortly thereafter?

A. Yes.

Q. You see on the front page the document is dated May 14th. So it's contemporaneous with the signing of the PSA?

A. Yeah.

Q. Do you know what assets are included within the pledged collateral on that right side?

A. Well, the pledged collateral on the right side is a summary of what's on the left side. So there is, yeah, I mean on the slide there's information provided. As you can see, the assets purchased by

Fortress, the assets purchased by Alli are included. There was an amount of cash on the company's balance sheet as of that time and then there was various other residual assets that were going to remain on the company's balance sheet after the sale, asset sales.

Q. Am I correct that what Houlihan has done on the left side is taken the book value as of February 29, 2012, as reflected on the cash collateral motion and rolled that forward to February 29, 2012, and then rolled forward to December 31, 2012?

MR. RENENGER: I'm going to object to the form of the question.

Q. Let me ask it in a more straightforward way, if that's easier. What is your understanding of the analysis on the left as it reflects book value February 29, 2012 -- what is your understanding of the various headings under pledged assets?

A. Yeah, I mean, I think the first

column is straightforward. That's just the book value as of that date. It would have been reported in their public financials. The second was an attempt to estimate, I guess, what the market value of those assets were in part based on we knew what Fortress and Alli were paying for certain assets. And I believe Houlihan would have had conversations with the debtor about what the other assets would be worth versus book value. And then obviously then there was an attempt to, I think the debtor had provided Houlihan with additional information relating to how the balance sheet had changed between February and the petition date. And that information was incorporated into the last column, which was then rolled forward, I guess, to December 31, 2012. But there would have been additional information basically provided to Houlihan from the debtor to formulate the last call.

Q. Let me ask the same question

with respect to the column under Estimated Waterfall Recovery, Illustrative Market Value, December 31, 2012. What does that include?

A. The asset side of it is simply a summary of what's on the left. And then when you get down to beginning at secured recovery distribution, that that is Houlihan's analysis of how those assets would be shared between -- would be shared under the waterfall in the PSA between the Alli senior secured notes and the JSNs.

Q. And the recovery is consistent with the PSA recovery, the first 400 goes to Alli, the next billion to the JSNs, and then there is an 81 percent to JSNs and 19 percent to Alli?

A. Right, yes.

Q. And that's what that waterfall reflects?

A. Yeah.

Q. And then there's a second line of unsecured recovery distributions. Is it your understanding that that also

reflects the distributions, the deficiency distributions that are in the PSA?

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

Q. It's the 81/19 percent split.

A. I believe the Waterfall One there is. And then Waterfall Two was, there would be, once we had received our full par plus post petition interest, Alli would look to whatever was remaining for the final portion of their recovery.

Q. You said post petition interest. Do you mean prepetition interest?

A. Pre and to the extent we weren't paid out by December 31, 2012, post petition interest.

Q. At that time period had someone calculated what the post petition interest would be after December 2012?

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

A. I don't know -- I believe we, Davidson Kempner, were doing some analysis to that effect. To the extent we weren't

paid off -- to be clear we were hopeful and certainly part of the -- what we were, the bargain we were negotiating for was to get paid off as of that date or have the large majority of our claim paid off as of that date. But I believe we did do some analysis to estimate what our rate of return would be on the remaining debt outstanding to the extent we weren't paid off as of that date.

Q. The 105 percent recovery as of this time period though assumed payment in full by December 31, 2012?

A. I think -- yeah. I mean, yes. If you got paid off by December 31, 2012, you would be entitled to 105 cents on the dollar.

Q. And you accepted the PSA based on that assumption? You signed the PSA with Davidson Kempner based on the assumption that there was a 105 percent recovery?

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

Q. Under that PSA?

A. Yeah. The PSA is a much broader document. If you are asking me in a state of the world where we signed the PSA and then were subsequently paid off in full including prepetition interest by December 31, 2012, we would have been entitled to 105, approximately 105 cents on the dollar.

Q. Am I correct that this analysis does not include any value for intercompany balances?

A. This specific analysis does not include any value.

Q. Was there any other contemporaneous analysis, either by DK or the ad hoc group, including intercompany value?

A. Well, we just looked at some. But it was --

Q. It was redacted?

A. -- it was pretty clear that there was a line item there that includes value for the intercompanies.

BASTABLE

Q. And am I correct that the ad hoc group is taking the position that that information is privileged?

MR. RENENGER: Well, I will state for the record what I stated before, which is that it was redacted by counsel for the ad hoc group and we stand by the redactions. I believe it's on the basis of work product.

Q. First, if you look at footnote 3, which is a footnote to the unsecured recovery distributions on the right, you see that there's -- I'll just read it for you quickly and slowly. "Unsecured recovery is based on a legal entity priority analysis and assumes illustrative estimates of approximately 600 million and 9.0 billion of admin\priority and contingent liability claims, respectfully, as well as the additional $1.4 billion of other general unsecured claims."

MR. RENENGER: Object to the form of the question. Just note that was an incorrect reading. The word

"the" should be "and."

MR. WALSH: Thanks for that correction.

Q. Do you have an understanding what that footnote refers to?

A. Yes. Generally.

Q. What does that refer to?

A. There would have been -- the waterfall above only addresses the Alli revolver and the JSNs in terms of their recovery. There were other claims in this case. Admin claims, unfortunately, we were already anticipating were going to be $600 million, which is I mean costs, generally costs of running ResCap and all of the fees that were paid out during the bankruptcy.

Q. What is the reference to contingent liability claims?

A. And then the 9 billion, that I believe would have been an estimate of what the other claims in the case primarily relating to the private label so-called private label RMBS claims. And

then also the claims relating to the monoline contingent liabilities. And then in addition to that there were 1.4 billion of general unsecured claims which would have been primarily unsecured notes but I'm sure there were other smaller pools of unsecured claims as well.

Q. Did you understand at this time period that there was going to be a separate PSA with the RMBS trustees or at least some number of RMBS plaintiffs settling their claims at approximately $8 billion?

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

A. We knew that that would be required to get a planned confirmed. So -- and we, I believe at that time we were aware that there would have been, you know, there had to have been some dialogue with those parties. So yeah.

Q. And am I correct that this analysis on the right side includes a resolution of at least some portion of

those RMBS claims?

MR. RENENGER: Just to clarify, you are on the right of page 2 of 3 still?

MR. WALSH: I am.

A. Yes.

Q. And your understanding was that it would not resolve all of the RMBS claims, that settlement?

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

Q. Did you have an understanding of the PSA with the RMBS plaintiffs did not resolve all of the RMBS claims?

A. At this time?

Q. At this time, yes.

A. I'm not sure we knew enough to know whether it would or would not resolve all of those claims.

Q. Did you have an understanding what the treatment would be in the bankruptcy of the RMBS claims? Again, as of this time period.

A. As of this time period. No, we

did not know exactly how those claims would be treated.

Q. Why not?

A. Again, those claims arose from various subsidiaries of ResCap. And the company had never disclosed which entities they had arisen and, therefore, we didn't know enough to have a view as to where those claims would sit in the company's corporate structure.

Q. When did you first become aware of the treatment of the RMBS claims in the PSA, the May PSA, May 2012 PSA?

A. Well, I think right around the petition date there was a disclosure that the debtor had reached an agreement with the private label RMBS holders. So at least at that point we knew what that headline number was. We did not know the specifics of the proposal beyond that.

Q. And you did not terminate your PSA based on the information that was provided regarding the RMBS?

A. No, we didn't.

BASTABLE

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

Q. As of that time period.

You learned of the RMBS PSA, you did not terminate your PSA based on the RMBS PSA?

A. We didn't. But we specifically included language in the PSA that protected us from any economic impact associated with that settlement. So basically the debtors made a rep that the RMBS settlement would not have an economic effect on the recoveries for the JSNs.

Q. What was your understanding of what an economic effect would be?

A. Meaning that it wouldn't impact the timing or the dollar amount of our recoveries.

MR. WALSH: This will be DK-12.

(DK Exhibit 12, e-mail chain, marked for identification, as of this date.)

Q. DK-12 is an e-mail from Dennis Prieto, dated June 26, to a number of

people, including yourself, Mr. Bastable, correct?

A. Yes.

Q. And you received this e-mail on June 26, 2012?

A. Um-hmm.

Q. And the e-mail attaches a letter from Mark Brodsky. Who is Mark Brodsky?

A. Per this and my knowledge, Mark is the chairman of Aurelius Capital Management, LP.

Q. Were you familiar with Aurelius prior to this date?

A. Yes.

Q. How were you familiar with them?

A. They were another hedge fund. They are involved in some of the same types of investment strategies as we are. So I have gotten to know them over the years from being involved in other situations alongside them.

Q. In what other situations?

A. You know, there's been a number of them over the years. One recent one

was we were both creditors of a company called Vitro. But we have probably been involved in dozens of cases or certainly a large number of cases together over the years.

Q. Were you involved in the Adelphia case?

A. I was not.

Q. Were you involved --

A. Well, excuse me. And when I say I personally was not.

Q. Was the firm --

A. DK did have exposure to Adelphia. But it would have -- I did not have any direct involvement in that case.

Q. Ultimately Aurelius became a member of the ad hoc group, correct?

A. That's right.

Q. Are you aware of any other ad hoc groups formed in connection with distressed situations in which both DK and Aurelius were members?

A. Yeah. For example, Vitro was one. But there would have been others.

BASTABLE

Q. Do you know the others?

A. I wouldn't want to give you a list of them because it wouldn't be a comprehensive one. But it could be a reasonably large number, although not, not dozens but certainly it could be in the double digits, over -- over a long period of time.

Q. Can you give me some names of names you remember?

MR. RENENGER: I'm going to object to the question as beyond the scope. I'm not sure how this relates to the topics that are, that have been noticed. Do you want to make a representation along those lines?

MR. WALSH: I'm asking about the ad hoc group and this is a connection with -- Aurelius is a member of the ad hoc group so I think I'm entitled to ask if there had been prior relationships.

MR. RENENGER: He answered that.

MR. WALSH: If he can remember

three or four names.

Q. Three or four bankruptcies or distressed situations where both Aurelius and DK have been members of an ad hoc group?

A. One of the reasons I'm hesitating here is that there's situations we may have been involved with where we were on an ad hoc group. I don't know if they would have been on the ad hoc group. I just don't want to -- I don't want to go there because I think it would be quite easy to misremember whether we were both participating. Vitro is a relatively recent one where we were both on an ad hoc group together.

Q. Let's look at DK-11 and the letter that Mr. Brodsky sent.

MR. RENENGER: DK-12.

Q. We, thank you. Did you read this letter when you received it?

A. Yes.

Q. Is it your understanding the letter was addressed to the ad hoc group?

A. It is addressed to the ad hoc group.

Q. And if you look at the cover letter, there are members of the ad hoc included in the cover e-mail?

A. Yes.

Q. Mr. Brodsky refers in the fourth full paragraph to an ad hoc group's May 14, 2012, presentation. Is that the Houlihan presentation we previously looked at?

MR. RENENGER: Object --

Q. Well, let me ask another question. Which, if either, of the Houlihan presentations is that referring to, if you know?

A. I don't know.

Q. If you see the one, and I don't remember that exhibit number but is that 11?

A. Yes.

Q. DK-11 is dated May 14th. Do you have any reason to question that that is in fact what Mr. Brodsky is referring to?

A. No.

Q. You see Mr. Brodsky writes in that paragraph, "We believe the secured notes are substantially oversecured, hence, would be entitled to post petition interest for 2012 and beyond in the absence of the PSA."

What was your understanding of that statement?

A. I'm sorry. Could you repeat that.

Q. The last sentence I read is the sentence beginning "Indeed." Do you see that sentence?

A. Yes.

Q. What is your understanding of that sentence?

A. I guess it's somewhat straightforward, right. That they believe that there was enough value to cover our notes plus prepetition interest as of the petition date and presumably post petition interest and that if the PSA didn't exist, that we would be entitled to recover that

through the bankruptcy process.

Q. And is it your understanding Mr. Brodsky was challenging the ad hoc group's decision to waive post petition interest, at least through December 31, 2012?

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

Q. Is that your understanding?

A. You can read this letter. I think it speaks for itself.

Q. What was your understanding as to Mr. Brodsky's position regarding post petition interest?

A. He believed that the JSNs were entitled to full or would be entitled to full post petition interest and was laying out the case for that in this letter.

Q. If you'll turn to the second page, there's a heading entitled Intercompany Claims. Take your time and read that.

A. (Witness reviews document.)

Yeah.

Q. Mr. Brodsky is identifying the intercompany receivables as a potential collateral source?

A. Right.

Q. And you said you were aware of that prior to entering the PSA, yes?

A. Yes.

MR. RENENGER: Object.

Q. He references the last ResCap consolidating financials made public in 2009. Do you know what he's referring to there?

A. I do know in general what this would be referring to, which would have been that there would have been financials that would have broken out individual ResCap entities as opposed to a single balance sheet for ResCap as a whole. So -- but I couldn't speak to the exact disclosure in those financials.

Q. Do you know if anyone from DK reviewed those financials at or around -- at or before the date of the PSA?

A. I think it's very likely we did.

Q. Do you know one way or other?

A. I can't definitively say. But again, I'm almost positive we did review those financials.

Q. Mr. Brodsky writes, "The intercompany claims are not counted in the Presentation." Does that refresh your recollection whether intercompany claims are included in the waterfall analysis that we looked at previously in DK-11?

A. Can you repeat the question?

Q. Mr. Brodsky writes that "The intercompany claims are not counted in the Presentation," capital P presentation, which is DK-11 we referred to earlier. Does that refresh your recollection that in the waterfall analysis the intercompany claims are not included?

MR. RENENGER: Object to the form of the question. I don't believe he needed his memory refreshed on that. He stated that affirmatively before. Go ahead.

Q. I'll let you testify. Is your

understanding --

A. Yes. That exhibit, DK-11, does not include recoveries from the intercompany claims.

Q. If you turn to page 3 of the Brodsky letter, there's a heading Alli Settlement Proceeds. I'll let you read that and let me know when you are ready to answer the question.

A. Okay.

Q. What is Mr. Brodsky referring to there?

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

Q. If you know. What's your understanding of what that paragraph addresses?

A. He's talking about again, obviously he's talking about the Alli settlement and he has concerns about the fact that it appears that unsecured bond holders are going to benefit from a portion of the proceeds put into the estate by Alli to satisfy potential legal

actions or, you know, potential avoidance of ResCap transfers to Alli.

Q. Did you have an understanding before this letter whether causes of actions against Alli constituted collateral to the JSNs?

MR. RENENGER: I'm just going to admonish the witness to the extent that any answer you give is based on communications with counsel, I'll instruct you not to answer. But based on otherwise, you are free to answer.

A. Yeah. I think this area gets into privilege. It would have been an analysis that would have been privileged because it was almost entirely based on legal analysis that our counsel did.

Q. Taking that into account, can you tell me when was the first time that you became aware that causes of action against Alli could be collateral to the JSNs?

MR. RENENGER: Same instruction but --

A. I mean, I'll have to -- I don't recall the exact date but I think -- but again, around this time we were cognizant of the fact that those -- that was potentially a source of collateral value for us.

Q. And was it around the June time period or --

A. Earlier.

Q. When?

A. I don't remember the specific date.

Q. Do you remember if it was before or after you signed the PSA?

A. I believe before.

Q. How much before?

A. I don't recall.

Q. Again, I'm not asking for the content of your communications but can you tell me who provided you, who first told you that there was the potential that these causes of action could constitute collateral for the JSNs?

A. Likely counsel. So I believe

White & Case would have informed us.

Q. Do you recall specifically who at White & Case?

A. No.

Q. Do you recall if this was an oral communication or if there was a written memorandum on the subject?

A. I don't recall if there was a written memorandum. There certainly would have been oral communication, but I don't recall if there was a written memorandum on the subject.

Q. Mr. Brodsky on the last page writes, "We are truth seekers so we welcome whatever correction this letter deserves." Did you have any discussions with Mr. Brodsky after this letter was sent regarding the letter?

A. The counsel for the ad hoc group would have had discussions with Mr. Brodsky about the contents of this letter.

Q. That's White & Case?

A. At the time -- well, no, Milbank

at this point I think.

Q. When did Milbank first become involved?

A. When J.R. Uzzi moved from White & Case to Milbank, which was sometime, I believe, in late -- actually, no, this would have still been -- sorry, that would have been a subsequent date.

Q. I believe Mr. Uzzi moved firms at the end of 2012.

A. Yeah. I was confused about the date.

Q. So still White & Case?

A. Still White & Case.

Q. Did you have any discussions outside the presence of White & Case with Mr. Brodsky about this letter, after it was sent?

A. I believe Mr. Brodsky called me to let us know, to let me and our firm know that this letter was coming and would have at that point described at a very high level why he was sending it to the group.

Q. What did he tell you?

A. It was a short conversation, effectively saying, you know, we believe that the JSNs are oversecured and you should not be agreeing to a deal that would give up any of your post petition interest. And then would let the letter obviously provide the details that it does regarding the specifics of his position.

Q. What was your understanding of what he meant by a deal? Was he referring to the PSA or?

A. Yes.

Q. Was he asking you to terminate the PSA?

A. No.

Q. What was he asking?

A. Well, he wasn't asking anything. He was just putting us on notice that this letter was coming.

(DK Exhibit 13, series of e-mails, Bates DK 233, marked for identification, as of this date.)

Q. This is DK-13. It's Bates

stamped DK 233. A series of e-mails dated July 3rd, 2012. This is an e-mail that you received, Mr. Bastable?

A. Yes.

Q. This is from Mr. Brodsky?

A. Yes.

Q. And Mr. Brodsky is referring to the bankruptcy schedules that ResCap released around this time period?

A. Right.

Q. And what did those bankruptcy schedules disclose?

A. I think the relevant thing they -- there would have been a lot that it disclosed, but the relevant thing was that it would have deconsolidated balance sheets for the rep -- for the ResCap entities.

Q. Prior to this date, though, the ad hoc group had some trial balances that were reflected in the company receivables, correct?

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

Q. You referenced that Houlihan received certain balance sheets from guarantors. That would have shown intercompany receivables, correct?

A. Yeah, I mean -- we just want to make sure that we are distinguishing when we get into these issues between our advisors and the ad hoc group.

Q. Thank you. Houlihan, at least prior to this time, had that some information on intercompany receivables?

A. Yes.

Q. When was the first time the ad hoc group received information regarding ResCap's intercompany receivables?

A. The -- again, Houlihan presented us with some estimate of recoveries I think relating to intercompany receivables, but we would not have received specifics in terms of seeing the balance sheets of these entities until -- I believe until these schedules were published.

Q. Well, you knew a ballpark

number, right? You testified earlier about something north of 500 million, correct? You knew there were substantial intercompany receivables?

A. Yes. And I did not testify that it was necessarily a number north of 500 million, but we did think there was potentially substantial value in the intercompanies.

Q. He refers to, Mr. Brodsky refers to 30 bond points. What is he referring to there, if you know?

A. He's talking about bond points relative to the face amount of JSNs, which call it 2 billion, slightly more than that, 2.1 billion. So 30 bond points would be 30 percent of that number.

Q. How would that relate to the price of the notes?

A. The price of the notes?

Q. Right. We talked about, you know, you bought these notes somewhere in the neighborhood of $0.60?

A. The first purchase.

Q. First notes. You had subsequent purchases I assume at higher numbers?

A. Yes.

Q. How would the 30 points relate to --

A. Yeah, it would be the same -- effectively the same manner of speaking. Meaning he would be talking about something that would be $0.30 on the dollar effectively.

Q. And do you know how he calculated 30 bond points as they related to the intercompany receivables? Was that something you and he discussed?

A. We did not discuss it, no.

Q. Do you know if he had that discussion with White & Case?

A. I don't know if he had that specific discussion with White & Case.

Q. There's a reference to a meeting of principals. And you forward the e-mail to Ms. Tirschwell and Mr. Shah. Do you know if there was a meeting of principals after this e-mail, as it relates to these

issues?

A. I don't believe there was. I don't believe there was.

Q. Was there a meeting between Mr. Brodsky and the Aurelius people and White & Case?

A. I think very likely there certainly would have been communication between them.

MR. WALSH: This will be 14.

(DK Exhibit 14, series of e-mails, marked for identification, as of this date.)

Q. DK-14 is an e-mail from Dennis Prieto dated July 5th, 2012, to you and others, Mr. Bastable, correct?

A. Yes.

Q. And you received this e-mail on July 5th?

A. Yes.

Q. Attaching Mr. Brodsky's letter?

A. Yes.

Q. And this letter is addressing the intercompany receivables, correct?

A. Yes.

Q. And again, Mr. Brodsky has provided an analysis of the effect of these receivables on the collateral value, correct?

A. Yes.

Q. He's estimated 64 to 72 bond points of collateral value?

A. Yes.

Q. Did you have a position at the time of this letter whether that was an accurate estimate?

A. We did do some independent analysis to verify their claims. I think that analysis concluded that it was very likely that there was, and probably more likely than we thought before, substantial value to the intercompany claims. But I'm not sure that our analysis completely agreed with their analysis. But we did come to a conclusion that there was -- there was very likely substantial value of the intercompany claims.

Q. What was the result of your

analysis as it relates to bond points?

A. I don't recall, specifically.

Q. Was it in the neighborhood of 64 to 72 points?

A. We were coming up with a slightly lower number.

MR. RENENGER: John, could you just clarify who the "we" is there, ad hoc group or --

MR. WALSH: I'm focused on DK.

A. This would have been an analysis that DK was doing independently.

Q. Do you know if the ad hoc group was doing a separate analysis of the intercompany receivables?

A. There were certainly conversations with our advisors about them. And obviously there was additional public disclosure. So yes, there would have been some -- there would have been some additional thought given to the value of intercompanies at this time.

Q. Do you know what, if anything, were the results of the ad hoc group's

analysis as it relates to bond points?

MR. RENENGER: I'll interpose an objection only to instruct the witness that to the extent he can only answer that question by relying on work product delivered by advice to the ad hoc group, I'll instruct you not to answer. But to the extent you can answer without getting into privileged information, you may do so.

THE WITNESS: Right.

Q. Can you answer the question without getting into privileged information?

A. I don't think it would be possible to answer, give you number. If that number was provided to us, it would be something that Houlihan would have provided.

Q. Mr. Brodsky goes on to talk about the proposed RMBS settlement. Do you see that in the letter?

A. Where are you specifically referring to?

BASTABLE

Q. The last full paragraph, last two sentences.

A. On the first page.

Q. On the first page.

A. Yes.

Q. Did you have an understanding before this letter that the settlement with the RMBS trusts and the monoline insurers would not be subordinated pursuant to bankruptcy section 510?

MR. RENENGER: And again, I'm going to instruct the witness to the extent that his answer would call for privileged information not to answer that. But of not, he can answer it.

A. I think that was based on the advice of counsel.

Q. I can ask whether you had a position one why are the other. I won't get into the content with the communication with counsel. Did you know one way or other how the RMBS settlement and monoline settlements would be treated under 510 prior to this --

BASTABLE

MR. RENENGER: I think that calls for a yes or no answer, so if you can limit your answer.

A. I'm a little confused as to what the -- what is the question you are asking me?

Q. Let me rephrase. Mr. Brodsky has made a point here about whether the settlements or the claims related to these settlements should or should not be subordinated.

A. Right.

Q. You have an understanding what subordinated means?

A. Yeah.

Q. Is this the first time that you are aware of that issue or were you aware of that issue prior to the letter?

A. I was aware of that issue prior to the letter.

Q. When was the first time you became aware of the issue of subordination as it relates to the RMBS and monolines claims?

A. I don't recall the exact date.

Q. Was it before or after you signed the PSA?

A. Honestly, I don't recall.

Q. And again, I'm not asking you to disclose the content but do you recall who provided you with the first notice of this issue? Was it White & Case?

A. Most likely.

Q. Do you recall who at White & Case?

A. No.

Q. Do you recall if it was an oral communication or if it was in writing?

A. I don't, I don't recall.

Q. Do you recall at the time of the PSA, signing the PSA, how the RMBS settlement would be treated under the bankruptcy code? Was it received in a general unsecured claim or something else? And I understand you didn't see it until -- I understand the timing of when you saw that document. But do you recall appreciating at the time of that document

in May how the RMBS settlement would be treated in the bankruptcy?

A. I think that's a broad question.

Q. Do you recall specifically whether it would be -- knowing one way or the other whether it would be subordinated or whether it would be treated as a general unsecured claim?

A. I believe my understanding at that time was that those claims were not going to be subordinated under 510B.

Q. What effect, if any, would the fact that the claims were not subordinated have on the recoveries of the JSNs?

A. Well, again, per the PSA they were repping that they would have no effect on the recoveries for the JSNs.

Q. Did you have an understanding that there was at least a potential that the settlement, the RMBS settlement could have an effect on JSN recoveries?

A. If the debtor wanted to breach that rep, then presumably it could have had an effect on us. Or conversely if it

had an affect on us, that would have been a breach of the rep and allowed us to walk away from the PSA. So that was a -- I mean that was a key component of the PSA for us, was ensuring that whatever deal got cut with the RMBS holders was not going to have an economic impact on the deal that we agreed to under the PSA.

Q. And you are aware of the subordination issue, at least as of the time of the July 5th letter?

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

Q. You are aware that these claims were not going to be subordinated, at least by the time of the July 5th letter?

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

Q. We were trying to fix a time when you first became aware of the issue, at least by July 5th?

A. Yes.

Q. At some point prior?

A. Yeah.

BASTABLE

MR. WALSH: Take a quick break.

A. Sure.

(Whereupon, there is a recess in the proceedings.)

BASTABLE

A F T E R N O O N S E S S I O N

(Time noted: 1:01 p.m.)

C O N O R B A S T A B L E, resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. WALSH:

Q. Mr. Bastable, we are back on the record. You understand you are still under oath?

A. Yes.

Q. We were talking about the RMBS claims prior to the break. Were you aware that there were RMBS claims at the time or was DK aware of the RMBS claims at the time of DK's initial investment in ResCap notes?

A. Some of these claims would have really arose -- I'd have to -- I honestly don't recall whether or not we were aware at that point in time.

Q. Do you recall if the investment memos that you mentioned earlier were reference -- did reference?

A. I'm not sure.

Q. -- those claims?

A. I'm not sure.

Q. What due diligence, if any, did DK do in advance of signing the PSA with respect to the RMBS claims?

A. We would have done somewhat limited due diligence because it was just, again, it was very opaque as to what amounts would have been due to the RMBS claimants. I think we did have -- we did make an attempt based on some prior settlements that other counterparties had made with RMBS claim holders about what -- how the general framework might look like. But we really didn't have enough information to estimate it with a high degree of specificity.

Q. Which prior settlements do you refer to?

A. There had been -- well, in particular, this may have been maybe more applicable to the monolines where they had reached settlements with other banks who had rep and warranty settlements with

other banks who had originated mortgages. But the same framework might be applicable or could be somewhat applicable for the RMBS claimants.

Q. Let me ask the same question about the ad hoc group. What due diligence, if any, did the ad hoc group do with respect to the RMBS claims prior to the PSA?

A. Are you including advisors?

Q. Yes.

A. Although I can't speak to how much analysis Houlihan did. Again, I think the primary comfort we took vis-‡-vis the RMBS settlement was the language in the PSA that protected us from any economic harm associated with that settlement.

Q. Would you pull the PSA and point me to that language?

A. It's on page 14 under the 7.1, which is the termination events section.

Q. Item L?

A. Item L, approving any settlement

of any contingent or disputed liability or allocating -- or allocating proceeds to be paid pursuant to the Alli settlement agreement in a manner which would materially or -- and adversely affect the recoveries of consenting holders.

Q. But with respect to the RMBS settlement you are referring to Romanette one?

A. Yes, I am.

(DK Exhibit 15, e-mail chain dated May 11th entitled, ResCap Steering Committee Plan Term Sheet, marked for identification, as of this date.)

Q. There was a plan term sheet that was attached to the PSA, correct?

A. Yes.

Q. And that term sheet provided for how claims would be treated in the bankruptcy?

JSN Objection 130:20-24: FRE 1002 (Best evidence)

A. Yeah. Do I have that term sheet here?

Q. We will make that the next

exhibit.

(DK Exhibit 16, plan term sheet attached to the PSA, marked for identification, as of this date.)

MR. WALSH: Just so we have a clear record, 15 is an e-mail chain dated May 11th entitled, ResCap Steering Committee Plan Term Sheet. 16 is the plan term sheet that was attached to the PSA.

Q. Do you recognize 16?

A. Yes.

Q. When was the first time you saw a draft term sheet?

A. I assume it was prior to signing the PSA. Probably in the days or low number of weeks before that.

Q. And if you look at 15, I see you are not on this e-mail chain, but Mr. Shah is one of your colleagues, correct?

JSN Objection 131:19-22: FRE 611(a) (Compound)

A. Yes.

Q. As well as Ms. Tirschwell?

A. Yes.

Q. That's Mr. Ephraim?

A. Mr. Diamond, yeah.

Q. All three of these individuals were working at DK in connection with the ResCap investments?

A. Yes.

Q. And they received a draft term sheet on or about May 11th?

A. Yes.

Q. Do you know if that was the first term sheet that was circulated, the one on May 11th?

A. I don't.

Q. At some point you saw that the RMBS claims were not subordinated in the plan that was proposed in connection with the PSA, the May PSA?

MR. RENENGER: Object to the form.

Q. We talked earlier about subordination?

A. Yes.

Q. At some point you determined that these RMBS claims were not going to be subordinated?

JSN Objection 132:20 –133:6: FRE 602 (Lacks personal knowledge, calls for speculation)

JSN Objection 132:23 –133:6: FRE 611(a) (Vague and ambiguous)

A. Yes.

Q. Do you recall when the first time was that you realized that?

A. It was prior to us signing the PSA.

Q. Do you know if Houlihan did any analysis of the RMBS claims in connection with the prepetition PSA?

MR. RENENGER: I'm just going to go ahead and instruct the witness as before. To the extent you can answer that yes or no, that's fine. To the extent you can't and the answer would otherwise divulge privileged discussions, I instruct you not to answer.

Q. If you can, answer the question yes or no.

A. I don't know.

Q. Had you worked with Houlihan prior to this engagement?

JSN Objection
FRE 402 (Not relevant)

A. Yes.

Q. Had you worked with the individuals at Houlihan prior to this

engagement, the same individuals?

A. Which individuals are you referring to?

Q. Who are the individuals that worked on this engagement, to your knowledge?

MR. RENENGER: Object to the form.

A. Eric Siegert was the senior most individual. And then there would have been a fairly large team of people who would have worked for him.

Q. Had you worked with Mr. Siegert prior to this?

A. Yes. We as a firm had worked with him on transactions prior to this.

Q. How many?

A. I couldn't tell you. Houlihan -- what's that? I mean, we have been involved in dozen of bankruptcies. Houlihan is the largest creditor financial advisory firm. So it would be -- that would be in the dozens of transactions.

Q. What is the number for, the

JSN Objection
134:10–135:15
FRE 402 (Not relevant)
FRE 602, 701, 702
(Lacks foundation, calls for expert opinion)

number of transactions that Mr., you've worked with Mr. Siegert on?

A. I couldn't tell you. But he is a very senior member of the Houlihan restructuring and financial advisory group. So I'm sure he had involvement in a number of those transactions.

Q. And he's an expert in this case, correct?

A. He is.

Q. And you have no question -- you have no reason to question his qualifications or competence?

A. No.

Q. You had full confidence in his ability and the abilities of the Houlihan team in connection with their analysis prior to the prepetition PSA?

MR. RENENGER: Object to the form.

Q. Let me rephrase. You had no reason to question Mr. Siegert's competence in connection with providing financial advice to the ad hoc committee

JSN Objection
135:22–136:6
FRE 402 (Not relevant)
FRE 602, 701, 702 (Lacks foundation, calls for expert opinion)

prior to signing the prepetition PSA?

A. I did not.

Q. And you've had not had any reason to question his competence since signing the PSA?

MR. RENENGER: Object to form.

A. I mean, I have not.

Q. Is there any reason today that you would have any reason to question Mr. Siegert's competence and abilities as a financial advisor?

A. No.

Q. And I'll ask the same question about Houlihan as a firm. At the time of the PSA, you had no reason to question Houlihan's competence as a financial advisor in connection with the work they did for ResCap?

A. No.

Q. And today you have no reason to question Houlihan's competence and abilities with respect to providing financial advice to the ad hoc group?

A. I do not.

JSN Objection
136:8-136:25
FRE 402 (Not relevant)
FRE 602, 701, 702
(Lacks foundation, calls for expert opinion)

(DK Exhibit 17, e-mail from Mr. Shah to Mr. Bastable dated July 5th, marked for identification, as of this date.)

Q. DK-17 is an e-mail from Mr. Shah to you, Mr. Bastable, dated July 5th. Is this in connection with the July 5th Brodsky letter we looked at earlier?

A. It appears to be, yes.

Q. Mr. Shah writes, "The interco and pledge analysis is correct." Do you understand that he's referring to the Brodsky letter and analysis in that Brodsky letter?

A. Yes.

Q. He continues, "I don't know exactly how they get to their bond PT contribution." Do you know what Mr. Shah is referring to there?

A. Yeah. This is the same concept we were talking about before. PT means points here. So he's, again, referring to the number of bond points that Aurelius believed were attributable to the

intercompanies.

Q. He writes, "Appears to assume limited or no contingent claims and no impairment to stated book values." What's your understanding of that sentence? What is he referring to?

A. Again, this may not be exactly what he's referring to, but I will give you a sense of what I think he's talking about, was as we've talked about the RMBS claims would have been a contingent claim in this case and then book value wouldn't necessarily tie to market value associated with individual assets. Although as we have seen with the purchases by Fortress sometimes market value can exceed book value.

Q. And at this point DK knew the amount of the RMBS claims that were going to be settled as part of bankruptcy?

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

Q. There was a PSA with respect to the RMBS claims that settled them for

approximately $8 billion, correct?

A. Yes.

Q. But Mr. Brodsky's analysis does not consider those claims?

MR. RENENGER: Object to the form.

Q. Mr. Brodsky's analysis does not take into account those claims?

A. Yeah. Well, it says limited or no contingent claims. So I don't want to say that they weren't taking them into account. But perhaps we had a different view as to the impact of those claims.

Q. And your view was that Mr. Brodsky was taking a limited view of the claims? DK's view was that Mr. Brodsky was taking a limited view of the claims, the contingent claims?

MR. RENENGER: Object to the form.

A. Yeah, that appears to be what this says.

MR. WALSH: This is 18.

(DK Exhibit 18, Cantor

Fitzgerald analyst report, marked for identification, as of this date.)

Q. Do you know who York Capital is, Mr. Bastable?

A. Yes, I do.

Q. Are they one of the members of the ad hoc committee as of July 2, 2012?

MR. RENENGER: Object to the form.

A. I don't know, but I believe so.

Q. Do you know who Erin Andrews is of Cantor Fitzgerald?

A. No.

Q. Did you receive analyst reports in this time period from any analyst on ResCap?

A. I'm sure we did.

Q. Do you recall which analyst reports you would have received?

A. No.

Q. You see Ms. Andrews writes about the intercompany claims, and at the end of that paragraph, first paragraph, she writes, "However, there's reason to doubt

some of the intercos." Do you know if there were discussions within the ad hoc committee questioning the value of the intercompany claims as of this time period?

A. Discussions between whom and whom?

Q. Any members of the ad hoc committee.

A. I can't speak to what conversations other people would have had.

Q. Were there any discussions within DK about the value of the intercompany claims as of this time period July 2012?

A. I think we have covered that. We did have discussions about what we thought the value of those intercompany claims were.

Q. Did you disagree that they were as valuable as Mr. Brodsky had assessed them to be?

A. We had a difficult time reconciling exactly how he got to the

numbers he got to. But we actually did -- we believed that his analysis was right with given all the facts that he had. It was just how you then translate that into the recoveries for the junior secured notes was a challenging exercise because we never had enough disclosure from the debtor to do that comprehensively.

Q. Well, as of July you had received the schedules, correct?

A. Yes.

Q. What other information did you need to determine the value of the intercompany claims?

A. I'd say it's a very complicated analysis that would involve needing to know the value of assets at each subsidiary, what other claims would have been at those subsidiary levels, either, you know, actual or contingent. And as we have discussed, there were some very large contingent claims. And we did not know what entities those claims were going to be sitting at. Nonetheless, we did

believe that there was a real potential for there to be recoveries under the intercompany claims and we felt strongly that the intercompany claims were a part of our collateral package.

Q. When did you first come to that conclusion? You meaning DK.

A. I think since -- I think since early on in our investment we had a view that the intercompanies could have value. That became more important once the company filed for bankruptcy. But I think from our getting involved in the investment, we would have had some view that there was -- that in the event of a bankruptcy filing where it was necessary to get recoveries from those intercompanies that that was a potential source of collateral for the JSNs.

Q. And you knew prepetition that the security agreement provided for liens on those intercompany claims?

A. That's right.

MR. WALSH: This is Exhibit 19.

JSN Objection
143:25-148:13
FRE 802 (Hearsay)
FRE 1002 (Best evidence)

(DK Exhibit 19, e-mail dated July 10th from Bastable to himself, marked for identification, as of this date.)

Q. This is an e-mail dated July 10th, Mr. Bastable. Is this an e-mail that you sent to yourself?

A. It is.

Q. You write, "Intercompanies are not as strong as you think." What were you referring to there?

A. This was -- just to frame this, right, we were in a position here where Aurelius had obviously approached the group with their view of what the intercompanies were worth and what all their collateral was worth. We knew the debtors were taking a very different view of that. We had signed up to the PSA with the knowledge that our intercompanies were potentially quite valuable or very valuable. But we felt that the economic deal that was offered under the PSA was a good one because of the certainty we got

from it and the speed with which we would get our recoveries. It was not an admission that we didn't think there was recoveries under the intercompany notes. It was just a business deal that we felt was a good one for us so.

Q. With that context, what do you mean when you write, "Intercompanies are not as strong as you think"?

A. I think this gets back to our view on what maybe the potential value of the intercompanies was relative to what Aurelius had articulated. We did think there was real value to the intercompanies or very likely to be really value associated with the intercompanies but perhaps not as much as Aurelius had outlined in their letter.

Q. Who is the you in that sentence?

A. I believe that would have referred to the position that Aurelius was taking.

Q. You go on to write, "Other GUCs where you might have to share value."

What is that referring to?

A. That's GUC stands for general unsecured claims. So again, as I was talking about before, an analysis of the value of not only intercompanies but any deficiency claim you might have had would be shared with potentially other intercompanies at different entities within ResCap.

Q. And was that a position that you gave to Mr. Brodsky? I assume Aurelius here you are talking to Mr. Brodsky or was it somebody else?

JSN Objection 146:11-17 FRE 611(a) (Compound)

A. I don't recall speaking with Mr. Brodsky subsequent to this date about this.

Q. The title of the e-mail is ResCap MTG, which I assume is meeting, with Aurelius?

A. Yeah.

Q. Were these notes that you took from that meeting?

A. No. I think this was -- I think this might have been in anticipation of a

meeting that ultimately did not happen.

Q. So you were going to meet the Aurelius folks and you wrote this down in anticipation of that meeting?

A. I believe that's what this was.

Q. Were these the statements that you were going to make to the Aurelius folks?

A. They were notes to myself about, you know, what some of the issues we wanted to talk with them about, what had been in their letter.

Q. What do you mean when you write, "Reattaching liens could be difficult"?

A. I don't recollect what that specifically refers to.

Q. And last you write, "As long as we like this deal." What are you referring to there?

A. Yeah. I mean, as I was talking about before we -- the PSA was, at its core was a business deal. We had agreed to give up post petition interest, our right to post petition interest up through

JSN Objection 147:3-6 FRE 611(a) (Compound)

December 31. In exchange for that, Alli was subordinating a part of their claim. We were getting a cash collateral order, adequate protection. Other benefits from that deal that ensured we would get paid quickly and with a high degree of certainty. So I think I was beyond -- whether or not we thought the intercompanies were worth 20 bond points or 50 bond points, we still liked the economic deal that we had cut under the PSA.

Q. Would you have cut the deal if the intercompanies were worth 100 points to 112 points?

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

A. Yeah, I think that's hard to answer.

Q. Was there any analysis by DK prior to the prepetition PSA going through that type of analysis if the intercompanies are worth X amount, we may ask for a different deal?

A. We didn't -- our claim, even if we were going to get all of our post petition interest, obviously there's a limit to how much we could potentially recover. So at some point if the -- whether the intercompanies are worth 50 or a hundred bond points is not particularly relevant for us. So I'm not sure it would have been made any difference in that regard.

Q. Ultimately you made a decision to terminate that prepetition PSA, correct?

A. Yeah.

Q. And that decision was based on the debtors' failure to reach milestones that are set forth in that PSA?

A. Yes.

Q. That was the reason for the termination?

A. Yes. It was the justification for the termination.

(DK Exhibit 20, ResCap document, marked for identification, as of this

date.)

Q. In all seriousness, could you just briefly tell us what Exhibit 20 is on the first page?

A. Yeah. This is a portion of the financial analysis that we would have put together to analyze ResCap and probably more specifically looks like, you know, some of the specific assets on ResCap's balance sheet and what those might be worth for the JSNs.

Q. When was this prepared?

A. I don't --

Q. There's a date on the top right corner of the first page.

A. Yeah. This says just to be clear here, this says, "As of August 24, 2012." The way this date functioned would work on a spreadsheet like this is whenever it was printed out, it would have that date on there. It does not reflect when it was prepared necessarily.

Q. Do you know if there's -- are you able to tell from the document or from

your memory when this was first prepared?

A. Well, it's just there are different parts of this. The first page shows the corporate structure of ResCap. Some of this was probably prepared before we made our first initial investment and then I would guess that as we got additional information regarding different entities within the corporate structure that this analysis was expanded. So it would not have all been together on any single date.

Q. There's some handwriting, forgive me if you mentioned this, is that your handwriting on the first page?

A. No, it's not.

Q. Do you know whose handwriting that is?

A. I don't.

Q. Do you know what the handwriting refers to?

A. I have a general sense that it is highlighting some of the intercompany assets or claims that run from various

entities within ResCap.

Q. Would you turn to the page ending 1086. Do you see the handwriting on the bottom right?

A. Yes.

Q. Do you know whose handwriting that is?

A. I don't.

Q. Can you read it?

A. Yes.

Q. What does this say?

A. It is says, "Unsecured deficiency," and, I believe, "interco claims."

Q. And the top of this page it reads Aurelius Analysis. Is this an analysis that Aurelius provided to DK?

A. No, it is not. It would have been an analysis that we would have done to vet some of what Aurelius had represented in their letter.

Q. Is this testing the points calculation?

A. Yes. It does appear that that's

a part of this analysis.

Q. You understand that DK terminated the prepetition PSA around the same time period that other members of the ad hoc group also terminated the prepetition PSA. How did the ad hoc group go about making that decision?

MR. RENENGER: Object to the form.

Q. I'm just asking process. Not so much reasons.

A. Right.

Q. You had said --

A. Okay. Sorry, go ahead.

Q. So with respect to the PSA, each signing party obviously made its own decision and signed the PSA.

A. Yes.

Q. It was independent, I assume. Each of the entities that wanted to sign it, signed it. Is it fair to say there was no vote amongst the group, this is the PSA let's all sign it?

A. Yes.

Q. What was that process with respect to terminating the PSA. Was it an individual assessment or was there a vote among the members of the steering committee or any other group of ad hocs that deliberated over whether or not to terminate and made a decision to terminate?

A. I would not have been on the calls directly, but I could say that there would certainly have been discussions about it. We knew we were within our rights to terminate the PSA. It was very clear that the company had not lived up to several milestones. And there were also several -- there were also other things going on in the case that made it very difficult for us to stay within the PSA. For example, the unsecured committee had filed a challenge to our liens. And it was also clear at that point in time that we were not going to get paid out anywhere near as quickly as the debtor had indicated when we signed up to the PSA.

So a combination of those factors would have led the group to discuss terminating the PSA. I don't know if there was a formal vote, but there would have been some level of consensus.

Q. Who would know whether there was a vote, if there was one?

A. Certainly our counsel and whoever from, I think people from DK who participated on those calls could tell you if there was anything, any type of --

Q. Who are those people?

A. I would think Kunal Shah and Sara Tirschwell and Ephraim Diamond.

Q. And the two factors that led to the termination were failure to reach the milestones and the creditor committee's assertion challenging the liens?

MR. RENENGER: Object to the form.

A. Those were major considerations. I wouldn't say those were the only considerations.

Q. At some point there was a second

PSA proposed by the debtors with respect to the Alli claims and the RMBS claims. And that PSA has led to the current plan as proposed. Did the JSNs, did the ad hoc group of JSNs vote to determine whether they would object to the plan as proposed?

MR. RENENGER: Object to the form of the question. It's beyond the scope.

Q. You said one of the things you reviewed in connection with today's deposition was the objections by the ad hoc group to the plan as proposed?

A. Right.

Q. And those objections were filed recently in the last few weeks, correct?

A. Yes.

Q. Was there a vote by the ad hoc group regarding whether or not to make those objections?

A. Again, I don't know if there was a vote. I don't believe there was but there was a decision made that that was an appropriate objection to make.

Q. Who made the decision?

A. It would have been --

MR. RENENGER: I'm going to object to the form. Standing objection to this line of questioning as beyond scope, but I'm not going to cut you off.

A. I think it's fair they would have been the steering committee and counsel for the committee.

MR. WALSH: Let me take a break and see if I have any other questions.

(Whereupon, there is a recess in the proceedings.)

A. Can I clarify one thing that you had asked me previously?

Q. Sure.

A. Which is as it relates to the vote to terminate the PSA. There was no vote to the group. It was a decision, a consensus-driven decision but there was no vote to terminate.

Q. Was there anyone who was opposed to terminating the PSA?

A. The group reached consensus on the issue.

Q. Let me ask about the mediation, one of the topics you've been designated on as the decision to not participate and then to participate in the mediation.

Were you individually involved in the decision not to participate in the mediation initially?

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

A. I don't think we -- we as an ad hoc group did not object to participating in the mediation. We wanted to participate in the mediation. And our advisors did participate in the mediation. We tried very hard to get an NDA signed in substantially identical form to the NDA, the NDA that was agreed upon to sign the -- to get the PSA. But the debtor was not willing to provide us with that form of NDA. And as a result, it was impossible for principals of the ad hoc group to participate in the mediation. As

you know, Berkshire Hathaway, the largest noteholder, did participate in the mediation. So I don't think it's a fair characterization to suggest that we voluntarily did not participate in the mediation.

Q. At some point did you ask the court to enter an order that allowed ad hoc group members to trade, notwithstanding their involvement in the mediation?

MR. RENENGER: Can I just get you to clarify. When you say mediation, just so the record is clean, is there a particular session you have in mind? My understanding it was a prolonged and multiphase process.

Q. Let's take it each step. At some point there was -- Judge Peck was appointed as mediator?

A. Yes.

Q. At that point in time did the ad hoc group want to participate in

mediation?

A. We did.

Q. And what happened that prevented the ad hoc group from initially participating in mediation?

A. Like I said, the company was not willing to provide us with an NDA. And just to clarify why we needed the NDA, obviously we are all investment firms with fiduciary obligations to our investors and you one of those is to be able to maintain an ability to trade in securities. We were all very willing to get restricted for a period of time. We just needed an ability to get unrestricted as some future date. And again, that's exactly what the NDA provided for when we negotiated the PSA. But because the debtor wasn't willing to provide us with a similar NDA, it effectively prevented us from participating in that mediation.

Q. Ultimately the ad hoc group was -- did get involved in the mediation. At what point in time was that?

A. That would have been -- where are we now?

MR. RENENGER: November 1st.

A. The late summer, early fall of this year.

Q. And what happened that allowed the ad hoc group to participate in that mediation?

A. Ultimately, Judge Peck was willing to request and get signed an order, which would have effectively protected us from getting sued, I guess, for trading on the basis of having information relating to bids and asks that would have been engaged in -- that would have, you know, stemmed from that type of negotiation to the extent that that negotiation ultimately did not result in a settlement.

Q. And it's your understanding that that was the initial request of the ad hoc group and that the debtor denied that request?

A. The debtor denied our request.

BASTABLE

We offered it up to, as we said you can -- we can get an NDA or we can get this protective order. Either one would have been acceptable to us. The debtor was not willing to provide the NDA for some time. There was not a willingness to provide the protective order. We had Sara Tirschwell from our office spoke directly with Gary Lee about this issue and he said that he thought Judge Peck would not provide this order and he also said that they did not need us to be involved in the mediation. I know Dan Groper had several conversations with Ken Eckstein on the same issue, expressing repeated willingness to sign an NDA, to engage in negotiations, and we were told that we were not needed at that time. So it effectively prevented us from engaging in the mediation.

MR. WALSH: That's all I have at this time. I want to let counsel for Wells Fargo ask the questions.

I just want to say on the record

the ad hoc group is continuing to produce documents. Actually, I haven't received any documents yet. We reserve the right to reopen this deposition based on the production of any DK relevant documents.

MR. RENENGER: I'll just put on the record that Mr. Walsh is referring to the production of the ad hoc group, call it ad hoc group, not DK a member of the ad hoc group. DK has completed its production. And obviously to the extent that there's an attempt to redepose Mr. Walsh based upon the production of the advisors to the ad hoc group, we'd be happy to have that discussion but we believe there would be no need to.

EXAMINATION BY

MR. KOCHMAN:

Q. Good afternoon, Mr. Bastable. My name is David Kochman. I represent Wells Fargo in its capacity as third private collateral agent, first priority

collateral agent in this case. All of the instructions that were applicable with respect to Mr. Walsh's examination are going to continue here. Do you understand that?

A. Yes, I do.

Q. And I want also to state right up front that I am not going to ask you any questions that require you or even ask you to divulge any conversations with counsel or any privilege conversations. So when I ask you a question, you should assume as part of the question that I am not asking you to disclose anything that would divulge a privilege conversation. Does that make sense?

A. Yes.

Q. Speaking about your experience generally, I believe you testified previously that the majority of your professional experience has been dealing with investments in distressed assets; is that right?

A. The professional experience at

BASTABLE

Davidson Kempner has primarily dealt with that.

Q. In such capacity, have you had the opportunity to deal with the rights and responsibilities of trustees that oversee collateral in distressed situations?

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

A. We have had -- I'm not sure I can answer that question directly. We have had, you know, we have had involvement with trustees in situations that I have been involved with at Davidson Kempner.

Q. Have you been involved in situations where a trustee has been responsible to hold collateral that accessed security for a DK position?

A. We have invested in securities where a trustee would have that general responsibility, yes.

Q. In such situations, do you have an understanding as to the trustee's

BASTABLE

obligations vis-‡-vis preservation of the collateral?

MR. RENENGER: I'm going to object to the form of the question. And also just ask for a representation about how this relates to the 30(b)(6) topics or which one it relates to.

MR. KOCHMAN: Well, first off, I'm going back through just his experience. I want to get an understanding as to foundationally what his knowledge is respecting the investment that DK was going into.

I think he said that there was an evaluation of the documents themselves and the position that DK would be taking when it purchased these notes. And then specifically I think I am, this would fall under at least the DK notice 3, 4, 8, 12, 13, 16 and potentially also the ad hoc notice 34 and 35. That's just off the top of my head so we obviously reserve our right if it can be other things.

BASTABLE

MR. RENENGER: Well, I hear the representation. I'll obviously give you leeway until I sort of see where it's going. But it's really hard for me to hear or understand how in any way a trustee's obligations to preserve collateral could relate to these topics he just covered, but we'll give you some leeway and see where it goes.

MR. KOCHMAN: Thank you.

Q. You want me to repeat the question?

A. Sure.

Q. What is your general understanding of a collateral agent's role in the context of holding collateral for, as security for notes?

MR. RENENGER: I'm going to instruct the witness that to the extent the answer to that question would require you to divulge advice of counsel that I would instruct you not to answer that. If you have an

understanding away from that, then go ahead.

A. I would rather not attempt to answer that question.

MR. RENENGER: Is that based on privilege?

Q. I think, look, I have given an instruction at the outset that I'm not asking you to divulge anything specific with respect to counsel. You are here today testifying on behalf of DK as their corporate representative; is that correct?

A. Yeah.

Q. I'm just asking, in your experience, you stated you deal with investment products and distressed assets. In the context of this transaction here, did you understand that there was a trustee and a collateral agent?

A. Yes.

Q. Did you have an understanding as to the rights and responsibilities of the trustee and the collateral agent in the context of the notes that DK was

purchasing?

MR. RENENGER: Same instruction.

A. Honestly, I'm not sure the legal responsibilities that the trustee has or that the trustee collateral manager has under the agreement.

Q. I'm not asking for the legal responsibilities. I'm talking about just their general obligations. What do they do? Do you have an understanding as to what they do -- let's try to restate it again.

Prior to purchasing these notes, both the junior secured and the unsecured, did you have an understanding as to what physical responsibilities the collateral agent and the trustee would have?

A. At a high level, yes.

Q. Could you explain to me what that understanding was?

A. That the collateral agent would be responsible for making sure that -- we have obviously have a security package under the terms of the agreement and there

would be certain collateral associated with that. And you know, the company would have a certain amount of flexibility to potentially do things with that collateral. And part of the collateral agent's responsibility would be to ensure that anything that was done to that collateral didn't compromise our rights as creditors with respect to that collateral or ran afoul of the collateral provisions of the security agreement or whatever other governing documents there were.

Q. Sitting here today, are you aware of any facts that would suggest that Wells Fargo ran afoul of the documents?

MR. RENENGER: I'm going to object to that question as certainly being well beyond the scope of a 30(b)(6) and on that basis instruct the witness not to answer.

MR. KOCHMAN: We are going to go through a series of questions, you can instruct him not to answer, but we will just create a record for the

court.

Q. Let's refer to DK-8. If you don't mind pulling that out. Please correct me if I'm wrong. I believe you testified earlier that you personally don't recall reviewing the security agreement prior to DK taking a position in ResCap; is that right?

A. That's right.

Q. But you believe that someone at DK probably did?

A. Yes.

Q. Are you aware who that person might be?

A. I'm not positive who it would have been. But likely one of the individuals that I have referenced or potentially someone else in our legal department.

Q. Is it your understanding that the general practice of the legal department or whomever would have reviewed this document would have reviewed it thoroughly?

BASTABLE

MR. RENENGER: Object to the form of the question. Calls for speculation. If you know, you can answer.

A. I'm not sure how you define thoroughly. There are certain things that are important to us as investors in an instrument like this that we would have reviewed and focused on here. There may be other components of an agreement like this that are sort of more, let's call it, boilerplate where we wouldn't have felt necessarily the need to review in as much detail. But there would have been some review and understanding of the debt instrument that we were buying into.

Q. I'm going to direct your attention to section 10 and section 15 of DK-8 and my question to you with respect to each section is going to be whether those provisions would be of the boilerplate variety or be something you would delve into more deeply? And specifically, I'll direct you to --

A. Section 10?

Q. Yes. Which I believe is on page 24 of 19 of 785.

MR. RENENGER: Is there a question pending?

MR. KOCHMAN: Yes.

A. I'm sorry, I'm on the page.

Q. The question was whether provision 10 would have been a provision that you would have focused on or whether this would fall under what you characterized as the most boilerplate variety.

MR. RENENGER: I'm going to object to the form of the question in that he's already said he wasn't involved in reviewing this document and believes somebody would have reviewed it but doesn't know who or how much time they devoted to it. So you are in the realm of very wide speculation here. I'm not quite sure what you are asking for.

MR. KOCHMAN: It's fine if you

want to put an objection on. I'd ask you please do not give a speaking objection to counsel your witness. The witness is here in his capacity as a corporate representative and so I'm asking him a question. He has also characterized that Davidson Kempner would review such documents, focusing on certain provisions more and other provisions would be of more boilerplate frankly.

MR. RENENGER: And you are, again, quite far afield of the 30(b)(6) topics. You told me what topics they relate to but have made no representation how the questions you're asking relate to the topics. To me they don't. And absent such a proffer, this deposition is going to be concluded.

MR. KOCHMAN: Are you instructing your witness not to answer?

MR. RENENGER: Are you willing

to make a proffer?

MR. KOCHMAN: Well, I think my questions will all relate to -- my questions related to the topics that I have already put on here. So I think maybe I have to ask you how my questions do not in your view relate to the topics, the many topics that I have identified.

MR. RENENGER: Topic 3, first one you identified, "The content of any analysis provided to you by Houlihan Lokey." This document has nothing to do with Houlihan Lokey.

Topic 4, "You or any noteholders expected recovery under the prepetition plan support agreement." That didn't come into existence until May 2012, this document is dated 2009. Every other topic on the list that you referenced also is a 2012 era document, not a 2009 era document.

MR. KOCHMAN: My questions relating to this document here go to

Davidson Kempner's belief as to what claims they may have. Which would fall under whether Houlihan Lokey believed that there were claims that the JSNs may have. I believe this all falls within the broad topic of what claims the JSNs believed they may have for recovery outside of the debtors' estate.

MR. RENENGER: Does it relate to their decision to enter into the PSA?

MR. KOCHMAN: At this point right now, you can instruct your witness not to answer. You can let me ask my questions and put your objection on, but I don't believe that this colloquy is useful.

MR. RENENGER: Okay. Then we are done.

MR. KOCHMAN: So with respect to all of my other questions, you are walking out? You will not let us --

MR. RENENGER: Frankly, I haven't heard an adequate proffer yet.

BASTABLE

I think you are trying to take discovery on something completely unrelated to the topic 30(b)(6) and completely unrelated to our objection to the plan. I think it's -- I'm not sure what you are doing here, but it sounds like you are trying to lay a foundation for something unrelated. I think it's improper, I think it's an abuse of process. This discovery is limited to Phase II and plan objections and that's not what this is.

MR. KOCHMAN: So let's go to one area and you can instruct your witness not to answer if you'd like.

Let's mark this as DK-21.

(DK Exhibit 21, summary of the examiner's findings, marked for identification, as of this date.)

Q. Mr. Bastable, I believe you testified earlier that one of the documents you reviewed in preparation for this deposition was the summary of the

examiner's findings; is that correct?

A. Yes, it was.

Q. Is this the document that you reviewed?

A. Yes.

Q. I want to direct your attention to page 43 of this document on to page 44 under the heading, Junior Secured Noteholder Causes of Action. I'd like you to read that paragraph that goes from page 43 to 44.

Do you have an understanding as to what that section I just directed to you means?

MR. RENENGER: I'm going to object to the question as being beyond the scope of the 30(b)(6) topics and on that basis instruct the witness not to answer.

Q. Does DK agree with the opinion expressed by the examiner in the section that I have pointed out to you?

MR. RENENGER: Same instruction, same objection. Anything else?

BASTABLE

MR. KOCHMAN: Give us a minute.

(Whereupon, there is a recess in the proceedings.)

Q. Among the objections to the plan that you reviewed, did you review Wells Fargo's objection to the plan?

A. I did not. I did not review their specific objection.

Q. Apart from any discussions with counsel, did you have any discussions, excluding counsel or privileged conversations, about Wells Fargo's objection to the plan?

MR. RENENGER: I am going to object to the form of the question as being -- you know what, I'll let him answer this one.

A. I have not had any conversations.

MR. KOCHMAN: That's it.

MR. RENENGER: Okay, thanks.

(Time noted: 2:20 p.m.)

STATE OF NEW YORK )
) :ss
COUNTY OF NEW YORK )

I, CONOR BASTABLE, the witness herein, having read the foregoing testimony of the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____

CONOR BASTABLE

Sworn and subscribed to before me,
this _____ day of _____, 2013.

_____

Notary Public

C E R T I F I C A T I O N

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

I, ERICA L. RUGGIERI, RPR and a Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of November, 2013.

ERICA L. RUGGIERI, RPR

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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

VOLUME II

CONTINUED DEPOSITION OF REID SNELLENBARGER

November 8, 2013

Reported by:
ERICA L. RUGGIERI, RPR, CSR, CLR
JOB NO: 32435

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Designation
Orange Highlighting = Joint Designation Light Blue = Wells Fargo Designation
Dark Blue = Wells Fargo Designation overlaps with Plaintiff's Designation

November 8, 2013

9:46 a.m.

Continued deposition of REID SNELLENBARGER, held at the offices of Curtis, Mallet-Prevost, Colt & Mosle, LLP, 101 Park Avenue, New York, New York, pursuant to Notice, before Erica Lynn Ruggieri, RPR, CSR, CLR and Notary Public within and for the State of New York.

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

SNELLENBARGER

R E I D S N E L L E N B A R G E R,
called as a witness, having been previously duly sworn by a Notary Public, was examined and testified as follows:

(AHG Exhibit 8, Notice of Deposition, marked for identification, as of this date.)

EXAMINATION BY
MR. WALSH:

Q. Good morning, Mr. Snellenbarger. I'm John Walsh. I'll be taking your deposition today. I have discussed with your counsel certain limitations on your testimony today. I have marked, as AHG Exhibit 8, the Notice of Deposition and I just quickly want to review for the record the limitations that your counsel and I have agreed upon.

With respect to topic 1. Mr. Snellenbarger will "identify the intercompany balances on which the ad hoc group claims the noteholders possess a lien based upon a review of the debtors'

schedules and other relevant documents."

With respect to topics 2 and 4 through 11. "The debtors are not seeking expert testimony from Mr. Snellenbarger about the value of the intercompany balances and are only seeking testimony as to how, if at all, the ad hoc group valued the intercompany balances prior to the termination of the prepetition PSA (September 25th, 2012)."

There will be no limitations on topics 3, 24 to 28 and 30 to 32.

With respect to topics 12, 16, 17, 20, 29, 33 and 38 Mr. Snellenbarger's testimony will be limited to "Houlihan's communications with the debtors and any significant meetings between the debtors or their representatives and the ad hoc group or its representatives."

With respect to topics 13 through 15 and 18 and 19, we are not seeking, "the debtors are not seeking expert testimony from Mr. Snellenbarger and are seeking testimony as to the fact

of what, if any, analysis was done by the ad hoc group with respect to each topic."

Topics 36 and 41 through 44 with the understanding that Mr. Snellenbarger "will testify about the expected recoveries by reference to the plain language of the plan and will testify as to the fact of whether or not the ad hoc group conducted an analysis of its expected recoveries under the plan."

With respect to topic 37, Mr. Snellenbarger will testify about "the business reasons for objecting to the plan."

With respect to topic 39, "with the understanding that the ad hoc group has not objected to the amount of the Ally contribution and that Mr. Snellenbarger will testify to that effect."

With respect to topic 40 "with the clarification that this topic seeks testimony about the ad hoc group's objection to the releases provided to Ally under the plan in exchange for the Ally

contribution."

And finally, with respect to topic 45, "with the clarification that we are seeking testimony from Mr. Snellenbarger about nonprivileged communications between Aurelius and the ad hoc group or its representatives, concerning the debtors that predate Aurelius's joining the ad hoc group."

MR. RENENGER: And if I could just clarify a few things for the record. Number one, the deposition notice that was recirculated two days ago also included topics 21 to 23, 34 and 35, which Mr. Snellenbarger is not testifying about. In fact, those have already been covered by Mr. Bastable last week.

Further, with respect to topics 18 to 19, the testimony would be limited to phase two issues with respect to those topics and not phase one issues with respect to those topics. And generally speaking, for

all topics, Mr. Snellenbarger is here as a fact witness, neither an expert witness nor a witness who is in a position to speak to legal issues. So on topic 40, for example, we would further limit that topic or request limitation of that topic to purely fact issues and not legal issues and we will make that objection when and if the questions are asked that would go beyond what we believe are the fact issues.

And then finally, on topic 45, the further clarification that I believe we have agreed to Mr. Walsh is that that would be limited to communications between Houlihan and Aurelius or significant meetings involving ad hoc group professionals and Aurelius prior to Aurelius becoming a member of the ad hoc group.

Q. Did you follow all that?

A. Got it.

Q. Mr. Snellenbarger, you

SNELLENBARGER

understand that you are still under oath?

A. I do.

Q. What did you do to prepare for today's deposition?

A. I met with Milbank and with one of my Houlihan colleagues to discuss the topics here.

Q. Who is that?

A. Who is my colleague? Jeffrey Lewis.

Q. Who from Milbank did you meet with?

A. Aaron and Jerry Uzzi.

Q. And when was that?

A. Yesterday.

Q. For how long?

A. 4 or 5 hours.

Q. Was anyone else present, either personally or telephonically?

A. One of my other colleagues briefly, Ben Ilhardt, in person.

Q. Anyone else?

A. No.

Q. Did you have any other meetings

with counsel to prepare for today's deposition?

A. No.

Q. Any other phone calls with counsel?

A. No.

Q. When did you first learn that you would be the witness for this deposition?

A. Couple weeks ago maybe.

Q. How did you learn?

A. I'm sorry?

Q. How did you learn of that fact?

A. Via e-mail from Aaron.

Q. And did you review any documents at that time or up through today to prepare to testify today?

A. Yes.

Q. What documents?

A. Just a few, like the plan objection, disclosure statement, variety of e-mails.

Q. What e-mails?

A. Certain e-mails related to

correspondence between myself and the ad hoc group or Houlihan and the ad hoc group.

Q. Do you know if those e-mails were provided to counsel for production to the parties in this case?

A. I believe they were, yes.

Q. How far back did the e-mails go back in time?

A. I believe back through, I'm not sure -- we adhered to the protocol as agreed to. I believe it was back through even prepetition, the spring of 2012, I believe.

Q. Do you know if it went back to 2011?

A. I don't recall. It may have. I mean, I do know that whatever protocol was agreed to, we adhered to that so.

Q. Do you know who at Houlihan assisted counsel in the collection of documents?

A. Under my direction Jeffrey Lewis with Houlihan's internal counsel.

Q. Did you have any discussions outside of the presence of counsel with anyone to prepare for today's deposition?

A. No.

Q. Did you have any meetings with other counsel besides Milbank to prepare for today's deposition?

A. No.

Q. Do you know if you are going to be a witness at the trial or plan confirmation in phase two?

A. I'm not aware of that.

Q. Do you know if anyone from Houlihan is going to be a witness at that trial?

A. I believe we have an expert there, Michael Fazio.

Q. Anyone else?

A. I don't believe so.

Q. When did you first start working at Houlihan?

A. Spring of 2005.

Q. And do you have a particular expertise in your practice?

A. I'm a managing director in the financial restructuring group. I have been doing, involved in advising companies and creditors in restructuring stress situations for close to 16 years.

Q. Is there a particular industry that you provide expertise in?

A. We are fairly industry agnostic. I tended to do a variety of different industries, real estate is one of them that I focus on. But I have done a variety of different industries.

Q. How much experience do you have anyone the real estate industry?

A. A fair -- decent amount. I have done several distressed and healthy deals in the real estate space over my career.

Q. Have you worked for companies that do securitizations of real estate investments?

A. Before ResCap not that I recall.

Q. Had you done any work for ResCap prior to this case?

A. ResCap specifically, no.

SNELLENBARGER

Q. Had you done work for Ally?

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

A. Yes.

Q. When?

A. Several years ago. We helped them examine, they had a time share portfolio they wanted us to examine alternatives for, which we helped with.

Q. Do you know if that work in any way informed the work that you've done in this case?

A. No, it did not.

Q. Do you know if anyone from Houlihan, besides yourself, has done work for either Ally or ResCap?

A. Yes.

Q. Do you know who that is?

A. Matt Niemann, Andrew Turnbull.

Q. What work did they do?

A. Well, I guess let me back up. Matt Niemann actually worked for ResCap several years ago as an employee after he left Houlihan. And then the Houlihan

engagement, Andrew Turnbull was my partner on the engagement.

Q. Where is Mr. Niemann working now?

A. At Houlihan.

Q. So he was at Houlihan, went to ResCap and then back to Houlihan?

A. Well, he actually left Houlihan to work for Cerberus. Cerberus is an investor/owner of ResCap. So he was, in his capacity as a service employee worked at ResCap, as I understand.

Q. For how long?

A. I believe a couple years.

Q. And do you recall which years?

A. Maybe '06 to '08. 2006 to 2008.

Q. Do you recall when your involvement in this engagement generally first began?

A. Yes.

Q. When was that?

A. The engagement -- we had been tracking ResCap as a name, as a potential client for some time. We actually

interviewed for the position of advisor to the company in late 2011. We were not selected as the company's investment banker and so we began discussions, on a public basis, with noteholders that were invested in the junior secured bonds.

Q. Did you meet with management at ResCap to pitch work?

A. We did.

Q. Do you recall who you met with?

A. Tom Marano, and I just don't recall the other -- there were other senior management people there, I just don't recall who else was there.

Q. You said late 2011. Do you recall which month?

A. I think it was November.

Q. Where did you meet?

A. At ResCap's offices here in New York.

Q. Do you recall how long you met with them?

A. An hour or two.

Q. Did you put together a pitch

book for that meeting?

A. We did.

Q. And what information was in the pitch book?

A. Just public information. ResCap had filed publicly financial statements and there was articles out on ResCap, et cetera. So we had just assembled an analysis -- or I wouldn't say analysis, just a presentation based on the public information.

Q. How long prior to that meeting had you been tracking ResCap as a potential client?

A. I would say 3 or 4 months.

Q. What led you to begin tracking ResCap as a potential client?

A. There was various reports of ResCap's financial distress, some of their bonds were trading very low. And we, just on a public basis, knew that they had significant maturities coming up that had to be dealt with, and so they might, we thought they might need assistance in

dealing with those issues.

Q. What public information did you review in connection with the pitch that you gave?

A. There was I think SEC filed public financials that were available that we reviewed.

Q. Were there analyst reports that you reviewed?

A. Yeah, I believe so. There were analyst reports and also articles and things like that that were publicly available.

Q. Did Mr. Niemann participate in the pitch?

A. He did.

Q. Mr. Niemann was generally familiar with ResCap as a company, correct?

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

Q. To your knowledge?

A. To my knowledge, yes. I mean, it had been a few years since he had

worked there so things may have changed but, yes, he was generally aware.

Q. Do you know if he knew Mr. Marano before that meeting?

A. I believe he did.

Q. Was Mr. Niemann the connection that led to that meeting?

A. I don't know if I would say that. I mean, we had several, I think, relationships from a firm perspective with ResCap and I think everyone employed those relationships to see if we could get a meeting.

Q. And do you know who ultimately ResCap hired as their investment advisors?

A. Yes.

Q. Who was that?

A. Centerview Partners.

Q. Did you have any other meetings, besides that November 2011 meeting, with respect to pitching ResCap for work?

A. No.

Q. When was the first time that you -- well, you are engaged here in

connection with the ad hoc group, correct?

A. Correct. And the trustee currently.

Q. And the trustee. When did that first begin, when did you first start working for the trustee?

A. With the trustee?

Q. Yes.

A. This was probably last summer, summer 2013, I believe.

Q. Is there an engagement letter between Houlihan and the trustee?

A. Yes.

Q. Is that something that you provided to counsel that's produce in this case?

A. I believe so and during the phase one process.

Q. We have seen an engagement letter from February 2012 between Houlihan and the ad hoc group. How did that engagement arise?

A. As indicated previously, after we were not selected to be the company's

investment banker, we reached out to a variety of holders that were invested in the junior secured notes, began discussion with them. They formed their own kind of ad hoc group and then called and said they would like to retain us as their financial advisor. And so we began that process and ultimately signed up or agreed to an engagement letter with them.

Q. When did that process start?

A. Discussions started in December and then ultimately we, I think we signed a letter in February.

Q. And did you meet in person with members of the ad hoc group at that time?

A. We had a lot of telephone calls. I think we met individually, you know, in person on kind of an ad, for lack of a better term, an ad hoc basis.

Q. Which members did you meet personally at that time?

MR. RENENGER: Object to the form of the question. With respect to when in time you mean?

SNELLENBARGER

MR. WALSH: Well, this is all in late 2011.

Q. Is that correct?

A. Or early 2012.

Q. Fixing that as the time period, when and who did you meet with?

A. I believe we met with Davidson Kempner, Pentwater Capital I believe in person. Others I think we had telephone calls with.

Q. Pentwater is in Chicago?

A. Correct.

Q. You met with them?

A. Yes.

Q. Had you worked with Pentwater before?

A. No.

Q. Had you worked with Davidson Kempner before?

A. Yes.

Q. In what matters?

A. I'm trying to think. They were involved in St. Vincent Catholic Medical Centers years back on our committee or

investor. I think they are involved in general growth properties, if I recall.

Q. Any other holders of the JSNs that you met with in 2011, early 2012?

A. In person, no, not that I remember.

Q. Same question but telephonically?

A. Yeah. We spoke to Appaloosa. We spoke to, I believe, Marathon, Silver Point.

Q. When you met with the various holders of the JSNs, did you provide a pitch book to them?

A. We did.

MR. WALSH: This will be AHG 9.

(AHG Exhibit 9, e-mail, marked for identification, as of this date.)

Q. Mr. Snellenbarger, you have Exhibit 9 in front of you. Do you recognize this e-mail from May 2012?

A. I see it. It's been a long time, but I generally understand the reason for the e-mail.

Q. Ben Ilhardt is the Houlihan colleague that you mentioned earlier, correct?

A. Correct.

Q. He sent this on May 11, 2012, to Alan Leavitt at Beach Point?

A. Yes.

Q. Do you know who that is?

A. I believe he's an investment advisor at a hedge fund.

Q. Beach Point is a hedge fund?

A. I believe so, yes.

Q. Were they a holder -- we have even using the word "JSN," junior secured notes. You understand what I mean by that, correct?

A. Yes.

Q. Was he a holder of JSNs?

A. I don't remember whether he was a current investor or whether he was looking to invest.

Q. You see that you are copied on this e-mail?

A. Yes.

Q. And the title of the e-mail is ResCap Public Book. Do you know what that refers to?

A. Yeah. We had put together some discussion materials based on public information that we could share with investors or potential investors that may be interested in ResCap on a public basis.

Q. And if you see the e-mail, it's three items that Ben has forwarded to Alan. Set of discussion materials from third quarter 2011, supplemental update for fourth quarter and a draft company org structure. And your understanding is all of these materials were based on publicly available information?

A. Correct.

Q. Turn to the page ending 561.

A. Okay. Yes. I'm here.

Q. Are these the discussion materials for third quarter 2011?

A. I believe so, yes.

Q. Do you know who prepared these?

A. Houlihan did.

Q. Do you know who at Houlihan was involved?

A. I was, Jeffrey Lewis, Ben Ilhardt, Matt Niemann.

Q. Do you recall roughly when this was prepared?

A. It was in probably late 2011. It's based on ResCap's publicly financials as of end of third quarter 2011. So it was sometime late fall.

Q. Did you provide this document to members of the, holders of the JSNs in late 2011, early 2012?

A. I believe we did, yes.

Q. Is this the pitch book for the pitch?

A. I don't recall whether we did anything else or not. We just kind of showed, summarized, you know, the financials and the situation for the holders. I don't know if we had any other materials. We may have sent some -- I guess we had the Houlihan Lokey overview phase II. This is probably similar to

what we sent.

Q. Was this the first set of materials that Houlihan prepared on ResCap?

A. I believe so.

Q. If you turn to the page, I'm going to use the page numbers from the presentation, page 5 of the presentation.

A. Okay.

Q. What does this page reflect?

A. It's a brief summary of ResCap the company and a summary of its assets and liabilities.

Q. Do you know if by this time Houlihan had reviewed the security agreement that was underlying the junior secured notes?

A. By this time, what time are you referring to?

Q. By late 2011 when this document was prepared.

A. If it was public, if the security agreement was public. I just don't recall if it was. If it was -- I

think it was -- then I think we would have.

Q. We will look later at some of the analysis of the collateral and if that refreshes your recollection, let us know.

A. Okay.

Q. The last bullet on this page 5 refers to "Ultimate value recoveries associated with ResCap's borrowings." What are you referring to there?

A. I think ResCap had a significant number of different debt obligations and we were just highlighting ultimately what recoveries those different debt obligations may be. It would be dependent on a variety of different issues.

Q. Including how different collateral pools would be allocated to various subsidiaries, correct?

JSN Objection:
152:18 – 153:8, FRE 611(a)
(Vague and ambiguous)

A. Correct.

Q. And what does that mean?

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

A. On a public basis, because

that's all we had at the time, we knew that different collateral was at different legal entities and determining who had guarantors there, who had liens there, et cetera, I think we determined the recoveries or the various debt obligations.

Q. And you knew at this time that the junior secured noteholders had liens on certain assets?

A. I believe so. To what extent I don't think we knew. But I think we knew that they had liens to some extent.

Q. What was your understanding of what their liens were as of this time, late 2011?

A. Yeah. In the public financials, there was some liens that were attached to the junior secured notes. And so we knew that they had some. That that was based on the public information.

Q. Do you recall which assets were subject to those liens?

A. I just don't remember what the

public financials had said. I mean, I know now. Obviously everything, liens that they had, I just don't remember what was disclosed in the public financials. I know on a public basis they had certain servicer advances, I believe, and held for sale loans.

Q. The bullet point goes on to reference "the amount and treatment of contingent liabilities beyond what ResCap has currently reserved for." What is referenced there?

A. Well, I think we are referring to the various potential claims against the estate with respect to RMBS claims and, you know, different holders of those securities asserting claims against the company for the performance of those securities.

Q. And what was your knowledge of those claims based upon as of this time?

A. Just I think there was public -- I think ResCap had made some reserve for those liabilities. And then there was, I

think, articles out there discussing whether that was, you know, if there were additional claims that might be asserted, et cetera.

MR. RENENGER: I just want to clarify for the record, there's multiple page 5s in this one Exhibit 9 since there's three attachments to the e-mail that are all together so the Bates number for the page we have been discussing is 9566.

MR. WALSH: Thank you.

Q. If you turn to page 9.

MR. WALSH: 570 are the Bates numbers.

A. I'm here.

Q. This is entitled, Summary of Historical Borrowing Funding Facilities. Briefly, can you describe what this page reflects?

A. I think this is a brief summary of ResCap's historical borrowing and how it raised debt, consolidated debt, and then we provided a simple schedule down

below based on public financials of the total of ResCap's debt outstanding over the last four years.

Q. You understood that there was a revolver with Ally, correct?

A. Yes.

Q. And that the junior secured notes -- well, you understood they were senior secured notes and that there were junior secured notes, correct?

A. Correct.

Q. And you had a basic understanding based on public filings of the assets that formed the collateral for each?

A. Based on the public financials.

Q. So if you turn to page 12 of the presentation, Bates number ending 573. This is a summary of pledged assets, and if you look at footnote 2, it reads "Junior secured notes are partially secured by same collateral as parent senior secured credit facility."

What does that refer to?

A. I believe based on the public financials, it showed that the junior secureds have a second lien on the collateral related to the Ally senior secured facility.

Q. And that, again, was based on public information?

A. Correct.

Q. If you turn to page 16, Bates number ending 577.

A. I'm here.

Q. This page is entitled 9 5/8s Junior Secured Notes, Summary of Select Provisions. What does this refer to?

A. This answers my question previously. It's a summary of the junior secured note indenture based on its being publicly filed.

Q. You had read and reviewed -- you had read that document in preparing this document?

A. Correct.

Q. And that document was publicly available as of June 2008 or at least the

filing of the 10-Q dated June 30, 2008?

A. I believe so. That's what the source says on this document.

Q. You see that one of the items laid out here is collateral. You had read the provisions in the indenture document regarding the collateral for the junior secured noteholders?

A. I believe we had reviewed what was in the indenture.

Q. Including the collateral provisions?

A. Yeah. As a general matter. I mean, we weren't obviously lawyers. We were just trying to get a general sense of what that was. But, yes.

Q. Is it fair to say this was an important document in analyzing any potential recovery by junior secured noteholders?

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

A. Absolutely. And indenture is very important with respect to what rights

the junior secured notes have with respect to recovery collateral or otherwise.

Q. Did you study the indenture document in preparing this presentation?

A. Well, yes. I mean, we reviewed it and put a summary together, you know, to the best of our knowledge at the time. I can't say we had full extent of understanding of every detail but we reviewed the best we could.

Q. Do you know if White & Case was involved in any of the ResCap issues as they relate to junior secured noteholders by this time?

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

A. By what time?

Q. By late 2011 when this document was prepared.

A. We had become aware by some of the holders that they had begun discussions with White & Case. And I don't remember if it was late 2011 or early 2012. And then one of the holders,

I don't remember, one or two of the holders, I don't remember who, recommended that we sit down with White & Case.

Q. When was that?

A. It was either late 2011 or early 2012.

Q. Do you know who was retained first, Houlihan or White & Case?

A. I believe White & Case was.

Q. Were there any other documents besides the indenture that you reviewed in connection with this presentation?

A. Well, as I said before, the ResCap's public financial statements and research reports and various articles.

Q. If you turn to 21 of the presentation. It's Bates number ending 582. This is an overview of contingent liabilities. What are the contingent liabilities that are reflected here?

A. I believe it summarizes rep and warranty claims and other securities claims against ResCap from a variety of different security noteholders.

Q. On the right side there's a column entitled Liability. What does that column reflect?

A. I believe it provided a high level estimate of range of what those claims could be.

Q. And you see footnote 2, which is hard to read but I will represent that it reads, "Range of approximate and preliminary industry and HL estimates."

Do you know what that footnote refers to?

A. I believe there were research reports out there and discussions about -- as a general matter, there were -- these types of claims were being asserted against a variety of different financial institutions. And there were some settlement, public settlements or potential settlements going on on a public basis. So there were, I think, research analyst reports out there trying to estimate using those templates about what maybe the liability would be here based on

the amount of loans that were originated by ResCap, et cetera. So these estimates were prepared just based on a very high level based on that kind of data.

Q. These were estimates that Houlihan made?

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

Q. Let me rephrase it. Were these estimates that Houlihan made?

A. I think that we clearly utilized the input that I described and utilized information from various research reports and laid out a range of values on a high level basis.

Q. Am I correct that if, if you look at the left column, there's a group of claims identified as representation and warranty claims and fraudulent underwriting\securities litigation. Am I correct that the right column, liability, where you see a dotted line around, those are estimates for that set of claims?

A. For the private label and whole

loan, yes.

Q. I see. So you separated the agency claims?

A. Correct.

Q. Is it correct that by that time the agency claims had been settled?

A. I think that's why we separated. I think most of them had been settled by that time, correct.

Q. So am I correct that at this time the estimate, preliminary estimate and Houlihan estimate for private label and whole loans claims was 2.5 to 3.5 billion?

A. And I think as we noted, it could be up to 5 to 6 billion.

Q. That was the estimate as of this time?

A. Yes. And again, this was based purely on public financial information. We weren't retained by anybody at the time. We had limited knowledge it was -- it was a -- almost illustrative at best.

Q. If you turn to page 27 of the

presentation. Page ending 588.

A. I'm here.

Q. This is a situation overview. And on the right side Houlihan has identified constraints and challenges. And there's a heading, Contingent Liabilities.

A. Yes.

Q. You see it?

A. I do.

Q. The second bullet, "Reps\warranty obligations could be meaningfully larger than the $829 million reserve currently in place."

A. I see that.

Q. And that was Houlihan's position as of this time period?

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

Q. Is that consistent with Houlihan's position as of this time period?

A. I would say so. I mean, as I said before, you know, based on public

kind of settlement comparables and so forth, I think the general consensus in the market, too, was that those claims could be much larger than 800 million.

Q. If you turn to page 30 of the document.

A. I'm here.

Q. Page ending 591, entitled Contingent Liability Management. And the page reads, second bullet, "Addressing these issues will be crucial to evaluate options to reduce their negative potential impacts on the company, its parent and the ability to carry out a successful long-term transaction."

What is your understanding of that sentence?

A. I think we were simply saying that the claims were not quantified. It could be significant. And given the company was not in bankruptcy at the time, that it was hindering the company's ability to operate and to raise additional financing given the unknown quantity.

Q. And then the first full bullet reads, "A deep dive diligence on these liabilities will be necessary to fully understand and communicate the issues and available options to outside parties and government entities whose support will be necessary to move forward."

What is referred to there?

A. I think we were merely trying to say that given the limited public information, that you'd have to do a full analysis of what we thought those liabilities may or may not be. And you had to deal with those parties in order to understand what their concerns and issues were to facilitate some kind of resolution.

Q. Turn to page 33. It's 594 Bates number.

A. I'm here.

Q. Noteholder Considerations. What's reflected on this page?

A. I think here we were just trying to summarize what we thought were issues

to consider with respect to the junior secured noteholders as they evaluated their position.

Q. The first bullet point, second sentence references the collateral pledged under the Ally facility and a fair value of 1.4 billion. And it reads, "Implying excess of $602 million available for the $2.1 billion of junior secured notes."

What is that referencing?

A. In the public financials, there is, I believe there was a collateral summary. And it showed, I believe, an Ally revolver column or something to that effect, and showed those assets, how to value at 1.4. We knew the debt outstanding in the Ally facility was 766. We knew we had a second lien that resulted in 600 million available for us. As we ultimately know, that there was -- debtors disclosed there was additional collateral available for both of those parties. But on a public basis, this was the only thing available at the time.

SNELLENBARGER

Q. The next bullet, it reads, "Beyond the secured collateral noteholders will need to fully understand other sources\pockets of value available for secured and unsecured recoveries."

What's referenced there?

A. I think we were saying merely that, look, based on the public financials this is the column they are showing, but the junior secured may have other collateral available to them and we need to examine that.

Q. And that was important to the junior secured noteholders?

A. Absolutely. Or we would assume so, yes, and we would think so.

Q. Houlihan certainly considered it important?

A. Yes.

Q. And Houlihan determined that was something that had to be analyzed in connection with any recovery that the junior secured noteholders would obtain?

MR. RENENGER: Object to the

form of the question.

Q. Let me rephrase. At some point you were retained by members of the ad hoc group?

A. Yes.

Q. Is it correct that part of the assignment in connection with that retainment was analyzing the collateral available to the junior secured noteholders?

A. I believe so.

Q. And in order to perform that task, you would need to fully understand other sources, pockets of value available for secured and unsecured recoveries, correct?

A. Correct.

Q. There's a row entitled Intracompany Agreements. What's referenced there?

MR. RENENGER: Where are you?

MR. WALSH: The second full row is Intracompany Agreements.

MR. RENENGER: Thanks.

A. We were aware on a public basis that ResCap and Ally had a variety of agreements between the two companies, a parent subsidiary relationship. And we were just highlighting the issue that those would have to be examined to determine whether they were arm's length, they were there, that no one side was getting a better deal than the other.

Q. And that was something that Houlihan would need to review in order to assist the junior secured noteholders in determining the value of their recoveries?

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

A. Yes. As a general matter, I think we were at this time uncertain what that impact, what that would have on the junior secured recoveries. But we thought it was an issue that at least needed to be explored.

Q. If you turn to the page 37 of the presentation, page ending 958.

This is strategic

considerations, strategic approach. Is it fair to say this page reflects next steps that Houlihan suggested for the junior secured noteholders?

A. Yes. I think we -- our view was we were trying to highlight services that we could provide and help assist the junior secured noteholders in their evaluation of their position.

Q. And those services included under high level process overview, financial due diligence, correct?

A. Correct.

Q. And that financial due diligence included evaluating all financial and operational aspects of the company and performing a deep dive analysis of all assets pool servicing and origination platforms and liabilities, correct?

A. That's correct. I mean, this was our hope and goal that we'd be able to do all this.

Q. And you did, in fact, do all that?

SNELLENBARGER

A. Well, we were --

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

A. Ultimately, we got some information. We were able to do as much as we could based on the information that was provided to us.

Q. We will get into that soon.

MR. WALSH: Let's take a break now. Five minutes, is that okay?

THE WITNESS: Sure.

(Whereupon, there is a recess in the proceedings.)

(AHG Exhibit 10, Letter to Mr. Uzzi from ResCap, marked for identification, as of this date.)

(AHG Exhibit 11, e-mail chain, marked for identification, as of this date.)

Q. Still looking at Exhibit 9, Mr. Snellenbarger.

A. Okay.

Q. If you flip through, you'll see there's another presentation. It's the

second page ending 9539.

A. I see it.

Q. And it's entitled, Discussion Materials, Financials Updated For Fourth Quarter '11. Then it's dated April 2012. Is this an update of a previous presentation?

A. I believe so.

Q. Houlihan prepared a presentation that was entitled Fourth Quarter 2011, correct?

A. Well, I believe we prepared the presentation as of the third quarter, which is the presentation we went through. And then several months later, ResCap produced financials for the fourth quarter so we updated our numbers accordingly.

Q. And that was something that was shown at your first deposition, if you recall?

A. I believe so.

(Brief interruption.)

Q. And approximately when was that presentation prepared?

SNELLENBARGER

A. The fourth quarter update presentation?

Q. No. The one that you -- there were two presentations. We looked at the third quarter and then there was one that was based on fourth quarter information. And then there's a third, I assume, in May, which updates the fourth quarter. I'm asking about the second.

A. I don't know if --

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

Q. The one that we are looking at now, Mr. Snellenbarger, that document was prepared in 2012, correct?

A. Correct.

Q. And that document was prepared based on publicly available information?

A. Correct.

Q. At some point the counsel for the noteholders entered a nondisclosure agreement with ResCap?

A. Yes.

Q. I'm showing you what has been

marked as Exhibit 10. Is this that NDA?

A. I believe so.

Q. Do you know if there was an NDA that was signed by Houlihan?

A. I think so, yes.

Q. Is that something that you provided to counsel?

A. I believe so.

Q. Do you know approximately when that NDA was signed, the one with Houlihan?

A. I believe it was around the same time that White & Case signed.

Q. Next exhibit is Exhibit 11. It's an e-mail from Harrison Denman dated February 28, 2012. Let me know when you are ready to discuss this.

A. I see it.

Q. Is this a due diligence request list that Houlihan prepared for the debtors?

A. Yes.

Q. At this time it was ResCap, correct?

A. Correct.

Q. And was this due diligence request list provided to counsel for ResCap at this time period, February 28, 2012?

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

Q. Well, let me take it one piece at a time. The bottom half of the e-mail is an e-mail from Jeff Lewis to K. Chopra at Centerview Partners. Who is to your knowledge K. Chopra at Centerview Partners?

A. Karan Chopra, he's a -- he works at Centerview.

Q. And who did they represent at this time period?

A. The company ResCap.

Q. And you are copied on that e-mail, correct?

A. I am.

Q. What was Mr. Lewis forwarding to Mr. Chopra?

A. A due diligence information

request list. The kind of information that both Houlihan and White & Case would like to obtain from the company.

Q. And why did Houlihan and White & Case want to obtain this information?

A. To -- well, once we had signed the confidentiality agreement we were told we could have access to confidential private information not available to the public. And we wanted to continue our diligence of the company and the situation on a private basis.

Q. When was the first time that either Houlihan or White & Case received nonpublic information from Residential Capital?

A. I don't recall. I would assume it would be sometime shortly after this was sent over.

Q. Are you familiar with Intralinks?

A. I am.

Q. Do you know if either Houlihan or White & Case or any of the noteholders'

representatives obtained access to Intralinks around this time period?

A. There was a data room. I don't know if it was Intralinks or not. But I know there was a data room and we got -- we Houlihan, and I think White & Case as well got access to it. I'm not sure exactly what time. There were, I think, a variety of different data rooms set up by ResCap. So we got access to a data room during that time, I believe.

Q. And what was your understand ing of what was in the data room at that time?

A. Some information on the company on a private basis. I mean, it was populated with certain, you know, financial information and other agreements.

Q. Do you recall if at this time period Residential Capital was trying to sell certain of its assets?

A. Yes.

Q. And do you recall that the data room that you referred to was prepared in

connection with the sale of those assets?

A. There was a data room prepared for the buyers. I believe initially we had a separate data room. We didn't have the buyer data room. I think we had a separate data room just for us that had certain information in it.

Q. What type of information?

A. As I recall, certain financial information, certain agreements. It was -- you know, we had sent this exhaustive list over. They began populating the data room with some of the information. There was a continual, you know, back and forth request of trying to get more information from the company.

Q. The list that we are looking at in Exhibit 11, is this a standard list that Houlihan has --

MR. RENENGER: Object to the --

Q. -- or was it prepared specifically for this engagement?

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

Q. Let me rephrase.

How was this document prepared, to your knowledge?

A. We prepared it based on what we thought was important to review for ResCap.

Q. And who at Houlihan prepared the list?

A. Myself and my team.

Q. That would include Mr. Lewis?

A. Correct.

Q. That would include the other individuals listed on the e-mail, Mr. Ilhardt?

A. Yes.

Q. Anyone else?

A. Mr. Karl as well.

Q. Mr. Karl works at Houlihan as well?

A. He did at the time.

Q. He's since left?

A. Correct.

Q. Mr. Denman, is he a lawyer at White & Case?

A. He is.

Q. Do you recall roughly how long it took to prepare the list?

A. A week or so.

Q. And do you recall if you coordinated with White & Case on the list?

A. I believe we did.

Q. Do you recall if White & Case added or deleted any materials on that list?

A. I don't recall. I mean, the e-mail says it's a compilation of both White & Case billing requests. So I believe that we had some dialogue back and forth about what to add, et cetera, what to include.

Q. And many of the items that are listed here are nonpublic items, correct?

A. Yeah. Looks like it. I believe so, yes.

Q. If you look at the first page of the information requests at page ending 551. Under Capital Structure, item 5, you've requested "supporting detail of all

collateral currently pledged to each borrowing facility, including but not limited to," and then you go through a number of specific issues or specific items. Why were you asking for that information?

A. I think we wanted to get a lay of the land frankly of what the company's view of the collateral that was pledged to each of the secured facilities.

Q. Did you obtain that information?

A. We got, received a schedule actually in a meeting we had with the debtors sometime maybe in March, I believe, in which they provided columns of debt facilities and laid out assets. And the debtors had tried to lay out what they thought the collateral was in each of those debt silos.

Q. Who was the meeting with?

A. It was between Houlihan and White & Case and the company's advisors, Morrison Foerster, Centerview, and I believe FTI was there as well.

Q. Where did the meeting take place?

A. I believe Morrison Foerster's office.

Q. Here in New York?

A. I think so, yes. Yes, definitely New York.

Q. How long was the meeting?

A. Couple hours.

Q. And you were at the meeting?

A. I was.

Q. Were you free to ask questions of Morrison Foerster, Centerview, anyone out there about the collateral, the collateral sheet that you were provided?

A. Yes. I mean, we had just received it when we walked in the room so we didn't have time to really examine it. But, yeah, we discussed the collateral. I mean, it was, as compared to the public information, there was significantly more detail and more, as it showed, more collateral available to the junior secured noteholders.

Plaintiff's Objection
184:2-186:18
Beyond the scope of
affirmative testimony

Q. Did you at that meeting and thereafter ask for more information regarding that collateral?

A. We did.

Q. And did you receive that information?

A. Not all of it, no.

Q. What information did you not receive regarding the collateral?

A. Yeah, we -- I mean, we had continued to ask a bunch of details about, you know, what specific loans we had liens on, which servicer advances, why certain collateral was allocated to the Ally LLC versus the Ally revolver and our silo. We -- you know, a variety of different other types of, are there other ancillary, you know, other collateral. We have an all asset lien, does that encompass anything else. Those types of questions.

And the debtors, there's a lot of things we went around. The debtors were talking to a lot of different parties so we could get some information, not

everything. Sometimes the debt collateral sheet were moved and balances were moved in between silos so we were trying to figure out why they were being moved, et cetera.

Q. Was there any information regarding the collateral that you asked for and didn't receive that you felt you needed to receive in order to perform your work?

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

A. Yeah, I mean, look, we had this extensive list of diligence. We didn't receive all of this on this list. It was not all provided. We got some information. I don't recall exactly what information. We didn't -- I know we had -- we didn't get everything we wanted. And we tried to examine things the best we could based on the information we received.

Q. Do you know if the reason that you didn't get the information was that

the debtors did not have that information or the opposite, they had the information and they just didn't provide it to you?

A. I don't know.

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

A. I don't know.

Q. Let me rephrase. Was there any information that you asked from the debtors that they told you they did not have in existence?

A. I'm sure there may have been. I just don't know exactly what -- it's difficult for me to determine what the debtors had and didn't give to us versus what they just didn't possess. I think there was a mixture of both.

Q. Do you recall how long you had access to the data room that you referenced earlier? Was it days or weeks, months?

A. I don't recall when we first got access to the data room. I think it was sometime in March maybe.

SNELLENBARGER

Q. How long did you have access?

A. We may still have access to it now. I know it's changed over time and so forth.

Q. If you turn to the second page ending 552, there are a number of items listed under D, Financial Performance. Do you recall if you asked -- well, you obviously asked for all of these items, correct?

A. Correct.

Q. Are any of these items under D that you did not receive?

A. I believe so. I don't remember which ones. I know we had asked for exhaustive, you know, financials. They provided us some, not at all.

Q. Did you keep copies of unconsolidated financial statements prepared by the company or anyone else?

A. We were provided some copies. I don't think all those financial statements since 2008, no.

Q. You did receive copies of

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unconsolidated financial statements from some period?

A. I believe so, yes.

MR. RENENGER: I just object and I think there was a bit of ambiguity when things would be received. I don't know if you are asking about that period before the PSA or...

MR. WALSH: Let me fix the time period.

Q. The PSA was signed approximately May 14th -- 13th, 2012.

A. I believe so.

Q. Did you receive copies of the unconsolidated financial statements prior to that date?

A. Certain unconsolidated financial information, yes, not all of it.

Q. Item 1 is Annual Consolidated and Consolidating Financial Statements. Did you receive that prior to the petition date?

A. We received some, not all.

Q. If you turn to the third page

ending 553.

A. Okay.

Q. There's an item H, Affiliate and third-party relationships\transactions. What are you requesting here?

A. We were trying to understand all of the transactions between ResCap and Ally and ResCap and third parties. So the major material transactions that occurred.

Q. Why was that something you requested?

A. Well, we thought it was important to understand the relationship between Ally and ResCap and whether those were on play, whether there was appropriate value traded between the two companies. And also understanding if ResCap, any other material transactions with outside third parties that would affect the performance of the company.

Q. Item 3 in the list is, refers to all material capital transactions between individual ResCap subsidiaries. What are you requesting there? When I say 3,

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romanette (iii) in item 1.

MR. RENENGER: Thanks. I was lost.

A. Well, I think we were aware that ResCap had significant operating subsidiaries, RSC, GMAC mortgage. And I think we just wanted to make sure that we were capturing transactions related to those entities as well.

Q. Did you receive information in response to this request prior to the petition date?

MR. RENENGER: Object to the form. Are you talking (iii) request?

Q. Let me be more broad. With respect to H(i), we have asked for a summary or list of all material, capital transactions between the various entities between Ally Financial, ResCap and ResCap subsidiaries. Did you receive information in response to that request prior to the petition date?

A. We received some information, not all.

Q. What information?

A. I don't recall exactly what pieces of information they received. I think they sent some, some summaries of certain transactions, not all of them.

Q. You are aware, at least prior to the petition date, that the company did have material transactions between subsidiaries?

A. Yes.

Q. Were you aware of the scope of those transactions prior to the petition date?

MR. RENENGER: Objection.

Q. Either by number of transactions or by dollar amount?

A. I don't know if we knew the magnitude or how many. It wasn't really publicly available so we were just trying to understand the nature of those, you know, transactions. We knew, as I said, RSC and GMAC were their main operating subsidiaries so we assumed that there were significant transactions there but. I

mean, we were trying to understand all that.

Q. Would you come back to Exhibit 9, please.

A. Okay.

Q. And we were looking at the third quarter 2011 presentation. If you look at the very last -- it's in the appendices. The very last page of the document and the very last page of the presentation, I believe, you see that there is a ResCap corporate structure set forth, correct?

A. Yes.

Q. Where was this information obtained? From where was this information obtained?

A. I think it was through ResCap financial statements and I think there is the Fed Reserve had certain public information available for, on ResCap. I think it was a combination of the two.

Q. And Houlihan was aware of this information by late 2011?

A. Of this corporate structure,

yes.

Q. And Houlihan included it in the presentation for the pitch to the junior secured noteholders, correct?

A. Correct.

Q. Why?

A. I think any kind of complex kind of distressed situation, understanding the legal entity corporate structure I think is important. Understanding where the operations reside and where the debt obligations are issued and who the guarantors are I think are important.

Q. And that could have an impact on the collateral underlying the junior secured notes, correct?

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

Q. Could that have an impact, the understanding of the corporate structure and where certain obligations lay, could that have an impact the collateral for the junior secured notes?

A. Yes.

JSN Objection: 193:15 – 194:3, FRE 602 (Lack of foundation)

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

Q. And that's why you included it in the presentation?

A. Yes.

Q. And turning back to the due diligence request at Exhibit 11.

MR. RENENGER: I just want to point out, I think this is a separate document in the presentation. If you look at the -- it's not paginated. If you look at the cover e-mail, it says that there's a separate attachment, a draft company org chart. So I just want to clarify for the record that this document does not appear to be attached to that.

Q. Well, Mr. Snellenbarger, this chart was available as of late 2011, correct?

A. I believe -- you know, it's a good question. Only because we sent this e-mail in 2012 as a separate attachment not attached to the 2011 agreement. I

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know it was based on public information. I can't tell you whether we had it in late 2011 or not now that it's been pointed out that it was not included in the document.

Q. It's fair to say at least prepetition you had the agreement, correct?

A. Yes. I believe so.

Q. And if we turn back to the due diligence requests.

A. Yes.

Q. You requested a list of all material capital transactions among these various ResCap subsidiaries, correct?

A. Yes.

Q. If you look at item 2, you've also asked, in this due diligence request, for a summary/list of all the material intercompany operating transactions since the beginning of 2008, again, with respect to the three items that are in request 1, the Ally Financial and ResCap transactions, the ResCap and outside third-party transactions and transactions

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among and between individual ResCap subsidiaries. That is one of the items that you asked for?

A. Yes.

Q. Why?

A. Again, we were trying to determine -- not determine -- trying to get an assessment of understanding of the relationship between Ally and ResCap and the relationship between ResCap's subsidiaries amongst themselves.

Q. Why?

A. Because we wanted to understand how value was flowing in between the various entities and whether that would affect the junior secured note's position.

Q. And you received information in response to request H(ii), correct?

A. We received some information, not all.

Q. What information do you recall did you receive?

A. I know we received the company's trial balance. And that had laid out

certain intercompany balances between subsidiaries. I believe we received that.

Q. And do you recall the trial balance date, the date that the trial balance covered?

A. I don't remember. I think it was December 31, 2011.

Q. And for what -- well, what did you do with the trial balance once you received it?

A. Just reviewed it. Trying to understand where the various assets and liabilities were by entity.

Q. If you look back at H(i). You've included in the request not just the capital contributions, buybacks or exchanges, but you also included forgiveness. What does that refer to, forgiveness?

A. I think on a public basis we understood that Ally had forgiven certain obligations with ResCap over a period of years. So we were trying to understand that better.

SNELLENBARGER

Q. Were you aware whether ResCap entities had forgiven intercompany balances?

MR. RENENGER: Object to the form of --

Q. As of this time period?

MR. RENENGER: -- question.

A. I don't think we were, no.

Q. Well, you included this request with respect to individual ResCap subsidiaries, correct?

A. Yeah, we requested it. I don't think we knew it at the time.

Q. It was a piece of information you wanted to learn, whether or not there had been forgiveness between ResCap subsidiaries?

A. Correct.

Q. Did you receive information on that?

A. I don't believe so.

Q. And if you turn to the last page, J. This refers to litigation and contingent liabilities. What were you

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requesting here?

A. We were trying to get detail regarding the rep and warranty notice security obligations that ResCap had with respect to security holders.

Q. And that included liabilities for rep and warranty cases, correct?

A. Correct.

Q. And what information did you receive in response to this request?

A. Not much. I think at the time the company had said that a lot of this detail was clearly confidential but they weren't willing to share it with us at the time, given their discussions with the various constituents.

Q. You are aware that the company had reserves for this litigation, correct?

A. Yes.

Q. Did you ask for information about that reserve?

A. We did.

Q. And what information, if any, did you receive on the reserve?

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A. Nothing other than what was in the trial balance I believe.

(AHG Exhibit 12, e-mail from Alexandra Barrage at Morrison Foerster, attaching six documents, marked for identification, as of this date.)

(AHG Exhibit 13, e-mail from Mr. Ben Ilhardt at Houlihan dated June 12, 2012, marked for identification, as of this date.)

Q. I have handed you Exhibits 12 and 13, Mr. Snellenbarger.

12 is an e-mail from Alexandra Barrage at Morrison Foerster to a number of people, attaching six documents.

And then Exhibit 13 is an e-mail from Mr. Ben Ilhardt at Houlihan dated June 12, 2012. I really want to focus on Exhibit 12.

Is it your recollection that the documents that Ms. Barrage forwarded on April 30, 2012, ultimately were given to Houlihan around that time period?

A. I believe they were.

Q. If you look at Exhibit 13, you see that Mr. Ilhardt references the six documents he received in late April.

A. I see that.

Q. What are the documents that are attached to Ms. Barrage's e-mail, Exhibit 12?

A. What are they?

Q. Yes.

A. I believe they are certain intercompany agreements between certain subsidiaries.

Q. And are these documents that Houlihan or any of Houlihan's representatives requested from the ResCap people?

A. I believe so.

Q. And why did Houlihan request these documents?

A. Well, I think -- I believe this went to White & Case so maybe White & Case requested the documents. I think we were trying to determine or understand better

what the intercompanies related to with respect to between the subsidiaries.

Q. Did Houlihan review these documents on or around April 30, 2012?

A. I don't know when we received these from White & Case. I know these went to White & Case on April 30th. I just don't know when Houlihan received them from -- Mr. Ilhardt's e-mail is from June, so I don't know how quickly we got those versus from White & Case.

Q. Did Houlihan receive these documents prior to the petition date?

A. I don't know.

Q. Do you know if anyone at White & Case received these documents prior to the petition date?

A. It appears so, yes.

Q. Mr. Denman is from White & Case?

A. Correct.

Q. The e-mail dated June 12th or, sorry, 19th, Exhibit 13, references paragraph, second paragraph, "discussions on this topic in late April." Do you know

what Mr. Ilhardt is referring to there?

A. I know we had requested more detail on intercompanies and just asked for -- we are trying to understand what they are, what they relate to, et cetera. Can you send us any information you have on them.

Q. And those requests were all in April of 2012?

A. Yes.

Q. Did you have a face-to-face meeting with anyone from Residential Capital or their representatives on intercompany balances prior to the petition date?

A. Face-to-face, no.

Q. Did you have any telephone calls on the subject prior to the petition date with anyone from Residential Capital or any of its representatives?

A. Financial advisors we did.

Q. You were dealing with either -- was it FTI?

A. FTI or Centerview.

Q. Who did FTI work for at that time period?

A. ResCap.

Q. And who at FTI did Houlihan interact with on intercompany balances?

A. Primarily Mark Renzi.

Q. And did you participate in any phone calls with Mr. Renzi about intercompany balances?

A. Yes.

Q. How many?

A. A couple.

Q. And in what time period?

A. Prepetition?

Q. Prepetition, that's fine.

A. Sometime in late April, early May kind of time frame, I believe.

Q. And all of these discussions were prepetition?

A. Yes.

Q. And why were you having these phone calls with Mr. Renzi?

A. Well, we, you know, counsel, White & Case, had believed that the JSNs

had a lien on certain intercompany balances. So we were trying to understand what those balances were and what impact that would have on recovery.

Q. And did Mr. Renzi provide information on the intercompany balances during those phone calls?

A. What he provided really was the balances pursuant to the -- the intercompany balances pursuant to the trial balance which we had had. We were trying to -- at the time, both FTI and Houlihan were building recovery models. And so we were primarily focused on how to, frankly both sides, build or model this correctly and get the tos and froms and the flows correctly so we could provide a better view of what the impact on these intercompanies would be based on a variety of assumptions.

Q. Why were you doing that?

A. Because we were trying to get a better assessment of what the junior secured collateral and recovery would be.

And one component of that was intercompanies.

Q. At this time period, do you know roughly the dollar amounts of the intercompany balances?

A. I believe so. The balances were in the trial balance. So I think we understood what the net balances were between different entities.

Q. Do you recall the amounts?

A. I don't. I know some were 3 billion. Some were several hundred million. They were significant balances and some not that much. I know there was a range of that.

Q. Do you recall if you had any meetings with FTI in person about any subject prior to the petition date?

A. We did. Yes.

Q. How many?

A. A few. And then we also had the settlement meeting.

Q. What was discussed at these meetings prior to the petition date? What

was discussed between Houlihan and FTI?

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

Q. What were the discussions with FTI prior to the petition date?

A. Primarily we were trying to get more information, some information we hadn't received. We were continuing to press the company to try to provide us more information. Some information we received didn't reconcile with other information we received. So we were trying to tie those out and get FTI to help us do that. All of which to try to get a general understanding of what our position was.

Q. What do you mean by our position?

A. What the JSNs, what collateral they had available to them, what ultimate, you know, views on the claims of the estate would be, ultimate recoveries, et cetera.

Q. Roughly how many meetings, if

you remember, with FTI?

A. There were a few face-to-face and then several phone calls, I believe.

Q. More than three phone calls, more than four phone calls?

A. Maybe. I mean, again, they were talking to a variety of different constituents, not just us, so their time was limited. So, you know, we did the best we could.

Q. And you also had face-to-face meetings with Centerview, correct?

A. I believe so. I don't know if it was separately.

Q. How many?

A. I think they were the same type. They were there with the same meetings.

Q. Was there a division of, you know, a division of responsibilities between Centerview and FTI with respect to the information that you were requesting?

A. Yes. I mean Centerview was primarily responsible for the sale process at the time and those types of

discussions. FTI was running more what we call detail underlying financials. They were building a model in parallel to us. That kind of distinction.

Q. Did you have a point of contact at FTI that you were dealing with in this time period?

A. Yes.

Q. Who was that?

A. Mark Renzi.

Q. And did you exchange recovery models with Mr. Renzi or anyone else at FTI?

A. We didn't exchange recovery models. But what we did is, we both would go through a set of assumptions and say, okay, if you assume the value of the assets are X, if you assume intercompany claims are turned on, if you assume the RMBS claims are Y, what is your recovery for the JSNs or the unsecured notes. And we would compare those results. And we were -- because what we wanted to do is if we got to a settlement discussion we

wanted to discuss the merits. We didn't want to debate math. And so we wanted to ensure that our models were working or in alignment as far as the math and how they were flowing. So that's what we did.

MR. WALSH: Mark the next Exhibit 14.

(AHG Exhibit 14, series of e-mails, marked for identification, as of this date.)

Q. Exhibit 14 is a series of e-mails, apparently all on May 10th. These are e-mails between FTI and Houlihan, correct?

A. And Evercore.

Q. Who was Evercore working for in this time period?

A. Ally.

Q. What was the purpose of these -- well, what was discussed in these e-mails in Exhibit 14?

A. Give me a second. Again, this was we were running hypothetical scenarios. Evercore built a model

themselves too. So we were all trying to see if we were getting the same results. To make sure the math was -- we were in agreement on the math, I guess, any one party between us, Evercore and FTI, we weren't missing something.

Q. Was it important in your words, to get the math correct?

A. Yeah, I believe so. Again, we wanted to avoid any debate about the math. We wanted to focus discussions on merits of arguments if we got to a settlement discussion.

Q. Take a look at the first e-mail in the chain that's dated May 10th, 1:43 p.m. from Jeff Lewis. Mr. Lewis references an illustrative hypothetical downside case. What is he referring to there?

A. Again, this was just an illustrative hypothetical scenario to put, for all of us to put inputs into our respective models to see what the recovery would be. Just to test our models, to

stress test it effectively, to make sure there weren't any blows in the respective models.

Q. Mr. Lewis proposes four changes, correct?

A. Yes.

Q. What is the first change?

A. Reduce all Fortress and Ally purchase prices 100 basis points. One of the inputs in the various models was the value of the assets. And so we were just saying, okay, if you reduce the value of those assets by X percent, we used hypothetically 100 basis points, what would that do.

Q. What was the second change to the model?

A. Reduce all unsold assets value 500 basis points. Again, there were certain assets being sold at the time to Fortress and Ally and there were certain assets not being sold. The assets not being sold were, again, the, hypothetically said, okay, let's lower

that a hundred basis points, again to stress test the model.

Q. And what was the third change?

A. Take contingent liabilities up one and a half times. So instead of, I don't know, 5 to 7 or 32 billion of claims, we raised it one and a half times. Again, I think the goal was to try to make a very draconian scenario with a model just to make sure there weren't any blows in it, that they weren't causing any destructions in the model. Again, it was all just testing the math.

Q. You reference PLS and RMW. What are you referring to there? What is Mr. Lewis referring to?

A. I believe private label security claims and rep and warranty claims.

Q. And what he was proposing was to increase the assumption for PLS from 5.7 billion to 8.6 billion, correct?

A. That's right. Hypothetically, again, just to stress test the model.

Q. And for the reps and warranty

liabilities he proposed changing that from 3.2 billion to 4.8 billion, correct?

A. That's right.

Q. What is the fourth change he proposes to the model?

A. Use both a set of waterfall and new waterfall 400. There was a proposed agreement between Ally and the junior secured notes of splitting the proceeds of their collateral. And we were running a, you know, there was an agreement on that split and then there was a new split of first 100 to Ally the next billion to junior secured notes and a 20/80 split after that. And so we were testing that as well, to make sure everyone was getting the same results on a mathematical basis only.

Q. Was the formula for the split determined fairly early in the process?

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

Q. You referenced an 80/20 split and I think a waterfall, right, that

provided certain recovery to Ally and certain recovery to the junior secureds. Was that piece of the negotiations agreed upon early on?

A. I don't know what you mean by early on.

Q. Well, we are in May now.

A. I mean, yeah, we met, I'm not sure when, maybe it was earlier that week, when we had a settlement meeting and we came to a, I would say a verbal agreement between us and Ally on what that split would be.

Q. And what was the split that was agreed upon?

A. I believe it was, if I recall, that based on proceeds Ally would get the first 400 million, junior secured notes would get the next billion and then there would be a 20/80 split -- 20 percent to Ally, 80 percent to junior secured notes, although I think that was modified a little bit, maybe 79/21 or 81/19, ultimately got settled out, but somewhere

around there.

Q. I'll represent to you it ended up as an 81/19 split on the final prepetition.

A. Fair enough.

Q. Do you know what caused that final adjustment?

A. I think subsequent discussions and negotiations. I believe just final tweaks.

Q. Were there phone calls at or around May 10 about the models and working through the math, as you discuss?

A. Yes.

Q. How many?

A. Several. I think we would send these e-mails around, lay out a hypothetical case, everyone would put in their number, get on a call, say what are you getting, what are you getting. Okay, I'm not getting that. Okay, let me work on something. Let's have a call in two hours. That kind of stuff.

Q. Ultimately you did reach

agreement on the math?

A. I think so, yes. Again, these were not discussions on merits or any arguments. We tabled all that. So let's just focus on the math and modeling, is all what the purpose of these were.

MR. WALSH: This will be Exhibit 15.

(AHG Exhibit 15, series of e-mails from May 12, 2012, marked for identification, as of this date.)

Q. Exhibit 15 is a series of e-mails from May 12, 2012. I believe between you, Mr. Snellenbarger and Karan Chopra at Centerview?

A. Yes.

Q. And what were you and Mr. Chopra discussing in these e-mails?

A. Just give me a moment.

Q. Sure.

A. Okay.

Q. What were you and Mr. Chopra discussing in these e-mails?

A. There was a lot of -- the

debtors had laid out in their estimates what the collateral was by debt silo. But unfortunately, about every other day a new schedule would come up where the collateral would move again based on a new review by the debtors. And so I was talking to Karan about how we lock that in or how we get comfort that this is not going to continue to move around.

Q. When you say move around, what do you mean?

A. The assets moving from one debt silo to another debt silo. You know, one day though showed hypothetically a hundred million of HFS loans in our silo. The next day they still revised it to 85. Okay, what's going on. How do we lock this down so that it stops moving and how do we protect against that movement.

Q. There were no changes in the value of the assets, just --

A. No, there were --

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

Q. Let me rephrase. Were there changes in the values of the assets?

A. Well, yes. Because there was assets -- I mean, the value of the assets themselves? No, because the schedule is based on book value. So the book values weren't changing. It was the types and amounts of those assets that were moving around.

Q. Just so we are clear. There was a book value assigned for various assets held by ResCap, correct?

A. Correct.

Q. And there were discussions between you and Centerview about which silos those assets would be put in?

A. Correct.

Q. And when I refer to silos, that refers to who would be entitled to recovery on those assets, correct?

A. Correct.

Q. And at this point there were silos for the Ally revolver?

A. Yes.

Q. And there were silos for the JSN recovery, correct?

A. Well, the JSN and the Ally were the same collateral silo because they shared in that collateral.

Q. That was my next question. So there was an individual Ally silo and then there was a shared silo between JSNs and Ally as of this time period?

A. Well, let me clarify. There was two different debt obliga- -- or debts by Ally. There was an Ally line of credit and then there was the Ally revolver. The debtors had said that we share or we were junior in the collateral of the Ally revolver silo and blanket lien, there's a blanket lien silo as well. We shared in that. We don't share in the Ally line of credit silo. So there was -- and then there were other secured debt obligations across the sheet as well.

Q. And in this time period, May 12th and earlier, there were discussions between Houlihan and

Centerview about the silos and who, whose collateral was whose, correct?

A. Yes.

Q. But the book values did not change in that time period?

A. I don't believe so. I think it was more about assets shifting on us, an amount.

MR. WALSH: This will be Exhibit 16.

(AHG Exhibit 16, two e-mails between Mr. Lewis and Mr. Renzi, marked for identification, as of this date.)

Q. Exhibit 16 is an e-mail, two e-mails between Mr. Lewis and Mr. Renzi. The first is dated May, the second is May 9, 2012. Do you recognize this, Mr. Snellenbarger?

A. Let me look at it.

Okay.

Q. There's a file that's attached to the e-mail. Can you tell me what the file is?

A. I believe it's the way the debtors had showed their assets and liabilities on a public basis as of March 31, 2012.

Q. Does it also reflect the silos that we have been discussing?

A. Not entirely, no.

Q. What does it reflect?

A. It doesn't include the blanket lien silo.

Q. But it does reflect the Ally revolver and the Ally line of credit, correct?

A. It does. But again, I think this is a very similar format that ResCap had filed publicly for many years, I think. So it does reflect the Ally -- yes, it does reflect those columns but it doesn't reflect all the appropriate silos.

Q. Does it reflect which silo the JSNs are entitled to recover from?

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

A. Can you repeat the question?

Q. Does it reflect the silo from which the JSNs are entitled to recover from?

A. Partially. It footnotes the -- says that the value of the proceeds from the sale of this collateral were used to pay the Ally revolver and then the third lien notes. Third lien notes I think are referred to as the junior secured notes. Again, this is only the public silo basis. It doesn't include these blanket lien silo.

Q. And in this time period you and Mr. Renzi were exchanging this type of information regarding the collateral?

A. Yes.

Q. Do you recall roughly how many discussions in this time period you had with Mr. Renzi about the collateral?

A. I mean some. You know, we were trying to -- again, we were trying to lock down the best we could what the debtors'-- what the debtors' position was on our collateral. And again, you know, things

kind of kept moving around a bit so we were trying our best to try to reconcile those.

Q. Was there any information regarding the collateral or how the collateral would be allocated between Ally and the JSNs that you requested and did not receive prior to the prepetition date?

A. Yes.

Q. And what information was that?

A. Well, it was really trying to -- what we kept asking for and really never received was, we would get these spreadsheets that said, okay, here's your collateral, here's what you have. Okay. Well, how did you determine that? Well, we looked at this and that. It was really full descriptive explanations. So ultimately, when we got to negotiating a settlement we really just had to rely on the debtors' numbers. Look, this is what you have. We weren't able to independently verify, okay, this really should be in our bucket or this should not

be in our bucket. We just didn't have time to do that. We didn't have the information available to say whatever. They were just saying, look, this is it. So that's what we went with.

Q. From your perspective, what was the most important piece of information regarding the collateral that you did not receive prior to the petition date?

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

A. Can you repeat the question?

Q. From your perspective what was the most important piece of information about the collateral that you requested and did not receive prior to the petition date?

MR. RENENGER: Same objection.

A. I would say just the detail and support and the rationale of why the collateral was allocated to certain silos versus not. Again, we received the spreadsheet. It had moved around. And we couldn't really verify why it was moving

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around. That was the challenge for us.

Q. Ultimately, you made a presentation to the junior secured noteholders regarding their recovery?

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

Q. Let me rephrase. Ultimately, you made a presentation to the ad hoc group regarding JSN recoveries, correct?

MR. RENENGER: Same objection.

A. We made a presentation to the junior secured noteholders in a general way just about the status of their position, yes.

Q. I realize we're getting into areas that may be privileged. Do you recall roughly -- I'm going to ask the who, what and when, not necessarily the what. Do you recall when that presentation was?

A. I believe it was early May.

Q. Was it around the May 10, May 12 period that we've been discussing?

A. Yeah. Yes.

Q. It was prior to petition date?

A. Yes.

Q. It was prior to the execution of the prepetition PSA with the ad hoc group, correct?

A. Yes, definitely.

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

Q. And where was that presentation given?

A. In New York, I believe White & Case's office.

Q. How long was the meeting?

A. Couple of hours.

Q. Who was there?

A. Houlihan, White & Case and certain members of the ad hoc group that had signed confidentiality agreements.

Q. Which ones?

A. Paulson, Appaloosa, Davidson Kempner, Silver Point, Pentwater.

MR. WALSH: This will be Exhibit 17.

(AHG Exhibit 17, e-mail with

attachment, marked for identification, as of this date.)

MR. WALSH: This was used at Mr. Siegert's deposition.

Q. If you look at the attachment to Exhibit 17, the page Bates stamped 4690.

A. Yes.

Q. Is this the cover page for the presentation?

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

Q. Let me ask a different question. What is the page ending 4690?

A. I'm sorry, repeat the question.

Q. There's a presentation that's attached to this e-mail. I believe it starts at 4690. What is the document?

A. It was a draft of a presentation we had proposed to give to our noteholder group that we had sent to Centerview for their review.

Q. And Centerview did, in fact, review it, correct?

A. Yes.

SNELLENBARGER

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

Q. Was this presentation ultimately used in connection with the meeting that we just discussed. The meeting with the members of the ad hoc group?

A. A version of this was. Not this exact presentation.

(AHG Exhibit 18, presentation, marked for identification, as of this date.)

MR. WALSH: This will be Exhibit 18.

Q. Just trying to fix a time, Mr. Snellenbarger, when this presentation was. It was prepetition, correct?

MR. RENENGER: Object --

Q. The meeting with the ad hoc group. I'm trying to fix in time when that meeting was. It was prior to the petition date, correct?

A. Correct.

Q. And it was sometime after you provided a draft of the presentation to

Centerview, correct?

A. Correct.

Q. So sometime between May 6th and May 14th?

A. Yes.

Q. And it was it was in White & Case's offices here in New York?

A. I believe so.

Q. If you look at Exhibit 18. Is this the presentation -- is this the document that was reviewed at that meeting to your knowledge? And I recognize it's redacted.

A. This may be a version of it. This says draft. I don't know if this is the final version.

Q. If you look at page 5 of the presentation, Bates stamp 4685, top right corner says "Previously sent to the company."

A. I'm sorry, where are you?

Q. Page 5 of the presentation. Houlihan page 5. And it's on a number of other pages previously sent to the

company?

A. Yes, I see it.

Q. Does that refresh your recollection that this was prepared after it was sent to Centerview?

A. This was prepared after it was sent to Centerview, yes. I just don't know if this was the final version that we ultimately presented to the ad hoc group.

Q. Would you look now and see if there's anything in the document that refreshes your recollection whether this was, in fact, what you presented to the ad hoc group at that meeting?

A. I don't believe it is the final version, no.

Q. Why do you say that?

A. Because I think we had certain additional caveats that were included in the version that we presented to our client.

Q. Where are you looking?

A. The very beginning of the document.

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Q. What caveats within the version that you presented to the client, if you recall?

MR. RENENGER: I'm just going to object and instruct the witness that to the extent the information the questioner is asking about relate to information that was contained in a deck pursuant to discussions with counsel, or at the direction of counsel, I will instruct you not to answer on the basis of attorney-client privilege. But if it's otherwise, you may answer.

THE WITNESS: Then I can't answer.

Q. Due to your counsel's instruction?

A. Correct.

Q. Well, is it fair to say that the final presentation that you did give, the presentation that you did give to your clients included a recovery analysis for JSNs?

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MR. RENENGER: I would give the same instruction to the extent you can answer that based upon, other than conversations with counsel, or even based on what's in front of you, you may do so.

Q. Just look at page 3, Contents. You'll see that one of the items that is within the document, according to this page at least, is "potential recovery outcomes." It's the third line down in the middle of the page?

A. What page are you on?

Q. Page 3 of the presentation, page 4694 of the document. Sorry, 4693.

A. I see that, yes.

Q. Without disclosing what the potential recovery outcome was, is it fair to say that one of the things that was discussed with your clients at the meeting that we have been discussing prepetition was a potential recovery outcome?

A. Yes.

Q. You see above the item contents

there's a summary of tasks performed. Am I correct that by this date, the date of the meeting, Houlihan had completed these tasks?

A. Yes.

Q. If you can turn to page 5 of the document. It's the page ending 4695. Is this a collateral overview? And when I say this, I'm referring to the chart, the numerical chart on this page.

A. I see it.

Q. Is this a collateral overview?

A. Provided by the debtors, yes.

Q. And this provides, additionally, information about the silos that we have been discussing, correct?

A. Correct.

Q. Does it provide information on the silo that is assigned to Ally?

A. Yes.

Q. And does it also provide information regarding silos available to the JSNs?

A. Yes. Again, these weren't

Houlihan's numbers. These were just provided by the debtors, or I guess ResCap at the time, to us.

Q. At this point, did Houlihan have any reason to question the number that the debtors had provided regarding the collateral?

A. Yes.

Q. Why? What was the reason?

A. Because the, as I had said before, these collateral silo buckets had continued to move around a bit. And the debtors had said, okay, this is in the Ally LLC, this is in the Ally revolver and then it would change. And so we were continually concerned about whether this was an accurate representation but we didn't have the information at the time to evaluate whether it was or it wasn't so we used the debtors' numbers.

Q. Did you relay your concerns to your clients?

A. Yes.

Q. What was their response?

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MR. RENENGER: And I'm going to instruct the witness to the extent that this discussion was part of a privileged discussion with counsel, I would instruct you not to the answer. To the extent it wasn't in connection with the request for legal advice or something done at the direction of counsel, you may answer.

A. I cannot answer.

Q. Due to the instruction?

A. Correct.

Q. If you turn to the page 10 of the presentation.

A. Okay.

Q. I recognize some portion of this has been redacted. I believe the bottom right corner. But it does reflect an Ally contribution of $950 million. Do you see that?

A. I see that, yes.

Q. And what does that reflect?

A. I believe the proposal on the table at the time was Ally was going to

contribute 750 million of cash. And then, I believe, pay an incremental $200 million on the held for sale loan portfolio of what they agreed to purchase. I think, I think that's how it was derived.

Q. And what was your understanding of what Ally would receive in return for their contribution?

A. Full releases from the interested parties with ResCap.

Q. At this point or any point prior to the petition date, did Houlihan understand whether the JSNs had a lien on causes of actions against Ally?

MR. RENENGER: I'm going to object to the form of the question and instruct the witness, to the extent you can answer that question without getting into privileged discussions that you may have had with counsel or work you did at the direction of counsel, you may answer. Otherwise, I will instruct you not to answer on the basis of privilege.

A. I can't answer.

Q. You are following your counsel's instruction?

A. Correct.

Q. Just for sake of simplicity, every time you say I can't answer, it is because you are following your counsel's instruction?

A. Yes, thank you. Thank you for that clarification.

Q. Turn to page 22 of the document. Again, I recognize that some portion of page 22, which is Bates stamped 4712, is redacted. But do you see the item Intercompany Claims?

A. I do.

Q. What does that line reflected regarding intercompany claims?

A. We would simply say for purposes of the analysis, the impact of the intercompany claims may be excluded but if they were allowed, it would increase the security coverage to the secured notes.

Q. And you advised your client of

that fact?

MR. RENENGER: I'm going to again object to the form of the question. To the extent the actual discussions with your client as opposed to what's in this deck involved legal advice or was done at the direction of counsel as work product, I'm going to instruct you not to answer.

A. I can't answer with the instruction of counsel.

Q. Going back to page 10.

A. Okay.

Q. The title of this is Summary of Estimated Recovery Assumptions. It's fair to say that what's reflected on this page are the assumptions that had an impact on estimated recovery, correct?

A. Yes.

Q. And that included the Ally contribution?

A. Yes. Well, let me clarify that. To the extent we were oversecured, then

the Ally contribution would be less impactful for the junior secured recovery. We had full hard assets that showed a full secured recovery. The Ally contribution wouldn't impact our recovery. We could get our share of the Ally contribution through our deficiency claim or account of increased intercompany value, if necessary.

Q. Did Houlihan have a position one way or the other whether the JSNs were oversecured at the time of the petition date?

MR. RENENGER: I'm going to instruct the witness that to the extent Houlihan's view on that issue was based upon work product or advice of counsel, I would instruct you not to answer. Otherwise, you can answer.

A. I can't answer on the instruction of counsel.

Q. If the JSNs were unsecured you would agree with me that the Ally contribution would have an impact on their

recovery, correct?

A. Correct.

Q. What assumptions, if any, did this analysis that's contained in the document have with respect to the RMBS litigations?

A. Would you repeat the question.

Q. What assumptions, if any, regarding the RMBS litigations are included or reflected in this document?

A. Well, the assumptions are redacted but if to develop a hypothetical recovery model you needed to make certain assumptions on what the other claims were, where they may be asserted so that you could determine ultimately what our recoveries were. If we were undersecured it would impact our deficiency level.

Q. How?

A. We would -- we would share or receive distribution -- our -- if we were undersecured, hypothetically, then our deficiency claim would share in distributions pro rata with other

unsecured claims depending where those claims resided or whatever these, et cetera.

Q. We saw in the correspondence between Mr. Renzi and yourself and Mr. Lewis one of the changes you were making to the models was changes with respect to those contingent liabilities, correct?

A. Correct.

Q. And during this time period, you were analyzing the impact of those contingent liabilities, including the impact of the RMBS litigation, correct?

A. I wouldn't say the impact of litigation. I guess really the impact of what claim amount they may be. We weren't really privy to the litigation or what those discussions were. We just were using a range of claim estimates to try to understand what impact that may have.

Q. Prior to the petition date, were there any discussions within Houlihan or within any of the ad hoc group members and

Houlihan regarding whether the RMBS litigation claims should be subordinated in the plan that was being proposed?

MR. RENENGER: I'm going to instruct the witness that due to the extent you can answer that question without getting into discussions that may have involved counsel or work that you did under the direction of counsel, then you may answer. Otherwise, I would instruct you not to answer.

A. I can't answer at the instruction of counsel.

Q. Do you understand what it means to be subordinated in a bankruptcy claim?

A. I do.

Q. What impact, if any, would subordination of RMBS claims have on JSNs recovery?

A. It would improve the recovery. Assuming we are -- well, it would impact it two ways. If we were undersecured, undersecured, excuse me, our deficiency

claim would -- value would increase because we are not sharing with those other claims. They would be paid after us. So we would have a first look of unrecovered value. Also, the value or the impact on the intercompany claims would increase if those claims were paid before these subordinated claims were.

Q. You are familiar with the issue of subordination prior to your involvement in ResCap, correct? You were generally familiar --

A. As a general matter, yes.

Q. You were generally familiar that securities claims are subordinated below general unsecured claims, right?

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

Q. I'm not asking whether you are a lawyer or not.

A. Okay.

Q. You were familiar prior to this engagement that subordination existed. That was something that could be done in a

bankruptcy claim?

A. As a general matter, yes. Not in a lot of detail.

Q. At least with respect to an economic recovery, you understood that subordination could have an impact on a stakeholder's recovery?

A. Yes.

Q. And were there any discussions with respect to subordination in the ResCap engagement prior to the petition date, any discussions among Houlihan any discussions between Houlihan and the ad hoc group?

MR. WALSH: Just on the topic. I understand your instruction, Aaron. I'm not asking for the content of the discussions.

Q. All I'm asking for is a yes-no answer. Was the issue of subordination discussed either within Houlihan or between Houlihan and the ad hoc group?

MR. RENENGER: And I would just instruct the witness if you can answer

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the question yes or no, but I wouldn't go beyond that in response to this question, please.

A. Yes.

Q. Was it discussed multiple times?

A. I don't recall.

Q. Let me break it up. Were there discussions between Houlihan and the ad hoc group regarding the issue of subordination prior to the petition date?

MR. RENENGER: You may answer it yes or no. For this entire series of questions if it calls for a yes or no, I would encourage you to answer yes or no, given those concerns.

A. We did not have any discussions without counsel present with respect to that.

Q. Let me include counsel. I'm not asking you to divulge the discussions but the topic of subordination, was that discussed among the ad hoc group prior to the petition date?

A. Yes.

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Q. Was it discussed as it related to the RMBS litigation?

A. I'm not certain --

MR. RENENGER: Again, it's a yes or no question or I don't recall in response to that particular question.

A. Yeah, I don't recall.

Q. You appreciated at least at the time you were performing those models prepetition that the RMBS claims would not be subordinated, correct?

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

Q. I saw some e-mails.

A. I'm sorry, can you repeat the question?

Q. Feel free to refer to any of the documents. But we saw e-mails regarding various changes to the models and the discussions with FTI about those changes to the models. The changes to the models with respect to the RMBS reflected the changes in amounts, correct?

A. Correct.

Q. You were aware that the RMBS claims would be treated as general unsecured claims in a proposed bankruptcy, correct?

A. We were aware that that's what the debtors had proposed.

Q. And you also analyzed the impact of that treatment with respect to JSN recovery prior to the petition date?

A. Yes.

(AHG Exhibit 19, document, Statement of Limiting Conditions, marked for identification, as of this date.)

Q. Exhibit 19 is a three-page document, Mr. Snellenbarger. This is a document prepared by Houlihan, correct?

A. Yes.

Q. And it's dated May 14th, correct?

A. Yes.

Q. And this is the document where the JSNs disclosed their estimate of recoveries, correct?

A. No. I would say this is simply a summary of the debtors' numbers that were provided and what the output is of that.

Q. You understand this document was disclosed publicly, right?

A. Yes.

Q. What was the purpose of that disclosure?

A. Certain ad hoc group members had signed confidentiality agreements for settlement purposes. They were shown certain information. The agreement was that all the information they were shown would be disclosed publicly within a certain time period. The debtors disclosed certain information and we disclosed certain other information to ensure that all was borne out.

Q. And Houlihan reviewed this information before it was publicly disclosed, correct?

A. Correct.

Q. Did Houlihan make any changes to

the information?

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

Q. Before it was disclosed?

MR. RENENGER: Changes as compared to what?

Q. Well, let me -- you reviewed the information that was going to be disclosed publicly, correct?

A. Um-hmm, yes.

Q. At some point you received a draft of that document?

A. Yes.

Q. Was that draft prepared by Houlihan or by the debtors?

A. This draft?

Q. Draft of this document.

A. Well, we prepared this document but we utilized the debtors' numbers for this document.

Q. Let's look at page 2 ending 3474. Am I correct that the information on the left side of the page under Pledged Assets was provided by the debtors?

A. Yes.

Q. And it's the information that was contained in the motion for cash collateral, correct, at least the information with respect to book value?

A. Yeah. I'm just --

Q. First bullet point.

A. Yes, correct. Thank you.

Q. The book value information was provided by the debtors in the form of a motion for the cash collateral, correct?

A. Yes.

Q. What is reflected under illustrative market value?

A. These were assumptions made or really these were estimates provided to us by the debtors advisors on what the market value was of those assets as compared to the book value.

Q. At particular points in time, correct?

A. Correct.

Q. One point in time was February 29, 2012, and the other point in

time was December 31, 2012?

A. Correct.

Q. Did you or anyone at Houlihan review that information to determine its reliability?

A. We reviewed it but we didn't make a determination of reliability. We were simply using the debtors' numbers, what they said that their estimates were for these assets.

Q. For what purpose were you reviewing their estimates?

A. To understand what the debtors' view of our recovery was.

Q. And this reflected recoveries as of -- well, market value as of February 29th and market value as of December 31st, correct?

A. Yes. As provided by the debtors.

Q. What was the significance of the December 31st date?

A. Well, under the PSA agreement the hope, or not even the hope, the

agreement was that the debtors were going to exit bankruptcy by December 31, 2012.

Q. And the information in that column, which related to the proposed date by which the debtors would exit bankruptcy was carried over to the right side, correct?

A. Correct.

Q. And that's where the estimated waterfall recovery is reflected?

A. Correct.

Q. And this is the waterfall that was included in the prepetition PSA, correct?

A. Correct.

Q. First 400 million goes to Ally and the next billion to the JSNs, correct?

A. Yes.

Q. And then there was an 81/19 percent split with respect to the secured recovery, correct?

A. Correct.

Q. And what this waterfall has reflected is a 93 percent secured recovery

for the JSNs, correct?

A. That's correct.

Q. And then there's deficiency, correct?

A. Correct.

Q. And the deficiency recovery would provide additional collateral to the JSN recovery, correct?

A. Provide additional recovery, yes.

Q. Additional recovery. And ultimately the JSNs, under this waterfall analysis, were expected to receive 105 percent of their claim?

A. Correct.

Q. And this information you discussed with the JSNs prepetition, correct?

A. Yes. It was part of the information, yes.

Q. And to your knowledge, this was information that the noteholders who signed the prepetition PSA relied upon in signing that PSA, correct?

A. Yes. They understood that this was the debtors' view of the JSN recovery.

Q. And they relied upon that information in signing the prepetition PSA, correct?

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

A. Among many other factors, but it was one of the things they looked at.

Q. At any point prior to the petition date, did Houlihan advise the JSNs who signed the prepetition PSA not to sign the prepetition PSA?

A. I mean, any discussions related to the PSA I think were privileged.

MR. RENENGER: To the extent the advice that he's asking about would have been provided in connection with discussions with counsel, meetings involving counsel and under the direction of counsel, I would instruct you not to answer on the basis of privilege.

A. I can't answer at the

JSN Objection:
255:4 – 6, FRE 602
(Calls for speculation)

instruction of counsel.

Q. I'm only asking a yes-no. Let me try to rephrase it. Was the issue about whether or not to sign the prepetition PSA discussed between Houlihan and the JSNs who signed it?

MR. RENENGER: You can answer that on a yes or no basis?

A. Yes.

Q. Did at any point in time Houlihan instruct those noteholders not to sign the prepetition PSA?

MR. RENENGER: I'm going to object and instruct you not to answer on the basis of privilege.

Q. Are you going to follow that instruction?

A. Yes.

Q. If you look at footnote 3 on this page.

A. I see it.

Q. You see that the unsecured recovery assumes -- includes certain assumptions regarding contingent

liabilities, correct?

A. Correct.

Q. Including a $9 billion value -- well, $9 billion for contingent liability claims?

A. Correct.

Q. Does that amount include claims for RMBS litigation?

A. Yes.

Q. And that value was included in the waterfall recovery that is reflected here?

A. Yes.

MR. WALSH: Why don't we take our lunch break.

(Luncheon recess taken at 12:13 p.m.)

SNELLENBARGER

A F T E R N O O N S E S S I O N

(Time noted: 12:54 p.m.)

R E I D S N E L L E N B A R G E R,

resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. WALSH:

Q. Before we get to Exhibit 20, Mr. Snellenbarger. I asked you a number of questions about whether or not the junior secured noteholders were oversecured at the time of the petition date. And I believe you answered that it was -- I asked you about whether Houlihan believed that -- and I think you got an instruction from counsel whether that's privileged or not. I'm going to ask the question one more time just to make sure we have it in the record. You understand you are a witness so I'm here on behalf of the ad hoc group. So I'm asking this question as the witness on behalf of the ad hoc group.

Did the ad hoc group as of the petition date believe that it was

258:8 – 259:2, FRE 611(a) (Vague and ambiguous, misstates witness's testimony)

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oversecured as of that date?

MR. RENENGER: And I will instruct the witness that to the extent that your view on that, as even a fact witness for the ad hoc group, is based upon discussions with counsel and not a discussion that was a position publicly taken but rather privately held and shared between members of the ad hoc group from counsel, then I would instruct you not to answer on the basis of privilege.

Q. Are you going to follow that instruction, sir?

A. Yes.

Q. I have handed you Exhibit 20.

(AHG Exhibit 20, Houlihan engagement letter from February 2012, marked for identification, as of this date.)

Q. Is this the Houlihan engagement letter from February 2012?

A. I believe so.

Q. I'm not asking for exact amounts

but do you recall roughly how much Houlihan was paid in connection with its work up through and until the petition date?

A. I believe it was 200,000 a month.

Q. Is that set forth in the -- an engagement letter?

A. I believe so.

Q. I see. Monthly fees on page 3?

A. Correct.

Q. And did the ad hoc group pay you for those services?

A. Actually, the company paid us.

Q. The company paid you up through the petition date?

A. Yes.

Q. And after the petition date, did you continue to provide services to the ad hoc group?

A. We did.

Q. In fact, you continue to provide services to the ad hoc group up until today, correct?

A. Correct.

Q. And you continue to incur and be paid for your services, amounts for those services?

A. We were paid monthly, our monthly fees by the company, through sometime last summer, I believe. And then those payments stopped by the company. We were then retained by the U.S. trus- -- by the indenture trustee. And the trustee has made our monthly payments since then.

Q. Do you recall roughly when that summer that happened?

A. Early in the summer, I think.

Q. I'm sorry, that was summer of 20?

A. '13.

Q. 2013?

A. Correct.

Q. And am I correct that the first month for which you were paid for providing your services was February 2012?

A. I believe so.

Q. So you would have been paid

February 2012, March 2012, April 2012 and May 2012?

A. I believe so.

Q. And you were performing work continuously in that time period?

A. Yes.

Q. How many members from Houlihan were working in that time period, prepetition?

A. Five or six.

Q. Can you give us the names?

A. Eric Siegert, Matt Niemann, Jeffrey Lewis, myself, Ben Ilhardt, Frank Karl.

Q. Were you preparing time sheets in connection with your work on this matter?

A. No. We don't --

Q. You don't --

A. Houlihan, we don't do time sheets there.

Q. Do you know roughly how many hours Houlihan spent in connection with this engagement prior to the petition

date?

A. I don't. It's not something we track. We are paid a flat monthly fee so we don't track our hours.

Q. During the April-May time period, is it fair to say, at least for you, that this matter took up most of your time?

A. I believe so, yes.

Q. Would you say you were working 40, 50 hours in that time period?

A. Maybe. It's hard to say but I mean, yeah, it was a significant amount of time.

Q. And would you say the same for the other members of your team?

A. Varying degrees.

Q. In that time period, April to May your team was working anywhere from 40 to -- more than 40 hours a week on this matter?

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

Q. Well, let me break it up. If

you could just review. I assume you were one of the busiest people on the engagement?

A. Correct.

Q. Who was the next busiest person?

A. Probably Jeffery Lewis.

Q. Roughly how much time was Mr. Lewis spending --

A. Probably the same amount of time as me or more, same as Ben Ilhardt and Frank Karl. The more senior people on the deal, Matt Niemann and Eric, were involved but not on a day-to-day basis.

Q. In that time period, were you working late hours?

A. At times.

Q. Were the other members of your team also working late hours?

A. Yes.

Q. In many instances you worked past 9:00?

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

A. Yes.

Q. Seeing e-mails produced, in fact, that there were e-mails exchanged at 1:00 in the morning, 2:00 in the morning.

A. Yes. Unfortunately, I recall those nights.

Q. That was not infrequent?

A. No.

Q. And this engagement was obviously a very important engagement to Houlihan?

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

Q. Let me rephrase it. Was this an important engagement to Houlihan?

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

A. Well, they are all important engagements. But, yes.

Q. And Houlihan devoted its full attention to the engagement?

A. Correct.

Q. And no one at the company or, I'm sorry, no one within the ad hoc group has ever questioned the quality of

Houlihan's work during that time period?

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

A. I don't believe so.

Q. And you had a number of calls with Centerview during this time period, April-May?

A. Yes.

Q. And you had a number of calls with FTI as well in that time period?

A. Yes.

Q. At any point during those calls or at any point in that time period, did you raise with either Centerpoint (sic), FTI or any of the company's representatives that you did not receive adequate information?

A. Yes.

Q. And did you at any point in that time period, April or May, specifically raise that you were not provided enough information on the intercompany balances?

A. I believe so. Yes, is the answer.

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Q. Are you aware of any writing that reflects your raising with the company or any of the company's representatives that you were not provided enough information regarding the intercompany balances?

A. I don't recall.

Q. Do you recall any point in time in April or May that you or anyone at Houlihan raised that you were not provided enough information about the RMBS claims?

A. Yes.

Q. And do you recall if that issue was raised in writing?

A. I just don't recall.

Q. In preparing for today's deposition, did you review any writings, e-mails, notes, which reflected that you had raised concerns about intercompany claims or the RMBS claims with any of the debtors' representatives?

MR. RENENGER: Again, April-May time period.

Q. April-May time period.

A. No.

Q. Did you keep notes of your work in this time period?

A. I'm not a great note taker so I wouldn't have anything that I could refer back to, no.

Q. Did you retain the e-mails from this time period?

A. Yes.

Q. At one point in time were you instructed to keep all of your e-mails?

A. Yes.

Q. What point in time was that?

A. I think when this litigation first began, as a matter, I think Houlihan because of the investment bank we are we have to retain all of our e-mails anyway so they are always kept. But pursuant to this situation when the litigation began, whenever, several months ago.

Q. You are not aware of any e-mail that you either sent or received in the April or May 2012 time period that's been destroyed?

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A. No.

Q. And in connection with the document requests that we have served in the case you've provided your e-mails to counsel for that time period?

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

A. Pursuant to what protocol was agreed to, we complied to that.

Q. Was anyone at Houlihan or anyone within the ad hoc group aware prior to the petition date that certain ResCap subsidiaries had forgiven liabilities owed to other ResCap subsidiaries?

A. I don't recall if we were aware of that or not.

Q. You are aware that that has happened?

A. I am now.

Q. Historically, prior to the petition date, certain ResCap entities have forgiven intercompany balances that were owed to other ResCap subsidiaries?

A. I'm aware of that now. That

Plaintiff's Objection
269:21-270:6
Beyond the scope of affirmative testimony; incomplete (FRE 106)

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that occurred.

Q. When was the first time you were aware of that fact?

A. Not that long ago. Maybe the last few months.

Q. Certainly prepetition you were aware that Ally had forgiven certain -- certain amounts owed to ResCap, correct?

A. Correct.

MR. RENENGER: Object to the form of the question. Do you mean Ally had forgiven amounts owed to ResCap or?

Q. Well, let me ask it more broadly. You are aware, prior to petition, that prior to the petition date, Ally and ResCap had certain amounts owed and owing, correct?

A. Between Ally and ResCap?

Q. Yes.

A. Yes.

Q. And you are aware that Ally had forgiven certain of those amounts?

A. Yes.

Plaintiff's Objection
270:15-25
Beyond the scope of affirmative testimony; incomplete (FRE 106)

SNELLENBARGER

Q. And we talked about this before the lunch break. You were also aware that ResCap had a number of subsidiaries, you are aware of that fact, prior to the petition date?

A. Correct.

Q. And you're aware based on your experience in this field and in investment banking that companies with a large number of subsidiaries often have intercompany balances owed between those subsidiaries?

A. Correct.

Q. It's a well-known fact that when you have a large company like this, there will be amounts transferred from one company to the other within the parent organization?

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

A. Each have their different issues, but as a general matter, yes.

Q. And you are aware that the balances owed generally between companies within one corporation could represent

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collateral for certain liabilities?

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

A. Yes.

Q. Do you recall any time prior to petition date discussing with any of the noteholders, your clients, that they were entitled to collateral that, the collateral that was the intercompany balances?

MR. RENENGER: I'm going to again instruct the witness that to the extent he can answer that question without revealing privileged conversations or work done at the direction of counsel, then he can answer that.

A. Can you repeat the question?

Q. Let me rephrase the question.

A. Okay.

Q. We looked at a presentation that Houlihan prepared in 2012 that reflected the analysis that was included in the presentation, did not include intercompany

balances, correct? Do you recall that document? It's the May 2012 presentation, I believe it's Exhibit 18.

A. I believe there's a comment in there about intercompanies.

Q. Are you looking at 18?

A. Yes.

Q. It's page 22 of that document, 2234.

A. Okay, I see it. Can you repeat the question?

Q. So at least as a subject matter you are aware that there were intercompany balances that could be, could represent collateral for the JSNs?

A. Yes.

Q. And the question I'm asking is did you have discussions with your clients prepetition about those intercompany balances? Just generally.

A. Yes.

Q. And did you have discussions that certain of those intercompany balances could have been forgiven,

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prepetition, discussions with your clients prepetition about whether certain of those intercompany balances were forgiven, historically forgiven between subsidiaries?

MR. RENENGER: I'm going to object and tell the witness it's a yes or no question.

A. Not that I recall.

Q. But you are aware from your experience in this field and obviously in all the other engagements that you worked on that large companies with many subsidiaries have intercompany balances and those intercompany balances are often forgiven?

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

Q. Let me rephrase it.

That large companies, based on your experience, you were aware that large companies that had multiple subsidiaries were subsidiaries owed certain amounts amongst those subsidiaries, it was not

Plaintiff's Objection
274:21-275:13
Beyond the scope of affirmative testimony; incomplete (FRE 106)

uncommon for a subsidiary to forgive those debts?

A. I don't know if I would say that. I mean, I don't think you can make a broad assertion with respect to intercompany claims. I think each individual company and each individual case is distinct and had to be evaluated, you know, based on that. Maybe some companies do that, maybe some companies didn't. I don't know as a general matter if you can make a broad conclusion.

Q. Let me narrow the question. Are you aware at least some companies, in fact, allowed subsidiaries to forgive debt owed to other subsidiaries?

MR. RENENGER: Just as a general matter?

Q. Yes. Based on your experience working in this field and working other engagements, are you aware that companies forgave debts owed among subsidiaries?

A. It can happen. But again, it's really depending on the individual

situation.

Q. Not only that it can happen, you are aware that it had happened at other companies at another engagements prior to this engagement?

A. Not engagements I have been involved in personally. So I can't really speak to that.

Q. Were you aware generally that companies, prior to a position date, prior to this engagement, were you aware that, of any instance where a company had forgiven debts owed between subsidiaries?

A. As a general matter, maybe. I mean, it's difficult for me to -- my particular specific engagements, no. So did it happen in other situations, I can't really speak to.

Q. Have you had an engagement where the value of the intercompany claims represented the collateral for a client?

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

Q. Or for any holder of security

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interests?

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

A. I just don't remember.

Q. Are you aware of any Houlihan engagement where either the client or the company at issue had intercompany balances that represented collateral for a secured interest?

A. I don't know specifically.

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

A. I don't know specifically. I'm sure we had. I mean, we do a variety of different restructuring transactions all over the place. I'm sure we've dealt with that situation.

Q. Can you name a few?

MR. RENENGER: Again, object to the form of the question.

A. Again, it's not my involvement so it would be difficult for me to know whether they were or not. I don't know if I can answer that.

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Q. Is this the first time in your experience where the engagement exchange of e-mails from May 8th with Mr. Chopra from Centerview involved claims for intercompany balances as collateral? Is this the first time you've seen that?

A. As collateral. Likely. I'm just thinking. I have had a lot of different cases. So it's hard for me to remember. We have dealt with intercompany balances before. I just can't remember whether they were collateral or not collateral to certain creditors in my prior engagements.

Q. Just referring generally back to Exhibit 20, the Houlihan engagement letter. Am I correct that part of the engagement that Houlihan was retained for by the ad hoc group was to perform an independent analysis of the information provided by debtors in connection with JSN recoveries?

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

A. It was certainly our goal.

Q. Let me rephrase the question. You see that the scope of the engagement is described in the first paragraph of the engagement letter?

A. Yes.

Q. And you see that a number of the tasks that are included in the scope of the engagement involve review and analysis?

A. Yes.

Q. Is it fair to say that with respect to each of these tasks, Houlihan performed an independent analysis?

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

MR. WALSH: Can you explain why that's objectionable?

MR. RENENGER: Yeah. I don't know what you mean by independent analysis. Independent of what? It's vague.

Q. Is it fair to say, Mr. Snellenbarger, that Houlihan performed

279:13 – 23, FRE 611(a) (Vague and ambiguous)

its own analysis with respect to each of the items that are listed in the scope of engagement?

A. I don't know if I can say that. I mean, we certainly, as I said before, it was our intent and goal to do that. We had some information of the company, we didn't have all the information. So it was difficult to do a complete independent analysis. When we put our information together in the presentations, we had to rely on a lot of the debtors' information and analysis. We didn't have all the information opportunity to evaluate everything on its own merits independently.

Q. What was Houlihan being paid to do?

A. To review as much information as possible for the debtors, summarize it for the ad hoc group and give our thoughts on that information and, you know, how to provide advice with respect to whatever issues arise.

Q. And did Houlihan provide its own thoughts on the information that was provided by the debtors?

A. Yes.

Q. And did Houlihan perform its own analysis of the information provided by the debtors?

A. We provided as much analysis as we could given the information that was provided to us.

Q. And at any point did the clients question whether Houlihan had performed its own analysis?

A. I think the clients understood the limitations of our analysis given the information that was provided.

Q. And were there discussions between Houlihan and the clients regarding those limitations?

A. Yes.

Q. And at any point did you tell the clients not to proceed with the PSA based on the limitations of information that you were provided?

A. I think that's privileged. I don't think I can answer that.

Q. You are not going to answer that question?

A. No.

(AHG Exhibit 21, exchange of e-mails from May 8th with Mr. Chopra from Centerview, marked for identification, as of this date.)

Q. Mr. Snellenbarger, this is Exhibit 21. It's an exchange of e-mails from May 8th with Mr. Chopra from Centerview. And you see that these are two e-mails that you sent, correct?

A. Yes.

Q. What did you provide to Mr. Chopra by these e-mails?

A. It looks like a simple waterfall schedule that summarizes the secured recovery of the JSNs.

Q. Did you prepare this summary?

A. Houlihan did.

Q. Houlihan. And did you have any input in the summary?

A. I believe so. This was, I think it's a -- basically we put this together based on these, the inputs, the substance that the debtors gave us and we were putting in the waterfall and saying, look, based on the assumptions you gave us and the waterfall we agreed to, does this look like what the outcome should be.

Q. I am sorry, I'm looking at the e-mail, Mr. Snellenbarger. It says, "Take a look at this simple asset recovery spreadsheet and let me know if you agree with our assumptions." These are your assumptions, correct?

A. Well, okay, it says our assumptions, but these were the assumptions based on the discussions we had had with the company. And so we put them in a spreadsheet and I said let me know if you agree with this.

Q. What are the assumptions?

A. The assumptions are the value of the sold assets. The amount of cash on hand. The value of the unsold assets.

The amount of derivative cash. The value for the equity pledges. And the assumptions up above, the claim amounts, the Ally revolver of the junior secured notes.

Q. You point out to Mr. Chopra to focus on the revised as of May 8th, 2012 line. What are you referring to there?

A. I think I'm just telling him to focus on the inputs and the value of the assets. I mean, the claim assumptions at the top are public.

Q. This is information that Houlihan revised?

A. They were revised based on discussions with the debtors. As I said before, these schedules of what our assets were and weren't were continually moving around. So we would continue to get updates from the debtors and so based -- for the revised version based on that update we then sent it to Centerview and said take a look at it. Do you agree with this.

Q. And you write, "Let me know if you agree with our assumptions," correct?

A. Yes. And again, they were assumptions based our discussions with the debtors.

Q. And did you say that to Mr. Chopra in your e-mail, these assumptions are based on the information you provided?

A. The words are not here, no.

Q. Did you perform any independent analysis, when I say independent I mean Houlihan by itself performing the analysis, of the information that the debtors provided regarding the collateral?

A. Prepetition?

Q. Prepetition.

A. We did not -- Houlihan did not arrive at any independent conclusions of our collateral value. We utilized the debtors' numbers and their assumptions and then showed you can sensitize those assumptions, show a range of recoveries based those debtors' numbers to give the

ad hoc group a view of what the debtors' view of our potential recovery was. Again, we had limited information and time to do a full blown bottoms-up analysis. That's what our experts ultimately did a year later. This is the best we could do given the time we had and our ad hoc group understood that.

Q. Did you inform the debtors that you had did not have sufficient information or time to complete an analysis?

A. Yes.

Q. Is that reflected in any writing?

A. I don't recall.

Q. Did Houlihan provide a recommendation to the junior secured noteholders regarding what their recovery would be under the prepetition PSA?

MR. RENENGER: I'm just going to instruct the witness and remind him that's a yes or no question. Anything beyond that could get into privileged

areas so keep that in mind, please.

A. So could you repeat the question.

Q. Did Houlihan provide a recommendation to the junior secured noteholders regarding the recoveries under the prepetition PSA? This is prior to the signing of the prepetition PSA.

A. Yes.

Q. What was that recommendation?

A. I think that's privileged. I don't think I can answer that.

Q. I'm not sure which exhibit number it is. But it's the third quarter 2011 presentation. Exhibit 9. Would you take a look at that.

A. I got it.

Q. That's not the one I was looking for.

MR. RENENGER: 19. Just guessing where he's going.

MR. WALSH: Well, it's actually 18. Close.

Q. If you turn to page 6 of 18,

it's Bates stamped AHG 4696.

A. I'm sorry, what's the page again?

Q. 4696. Page 6 of the document.

A. 4696?

Q. Right. It's Legal Entity Overview.

A. Got it.

Q. We talked earlier about public information that you had obtained regarding the family structure of the ResCap entities, the legal entities. Does this refresh your recollection that you had had that information prior to the -- prior to the petition date?

A. Yes.

Q. And it's your understanding that the information was publicly available?

A. Yes. I'm not sure if this particular chart was public or not. There may be more detail here that was private originally but we did have that public chart that we had shown.

Q. You can put that aside.

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MR. WALSH: 22.

(AHG Exhibit 22, series of e-mails between Dennis Prieto and a number of other people, marked for identification, as of this date.)

Q. 22 is a series of e-mails between Dennis Prieto and a number of other people, including yourself, Mr. Snellenbarger. Do you recall this correspondence?

A. I do.

Q. And did you know Mr. Prieto prior to the ResCap engagement?

A. I did not.

Q. Did you know anyone at Aurelius?

A. I personally did not know.

Q. Did the company Houlihan?

A. I believe so. I believe they dealt with them on other engagements.

Q. Had Houlihan worked for Aurelius on other engagements?

A. I think so maybe. I think may have been on a committee or two that Houlihan was advising or had advised

previously.

Q. If you go to the very last page, there's an e-mail from Dan Gropper from Aurelius?

A. Yes, I see it.

Q. And you see that Mr. Gropper is trying to get an introduction to you.

A. I see it.

Q. And ultimately he did make an introduction to you, right? You eventually caught up with each other?

A. Correct.

Q. And what did Mr. Gropper want to talk to you about?

A. He wanted to, I think at that time they had bought some junior secured bonds and let us know that they were holders. And they had, on a public basis had some thoughts about the value of the -- available for the junior secured noteholders and wanted to understand a little better the PSA agreement that the ad hoc group had entered into.

Q. Did you have a meeting with

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Mr. Gropper or anyone else at Aurelius around this time period?

A. We had some phone calls first. I think we met with them ultimately in July, I believe.

Q. The e-mails are, I know there's a number of different e-mails, but the first series of e-mails are from May and earlier, May 15th, which I believe is --

A. The day after the --

Q. -- the day after the petition, right. Do you know if you spoke to anyone at Aurelius in May?

A. I think I only spoke to them after the filing. So yes, in May but I think after the filing.

Q. If you -- right. I'm focused on the May 15th date. If you look at the page ending 8871.

A. Right.

Q. It looks like you and Mr. Prieto catch up on May 15th?

A. Yes.

MR. RENENGER: 8771 just to

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clarify.

MR. WALSH: Yes, thank you.

Q. What did you and Mr. Prieto talk about on that phone call?

A. This same discussion of Aurelius, I think, had bought some junior secured note bonds and were holders and they wanted to understand in parallel with the filing, I think the PSA had been filed. I think that had been made public so they wanted to understand what it was, what the ad hoc group agreed to, et cetera.

Q. And did you provide that information to him?

A. Whatever was publicly available we discussed.

Q. We looked at the three-page document reflecting recoveries of JSNs that was publicly filed. Did you share any information that was in that document with anyone from Aurelius in May?

A. It was already public at that point so they had it, so I didn't have to

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share it with them.

Q. Was that one of the things you discussed on the phone call?

A. It may have been, yeah.

Q. Did Mr. Prieto raise the issue of whether the JSNs had a collateral interest in intercompany balances on that phone call?

A. That phone call I don't know. I just don't remember whether it was that phone call or not.

Q. We will get to the later phone call. So at some point you did have discussions with Aurelius about intercompany balances, correct?

A. Correct.

Q. Did you have an understanding why Mr. Prieto was reaching out to you as opposed to someone in the JSN group?

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

Q. If you know. Why was he reaching out to Houlihan rather than to individual noteholders?

A. I assume because we were the financial advisor to the holder and probably had done more diligence, even on a public basis, than individual holders. I can't say. He may have had other discussions with individual holders, I don't know.

Q. Did you share with Mr. Prieto any nonpublic information?

A. No.

Q. Did you discuss the RMBS contingent liabilities on that phone call?

A. I don't remember. I think the RMBS proposed settlement was made public I think around the same time as the filing so it was out there. So we may have talked -- we may have talked about it.

Q. Did you discuss with him whether those liabilities, those claims, would be subordinated in the bankruptcy?

A. I don't believe so on that call.

Q. Did you review the RMBS PSA when it came out?

A. Yes.

Q. And did you understand that PSA did not provide for subordination of those claims?

A. Yes.

Q. If you turn to the first page, Mr. Prieto has latched on to -- has followed up on the May correspondence with a new e-mail dated June 21, 2012. And he writes, "Reid, we are in the process of drafting a letter to the ad hoc group expressing the view that the junior secured settlement could be dramatically improved."

Did you on June 21st or thereabouts have a discussion with Mr. Prieto about that issue?

A. I believe so, yes.

Q. What was the discussion?

A. They basically said that they wanted to highlight several issues and areas of value that they thought were important to the JSNs. And that their belief that they were, the junior secureds were significantly oversecured. And that

they were concerned that the PSA had forgone six months of post petition interest unnecessarily.

Q. Did you disagree with the view that the JSNs were oversecured at that time? This is June 2012.

A. No. What I said, I said his -- the points that he raised we were aware of, we had considered. But there were other considerations that factored into the group agreeing to the PSA.

Q. What were those considerations?

A. Speed and certainty. The bargain that the ad hoc group was making was that, even if they ultimately were oversecured or not, I think they were willing to waive 6 or 7 months of post petition interest if they could get paid out before the end of the year. That is really what they were doing. And get their full claim paid out. So that was really what, you know, what that group kind of hung their hat on.

Q. And you understand that in

connection with the prepetition PSA the ad hoc group had also waived their rights to certain intercompany balances?

A. I don't know. I don't recall that.

Q. Do you recall that at least with respect to the RFC intercompany balances those intercompany balances would be waived in the prepetition PSA?

A. Well, actually I do recall that was actually a mistake in the drafting and that White & Case had then reached out to MoFo to correct that drafting and had alerted MoFo that they had a problem there, that waivers shouldn't be applied because we weren't waiving any of the intercompany claims amongst any of the entities.

Q. When did that happen?

A. Subsequent to the filing of the PSA.

Q. Had White & Case reviewed the term sheet prior to the signing of the PSA?

A. I don't believe so.

Q. That error was in the prepetition PSA term sheet?

A. It was. There were a lot of documents flying around, people working late trying to get everything done. So it was just missed and White & Case alerted MoFo of that fact.

Q. With respect to the discussion with Mr. Prieto in June, did he provide you with a draft of the letter that he ultimately sent or that was sent to noteholders on June 26th?

A. You know, I can't remember if he sent us a draft ahead of time or not. He may have. I just -- I honestly don't recall. I know we talked about the substance of it. But whether he sent me a draft ahead of time I just can't remember.

Q. While we are getting the letter, you see at the top of this page Mr. Prieto asks you for the e-mail addresses for Alliance, Loomis and CQS. Did you provide those e-mail addresses to him?

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A. I can't remember if we did. You know, ultimately, I don't think we needed to because they actually tracked them down themselves I think. We may have, I just don't remember.

(AHG Exhibit 23, June 26th e-mail from Dennis Prieto to a number of people, marked for identification, as of this date.)

Q. Exhibit 23 is June 26th e-mail from Dennis Prieto to a number of people, including yourself, Mr. Snellenbarger. It attaches a letter from Mr. Brodsky of Aurelius. You are familiar with this?

A. I am.

Q. Does this refresh your recollection whether you saw a draft of this before it was sent?

A. I just don't remember. I remember -- I obviously remember the letter and I just don't know if we had a copy of it before or not.

Q. But at least with respect to some of the issues in the letter, you had

a discussion with Mr. Prieto on those issues before the letter was sent?

A. Yes.

Q. Could you review the letter and tell me which issues you discussed with him?

A. I think it primarily revolved around the incremental value and the sale process. We talked about intercompany claims.

Q. Let me stop you there. What were your discussions on the intercompany claims?

A. I think by then the debtors had filed their schedules and so forth and the intercompany claim balances were public. And I think they thought that those would have significant value in a plan.

Q. If you look at the paragraph on intercompany claims, Mr. Brodsky refers to the last ResCap consolidated financials from 2009. Do you know what he's referring to there?

A. Yeah. I believe historically

several years ago ResCap had provided more detailed financials in public. And they had actually on a public basis had shown financials by legal entity. And in those legal entities there were certain intercompany balances shown. So this refers to that. So maybe the schedules hadn't been filed by then. I don't know.

Q. We will look at a separate letter which was sent after that schedule.

A. Maybe that's what it was referring to. But that's the answer to your question, I think.

Q. Had Houlihan reviewed those 2009 financial statements in connection with his work for the ad hoc group prior to the petition date?

A. No. Because we had updated information on a private basis. So we had more recent information that showed that consolidated information so we didn't need to look at the '09 one.

Q. You had information on intercompany balances prior to the

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petition date?

A. Yes, to the trial balance.

Q. What were the issues that Mr. Prieto raised with you on the sale process?

A. He just said that the stalking horse bids -- that there's a lot of future opportunity for the values to increase. The stalking horse bids have already increased by 175 million. That, you know, it was thought there was a lot of -- you know, there could be potential upside in the value of that, and you know, higher bids would enhance our collateral and our recovery.

Q. If you turn to the first page of the letter. Mr. Brodsky refers to a May 14, 2012, presentation. Is that the Houlihan presentation that we looked at previously?

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

Q. What's the document, what document is he referring to there if you

know?

A. I believe he's referring to the public document that was issued, three pager.

Q. That we looked at previously?

A. Yes.

Q. Exhibit 19?

A. Yes.

Q. You see on page 2 that Mr. Brodsky has identified that the intercompany claims are not included in the presentation, that's correct? They were not included in the presentation?

A. That's correct.

Q. He also on the third page identifies collateral related to the Ally contribution that is not counted in the presentation. Do you see that?

A. Yes.

Q. What is he referring to there?

A. I think what he is referring to is he's saying that a portion of the 750 million -- he's asserting that the JSNs perhaps had a lien on a certain portion of

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the $750 million, that that should be counted in the secured recovery as opposed to part of any unsecured recovery.

Q. Was Houlihan aware of that fact prior to the petition date?

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

A. That?

Q. That there was the potential that the JSNs had collateral on certain causes of action against Ally? Was that discussed or was that something that Houlihan knew prior to the petition date?

A. Yes.

Q. Was that discussed with the JSNs that were your clients prior to the petition date?

MR. RENENGER: I'm going to object to the question to the extent it calls for privileged information. To the extent that you had nonprivileged discussions with members of the ad hoc group on that subject, you can answer.

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Q. I'm just asking for a yes-no question. The subject, the subject matter being the potential that the JSNs had a collateral interest on causes of action of actions against Ally. Was that subject matter discussed between Houlihan and your JSN clients prior to the petition date?

A. Yes.

Q. Do you recall how many times that was discussed?

A. No.

Q. More than once?

A. I think it was discussed part of our settlement discussions.

Q. Discussed prior to the settlement?

A. No. I think it was during.

Q. And was it a discussion that occurred with the debtor or debtors' representatives?

A. With the ad hoc group in presence? I mean --

Q. Let me reframe the question. You had a number of discussions with the

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advisors to ResCap and I assume also with ResCap personnel?

A. Yes.

Q. Was the issue of whether the JSNs had a collateral interest in causes of action of actions against Ally discussed at those meetings, phone calls?

A. Between advisors?

Q. Yes.

A. I believe so.

Q. How many times?

A. I couldn't recall. The issue was raised. How many times, I couldn't -- I don't know.

Q. Same question with respect to internal discussions, internal with respect to Houlihan and the ad hoc group. Were the discussions, prior to the petition date, between Houlihan and the ad hoc group regarding whether the JSNs had a collateral interest in the causes of action against Ally?

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

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Q. Were there discussions prior to the petition?

MR. RENENGER: I heard it the same way she wrote it actually.

Q. Were there discussions between Houlihan and the clients, the JSN clients regarding whether the JSNs had a security interest, a collateral interest in causes of action against Ally?

MR. RENENGER: Object to the form of the question as asked and answered. Yes or no question.

A. Yes.

Q. There were discussions. Did you have -- let me ask more broadly. Did Houlihan have discussions with the ad hoc members that were Houlihan's clients about the Brodsky letter at or around the time of the Brodsky letter? This is the June 26th letter that's 23?

A. Yes.

Q. How many discussions?

A. A few. I mean it was made public. It was sent to them. They

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called. Asked questions.

(AHG Exhibit 24, e-mail chain, marked for identification, as of this date.)

(AHG Exhibit 25, e-mail chain, marked for identification, as of this date.)

Q. Mr. Snellenbarger, I have handed you Exhibits 24 and 25. 24 is an e-mail from July 3rd. The last e-mail dated July 3rd, 9:39 a.m. from Liz Park from FTI. You see your colleague Ben Ilhardt is copied on these e-mails?

A. Yes.

Q. You see that Ms. Park has provided to Jeff Lewis and Ben Ilhardt the top ten intercompany schedule?

A. Yes.

Q. Had Houlihan received this document prior to this date?

A. No.

Q. Houlihan was aware, though, that in late June the debtor had filed its schedules that included information on the

intercompany balances, correct?

A. Correct.

Q. Did Houlihan do an analysis of those schedules to determine the value of the intercompany balances?

A. No.

Q. Do you know why FTI was providing this to Houlihan on July 3rd?

A. Yeah. I mean, we had continued to ask about the intercompany's balances. We had looked at the schedules, saw the balances there. I think they were trying to provide a little more detail to us about what those balances were and what it contained, et cetera.

Q. Why were you asking for that information?

A. To, you know, further refine our recovery model to understand what the potential outcomes may be with respect to intercompanies. Again, like we discussed previously, both sides built a recovery model. Both sides included and developed intercompany relationships as part of

those models. So we were trying to refine that analysis to make it more accurate so we had the right correct balances in there. So that if we ran waterfalls, that they would -- the output would be more accurate, more refined.

Q. Take a look at Exhibit 25.

A. Okay.

Q. This is an e-mail from Dennis Prieto, July 3rd as well, time 11:40 a.m. He asks for a call with you on that day. Did you talk to Mr. Prieto on July 3rd?

A. I may have, perhaps, yes.

Q. He writes he wants to discuss planned next steps in light of the ResCap schedules. What's your understanding of that?

A. I think he wanted to, there's a lot of information in this file much more interface with the public. He wanted to understand what our plan was to review and go through them.

Q. Do you know if anyone at Aurelius had performed their own analysis

of the intercompany schedules?

A. I know they had looked at the intercompany balances and saw that there were balances. You know, saw what the balances were. I think they were trying to develop again, their own, on a public basis, their own recovery model.

Q. Did they perform their own recovery mold, to your knowledge?

A. I think they were trying to kind of develop what they thought the ranges of outputs, what the intercompanies could receive based on a variety of inputs. I think they were trying to come up with that range.

Q. He also asked about the footnote 3 to the presentation. If you turn back to Exhibit 19, it's on page 2 Bates stamped 3474. It's Exhibit 19 if you have it handy.

A. Yeah. Okay.

Q. What was Mr. Prieto's question about the 1.4 billion of other general unsecured claims?

A. I think because the schedules didn't have that high a number. The 14 in the presentation on Exhibit 19 was the estimate given to us by the debtors. And then when they filed their schedules, the statements, that number was significantly less. So I think he was trying to understand why there was a difference.

Q. Do you have an understanding why there was a difference?

A. The debtors overestimated.

Q. What impact, if any, would that have on junior secured recovery?

A. Only to the extent that we had deficiency claims. Well, in two ways. Whether -- if we were undersecured, it would -- that there were less ducks, general unsecured claims then the value of our deficiency would be higher. Also with respect to intercompany claims. If the amount of general secured claims were lower, those -- the value of intercompany claims would be higher.

Q. In a sense this was good news,

they had overestimated?

A. Correct.

Q. You can put that aside.

(AHG Exhibit 26, July 5th, 2012 letter from Mr. Brodsky, marked for identification, as of this date.)

Q. 26 is the July 5th, 2012 letter from Mr. Brodsky to a number of people including yourself, Mr. Snellenbarger. Did you receive this letter on July 5th?

A. I did.

Q. Do you know if you saw a draft of this letter before July 5th?

A. I don't recall.

Q. The letter includes a discussion on the intercompany claims, correct?

A. Yes.

Q. Mr. Brodsky refers to the schedules that were recently filed by the ResCap debtors?

A. Yes.

Q. Those are the same schedules that we have been discussing?

A. Correct.

Q. You see that Mr. Brodsky has -- well, someone as Aurelius has performed an analysis of the collateral value of the intercompany receivables, correct?

A. Yes.

Q. And he's calculated 64-72 bond points of collateral value for those intercompany claims. To the lawyers who are laymen in room, what does that represent, 64-72 bond points?

A. I think he's trying to say that that could equal 64 to 72 percent of amount of bonds or amount of recovery.

Q. It was a substantial amount?

A. Yes.

Q. Increased value?

A. Correct.

Q. Did you agree with that analysis as of July 5th, 2012?

A. Aurelius had used -- in order to determine a range of recoveries for the intercompany claims, it involves a whole host of different assumptions to be put in to any analysis. Aurelius only had public

information. So they were trying to look at it on a public basis. There was limited information publicly. We had more private information internally. Our recovery output estimates on those recoveries were probably more refined. We thought it could be potentially significant. Whether it was to that magnitude, I'm not sure.

Q. Do you know if anyone at Houlihan or Houlihan generally reached a conclusion on the value of the intercompany claims prepetition?

A. No.

Q. At some point though, at least prior to July 5th, Houlihan had concluded there was a value to those intercompany claims, correct?

A. We never had did a valuation. I just want to draw the distinction. The intercompany -- we never looked at the validity of the claims and whether this intercompany claim was valid or this one wasn't valid or whatever. We never did

that analysis. What we did was simply put the balances as stated in our recovery model and then made assumptions on asset values and so forth, primarily, you know, the substance given to us by the debtor and different claim assumptions for other creditors. You run that through a waterfall model and out comes a, you know, recovery estimate for those intercompany claims.

So you can provide recovery estimate ranges based those assumptions but we didn't do a value, you know, of that intercompany because we didn't do a validity analysis whether they were not. It was simply binary. We turn them on, we turn them off and we show what that range is.

Q. What was the amount?

MR. RENENGER: Object to the form.

Q. You said you assumed that the amounts were valid. What were the amounts, the total amounts?

A. The recovery amounts or the balances?

Q. The balances.

A. I don't have the numbers in front of me. As I discussed before, I know there were different intercompany counts back and forth. Some were in the billions some were in hundreds of millions.

Q. It was north of 2 or 3 billion?

A. In aggregate, yes.

Q. The recovery model and the waterfall model that was presented in the presentation, Exhibit 19, does not include recovery for intercompany balances, correct?

A. No. Because the debtors at the time of the settlement said they didn't believe they would be allowed and, therefore, we were limited to what we could disclose to our client and what the debtors would allow us to disclose. So we couldn't show intercompany recovery estimates to them because they weren't --

they didn't want us disclosing that publicly.

Q. The debtors informed Houlihan that the intercompany balances should not be disclosed to their clients?

A. Not the balances but the -- well, balances and recovery estimates. That information was not public at the time of the PSA and they weren't going to divulge it inside settlement negotiations. They didn't want to divulge it or blow it out once the confi period had ended.

Q. The ad hoc group had signed a nondisclosure agreement, correct?

A. Correct.

Q. And that nondisclosure agreement allowed the debtors to see provide the noteholders to sign that NDA with nonpublic information?

A. Yeah. Certain nonpublic information that would ultimately be borne out.

Q. And is it your testimony that the nonpublic information regarding the

intercompany balances were only provided to Houlihan and not provided to the funds?

A. That's correct.

Q. And the recoveries that included claims for intercompany balances was also not provided to the JSNs?

A. That's correct.

Q. So I'm not going to ask you to divulge what's redacted in the presentation that we looked at earlier but it's your point of view that those presentations do not include recoveries for intercompany balances?

A. That's correct. We just simply said in the presentation that if they were valid, they would increase the secured recovery.

Q. Without quantifying for the JSNs the amount of the increase in recovery?

A. That's correct.

Q. Did you at any point raise with your clients prior to the petition date that that information should be provided to the signatories to the NDA?

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MR. RENENGER: I'm going to object to the form of the question and instruct the witness to the extent the answer to that question would divulge work product or attorney-client privileged communications, I'll direct you not to answer.

A. I can't answer at the direction of counsel.

Q. If you turn back to the July 5th letter.

A. Sure.

Q. First page of the letter has a footnote 2, referring to the RMBS trust and monoline claims and subordination.

A. Yes.

Q. Was this the first time that Houlihan became aware that the RMBS and monoline claims could be subject to subordination in the plan?

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

Q. We asked a number of questions prepetition about subordination. I think

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most respects your counsel advised you not to disclose confidential and privileged information. I'm just asking generally. When was the first time with respect to this engagement that Houlihan became aware that the RMBS and monoline claims could be subordinated in the plan?

MR. RENENGER: I'm going to object to the form of the question.

Q. At some point, either at the date of this letter or at some point prior to the date of the letter, you Mr. Snellenbarger became aware that these claims, the RMBS and monoline claims, could be subordinated in the plan. They were not subordinated but Mr. Brodsky is saying they could be subordinated?

A. Correct.

Q. Is this the first time you learned that fact or did you know it before?

A. No.

Q. Did you know it before the petition date?

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A. I think as a general matter, we -- I think we were aware that it was possible.

Q. And you discussed it with your clients prior to petition date?

MR. RENENGER: Objection.

Q. Yes or no answer. The issue of subordination with respect to the RMBS and monoline claims, did you discuss that issue with your clients prepetition?

MR. RENENGER: Object. I think it's been asked and answered earlier, but go ahead.

A. I believe so.

MR. WALSH: If we take a break, I can shorten what we have.

MR. RENENGER: Sure.

(Whereupon, there is a recess in the proceedings.)

Q. Exhibit 26. Where it says, "We look forward to meeting with you next week," Mr. Brodsky is writing to among others you. Did you, in fact, meet with anyone from Aurelius at around that time?

A. Yes.

Q. In person?

A. Yes.

Q. What happened at that meeting?

A. We discussed the letters that they had sent around publicly and also discussed kind of generally on a public basis the history of the case and the discussions and the rationale for entering into the PSA.

Q. Was there a discussion about intercompany claims at that meeting?

A. I believe so.

Q. Where was the meeting?

A. I believe it was at White & Case offices.

Q. And how long did the meeting last?

A. About an hour or two.

Q. Were you there at the meeting?

A. I was.

Q. Who else was at the meeting?

A. Mr. Brodsky, Mr. Prieto, Jerry Uzzi from White & Case, I believe Jeffrey

Lewis from Houlihan, Matt Niemann may have been there. I don't remember if he was or not.

Q. And what -- did the Aurelius folks take a position on whether the prepetition PSA should be supported or not supported?

A. I'm sorry, can you repeat the question?

Q. Did the Aurelius people at this meeting take a position one way or the other whether the prepetition PSA that was in place should be supported or not supported?

A. No, they didn't go that far in the meeting.

Q. Were they asking questions to you and the other attendees about why they should support the prepetition PSA?

A. I think they wanted to understand based on the items that they had laid out in the -- excuse me -- the significant value that they thought was available to the JSNs, what was the

rationale for entering into the PSA.

Q. Was that information provided to them at that meeting?

A. Yes.

Q. Were there any other meetings with the Aurelius folks regarding any of these issues after July 5th or after the July meeting?

A. Yeah. I believe we met with them.

Q. I'm fixing this pretermination. So any meetings between July and September regarding support for the PSA?

A. Well, I think we met with them again, I don't know whether it was regarding support for the PSA or not, but I had subsequent discussions just generally about the case and where things were headed, et cetera.

Q. Do you recall how many times you met with them?

A. Couple times, I believe.

Q. How many times in person?

A. I think twice I think.

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Q. Here in New York?

A. Yes.

Q. Do you recall when?

A. Well, the first one was around right after July 5th. The second one may have been a couple weeks later. It could have been in August, too, I don't know.

(AHG Exhibit 27, e-mail from Ben Ilhardt at Houlihan to Arthur Kaz, marked for identification, as of this date.)

Q. Exhibit 27, Mr. Snellenbarger, is an e-mail from Ben Ilhardt at Houlihan to Arthur Kaz. Do you know who Arthur Kaz is?

A. I do.

Q. Who is he?

A. He was a professional at Pentwater Capital at the time.

Q. Was he the professional at Pentwater that was supervising Pentwater's investment in JSNs?

A. He was the day-to-day guy.

Q. Were there discussions with

Mr. Kaz about the value of the intercompany claims at or around July 5th, 2012?

A. He had seen the letter that Aurelius had sent around and, you know, about the, you know Aurelius's kind of assertion about the magnitude those intercompany claims may yield in recovery. And so he called and said where do or you think -- how are you getting the rates numbers. He said we don't know exactly how they're quantifying them but I think they are looking at the schedules. And he said can you point me to where they are in the schedule, et cetera. So we sent him this summary of where they were in these schedules.

Q. So the listing that's attached reflects the docket entries for the schedules?

A. I believe so, yes.

Q. That also includes the amounts to the intercompany receivables, correct?

A. Correct.

Q. And this is information that the debtors made public at the end of June?

A. Correct.

Q. Did you have subsequent discussions with Pentwater about the intercompany balances?

A. Yes.

Q. What were those discussions?

A. They were trying to develop their own model to come up with a range of recovery, ranges of what those intercompanies may yield based on assumptions. So they were trying to figure that out on a public basis. So we were doing our best on a public basis to guide him on what assumptions he used on a public basis to try to help him there.

Q. So by this time we had a recovery model by Aurelius and we also had Pentwater doing a recovery model of their own?

A. Correct.

Q. Do you know if the amounts in the Aurelius recovery analysis matched the

amounts in the Pentwater recovery analysis?

A. I don't recall. I don't believe they did. Again, a recovery model with a case is complex. There's a variety of different assumptions that can be used that would impact what those ranges would be.

Q. Did Aurelius and Pentwater have different assumptions with respect to the intercompany claims?

A. I just don't remember what the different assumptions were.

Q. Well, you mentioned that Aurelius's assumptions regarding the intercompany claims were different than Houlihan's assumptions, correct?

A. Right.

Q. Do you recall if Pentwater's assumptions regarding the intercompany claims were also different from Houlihan's?

A. Yes. Only because both Pentwater and Aurelius were, could only

use public information. We had the benefit of some private information.

Q. Did you receive any analysis from any other signatory to the PSA regarding the intercompany claims, Marathon, York?

A. No, not that I recall.

Q. Silver Point?

A. I don't think so.

Q. Prior to the petition date, were you provided a recovery analysis by any of the ad hoc group members?

A. Prior to the petition date?

Q. Correct.

A. No.

Q. Were you aware whether members of the ad hoc group were doing their own recovery analysis prior to the petition date?

A. I don't remember. I mean, I think based on the public information it had been very difficult to try to do that, to ascertain what that was or wasn't.

Q. Well, by the petition date,

though -- by the petition date those members had signed an NDA and had received some nonpublic information?

A. I'm sorry. I apologize.

Q. I'm trying to fix before the petition date just so we have all the questions squared. Prior to the petition date, were you aware whether any members of the ad hoc group were performing their own recovery analysis with respect to the JSNs?

A. I don't believe so because the information they received on a confidential basis was such a short time period between that and when we did the settlement. I don't think they had time to do their own recovery analysis based on that information. My guess.

Q. You don't know one way or the other?

A. But I don't know.

Q. At some point Houlihan shared its recovery analysis with the members of the ad hoc group prior to the petition

date? We saw the redactions but I'm not going to ask you what's in the recovery analysis but there was a recovery analysis by Houlihan that was provided to the ad hoc group?

A. Yeah. Based on the information provided in the petition.

(AHG Exhibit 28, e-mail from Arthur Kaz, marked for identification, as of this date.)

(AHG Exhibit 29, e-mail from Ben Ilhardt, marked for identification, as of this date.)

Q. 28, Mr. Snellenbarger, is an e-mail from Arthur Kaz to you and others at Houlihan from August 23rd. Do you recall this e-mail?

A. I do.

Q. Mr. Kaz refers to an analysis that's attached, appears to be his waterfall, well, Pentwater's waterfall analysis, correct?

A. Yes.

Q. And it's based on the publicly

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available information on the schedules, correct?

A. Yes.

Q. And it includes a recovery based on recovery on intercompany balances, correct?

A. Just give me a second. I just want to reread the e-mail.

Can you repeat the question?

Q. While you are looking at it --

MR. WALSH: Aaron, would you look at page printed from November 5th, 12:24. It's the first page of the analysis. Can I ask you, the intercompany receivables are blacked out, is that a redaction or is that a --

MR. RENENGER: No, that's not a redaction.

A. I'm sorry, can you repeat the question?

Q. So if you look at the attachment that is Pentwater's analysis.

A. Hmm.

Q. You see under assets there's an item for intercompany receivables?

A. Yes.

Q. MV. Do you know what MV refers to?

A. I don't know actually. I don't know.

Q. In the cover e-mail, Mr. Kaz is asking -- asking the Houlihan folks to forward any analytical work that Aurelius has sent to date. Do you know what he's referring to there?

A. I think he was trying to -- based on the letter, Aurelius provided a range of recovery estimates. On the second letter on the intercompanies and he was trying to understand if they provided any analytical support behind that to understand how they got to that number, he wanted to see that.

Q. Had they, had Aurelius provided underlying support?

A. They did not provide that to us, no.

Q. Do you know if Aurelius ever provided that support to --

A. No. We had some discussions with them about what their assumptions were but they didn't provide the actual, their recovery.

Q. Did Pentwater perform its own analysis of the intercompany balances?

A. They tried to create their own waterfall model to determine some, a range of outcomes for the intercompanies.

Q. Did they provide that to Houlihan?

A. Yes.

Q. Do you know when?

A. Well, it looks like from this e-mail he sent it in August but he said he had sent it a month before as well. So if that's correct, then I assume the first time he sent it was in July.

Q. If you turn to the last page of the document.

A. Yes.

Q. Do you see at the top third

intercompany receivables, there are certain values listed in the various, I'll call them silos, for lack of a better word?

A. Yes.

Q. Is it your understanding those reflect the intercompany receivables at each of those silos?

A. I'd have to go back and check but I assume he was using the balances that were provided in the schedules.

Q. And those were balances, intercompany balances, between certain ResCap entities and other ResCap entities?

A. I believe so, yes.

Q. Did you have any meetings with Pentwater about this analysis?

A. Yes.

Q. And when did you meet with them?

A. Probably in late August.

Q. If you look at Exhibit 29?

A. Yes.

Q. Before we move to 29, can you look back at 28?

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A. Um-hmm.

Q. The first e-mail from Pentwater. Mr. Barrett Eynon at Pentwater is asking for a side-by-side analysis of how Aurelius gets to the intercompany recoveries versus how you guys, Houlihan, get to the recoveries using different methodologies and clearly only public information. Do you know what he's referring to there?

A. Yeah. I think he was trying to say, if we developed our public model, if we developed a public model, what would our range of recoveries on the intercompanies be versus what Aurelius did. That's the question he asks.

Q. Did you have a model that was based only on public information?

A. We did not at the time so we created one.

Q. And in your meeting with Pentwater, did you perform the side-by-side analysis?

A. We never prepared the

side-by-side analysis because we didn't -- we didn't want to -- we were careful not to relay any of our thoughts on what the recovery estimates on the companies may or may not be. So what we did, we developed a base kind of public model that Pentwater could insert their own assumptions and play around with it to develop a range of what the intercompanies may or may not be.

Q. I thought Pentwater had signed an NDA?

A. They had. But by August that NDA had expired. So they were on a public only basis at that point.

Q. Was there any difference between the Houlihan model based on public information and the Aurelius model based on public information, at least with respect to intercompany receivables?

A. Again, we didn't run that for Pentwater. We basically -- we didn't -- what we sent over to Pentwater was a recovery model that had zero recovery for the intercompanies. Not that we didn't

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think they were worth anything but we simply just said, look, put your own assumptions in, play around with it. We can see what outcomes result from that. Basically they could have done it themselves. We were trying to be helpful and just did it for them basically as a mathematical exercise for them.

Q. What type of assumptions could change on the intercompany receivable issue?

A. The size of the unsecured claims, the value of the assets, where those assets and claims reside, at what entities, would impact the value or the output recoveries of the intercompanies.

Q. Is it fair to say that reasonable people could disagree on the value of intercompany claims that were publicly disclosed?

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

A. Based on public information, there would be -- definitely a range of

outcomes could be concluded because it wasn't enough public information to be very specific and find out about some of those assumptions.

Q. At some point, either in the summer of 2012 or later, did Houlihan perform an analysis of the intercompany receivables based on nonpublic information?

A. We never did a valuation. We, as I said before, we continued to update our recovery model based on refinements and inputs provided to us by the debtors and based on the different scenarios and our range of scenarios we would -- at the direction of counsel we would provide -- counsel would provide different scenarios for us, we would run it through our model. We would provide those outputs to them.

Q. Did the refinements include refinements on the value of the intercompany receivables?

MR. RENENGER: Object to the form of the question. I'm going to

instruct the witness to the extent that the work in question was work done at the direction of counsel, you are not to provide any detail on that work. But just whether or not the work was done is okay.

A. Yes, the work was done.

Q. Let's look at Exhibit 29.

A. Okay.

Q. Mr. Ilhardt, is he attaching the model that you referenced earlier that does not assign a value to the intercompany claims?

A. Yes.

Q. This is an illustrative model?

A. Correct.

Q. And it was provided in electronic form such that Pentwater could perform its own analysis?

A. Correct.

Q. Did Pentwater ever share with you it's own analysis based on the illustrative waterfall that you provided to them?

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A. I don't know if they sent their estimates back. I think they played around with it to come up with different ranges. And we talked about what those ranges may be, you know, generally.

(AHG Exhibit 30, e-mail between Mr. Snellenbarger and Mr. Prieto dated July 10th, 2012, marked for identification, as of this date.)

Q. Exhibit 30 is an e-mail between you and Mr. Prieto July 10th. Tail end of a number of other e-mails. Mr. Prieto seems to reply to all in the same e-mail. Did you have a discussion -- if you look at the bottom of the first page, you had offered Mr. Prieto to meet or discuss, I guess -- turn to page 2. The page ending in 81. You see at the top Mr. Prieto e-mails you, references an in-person meeting you had and says, "We want to better understand the tax issue and the treatment of the monoline claims," and asks if you can meet, well, chat. Did you in fact talk to Mr. Prieto or around

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July 10th?

A. I believe we did.

Q. And did you talk about the monoline issue?

A. Yes.

Q. What was the discussion?

A. I mean, as I recall, it's been a long time. I think just to understand what the -- I think they were trying to figure out where the monoline claims should be asserted, what entities. And based on public information. And we were trying to help them through public information and public information available to the RMBS trusts at ResCap where those securities were created, at what entities to try to come to a determination of what they were supposed to put in their model with respect to those claims.

MR. WALSH: This will be 31.

(AHG Exhibit 31, e-mail from Mr. Snellenbarger to David Reid forwarding an e-mail from Mr. Prieto,

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marked for identification, as of this date.)

Q. Exhibit 31 is an e-mail from you, Mr. Snellenbarger, to David Reid forwarding an e-mail from Mr. Prieto. Are you sending that to yourself?

A. Yeah. That's my e-mail address.

Q. I figured that. But I want to focus on the e-mail from Mr. Prieto. What is Mr. Prieto forwarding to you?

A. I think he was trying to -- they did an analysis of where these securities were issued and what the loss estimates were to try to determine where the appropriate claims should be, what entities the appropriate claim should be assessed at.

Q. Where did he get the information to perform this analysis, if you know?

A. There's a service called Intex that has a lot of this securities RMBS, CMBS type of information that's publicly available.

Q. Was that available prepetition?

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A. I believe so.

Q. Did Houlihan access Pretex --

A. Intex.

Q. Intex. Thank you. Prior to the petition date?

A. I don't recall if we did or not.

Q. Did Houlihan or anyone for the ad hoc group perform the analysis that Mr. Prieto has included here or any form of that analysis prior to the petition date?

A. No, because the debtors had told us what their assumptions were with respect to those claims, what entities so we utilized those assumptions.

Q. But the information was available in Intex prepetition?

A. Yes. It's one way to look at it. It's not the definitive guide of how those claims should be assessed and what entity. It's one way to look at it on a public basis. The debtors made an assumption based on their knowledge and that's what was utilized in the recovery

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models at the time on a private basis.

Q. Did the debtors provide the information that is included in this spreadsheet prior to the petition date?

A. No.

Q. Is this additional information that you could have accessed prior to the petition date to understand the RMBS settlement?

A. Well, the RMBS settlement happened before the date of the filing. So I don't know if we could have had time to do that.

Q. Let me ask a different question. Did anyone at Intex -- sorry. Did anyone at Houlihan access Intex prior to the petition date to either confirm what the debtors had provided on the RMBS claims or to investigate what the debtors had provided on the RMBS claims?

A. We had ancillary financial institution group professionals that have experience in RMBS and CMBS. I wasn't at the time that familiar with the

securitizations. I think they had generally looked at it but not on a deep dive of it generally.

Q. Who are they?

A. I think her name was Kinga Elo.

Q. She was a Houlihan employee?

A. She was at the time.

Q. Anyone else at Houlihan that look at the RMBS claims?

A. She was the person that did that always.

Q. Did she prepare an analysis of the RMBS claims prior to the petition date?

A. No. I think she on a public basis. Well, I would say when we were putting together, we talked about our estimates way back when and she was the one that had looked at the research reports and looked at the comparable settlement deals. I think had looked at Intex a little bit to kind of develop some kind of best guess range on a public basis.

Q. We had looked at a document that provided a preliminary and HL estimate. Was she involved in that?

A. Yes.

Q. If you look back at Exhibit 24, you see Ms. Park refers to Intralinks at the top?

A. Yes.

Q. Does this refresh your recollection that Houlihan had access to Intralinks during this time period?

A. Yes. And again, I think Intralinks had different data rooms -- or, excuse me, Intralinks ResCap had different data rooms set up on Intralinks so I know we had access to a data room on the Intralinks site from ResCap.

Q. At least through July 3rd, 2012?

A. Yes.

Q. You don't know one way or the other but you potentially could still have access to Intralinks?

A. Right.

(AHG Exhibit 32, Notice, marked

for identification, as of this date.)

Q. Mr. Snellenbarger, you are a 30(b)(6) witness on the public disclosure document that I have just handed you. This is Exhibit 32. Are you familiar with this document?

A. I am.

Q. You reviewed it in connection with today's deposition?

A. Yes.

Q. Turn to the last page.

A. Okay.

Q. The title of the last page is intercompany claims and estimated recoveries. Is this a disclosure that the ad hoc group was required to make in connection with confidentiality agreements previously signed?

A. Yes.

Q. And here the ad hoc group is disclosing -- well, what are they disclosing here?

A. They are disclosing a range of, on a -- we are disclosing a recovery

estimate on the intercompany claims based on certain assumptions outlined here.

Q. What were the assumptions?

A. The assumptions were that the Ally contributes $2.1 billion for the POR, JSN collateral is assumed to include 1.69 billion of debtor stipulated secured recovery, 180 million of cash collateral projected to be used post April 30th that had not been authorized. If you want me to read this, I can.

Q. No, I don't need that. I'm more interested in the numbers below the line.

A. Okay.

Q. You see that the value that the ad hoc group has placed on the intercompany claims recovery is approximately 462 million?

A. Yes.

Q. What analysis, if any, did Houlihan do with respect to that number?

A. This is a result of, again, our recovery model that we had built basically putting the assumptions that we summarized

and the bullets on the top half of the page, putting into the recovery model and the output of what that means for the intercompany balances.

Q. How do you go about calculating the percentage of recoveries for each of these intercompany claims?

A. The percentage recovery is simply the math of the output recovery value divided by the net claim number.

Q. Okay. Let me ask it a different way.

A. I apologize if I didn't understand your question.

Q. Ask an obvious question, get an obvious answer. How did you go about calculating the value of each of the intercompany claims?

A. Again, we had a recovery model. We put the assumptions in that we describe on the top half of the page. Those values flow through the model and based on the intercompany claim balances per entities, they are shared with other unsecured

claims. And that results in what recoveries those intercompany claims would get through the estate.

Q. Let me take the first one. You have an intercompany claim between Residential Capital, LLC and GMAC Residential Holding Company, LLC. And the net claim is 3.3 billion. Do you see that?

A. I do.

Q. And this document places a value of zero on that. What analysis did the ad hoc group perform to come to that value?

A. Again, it wasn't -- we didn't determine whether the intercompanies were valid or not. I think for the purpose of this, we assumed they all were valid. I think the result is I don't think there's really any assets or value at GMAC Residential Holding Company, LLC. So they are the ones that are paying the claim. There was no value there. There wouldn't be any ability to pay on that claim. That's why there would be zero ascribed to

that.

Q. If you look at the next item, the receiving entity is Residential Funding Company. And the paying entity is Residential Capital, LLC. The net claim is 1.9 billion. And the value ascribed here is 350 million. How did the ad hoc group come to that value of 350 million?

A. Again, this is like, it's a mathematical output based on the assumptions of what the value of the assets at Residential Capital, LLC, the secured collateral that goes to the secured creditors. There's unencumbered collateral or unencumbered value available at that entity. The unsecured claims share in that value. The intercompany claim would share in that value and their pro rata should be -- is shown here.

Q. And Houlihan performed that analysis with respect to each of these intercompany claims?

A. Yeah, pursuant to our recovery model. Again, we weren't opining on the

validity of the claims. We were just simply saying if they are valid, here's what the output is.

Q. How much work went into the preparation of these numbers, roughly in hours or --

A. Well, I mean, this is a -- it's really a result of our model that we had built over time. We built it prepetition and had refined it throughout the case. So it's not too difficult to put the numbers in and see what the output is.

Q. And you had confidence in the numbers that you provided for this disclosure?

354:14 FRE 611(a) (Vague and ambiguous)

A. Yeah. I mean, they were based on the assumptions -- we basically said we had confidence in our model that the math works. As we talked about before, we were trying to test it with every client. Yeah, I think we were getting the same results. So we felt comfortable that our model from a mathematical perspective worked. And given the assumptions that we

described here, this is what the output could be.

Q. And you were comfortable with the value ascribed to each of these claims as presented in this public disclosure?

A. Yeah. I was comfortable that that would be the recovery on these intercompany claims based on the assumptions that are provided here. If the assumptions changed, then the recovery numbers would change.

Q. Okay. You can put that aside.

Mr. Snellenbarger, you've been designated as the corporate representative on the decision to object to the plan, the ad hoc group decision to object to plan, and I understand we've limited that to the business reasons for objecting to the plan. Do you have an understanding, as the witness for this issue, of what the plan provides with respect to JSN recoveries?

A. Yes.

Q. What does it provide?

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A. A payment in full on account of our principal amount of our claim plus accrued prepetition interest.

Q. And if there is a judicial determination that the JSNs are oversecured, what does the plan provide?

A. I believe then we would be entitled to post petition interest.

Q. And if there is a judicial determination that the JSNs are not oversecured, do you have an understanding that the recoveries of the JSNs would be reduced?

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

Q. Let me ask a different way. Do you have an understanding of what the recoveries for the JSNs would be if there's a judicial determination that the JSNs are undersecured?

A. I believe it would be the principal amount of our claim plus accrued prepetition interest.

Q. Do you understand that the plan,

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as presented, provides that if there is a judicial determination, either with respect to phase one or phase two, that the JSNs were oversecured, the JSNs will receive full recovery of both par prepetition interest and post petition interest?

A. I believe that's the case. We wanted -- I think it wasn't clear in the plan, in the actual document. I think through court appearances we tried to clarify that.

Q. And is it correct that the ad hoc group is still objecting to the plan?

A. Yes.

Q. And what is the basis for the objection?

MR. RENENGER: I'm going to object to the form of the question and just remind the witness that he's here to testify about business reasons for the objection and not necessarily the legal grounds for the objection.

A. Right now the plan provides that

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the intercompany claims are waived. We believe that there is substantial value available to us on account of those intercompany claims. Until such time that we -- in fact, would help prove that we're oversecured and entitled to post petition interest. So we think that the plan is unfair with respect to the treatment of those intercompany claims and our collateral.

Secondly, we believe we are not giving a distribution on account of the Ally contribution and we are asked to provide Ally a full release in exchange for no distribution on account of the Ally contribution. Those are the two primary reasons.

MR. RENENGER: Object to the form.

Q. Do you understand that each of those issues will be subject to phase two of this litigation?

A. I believe so, yes.

Q. And if there is a judicial

determination that there is a right to the intercompany balances and a right to some portion of the Ally contribution, the plan provides that the JSNs will receive recovery consistent with that finding?

A. I think as we -- as is described in the plan objection, if we are found to be oversecured entitled to full post petition interest -- I believe it's described in our plan objection, if we are found about oversecured entitled to full post petition interest, I think these issues become moot.

Q. The plan provides that you will receive a recovery based on the judicial determinations, either in phase one or phase two. So if there's a finding that you are entitled to either a lien on the intercompany balances or a lien on the causes of actions, you will receive under the plan what you are claiming is due. I'm trying to understand why you are objecting to a plan that provides exactly what you are seeking?

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MR. RENENGER: I'm going to object on the basis that this has been asked and answered.

A. Can you repeat the question?

Q. Can you explain to me why the ad hoc group is objecting to a plan that would provide them exactly what they are asking for if there is a judicial finding in their favor?

MR. RENENGER: I'm going to object on the basis that it's been asked and answered and I'm also going to instruct the witness, remind the witness that he's here to testify as to business reasons for objection not necessarily legal arguments about the validity of -- the arguments made in the objection in light of what could or could not happen in phase one and phase two.

A. I have answered why I believe we objected to the plan. I think we believe our, again, our intercompany claims are being waived and we think there's value

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and we are not getting consideration on account of the Ally settlement.

MR. WALSH: Let me see if I have any other questions and then I will cede the floor to my colleague.

(Whereupon, there is a recess in the proceedings.)

MR. WALSH: I pass the witness. I just want to reserve the right to reopen the deposition based on our review of the documents produced last night and our ongoing discussions with counsel about additional documents we are seeking. And the privilege log issues that we discussed earlier.

MR. RENENGER: We are happy to entertain all such discussions. Of course, given the schedule remaining, we think any further depositions would be impracticable and also inappropriate given how exhaustive this one was.

EXAMINATION BY

MR. KOCHMAN:

Q. Good afternoon, Mr. Snellenbarger, my name is David Kochman, I represent Wells Fargo. I'd like you to pull out what's been marked as No. 8. It should be the 30(b)(6) notice.

A. I have it.

Q. I understand that there was some agreement reached concerning the scope of the topics identified in this. I'd like to go through some of these topics and I'll ask both counsel here to clarify to the extent I misconstrue what the understandings were.

Mr. Snellenbarger, you are here to testify as a 30(b)(6) witness on behalf of the ad hoc group of junior secured noteholders; is that correct?

A. Yes.

Q. Looking at topic 19 in No. 8, is it your understanding that you are here to testify about any diminution in the value of any noncash collateral during the pendency of the Chapter 11 cases?

A. Yes.

JSN Objection to Wells Fargo Designation
362:2 – 391:18
FRE 601, 611 (Outside the scope of 30(b)(6) topics)

Q. And that your testimony will be given with the understanding that I am not seeking any expert testimony and I am seeking testimony only as to the fact of what, if any, analysis was done by the ad hoc group with respect to such topic?

A. Correct.

MR. RENENGER: And just in terms of that particular agreement this morning when Mr. Walsh discussed the agreement on topics 18 and 19, in particular, I pointed out that we would be objecting to the extent the questions went beyond phase two issues. There's phase one issues that have a lot of do with that topic and some phase two issues. And the phase two issues are basically limited to the intercompany claims with respect to the value of adequate protection liens.

MR. KOCHMAN: Certainly. And would Mr. Snellenbarger's testimony extend to phase two and plan

confirmation issues.

MR. RENENGER: Interesting question. I have to look at the front page of this agreement, part of the depo notice.

MR. RENENGER: Look, I mean, the scheduling order that's described in this document I believe relates to phase two discovery, not necessarily plan confirmation discovery. I could be wrong about that.

MR. KOCHMAN: I think it's both.

MR. RENENGER: But, I'll tell you, we are not going to shut it down to the extent it goes to plan confirmation issues with respect to any valuation, you know, sort of as limited by the topics you read into the record.

MR. KOCHMAN: That was precisely the understanding I wanted to make sure that we had, which is that provided the questions concern phase two and plan confirmation as they

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relate to the topics identified and as amended by your understanding with Mr. Walsh, they are fair game.

MR. RENENGER: Yes.

Q. Mr. Snellenbarger, do you have an understanding as to the definition of collateral as used in topic 19?

A. I believe so.

Q. When I refer to collateral here and in the discussions of No. 8, the 30(b)(6) notice, I am going to refer to collateral as used in the definition here.

A. Okay.

Q. Is it the JSNs' view that there has been diminution in the value of its noncash collateral during the pendency of the Chapter 11 cases?

A. I think that's a topic that's been covered by the expert. That was covered by Mr. Siegert in phase one.

Q. And I'm not asking about the amount of any such diminution, simply whether you have an understanding if there has been any diminution. You can answer

it yes or no?

A. Yes.

Q. So there has been diminution?

A. Yes.

Q. Is it the JSNs' view that any diminution in the value of the noncash collateral is attributable to actions taken or not taken by Wells Fargo?

MR. RENENGER: I'm going to object to the form of the question only to really remind -- it's a broad question, and I just want to remind the witness that he's not to testify on expert topics but simply any analysis undertaken, let's see, by the ad hoc group that was nonexpert in nature on that question.

A. Can you repeat the question?

Q. I'd be happy to because I'd like to get a clean record on this. And just to make certain that I'm crystal clear, none of my questions ask you to disclose any confidences or communications with counsel. You should assume that every

single one of my questions, implicit within the question is a direction that you should not disclose anything to do with counsel, any confidences. If you are unable to answer a question on the basis that it would reveal a confidence, please so state. But otherwise, none of my questions ask you to disclose those confidences. Do you understand that?

A. I do.

Q. Is it the JSNs' view -- let's take a step back. You've testified that it is the JSNs' view that there has been diminution in the value of its noncash collateral; is that correct?

A. Correct.

Q. Is it the JSNs' view that Wells Fargo's actions or omissions are in any way attributable to the diminution in the value of the JSNs' noncash collateral?

A. It's a privileged discussion. I can't answer at the direction of counsel.

Q. Have you had any discussions, apart from discussions with counsel, about

JSN Objection to Wells Fargo Designation

367:15-16, FRE 611(a) (Vague and ambiguous)

whether or not Wells Fargo's actions or omissions have caused the diminution in the value of the noncash collateral?

A. No.

Q. Have you had conversations with counsel about whether -- without disclosing the substance of those conversations -- have you had conversations with counsel about whether Wells Fargo's acts or omissions have caused a diminution in the value of noncash collateral?

A. Yes.

MR. RENENGER: You mean during the pendency of the Chapter 11 cases, because that's the topic?

MR. KOCHMAN: Yes.

MR. RENENGER: Okay.

A. Yes.

Q. Let's turn to topic 36. Noteholders expected recovery under the plan. Have the JSNs -- in the event that JSNs are held to be undersecured and not entitled to post petition interest, have

JSN Objection to Wells Fargo Designation 368:23 – 369:4, FRE 611(a) (Vague and ambiguous)

you had discussions apart from discussions with counsel about whether or not there are other sources of recovery?

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

A. Can you repeat the question?

MR. KOCHMAN: I'll have the reporter read it back.

(Record read.)

MR. RENENGER: Same objection.

A. No.

Q. In the event the JSNs are held to be undersecured and not entitled to post petition interest, without disclosing the substance of communications with counsel, if any, have you had discussions with counsel about other sources of recovery?

A. Yes.

Q. Again, without disclosing the substance of those communications, have you had discussions about any recovery from Wells Fargo in the event the JSNs are held undersecured and do not receive post

JSN Objection to Wells Fargo Designation 369:21 – 370:2, FRE 402 (Not relevant)

petition interest?

MR. RENENGER: I'm going to object to the question and ask for a proffer about how this relates to recoveries under the plan.

MR. KOCHMAN: What's your objection to the question?

MR. RENENGER: It's beyond the scope of the 30(b)(6) topic.

MR. KOCHMAN: Of this specific question here?

MR. RENENGER: Right. The topic is the noteholders expect to recover under the plan and you are talking recoveries, as I understand it, outside of the plan. But if I'm misunderstanding that, I'm happy to hear a proffer.

MR. KOCHMAN: We can certainly go and capture it under a number of other topics. I was just trying to make it nice and neat, but that's fine.

Q. Look at topic 45. "Copies of

all communications between Aurelius and the ad hoc group, its members and/or its advisors concerning the debtors prior to Aurelius becoming a member of the ad hoc group." Have any of the discussions encompassed within topic 45 concerned the -- let's withdraw that question.

Have there been discussions that fall within the scope of topic 45 concerning a recovery from Wells Fargo apart from discussions with counsel?

MR. RENENGER: David, I want to point out that that topic was narrowed by agreement of counsel, although not reflected in this list to be communications between Houlihan and Aurelius or, let's see, or significant meetings between the ad hoc group's financial advisors and Aurelius.

MR. KOCHMAN: That's fine.

Q. Do you understand your counsel's limitation as explained?

A. I do. Could you repeat the question?

Q. I'd be happy to. Have there been communications falling within the scope of topic 45 concerning a recovery from Wells Fargo in the event the JSNs are held to be undersecured? And again, I'm not asking about any communications that would implicate a privileged conversation?

MR. RENENGER: And just to clarify, that's prior to Aurelius becoming a member of the ad hoc group, which happened in November of 2005.

Q. Have there been any communications or conversations again falling within the scope of topic 45 as clarified by your counsel concerning Wells Fargo's breach of any duties or obligations to the JSNs?

A. No.

MR. KOCHMAN: Mark this as 33.

(AHG Exhibit 33, objection of Wells Fargo Bank to the plan that was filed in this case at docket 5410, marked for identification, as of this date.)

JSN Objection to Wells Fargo Designation 373:2 – 379:25, FRE 402 (Not relevant)

Q. Mr. Snellenbarger, I'm showing you the objection of Wells Fargo Bank to the plan that was filed in this case at docket 5410. Have you seen this document before?

A. I'm aware of its filing. I can't say I have reviewed it.

Q. Do you recall how you became aware of it, apart from communications, privileged communications with counsel?

A. I believe one of the people that worked at Houlihan just advised us of the various objections to the plan made by numerous parties.

Q. Was this person an attorney at Houlihan?

A. No.

Q. Who was the person that advised you of Wells Fargo's filing of an objection?

A. One of my guys. I don't know which one it was. One of my guys did. Again, they were just -- came in and said that various people had filed objections

to the plan.

Q. Was it in an e-mail communication or a telephone call?

A. I think they just walked into my office and told me.

Q. Did they describe any substantive aspects of Wells Fargo's Objection.

A. No.

Q. Have you had occasion to review Wells Fargo's objection to the plan?

A. I have not.

Q. Do you have an understanding as to any bases for Wells Fargo's objection to the plan?

A. I'm going to object to the question as beyond the scope of the 30(b)(6) topics and on that basis instruct the witness not to answer, although I'm happy to hear a proffer as to how it relates to the topics.

MR. KOCHMAN: I believe it relates directly to the plan confirmation.

MR. RENENGER: There's no topic on plan confirmation.

MR. KOCHMAN: Is it your position that the scope of this deposition is limited to the 30(b)(6) topics only and not plan confirmation generally?

MR. RENENGER: Limited to the 30(b)(6) topics included in the deposition notice, correct.

Q. Mr. Snellenbarger, I'm going to direct your attention to paragraphs 38 through 43 of Wells Fargo's plan. I'd like you to review this. Let me know when you've had an opportunity to do so.

A. (Witness reviews document.)

Okay.

Q. Do you have an understanding as to -- withdrawn.

Do you understand that Wells Fargo has a claim against the debtors for its fees and expenses incurred in connection with its actions as collateral agent?

A. I'm going to object to the question as beyond the scope of the 30(b)(6) and on that basis instruct the witness not to answer.

MR. KOCHMAN: I would like an explanation as -- well, take a step back.

Q. Do you have an understanding as to whether Wells Fargo is entitled to its fees and expenses from the debtors' estate?

MR. RENENGER: Same objections and instruction.

MR. KOCHMAN: Let's go off the record for a second here.

(Whereupon, there is an off-the-record discussion.)

Q. Direct your attention to paragraph 38 of Wells Fargo's objection, which references the JSNs' answer and affirmative defenses and first amendment counterclaims. Did you have any role in preparing that document?

A. No.

Q. Did you have occasion to review that document prior to the time that it was filed?

MR. RENENGER: I'm going to object to the question as being beyond the scope of the 30(b)(6) topics and on that basis instruct the witness not to answer.

Q. Direct your attention to paragraph 41 of Wells Fargo's plan objection. Which references a statement by ad hoc group's counsel that if there's evidence of a lien release gets released, that's Wells's issue now. Do you see that?

A. I do.

Q. Do you have an understanding as to what counsel was referring to when he stated that's Wells's issue now?

MR. RENENGER: I'm going to object to the question as being beyond the scope of the 30(b)(6) topics. I'm also going to instruct the witness not to answer on the basis that any

knowledge he would have about what counsel meant by that would be attorney-client privileged.

Q. Same question, specifically carving out nonattorney-client privileged communications.

MR. RENENGER: I'm going to object to that question as being beyond the scope of the 30(b)(6) topics and on that basis instruct the witness not to answer.

Q. Direct your attention to paragraph 42 of Wells Fargo's plan objection. Apart from any communications, privileged communications with counsel, have you had occasion -- withdrawn.

Apart from information learned through privileged communications with counsel, do you have an understanding as to whether there have been any requests by the collateral agent to the ad hoc group inquiring about whether claims will be asserted by the ad hoc group against Wells Fargo?

MR. RENENGER: I'm going to object to the question as being beyond the scope of the 30(b)(6) topics and on that basis instruct the witness not to answer.

Q. Are you going to follow your counsel's instruction?

A. Yes.

Q. Direct your attention to paragraph 43 of Wells Fargo's objection. Apart from communications with counsel, have there been discussions among the ad hoc group concerning any claims they intend to bring against Wells Fargo in the event it is judicially determined that the JSNs were undersecured?

MR. RENENGER: I'm going to object to the question on the basis that it's beyond the scope of the 30(b)(6) topics and on that basis instruct the witness not to answer.

Q. Are you going to follow your counsel's instruction?

A. Yes.

MR. KOCHMAN: Let's take a break for a second.

(Whereupon, there is a recess in the proceedings.)

MR. KOCHMAN: If you pull out No. 8, the deposition topics.

Q. Directing your attention to paragraph 38, "The content of all communications with, by or among present and former noteholders concerning the plan and the global settlement described in the disclosure statement." Do you see that paragraph?

A. Yes.

Q. And I understand that that paragraph has been limited to your -- to Houlihan's communications with the debtors and any significant meetings between the debtors or their representative and the ad hoc group or its representatives. Do you have an understanding that that topic has been so limited?

A. Yes.

Q. Have any of the communications

falling within the scope of topic 38, as clarified, concerned Wells Fargo?

MR. RENENGER: I'm going to put before him the narrow topic so he can see. This is to clarify.

A. Any communications would be privileged.

Q. So there have been communications; is that correct? That's just a yes or no question.

A. Can you repeat the question again?

Q. Have there been any communications falling within the scope of paragraph 38, as amended, concerning Wells Fargo?

MR. RENENGER: Just to avoid confusion, the answer that he gave before I think might reflect confusion, the limitation is Houlihan discussions with the debtors or discussions between the ad hoc professionals and the debtors at significant meetings.

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Do you agree with that limitation?

MR. KOCHMAN: I wasn't a party to those communications. To me, it is Houlihan's communications with, A, debtors and any significant meeting between the debtors, B, the debtors' representatives and, C, the ad hoc group or its representatives.

MR. RENENGER: Yeah, I can clarify that it's two topics. It's Houlihan and the debtors' communications or meetings, significant meetings where Houlihan -- well, Houlihan didn't have to be present, or the ad hoc group had meetings with the debtors in terms of significant meetings.

MR. KOCHMAN: So this topic, it's your contention, does not encompass Houlihan's communications with the ad hoc group and its representatives not involving the debtors?

MR. RENENGER: That's correct.
Mr. Walsh, is that your understanding?
MR. WALSH: We reached that agreement based on our understanding that all those communications would be privileged.
Q. So to clarify your answer, if there were any such communications concerning Wells Fargo not involving the debtors, you could not testify about them because they would implicate privileged communications?
A. Yes.
Q. So without disclosing the substance of any privileged communication, I'm simply asking whether there were conversations between and among Houlihan and the ad hoc group concerning Wells Fargo that fall within the scope of topic 38.
MR. RENENGER: I'm going to object to the question as being beyond the scope of topic 38 as narrowed by

agreements between debtors' counsel and ad hoc group counsel and on that basis instruct the witness not to answer.

Q. Directing your attention to paragraph 39, "The reasonable, sufficiency or adequacy of the global settlement described in the disclosure statement or the Ally contribution."

Do you see that topic?

A. Yes, I do.

Q. I see that it's been clarified and I don't believe the clarification is going to implicate any of my questions but I'll refer you to the clarification on the e-mail.

Have there been any communications between or among the ad hoc group, excluding communications with counsel that implicate privileged considerations, concerning Wells Fargo?

A. No.

Q. Topic 40, "The scope of the releases provided in connection with the

Ally contribution." Do you see that?

A. I do.

Q. Excluding communications with counsel, have there been any communications between or among the ad hoc group falling within the scope of topic 40 concerning Wells Fargo?

A. Not to my knowledge.

Q. Is there anyone else that would have knowledge concerning that?

A. Not that I'm aware of.

Q. Turning to topic 41, "The noteholders expected recovery under the plan and the global settlement described in the disclosure statement." Do you see that topic?

A. I do.

Q. Are you aware of any documents communications, apart from privileged materials, concerning Wells Fargo that fall within the scope of topic 41?

A. Not to my knowledge.

Q. Topic 42, "The effect of the Ally contribution on the noteholders

expected recovery." Do you see that topic?

A. I do.

Q. Are you aware of any communications or correspondence about the actions or omissions of Wells Fargo that had an effect on the Ally contribution and/or the noteholders expected recovery?

MR. RENENGER: Object to the form of the question. I don't understand the question.

A. Can you repeat the question?

Q. Are you aware of any communications between or among the ad hoc group, excluding privileged communications, concerning Wells Fargo that fall within the scope of topic 42?

MR. RENENGER: Just to clarify, Counsel, your -- 42 is limited by agreement of counsel in advance of the deposition. All these topics have been limited by counsel but.

MR. KOCHMAN: I don't see a limitation as to paragraph 42.

MR. RENENGER: Topics 36 and 41 through 44, you'll see it in the middle of the list.

MR. KOCHMAN: The limitation you are referring to is that Mr. Snellenbarger will testify as to whether or not the ad hoc group conducted an analysis of its expected recoveries under the plan.

Q. Do you understand that?

A. Yes.

Q. With such limitation, have there been nonprivileged communications concerning Wells Fargo that fall within the scope of topic 42?

A. Not to my knowledge.

Q. Topic 43, "The impact of the plan, the Ally contribution or the global settlement described in the disclosure statement on the expected recoveries for general unsecured creditors."

Do you see that?

A. I do.

Q. Do you understand that it

contains the same limitation that applied to topic 42?

A. I do.

Q. Are you aware of any communications between or among the ad hoc group concerning Wells Fargo that fall within the scope of topic 43?

A. Not to my knowledge.

Q. Are you aware of anyone else that would have greater knowledge concerning any communications about Wells Fargo falling within the scope of topic 43?

A. Not that I'm aware of.

Q. Topic 44. Are you aware of any communications between or among the ad hoc group falling within the scope of topic 44 as amended by agreement?

A. Not to my knowledge.

Q. Are you aware of any facts -- withdrawn.

Are you aware of any actions taken by Wells Fargo that would impact the plan, the Ally contribution or the global

settlement described in the disclosure statement?

MR. RENENGER: Object to the form of the question as being beyond the scope of the 30(b)(6) topics and on that basis instruct the witness not to answer.

Q. Are you going to follow your counsel's instructions?

A. I am.

Q. Are you aware of any actions taken by Wells Fargo that have impacted the plan -- withdraw that question. I'm trying to be too cute.

MR. KOCHMAN: I'd just like to put one thing on the record here. We are going to reserve our right to recall this witness to answer the questions that he has been directed not to answer on the basis that we believe our plan objection and the nature of our questions unquestionably fall well within the scope of these 30(b)(6) topics and our follow-up

questions as well as fall within the scope of those 30(b)(6) topics.

I understand that you disagree but I wanted to put on the record that we reserve our right to recall the witness on that basis.

MR. RENENGER: And I will add to the record, since we are making a record here, that our view is that these questions relate entirely, all the questions we objected to, to whether the ad hoc group intend to pursue claims against Wells Fargo and issues that have been addressed by the court in prior orders. Those topics unquestionably, to use your word, in our view, do not fall within the 30(b)(6) topics. The Wells Fargo chose not to serve its own document or rather its own deposition notice, setting forth clearly the Wells Fargo topics and instead, from our perspective, has tried to rather ambush a witness who is in no way

prepared to answer any questions about claims against Wells Fargo. It's not a topic with which he's familiar. He would not be the witness in any event on those topics. Those topics are purely legal, have to do with discretion of counsel. And so we understand keeping the record open but we wanted to make our objection to any further attempt to recall this witness clear on the record as well.

MR. KOCHMAN: I have nothing further.

MR. SILVERSCHOTZ: We take exception to the term "ambush," that's certainly not our intention. Other than that...

MR. RENENGER: I do have a couple questions for the witness on the record.

EXAMINATION BY
MR. RENENGER:

Q. Mr. Snellenbarger, prior to the petition date in these cases, did the

debtors or any of their representatives inform you of their view as to whether or not the intercompany claims were valid?

A. Yes.

Q. What did they tell you?

A. The morning of the first settlement meeting, representatives of FTI or Centerview pulled me aside and said based on preliminary review by Morrison & Foerster they believe that the intercompanies would -- may not be valid.

Q. Did you have a discussion with them about their view?

A. Briefly I asked how are they coming to that conclusion. They said at that time they didn't know really yet that Morrison & Foerster performed -- that that was their preliminary conclusion. I told them, well, we can't clearly agree to that nor agree to that and so as part of the settlement discussions, we went forward and pursuant to the settlement agreement we reserved our rights with respect to intercompany claims and validity.

Q. Did you tell the debtors whether or not you believed there was value at all in the intercompany claims?

A. Well, I --

MR. WALSH: Objection. You can answer.

A. Well, I think frankly both sides in the recovery model built in the intercompany balances utilizing assumptions that noted that if they were valid, that there was significant value attributable to it.

Q. When you testified a moment ago that we reserved our rights with respect to intercompany claim and validity, what did you mean by that?

A. When we agreed to the PSA, we didn't waive any rights with respect to pursuing our arguments with respect to the value of our collateral, including intercompany claims. We agreed simply to waive post petition interest to the end of the year in exchange for getting a par payout by the end of the year. So we were

doing that for certainty and speed. But we didn't waive any rights with respect to that. So we preserve those rights to argue our collateral value in the future.

Q. Why was the ad hoc group willing to continue the negotiations and, in fact, reach an agreement, given that there was the question mark hanging over the collateral value, given what the debtors had told you about their position on the value of intercompany claims?

MR. WALSH: Objection.

A. There were significant -- I think given the fact that there was significant intercompany balances, I think our position was we didn't have any information to do the full diligence of whether they were valid or not valid or whether they were 20 percent or 80 percent. But just from a plausibility perspective, it seems that there was likely value there, period. But given the -- and we preserved those rights with respect to PSA. But again, given the

opportunity for speed and recovery with respect to the plan and ultimate payout before the end of the year, the ad hoc group was willing to forego the post petition interest for 6 or 7 months.

MR. RENENGER: I have no further questions.

(AHG Exhibit 34, Plan Term Sheet, marked for identification, as of this date.)

EXAMINATION BY

MR. WALSH:

Q. Mr. Snellenbarger, did you review the deposition testimony of Conor Bastable in preparing for today's deposition?

A. I did not.

Q. Are you generally familiar with his testimony or are you familiar at all with his testimony regarding intercompany claims and whether the prepetition PSA waived those claims?

A. I'm not.

Q. Did you review the term sheet

that I have handed you, Exhibit 34, which is the term sheet that was attached to the prepetition PSA in connection with your preparation for the deposition?

A. Yes.

Q. You testified earlier that there was a typo. Would you direct me to the typo that you referred to that you said that White & Case had identified and followed up with Morrison & Foerster. If it helps, look at page 12.

MR. RENENGER: I'm just going to interpose an objection that it's beyond the scope of the direct. But I'm not going to cut you off. I'm just going to state it now and we will see where it goes.

A. Yes, I see that.

Q. Where is the typo?

A. I believe it's on page 12 class RS-9 intercompany claims where it says "Holders of intercompany claims shall receive no recovery on account of intercompany claims." I believe that the

language on page 10 on class GS-11 should carry forward onto RS-9. I believe that was the discussion, as I understand it.

Q. You believe that that typo was corrected in a later filing in the bankruptcy?

A. I don't know if it was ultimately corrected in the bankruptcy filing or not. I just know that the conversation happened and that we needed to -- that there was a discussion that that needed to be cleaned up.

Q. You understand that the prepetition PSA that the ad hoc group signed included this language waiving intercompany claims as they related to RFC?

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

Q. That's what the document says, right? There was a waiver of the intercompany claims as they related to RFC?

A. That's what the document says.

JSN Objection 397:14-398:7 FRE 611(c) (Leading)

But as I testified, Counsel, based on the amount of documents moved back and forth, White & Case called Morrison & Foerster, as I understand, after the fact and said, look, there is a blow in the document, we need to correct it.

Q. There's a blow?

A. Yes. An error, whatever you want to describe it.

Q. And you understand that White & Case in fact reviewed the term sheet before the junior secured signed the PSA, correct?

A. Correct.

Q. And your analysis that we saw in Exhibit 19 did not include any consideration for intercompany balances, correct? We looked at that document before, the three pager.

A. Correct.

MR. WALSH: That's all I have.

(Time noted: 4:00 p.m.)

STATE OF NEW YORK )
) :ss
COUNTY OF NEW YORK )

I, REID SNELLENBARGER, the witness herein, having read the foregoing testimony of the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____

REID SNELLENBARGER

Sworn and subscribed to before me,
this _____ day of _____, 2013.

_____

Notary Public

C E R T I F I C A T I O N

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

I, ERICA L. RUGGIERI, RPR and a Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of August, 2013.

ERICA L. RUGGIERI, RPR

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*** EXHIBITS ATTACHED ***

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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B. WESTMAN

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 Page 2)

VIDEOTAPED DEPOSITION OF BARBARA WESTMAN
October 15, 2013
New York, New York

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Counter-Designation
Orange Highlighting = Joint Designation

Reporter: Kathy Klepfer
Job 66939

(Caption continued from previous page)

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.

October 15, 2013

Videotaped deposition of BARBARA WESTMAN, held at Morrison Foerster LLP, 1290 Avenue of the Americas, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

B. WESTMAN

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ANTHONY R. MILAZZO, FTI

B. WESTMAN

THE VIDEOGRAPHER: This is the start of the tape labeled number 1 of the videotaped deposition of Barbara Westman in the matter In re Residential Capital, LLC.

Today is October 15, 2013. The time is approximately 10:09 A.M. Appearances have already been noted by the court reporter.

Will the court reporter please swear in the witness.

* * *

B A R B A R A W E S T M A N, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MS. MILLER:

Q. Good morning, Ms. Westman. My name is Atara Miller and I work at Milbank Tweed Hadley & McCloy and we represent the Junior Secured Noteholders in this action.

Before we begin the deposition, I just want to note for the record that Debtors produced last night an additional 500

documents -- 500 pages of documents for which you were designated the custodian.

MS. MILLER: We have not had an opportunity to even load the documents, nevertheless review them, and we reserve all rights to recall the witness, as necessary, after review of those documents.

MR. KERR: I just have one question. Do you have appearances for everybody?

COURT REPORTER: I do.

BY MS. MILLER:

Q. Good morning. Can you please -- have you ever been deposed before?

A. One other time.

Q. And in what context was that?

A. It was an employee litigation matter.

Q. And was that an employee of ResCap?

A. Yes.

Q. And in what capacity were you testifying?

A. As a company representative testifying about accounts payable policies.

Q. And do you understand that you're testifying here today in part also as a company

representative?

A. Yes.

Q. I'm going to just go over some very quick instructions. You have been deposed before, so hopefully you know them. But I'm going to ask you questions. You're going to answer them. The court reporter is going to take everything down. She can't record both of us speaking at the same time, so I ask that you wait until I finish asking a question before you answer, and I'll try to do the same.

Also, you need to give audible responses. The court reporter can't take down, although they have creative ways, can't take down nods of the heads, knowing glances and the like.

There may be times during this deposition that your counsel will object to a question that I pose. I ask that unless you're specifically instructed by your counsel not to answer the question, that you still answer the question that I asked.

Of course, if at any time you don't understand a question or need clarification, I

would be happy to restate the question or explain it further for you.

I also ask that you not take breaks to confer with counsel or for any other reason while a question is pending. Please answer the question and then I'd be happy to, you know, take a break whenever you feel you need one. Just let me know and I'd be happy to go off the record.

MR. KERR: Atara, on that, I respect that and you should try to answer questions and not take breaks. However, if there is an issue of privilege that comes up that you're not able to respond to the question without knowing whether or not you might be stepping into privilege areas, for that I think you should let Atara know and then we can discuss it at that time.

THE WITNESS: Okay.

BY MS. MILLER:

Q. So I think the instruction that your counsel just gave you is that if you think it's privileged, note that you're not sure if the question implicates privileged information and

you would like to confer regarding that specifically.

A. Okay.

Q. What did you do to prepare for today's deposition?

A. I reviewed documents, refreshed my memory on several sets of documents, talked with various individuals.

Q. And who did you speak to?

A. Spoke with people from FTI, individuals from MoFo.

Q. And who specifically at FTI did you speak with?

A. Anthony Milazzo.

Q. And who from MoFo did you confer with?

A. The individuals in this room.

Q. And did you meet with MoFo and FTI together or separately?

A. Together.

Q. And how long did you meet with them for?

A. Two days.

Q. And when you said you reviewed documents, were those documents that you

independently determined to review?

A. They were mainly documents that MoFo pulled together for review.

Q. Were there any documents that you went back to your files or the company records to review?

A. I did look at e-mails from my own records.

Q. And what were the topics of those e-mails?

A. Regarding various intercompany schedules and information.

Q. Were those intercompany schedules that you prepared?

A. I don't recall specifically.

Q. And do you know if all of the e-mails that you looked at have been produced in connection with this litigation?

A. I don't know. I'm not aware of all the materials that have been produced.

Q. Do you know what the process was for collecting and producing your materials in this litigation?

A. I know that my e-mails were produced.

I don't know of the process to do that.

Q. Did you assist counsel in obtaining relevant materials or responsive materials from your records?

MR. KERR: Objection.

A. Not from e-mails, but from other documents that met some of the requests.

Q. Did you keep a record of the specific e-mails that you looked at to prepare for today's deposition?

A. I did not.

MS. MILLER: I would like to mark --

And I'm going to go with "Westman Exhibit No." for tracking purposes, does that work?

MR. KERR: That's fine.

MS. MILLER: I would like to mark as Westman Exhibit 1 the Ad Hoc Group of Junior Secured Noteholders 30(b)(6) Notice in this case.

(Westman Exhibit 1, Ad Hoc Group of Junior Secured Noteholders 30(b)(6) Notice of Deposition, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, the court reporter has marked as Exhibit -- as Westman Exhibit 1 the Ad Hoc Group of Junior Secured Noteholders Notice of Rule 30(b)(6) Deposition, and beginning on page 8 of that document, there are deposition topics enumerated. Do you see that?

A. Yes.

Q. And do you see that the first topic states is, "All matters relating to the cash management system and treasury management system used by or amongst the Debtors and their affiliates, including but not limited to the daily movement of cash between Debtor entities and the movement of cash in connection with Intercompany Transactions"?

A. Yes.

Q. And do you understand that you've been designated by the company as the corporate representative on that topic?

A. Yes.

Q. And do you believe that you're the person most knowledgeable within ResCap to speak to that topic?

A. Yes.

Q. And looking at topic number 2, it reads, "All matters relating to Intercompany Transactions and/or Intercompany Claims including, but not limited to, (i) corporate practices, policies, procedures, and guidelines, including approvals concerning, including but not limited to the accounting treatment of Intercompany Claims and Intercompany Transactions; (ii) the general nature of the types of transactions that were recorded in the Intercompany Accounts; (iii) whether interest accrued and/or was paid on the Intercompany Claims; (iv) corporate practices, policies, procedures, guidelines and decisions to forgive, cancel, settle and/or waive Intercompany Claims; and (v) corporate practices, policies, procedures, and guidelines for documenting Intercompany Transactions and the location of such documentation," and there are two additional romanettes which I'll spare the court reporter from typing because you weren't designated as a representative on those.

Do you understand that you were

designated by the Debtors as a corporate representative on topics 2 (i), (ii), (iii), and (v)?

A. Yes.

Q. And do you believe that you're the person most knowledgeable within the company about those topics?

A. Yes.

Q. And topic number 3 is, "All matters relating to the accounting and audit -- and/or audit of the Debtors' financial statements on a non-consolidated basis." Do you see that?

A. Yes.

Q. And do you understand that you were designated by the Debtors as the corporate representative on that topic?

A. Yes.

Q. And do you believe that you're the person most knowledgeable within the company about that subject?

A. Yes.

Q. What's your educational background?

A. I have a bachelor of business administration with an emphasis in accounting.

Q. And where do you have that degree from?

A. The University of Wisconsin, Oshkosh.

Q. Do you have any other degrees?

A. No other degrees. I have other insurance or industry designations.

Q. And what other insurance or industry designations do you have?

A. And HIA, Health Insurance Associate; FLMA, a Fellow Life Management Associate; and one other I don't recall the initials.

Q. Are you a CPA?

A. I am.

Q. And when did you become a CPA?

A. I took the exam in 1981.

Q. And did you pass?

A. I did pass.

Q. I thought you were going to say you then took it five more times.

A. I took it once.

Q. Good to hear.

You said that you have an HIA. What is that?

A. It's a health insurance designation.

At the time I worked in an insurance organization. It's an insurance designation.

Q. And what is an insurance designation?

A. It's a series of courses that you can take to learn different terminology, processes, et cetera, related to insurance.

Q. And when did you graduate from college?

A. 1981.

Q. And where were you first employed when you graduated from college?

A. Sentry Insurance in Stevens Point, Wisconsin.

Q. And how long did you work at Sentry Insurance?

A. Five years.

Q. And what was your position there?

A. Internal audit.

Q. And what were your responsibilities?

A. I assisted in performing audits of various divisions or branches or offices of the organization.

Q. And where did you work after Sentry Insurance?

A. I moved to Minnesota and joined an organization North American Life and Casualty, which later changed its name to Allianz Life.

Q. And what were your responsibilities -- or, what was your position at North American Life and Casualty?

A. I held several.

Q. And what was your first position?

A. Internal audit.

Q. And how long were you an internal auditor?

A. I don't remember exactly. Six months to a year.

Q. And what was your next position?

A. I moved into several financial manager positions. I don't recall each of the titles.

Q. What were your responsibilities in the financial manager positions?

A. For a time period I worked within the Claims Department and Managed Claims. I managed financial claims audits. I don't recall other specifics while a manager.

Q. And did you have any other positions at North America Life and Casualty?

A. Yes. I also held several comptroller and/or CFO positions for several divisions of the organization.

Q. And did you hold those comptroller and CFO positions contemporaneous with your financial manager positions?

A. No, those were promotions.

Q. Okay. And so how long -- when did you move into a comptroller position?

A. I don't recall the date.

Q. Do you remember approximately what year?

A. I don't.

Q. Do you recall how long you were in comptroller or CFO positions?

A. Ten to fifteen years.

Q. And how long were you at North America Life in total?

A. Twenty years.

Q. And what were your responsibilities as comptroller?

A. They varied. Generally, financial analysis, managing budgets and expenses, management reporting.

Q. And when did -- where did you go after North America Life and Casualty, which I guess was Allianz Life at that time?

A. I worked at a consulting firm Hudson Financial.

Q. And what kind of consulting does Hudson Financial do?

A. Financial, financial consulting for businesses.

Q. And who were your primary clients when you were at Hudson Financial?

A. My initial client was a non-profit organization, ELCA Board of Pensions.

Q. Did you have any subsequent clients?

A. My next client was ResCap, Residential Capital.

Q. And what financial services did you provide to ResCap?

A. I was a member of the Financial Control Team, so I worked on various projects within that team.

Q. And do you recall what year you started working with ResCap?

A. 19 -- excuse me, 2007.

Q. And what projects did you work on within the Financial Control Team?

A. I worked -- the main project that I worked on was establishing process and procedures for the Ally revolver facility.

Q. Can you describe what the Ally revolver facility that you're referring to is?

A. It is the -- was a parent borrowing from -- that ResCap borrowed from its parent Ally and it was a funding facility.

Q. And what processes and procedures had to be put in place in connection with that facility?

A. Mainly, the tracking and monitoring of the collateral that supported the facility.

Q. And why did you have to track and monitor the collateral that secured that facility?

A. We had required monthly reporting of the collateral for that facility and produced that monthly collateral report.

Q. You said "we had required monthly reporting". Is that Hudson required ResCap to provide the monthly reporting?

A. I was working under the direction of ResCap, so this was a ResCap funding facility with its parent Ally.

Q. So who required the monthly reporting of collateral?

A. Ally as part of the revolver facility.

Q. And were there certain minimum or maximum thresholds regarding net worth or solvency that had to be demonstrated in connection with that facility?

Plaintiff's Objection 21:8-15 Objection to form; vague and ambiguous

MR. KERR: Objection.

A. Not in connection with the monthly reporting, but under the facility there were net worth requirements.

Q. And what were the net worth requirements?

A. There was a requirement for obligors under that agreement to maintain a minimum net worth or be in a solvent position.

Q. And who were the obligors under that agreement?

A. There were -- there were a variety. There were subsidiaries of ResCap.

Q. Were all of ResCap's facilities

obligors under the facility?

A. Not to my knowledge, no.

Q. Did you track intercompany transactions in connection with the monthly reporting on that facility?

A. No.

Q. Did you track intercompanies for the purpose of evaluating whether the obligors under that facility maintained their minimum net worth requirements?

MR. KERR: Objection.

A. An intercompany balance would have been part of any balance sheet and would have impacted their net worth.

Q. What do you mean when you say "part of their balance sheet"?

A. Net worth is defined by the equity within the individual entity, and intercompany transactions were part of the balance sheet of that entity; therefore, they impacted the equity.

Q. You say balance sheet, do you mean assets and liabilities of the company?

A. Yes.

Q. And how long did you remain in a consulting role for ResCap at Hudson Financial?

A. I became an employee at ResCap in 2010. I'm sorry, I -- I may have misspoke. I started with ResCap in 2008, March of 2008.

Q. Did you -- sorry.

A. I'm sorry. I was a contractor from 2008 through 2010 and then was an employee.

Q. And so you were technically employed by Hudson Financial, but you were under contract with ResCap?

A. From 2008 until 2010, yes.

Q. And did you work for any other clients during that time?

A. No.

Q. And were your offices at ResCap?

A. Yes.

Q. And what was your position when you transitioned to being an employee of ResCap in 2010?

A. Senior director.

Q. And what were your responsibilities as senior director?

A. I was responsible for financial

controls, which included continuing with the Ally revolver and Ally line of credit funding facility, reporting process; was also responsible for Sarbanes-Oxley or SOx work for ResCap, and also managed the -- responsible for the general ledger functions within ResCap and a change management function.

Q. I didn't hear the last? And a?

A. A change management function.

Q. What is a change management function?

A. It was a process that ResCap had to monitor significant events or transactions within the company and ensure that that change was implemented in a controlled manner.

Q. Can you give me an example of a significant event or transaction that would be monitored?

A. Could be entering into a sale transaction, a new funding transaction, a significant organizational change, anything that may impact the financial statements. It was focused on impact to the financial statements.

Q. Can you -- you said you had responsibility for the general ledger function?

Plaintiff's Objection 24:24-26:8 Incomplete (FRE 106)

A. Yes.

Q. Can you describe how ResCap maintained its general ledger?

A. ResCap had one or more general ledger systems at different periods of time and transactions were entered into the general ledger and a monthly close process would be performed to produce trial balances and financial statements on a monthly basis.

Q. And was the general ledger maintained on a consolidated basis?

A. The general ledger was maintained for each individual legal entity and then those legal entities were consolidated.

Q. And what were your responsibilities in connection with the general ledger function?

A. The team that managed the month-end process reported to me, so ensuring that the month-end -- that transactions were entered, that the month-end was properly closed and consolidated, and that we produced monthly trial balances and financial statements in a timely manner.

Q. And were intercompany transactions

recorded in the general ledger?

A. Yes, they were.

Q. And were there specific accounts that intercompany transactions were recorded into?

A. Yes. Intercompany receivables and payables were recorded in certain general ledger accounts.

Q. And do you recall which specific intercompany accounts they would have been recorded into?

A. I do not. There were many.

Q. And you said intercompany receivables and payables were recorded in certain general ledger accounts. Were there other intercompany transactions that were recorded elsewhere?

A. There would be other transactions that were with two different entities. For instance, if an entity sold an asset to another entity, each entity would have a gain -- one would have a gain and one would have a loss. Those would be considered intercompany balances, but they were not intercompany receivable payables. They were intercompany transactions that needed to be monitored for financial statement purposes.

Q. And would those also be recorded in the intercompany accounts?

A. The gain and loss would not be recorded in the intercompany receivable/payables. They would be recorded in income statement accounts, for instance. If they generated an intercompany receivable or payable, those would be recorded in the intercompany accounts.

Q. Can you give me an example of how they would generate an intercompany receivable or payable?

A. Again, if one entity sold assets to another entity, that the purchasing entity would record that asset. They may also record a gain or a loss. If they did not pay cash for those assets, then they would record an intercompany payable to the entity they purchased that from.

An entity that sold the assets would have an intercompany receivable from the entity purchasing the assets, and they would remove the assets from their balance sheet and they would also have the associated gain or loss.

Q. And in your experience at ResCap, were

sale transactions like that recorded as intercompany receivables and payables when cash was not transferred?

A. Yes, they were.

Q. Did you have any other positions other than senior director at ResCap?

A. No.

Q. Is that your current position?

A. I'm currently a senior director. I am also currently the comptroller.

Q. And when did you become the comptroller?

A. February or March of this year.

Q. Did your responsibilities change at any time between joining ResCap as an employee in 2010 and today?

A. Yes, they changed earlier this year when I also took over responsibility for -- larger responsibility for the month-end financial statements and analysis of the financial statements. I also took over managing the CFDR, which is a data repository.

Q. What kind of data is maintained in the CFDR?

Plaintiff's Objection 28:9-14 Incomplete (FRE 106)

A. It tracks certain assets within the organization and maintains asset-level detail that will tie to the general ledger for certain asset populations, and that data is also used as an input into the revolver line of credit reporting processes.

Q. What do you mean by "asset populations"?

A. For instance, mortgage loans that ResCap owns are maintained in CFDR. Each individual mortgage loan is listed within the database.

Q. Is there any information regarding intercompany transactions in the CFDR?

A. Not prior to bankruptcy, but post-bankruptcy there may have been certain intercompany balances that were maintained in CFDR for intercompany balances with our parent or other outside affiliates.

Q. So there are no intercompany -- there is no data relating to intercompany transactions within the ResCap group in CFDR?

MR. KERR: Objection.

A. Correct.

Q. I've been using the term intercompany transactions. Can you, just so that we're clear, can you explain what your understanding of an intercompany transaction is?

MR. KERR: Are you asking for her to explain your understanding of it or -- she's been using "intercompany balances."

MS. MILLER: Okay.

Q. What is your understanding of an intercompany transaction?

A. An intercompany transaction would be, as I explained earlier, when entities have entered into a transaction with each other which may generate various different types of intercompany items within the general ledger. One of those types might be intercompany receivables or payable balances.

Q. And what's an intercompany balance?

A. An intercompany receivable or payable is an entry within the general ledger that represents a receivable from one entity and a payable from another entity on a GAAP perspective.

Q. What's an intercompany balance?

B. WESTMAN

MR. KERR: Objection. Asked and answered.

A. An intercompany balance is not a defined term, to my knowledge. I would use that to indicate an intercompany receivable or payable.

Q. Would you use that to indicate the net intercompany receivable or payable as a result of aggregating all intercompany transactions?

A. It could be used in that context.

Q. Is that how you would use it?

A. It depends what -- what I was talking about, whether I was talking about individual transactions or a listing of net balances of intercompany transactions. So it would depend on the context or the source that I was looking at.

Q. I'm not trying to be difficult, but your counsel indicated that you were using the term "intercompany balance" as opposed to my use of "intercompany transactions." I'm just trying to understand if there is a difference between those in the way you would use those terms.

So let me just try one more time. If

you used the term "intercompany balance," what would you be referring to?

MR. KERR: Objection. Asked and answered.

A. Generally, the intercompany receivables and payables between the organizations.

Q. And you noted that ResCap had certain intercompany balances between Ally and other outside affiliates that are non-Debtors. For sake of clarity, unless I specify, when I refer to "intercompany balances" or "intercompany transactions" today, I'm going to be limiting my questions to those intercompany -- those intra-ResCap subsidiary and affiliate intercompany balance -- intercompany transactions or balances.

A. Okay.

Q. Ms. Westman, did there come a time before ResCap filed for bankruptcy that you were asked to collect information regarding the intercompany balances?

A. Yes.

Q. And who asked you for that

information?

A. I believe it generally started with a request from our parent for a project that they were working on to review intercompany balances.

Q. And when was that request made?

A. In the fall of 2011.

Q. And do you understand what the scope of the review of intercompany balances was?

A. Could you repeat the question?

Q. Do you understand what the scope of Ally's review of intercompany balances was?

MS. WU: Objection.

A. I knew generally what they were asking us to review as part of that project.

Q. And what were they asking you to review?

A. To review our intercompany balances and compliance with their intercompany -- Global Intercompany Policy.

Q. Did you undertake that review?

A. Yes.

Q. And who assisted you with that review?

A. Various members of the Finance Team were involved in that --

Q. And what --

A. -- process.

Q. What specifically did you do?

A. We created lists of the various intercompany receivables and payables among the various entities, and we reviewed information about those intercompany balances, determining whether or not they had interest charged, if they were settled, if there were agreements that supported the balances.

Q. And prior to this review, had you ever looked into whether there were agreements that supported the balances?

MR. KERR: Objection.

A. Not that I recall. There may have been an individual question throughout the history of -- at ResCap, but not as a consolidated project that I was aware of.

Q. And have you ever before considered whether interest was charged?

A. Personally, no.

Q. And upon your review, was it determined that ResCap was in compliance with the Global Intercompany Policy?

B. WESTMAN

A. Certain balances were in compliance and certain balances were not.

Q. And what about -- what did compliance require?

MR. KERR: Objection.

MS. WU: Objection.

A. Generally, that they were cash-settled, the items that I mentioned that were in the policy.

MS. MILLER: I apologize. Given the volume of documents produced last week --

MR. KERR: No. No. No. Take your time.

MS. MILLER: -- they're not in the best order.

I'd like to mark as Westman Exhibit 2 a document that was marked for production RCJSN1004 through -- no, 10041452 through 1455, with its attachments.

(Westman Exhibit 2, a document with attachments bearing Bates Nos. RCJSN10041452 through 1455, marked for identification, as of this date.)

BY MS. MILLER:

Plaintiff's Objection 35:17-36:7 Lack of foundation (FRE 602, 901, 903); incomplete (FRE 106)

Q. Ms. Westman, I have marked as Exhibit 2 an e-mail from you, a chain of e-mails, the top one of which is an e-mail from you to Stan Venne and Jacob Bazella dated 9/10/11, with the subject Intercompany Files. Do you see that?

A. Yes.

Q. Do you recall this document?

A. Generally, yes.

Q. And does this document relate to the review of intercompanies that you conducted in the fall of 2011 to determine whether ResCap's intercompanies were in compliance with Ally's Global Policy?

A. Yes, this would have been in the early stages of that project.

Q. In bullet 2 or the numbered 2 in the text of your e-mail, you state in the last sentence of the first paragraph, "If the balance just changes because we push cash up and down the food chain, that needs to go in the exception category." What are you referring to?

A. Let me read the document.

Q. Sure.

(Document review.)

A. What that's referring to is the categorization of intercompany balances within the document. Again, this was an early working version and there were balances that indicated that they settled, but in fact I believed they belonged down in Section 4, where they were actually part of our cash management process where cash was moved between entities, and so I was asking Stan to move them to the other category.

Q. Can you describe the cash management system in place at ResCap at this time?

A. The cash management process generally referred to the aggregation of cash within ResCap so that it could be most efficiently used for any entity within the organization that required cash.

Q. And where was the cash aggregated?

A. The cash generally was aggregated up to the ResCap level for distribution back down to those subsidiaries that would require it. It was held in different accounts within the organization but generally brought up to the top level, as needed.

Q. So if, for example, Homecomings Financial, LLC generated cash, how did that cash move?

A. It could have moved a variety of ways. That cash could have moved directly to ResCap. It could have moved to RFC, its parent. There was not necessarily a standard way that would occur. It depended on the transaction, time period, et cetera.

Q. And if it got moved up to RFC, would it then get swept up the next level to ResCap in an aggregating account?

A. It could, unless RFC needed the cash. It could be swept to RFC to be used by RFC. If it wasn't needed by RFC, it may have been swept up to ResCap to be used by another entity.

Q. And did subsidiaries or individual entities within the ResCap family make their own disbursements?

MR. KERR: Objection.

Plaintiff's Objection 38:18-22: objection to form; vague and ambiguous

A. Could you rephrase the question?

Q. Did ResCap's subsidiaries have their own accounts from which disbursements were made on their behalf?

A. Certain subsidiaries had accounts where they would make disbursements. Not every subsidiary had those types of accounts.

Q. Do you recall which subsidiaries had disbursement accounts?

A. I don't recall offhand. GMAC Mortgage and RFC would have made disbursements. Beyond those entities, I don't recall which other individual subsidiaries.

Q. Do you know whether there were other individual subsidiaries that had their own disbursement accounts?

A. Yes, I believe there were.

Q. And were those accounts held in the name of, in the case of GMAC Mortgage, GMAC Mortgage?

A. Yes, if it was GMAC Mortgage's account on GMAC Mortgage's balance sheet, it should be in the name of GMAC Mortgage.

Q. And were there instances where ResCap would make disbursements on behalf of RFC?

A. It could have occurred.

Q. And if it did occur, how would it be recorded in the books and records?

Plaintiff's Objection 39:24-40:7, lack of personal knowledge (FRE 602); impermissible lay opinion

MR. KERR: Objection.

A. If ResCap made a disbursement on behalf of RFC, it would have recorded an intercompany transaction that RFC had a payable to ResCap for that disbursement ResCap made on its behalf.

Q. And would that be recorded in an intercompany account?

A. Yes, that payable balance would be recorded in an intercompany account.

Q. Do you know if Homecomings Financial had its own disbursement account?

A. I don't recall.

Q. Do you know whether RFC Asset Holdings II, LLC had its own disbursement account?

A. I don't know.

Q. Who would know?

A. Over different time periods, that would be different individuals. I'm not sure there is anyone left in the organization that would have that entire historical perspective.

Q. Would anyone in the company know as of the fall of 2011?

A. Someone in the company may be able to

look at records to determine that.

Q. Have you looked at those records?

A. I have not.

Q. How frequently was cash swept up to the parent entity in the cash management process?

A. Cash could be moved daily.

Q. Was the cash management process formalized in a policy?

A. It was not formally documented. It was generally due to a requirement under the Ally line of Credit Agreement as to what cash ResCap could maintain.

Q. Was there any assessment of the amount of cash that ResCap could maintain under the Ally line of Credit Agreement when the daily sweep occurred?

A. Yes. That had to be forecasted on a daily basis to make ensure that we met the requirements of that agreement.

Q. How was it determined which account -- which amounts would be swept?

A. I don't know the specific process, but there was a forecasting process and cash -- the

Treasury Department managed those cash balances so would know what cash was available and could calculate -- calculate that cash and determine what was required to be repaid or what borrowing might need to occur to meet the cash needs. There was a cash forecasting process.

Q. And who was responsible for the cash forecasting process?

A. The Treasury Department.

Q. And who specifically within the Treasury Department?

A. It was different over different periods of time.

Q. In the fall of 2011, who was responsible for it?

A. I don't recall specifically. Most likely was Joe Ruhlin, but I'm not positive of the dates that he was the ResCap treasurer.

Q. And who -- do you know who had that position before Joe?

A. I don't know the exact individual. I know individuals within Treasury.

Q. And do you know if it was Treasury's responsibility to effectuate the sweeps?

A. Yes, it was.

Q. Would you describe it as an automated process?

A. No, I don't believe it was necessarily automated. It was performed by implementing various wire transfers, performing calculations, doing wire transfers of money.

Q. How are the sweeps documented?

A. The wire transfer transactions would be performed. Those would create journal entries within the general ledger. They would also be documented within the various bank accounts and bank statements.

Q. Would they also result in intercompany payables and receivables being booked in the intercompany accounts?

A. Yes, they would.

Q. Were these -- were these cash management sweeps done in the ordinary course on a daily basis?

A. Yes.

Q. And other than the wire transfers and bank account records and entries in the general ledger, was there any formal documentation of

Plaintiff's Objection 43:9-22 Incomplete (FRE 106)

those transactions?

MR. KERR: Objection.

A. That would be the formal documentation of those transactions.

Q. So the fact that the transaction happened was recorded?

A. Correct.

Q. Was there any documentation of a request that the transfer happen?

A. There would have been an approval process for performing a wire transfer, so there would be documents that were created to generate that cash movement.

Q. How was an equity contribution from a parent to a subsidiary recorded in the general ledger?

A. It would be recorded as additional paid-in capital for the subsidiary.

Q. And during your time at ResCap, were there instances where such capital contributions were made from parent to subsidiaries?

A. There may have been. I don't specifically recall an instance.

Q. And would those have been recorded in

the intercompany accounts receivable and payable?

A. They would not.

Q. And what if a subsidiary wanted to provide a dividend or a distribution to a parent entity, how would that be reflected in the general ledger?

A. It would be a reduction of paid-in capital from the subsidiary. They would be returning paid-in capital or returning retained earnings. So it would be recorded as an equity transaction.

Q. And would that be recorded in the intercompany accounts payable and receivable in the general ledger?

A. It would not assuming cash and that it was an actual cash contribution or cash distribution back to the parent.

Q. And who determined whether a transaction should be accounted for in an intercompany accounts payable or a receivable as opposed to a capital account?

A. Intercompany payables and receivables happened in the normal course of business. A

capital contribution or a dividend would have been something that had to be declared by the board of those entities and would have been a specific type of transaction.

Q. And based on your review of the intercompany transactions that occurred within the ResCap group, would you say that they're -- are they consistent with -- strike that.

Did intercompany transactions require specific board approval?

A. Generating an intercompany receivable or payable did not.

Q. Okay. I'd like to go back to the document that we marked Westman 2, and with that context, hopefully I can understand it.

Focusing now on bullet 4, which you referenced earlier, which is titled "Tab for the Cash Management exception request," what is the cash management exception request?

A. As part of the certification process to Ally that I mentioned, we reviewed the cash management function with Ally to determine if they would agree that that met the requirements of the accounting policy, and they did in fact

agree that that activity or process was in compliance with their policy.

Q. And what was their policy?

A. The policy generally discussed that transactions would be settled on a regular basis, and we determined that due to the functions of the cash management process, that that would meet the requirement, did not need to be fully cash-settled, which would be counterintuitive to the cash management process.

Q. Can you explain what you mean by "that would be counterintuitive to the cash management process"?

A. The intercompany receivables or payables are created by moving cash up to the parent in order to use that cash or use that cash to pay down the line of credit. You couldn't, therefore, also give the cash back to settle that intercompany.

That cash up or down could happen on a regular basis, so cash would move either direction depending on the needs of the organization.

Q. I'd like to -- if you could turn to

the first exhibit, which is Bates-stamped RCJSN10041456, which every page has the same Bates number, which makes me believe that it was produced in native format and, unfortunately, the printing is not the easiest to follow, but hopefully we can work through it.

I think the way it works, and you can correct me if I'm wrong, is that the table runs across the first page and the back of that page, and then the next table starts with the columns to the right are printing out on the reverse page.

A. Okay.

Q. So, turning to what is the second tab in the spreadsheet on the page titled "Intercompany Relationships that have Cash Movement," what do you mean -- or, sorry, let me step back. Do you recognize this spreadsheet?

A. I do. It's a working copy of a document that ultimately became our -- part of our certification.

Q. And is it a document that you prepared?

A. I did not prepare it myself, but I

reviewed it.

Q. And did you assist in the preparation?

A. I made comments, et cetera, but didn't make any -- make those changes to the document, to my knowledge.

Q. Focusing on the second page, which is the tab of the spreadsheet titled "Intercompany Relationships that have Cash Movement," do you know what's meant by "cash movement"?

A. I don't specifically since this was a working version. To my recollection, these would have been balances where we were seeing activity in the general ledger continuing to occur.

Q. And how is that distinct from intercompany relationships that cash-settled?

A. I believe that -- excuse me. Let me review a minute.

I don't specifically recall the distinction in these two tabs.

Q. So do you know what "Intercompany Relationships that have Netting Position Agreements" is referring to?

A. Intercompany positions that have

relationships that have netting position agreements, these were generally derivatives or other arrangements where cash would be moved between entities in relation to a particular agreement that required that cash.

Q. And if you turn to the second attachment, which is Bates-stamped RCJSN10041457, it says "Intercompany Relationship" -- it's titled "Intercompany Relationships that Do Not Settle." What are -- what's your understanding of what intercompany relationships that do not settle are?

A. These were transactions that were not having any type of a cash payment made associated with them to reduce the balance.

Q. Was cash being exchanged to generate the balance?

A. Cash may have been exchanged to generate the balance depending on the type of transaction.

Q. So in the Account Description column, I note that some of the entries are -- some of the account descriptions are designated intra-company payable and some are interco

payable. Do you have an understanding of what that distinction is?

A. I don't believe there is a distinction. In some instances, that may have been an account description that came directly from the ledger, and in others it may have been something that an individual typed in to describe the balance, depending on the particular line item.

Q. And so that's not an attempt to distinguish between intra-ResCap intercompanies and ResCap/Ally intercompanies?

A. No.

Q. And if you turn to the third page of the exhibit, which is, if I'm following the spreadsheet properly, actually the continuation of the first page, the columns that would continue to the right of the first page, and for a number of them there the Action Proposal is Cash Management Exception.

Does that mean that ResCap was to request from Ally that these accounts not be settled; that Ally not require that these accounts be settled on a regular basis but

instead be subject to a cash management process exception that you described earlier?

A. Correct.

MS. MILLER: I'd like to mark as Westman Exhibit 3 a document that was Bates-stamped for identification RCJSN10041500 through 502.

(Westman Exhibit 3, a document bearing Bates Nos. RCJSN10041500 through 502, marked for identification, as of this date.)

(Document review.)

BY MS. MILLER:

Q. Ms. Westman, I marked as Westman Exhibit 3 an e-mail chain, the top one of which is from Brooke Jeffress to -- I'm not going to do this properly -- Kwab Gyasi-twum and Stan Venne, dated 9/12/11, and the subject is Cash Management Policy, and you're copied on this e-mail. Do you see that?

A. Yes.

Q. And does this e-mail relate to the analysis that you were undertaking in the fall of 2011 to determine whether ResCap's intercompanies complied with Ally's Global

Policy?

A. I'm sorry. Could you repeat the question?

Q. Yes. I'll say it more succinctly.

Does this -- does this e-mail relate to the same analysis that was being conducted in the e-mail chain that was marked as Westman 2 that we were just discussing?

A. Yes.

Q. And do you recall this e-mail?

A. Yes.

Q. And if you were CC'd on an e-mail like this, would it be your general practice to read it?

A. Generally, yes.

Q. And if you were CC'd on a chain that was not -- that you were not included on initially in a subsequent correspondence, would you generally go down and read the original e-mails in the chain?

A. It would depend on the topic and whether it was relevant.

Q. You were specifically involved in this project, correct?

A. Correct.

Q. The first e-mail in this chain is an e-mail dated September 12, 2011 between -- from Mr. Venne to Mr. Gyasi-twum and in which he notes --

First of all, who is Mr. Venne?

A. He was on the General Ledger Team. He was one of the individuals that was working on creating an inventory of the intercompany balances.

Q. So he was a ResCap employee?

A. Yes.

Q. And who is Mr. Gyasi-twum?

A. He was within the Treasury Department.

Q. And was he also a ResCap employee?

A. Yes, he worked for ResCap. He may have -- excuse me. Treasury was a centralized function, so he may have been an Ally employee who was responsible for ResCap.

Q. So that's why he has an Ally title and an Ally e-mail address?

MR. KERR: Objection.

Q. So in that first e-mail, Mr. --

MR. KERR: Are you at the bottom of

the chain?

MS. MILLER: I'm at the bottom of the chain, the first chronologically, the 10:48 e-mail of September 12 from Mr. Venne to Mr. Gyasi-twum.

BY MS. MILLER:

Q. And do you see that Mr. Venne states that, in the second sentence, "We have a number of intercompany relationships within ResCap (RFC and Resi) that do not cash settle and the balance continues to grow"?

A. Yes.

Q. Do you believe that that was an accurate statement?

A. Yes.

Q. And just for clarity, what entity is "Resi" referring to?

A. In this context, I believe "Resi" may mean GMAC Mortgage, but it can be used to mean GMAC Mortgage or GMAC Residential Holding, Mortgage's parent.

Q. So "Resi" can be -- can be referring to either GMAC Residential Holding or GMAC Mortgage?

A. Depending on the individual.

Q. Good way to confuse things.

But you believe here it's referring to GMAC Mortgage?

A. That would be my belief, yes.

Q. So I'm going to ask you now, just because it seems like everything is up in the air, to confirm what is "RFC" referring to?

A. Residential Funding Company.

Q. Okay. Is that one consistently used throughout the organization?

A. Should be, yes.

Q. And Mr. Venne then continues, "Many of these relationships seem to be created by cash movement." And do you agree with that statement?

A. I'm not sure what he's basing that on so I guess I can't opine on that.

Q. Is it your understanding that many of the intercompany relationships between RFC and Resi are created by cash movement?

A. That is -- that is a way that balances can be created, yes.

Q. Have you ever looked at the

intercompany balances and how they arose?

A. We've reviewed intercompany balances, but there are thousands of transactions.

Q. And are the majority of those transactions cash movement through the cash management process?

A. I couldn't say.

Q. Any reason to believe that the majority of those transactions are not generated through the movement of cash through the cash management process?

A. They can be created for many different processes. They can be generated from the lack of movement of cash rather than the movement of cash.

Q. Can you explain how an intercompany receivable or payable can be generated through a lack of movement of cash?

A. If one entity pays an expense for another entity and it'll create a receivable from that entity that it paid that expense on behalf of. It didn't actually exchange cash with that entity. The reason it has an intercompany is because it did not exchange

cash.

Q. And so the payment, for example, of -- by RFC on behalf of RFC Asset Holdings -- sorry. Strike that.

Would you consider the payment of an obligation of RFC Asset Holdings II, LLC by Res Funding Company to be a movement of cash --

MR. KERR: Objection.

Q. -- within the intercompany accounts?

A. Could you repeat the question?

Q. Yes.

Would the payment of an expense on behalf of a subsidiary be part of the cash management process?

A. I wouldn't necessarily put that in the cash management process, but it's not -- it's not a specific definition for the process.

Q. Well, if, for example, Homecomings' cash is swept on a daily basis up to RFC, is there an -- is there an alternative method other than through the cash management process that Homecomings could satisfy any of its financial obligations?

MR. KAUFMAN: Object to form.

B. WESTMAN

MR. KERR: Objection.

A. If Homecomings kept cash and maintained cash, it may pay its own obligations and excess cash may be swept. I'm not familiar with how Homecomings' payments were made.

Q. Just so I'm clear, when you refer to the cash management process, are you referring only to the maintenance of certain cash balances within the ResCap group and the movement of money to accomplish those balances?

A. I would generally be referring to the process where cash was aggregated for use within the organization in conjunction with the line of credit.

Q. But you would not consider the use of that cash that has been aggregated to also fall within the cash management process?

MR. KERR: Objection.

A. It could. I did not think of it that way, but the cash management process is not a set, defined process. It's an explanation of a cash-sweeping process.

Q. Do you know when the cash-sweeping process was first put in place within ResCap?

A. To my knowledge, associated with the line of credit, the requirement came into effect. I'm not familiar with the process prior to that.

Q. And when was the line of credit entered into?

A. November of 2008.

Q. And was establishing the cash-sweeping process part of your responsibilities as a consultant when you were working for ResCap at Hudson Financial?

A. No, that was a Treasury function.

Q. And did you work with Treasury on developing that system?

A. No.

Q. While you were at Hudson Financial working as a contractor for ResCap, were you advised of the cash-sweeping process that was being put in place?

A. I was generally aware of it. I was not advised on it.

Q. And how did you become generally aware of it?

A. Because I was involved in other

functions or other processes within the line of credit so had a general knowledge of the agreement and the processes within the organization, and also, due to work on Sarbanes-Oxley, may have been aware of various process.

Q. Have you ever had any responsibility for monitoring the cash management process within the company?

A. No.

MR. KERR: Atara, we've been going an hour and a half, so whenever a good time to take a break or whatever.

MS. MILLER: Let me finish with this document.

MR. KERR: That's fine.

MS. MILLER: And we'll take a break.

BY MS. MILLER:

Q. Does ResCap still have a cash management process in place?

A. Yes, it has a form of a cash management process in place.

Q. And is it substantially different from the cash management that was in place

prepetition?

A. Yes, in that ResCap no longer borrows or pays back to the line of credit so that process is not in place anymore.

Q. Are subsidiary accounts swept daily up to the parent entity?

A. They are. Generally, there is a sweep process so that cash can be aggregated in various concentration accounts.

Q. And who's responsible for overseeing that process?

A. Treasury.

Q. And who in Treasury?

A. Paul Grande.

Q. And was Mr. Grande employed by ResCap prepetition?

A. He was, but he was not within Treasury.

Q. Looking back at the first e-mail in the chain, first chronological e-mail in the chain in Westman 3, Mr. Venne states toward the middle of the paragraph, "With this cash management strategy in place, Barb Westman is suggesting that we write this up as an exception

to the Ally policy for cash settlement."

Was there ever a formal write-up submitted to Ally?

A. There was not to my recollection, no.

Q. Was there ever a formal write-up of the exception that was prepared for your review?

A. I don't recall if there was a formal write-up of the exception. It was generally discussed through meetings and it was documented in our final results of what were sent to Ally.

Q. What form did the final results that you submitted to Ally take?

A. There was a document similar to what we looked at before, a final version of the spreadsheet within Exhibit 2.

Q. Do you know when the final spreadsheet was submitted to Ally?

A. Sometime in the first quarter of 2012.

Q. And how many meetings did you have with Ally to discuss the cash management exception?

A. I don't recall.

Q. Do you recall having more than one meeting?

A. Yes.

Q. More than five meetings?

A. The meetings were generally to discuss the intercompany project. I don't recall on how many occasions we would have discussed the cash management process.

Q. And how frequently did you meet to discuss the intercompany process, generally?

A. I don't recall specifically.

Q. Were there regular meetings scheduled?

A. I don't believe they were weekly, but they were ongoing.

Q. Did you generally participate in those meetings?

A. Generally, yes.

Q. And were those meetings held in person?

A. They were via conference call.

Q. And what did you tell Ally regarding the cash management strategy that ResCap had in place?

A. We discussed the aggregation of cash to meet the requirements under the line of credit and how that created or involved the

various intercompany balances.

Q. And did Ally ask any questions about the cash management exception?

A. I don't recall.

Q. Do you recall having any discussions other than beyond -- sorry. Strike that.

Do you recall having any discussions beyond describing the cash management process and requesting an exception about the intercompany balances that don't settle?

MR. KERR: Objection.

A. I don't recall the specific discussions.

Q. And there's a question in here. The next line says, "Do you have anything written up that shows this as a company policy or do you have a list of guidelines/process that is followed to maintain a certain cash position?"

I know you have said there's no policy, but are there guidelines or processes regarding the cash management process that exists within ResCap?

A. I believe Kwab answered that and indicated that there generally are not.

B. WESTMAN

Q. And is that consistent with your understanding?

A. It's consistent with my reading of his response and my understanding at the time.

Q. Do you have a different understanding sitting here today?

A. No.

MS. MILLER: Okay. I think we can take a break now.

MR. KERR: Good time? Okay.

THE VIDEOGRAPHER: The time is 11:42, this is the end of tape labeled number 1. We're going off the record.

(Recess.)

THE VIDEOGRAPHER: This is the start of tape label number 2. The time is 11:58. We're back on the record.

BY MS. MILLER:

Q. Ms. Westman, did you speak or meet with anyone within Treasury in connection with preparing for your deposition today?

A. No.

Q. So, looking one e-mail up the chain in the document that was marked Westman Exhibit 3

to the e-mail from Mr. Gyasi-twum to Mr. Venne, time-stamped 12:06 P.M., responding to the e-mail we were just talking about, Mr. Gyasi-twum says in the first bullet, "Intercompany transactions - I believe these do involve cash movement (i.e., there's daily cash movement between Mortgage and ResCap)."

Do you believe that the intercompany transactions involve cash movement between Mortgage and ResCap?

A. Intercompany transactions can include cash management -- cash movement between entities.

Q. Do you believe that the intercompany balances that you were reviewing in connection with this review in the fall of 2011 that Mr. Gyasi-twum is referring to in fact do involve cash movement between Mortgage and ResCap?

A. I can't speak specifically between Mortgage and ResCap, but intercompany transactions can include cash movement.

Q. And looking up at the first e-mail, the last chronologically but the one at the top of the page from 5:03 P.M. from Ms. Jeffress to

Mr. Gyasi-twum -- sorry, just going back down to the second e-mail that we were looking at, Mr. Gyasi-twum then says, "Brooke, please validate our process for the intercompany settlements," and then at the top of this page, Brooke then replies and states, "Intercompany transactions between Mortgage and ResCap represent daily paydowns/advances which support Mortgage's need for cash to fund outgoing cash obligations or concentrate Mortgage's excess cash for the parent which is ultimately used to pay down the outstanding balance on the LOC."

Is that an accurate description of the intercompany transactions between Mortgage and ResCap that were being reviewed?

MR. KERR: Objection.

A. That can be one of the reasons or one of the items that creates intercompany transactions. It can be created for many different reasons.

Q. If you believed that the intercompanies that were being considered in this review process represented something other than what Mr. Gyasi-twum and Ms. Jeffress were

saying, would you have responded and said so?

A. I understood the context of how they were responding to our question here, so I didn't have any follow-up questions.

Q. And did you have any reason to doubt that what they were saying was accurate?

A. I didn't take that to be an all-inclusive statement speaking to all of the intercompany transactions. They were responding to our request about information about cash movement.

Q. And where do you see the request that was made to them?

A. The context of the request was to determine whether they had any documentation that we could use that described the cash movement process, and the response was they did not, other than our general knowledge that it was done in conjunction with the line of credit.

Q. And they also confirmed that in fact the intercompanies were related to the cash movement under the cash management process?

MR. KERR: Objection.

A. I don't believe that's what they were

stating. They were stating that that is an activity that can occur.

MS. MILLER: I would like to mark as Westman Exhibit 4 a document that's been marked for identification --

I'm sorry, the printing looks weird. It's okay. A document that's been marked for identification in this case RCJSN10037951 with two attachments.

(Westman Exhibit 4, a document, with attachments, bearing Bates No. RCJSN10037951, marked for identification, as of this date.)

(Document review.)

BY MS. MILLER:

Q. Ms. Westman, I have mark as Westman Exhibit 4 an e-mail from you to MaryLou Lee and a number of other people dated 11/15/11, with the subject line "ResCap intercompany information," attaching a Word document and an Excel spreadsheet. Do you see that?

A. Yes.

Q. Do you recognize this document?

A. I don't specifically recall it, no.

Plaintiff's Objection 70:4-23Lack of foundation (FRE 602, 901, 903); incomplete (FRE 106)

Q. Do you recall sending materials to Ally in advance of your meetings regarding the intercompany balance project?

A. I'm sorry, could you repeat the question?

Q. Do you recall sending materials to Ally in advance of any meetings you had with them regarding the intercompany balance project?

A. I don't recall specifically which meetings I sent materials or all the materials that were sent, no.

Q. But you do recall on occasion sending materials, though?

A. Yes.

Q. And do you recall, looking at the second attachment, do you recall sending them versions of the spreadsheet listing the intercompany -- various intercompany relationships and categorizing them in different ways?

A. I know the spreadsheets were sent. I don't recall how many versions were sent.

Q. You have no reason to doubt these documents were sent to Ally, right?

A. I don't doubt it. I just don't specifically recall this particular one.

Q. And you don't doubt that you personally sent them, right?

A. I sent the e-mail --

Q. And the e-mail attaches the documents?

A. -- if these were attachments.

Q. I'll represent that the documents attached to this Westman Exhibit 4 are in fact the attachments that, as produced to us, are the attachments to the cover e-mail.

A. Okay.

Q. Looking at the first attachment that's titled "Intercompany Process," do you recognize this document?

A. I don't recall this document, no.

Q. Do you recall there being a write-up of the intercompany process with Ally --

MR. KERR: Objection.

Q. -- that was prepared in the fall of 2011?

A. I don't recall doing a write-up.

Q. Do you recall ever reviewing a

write-up?

A. I don't remember. I know that we worked with Ally and we provided information to Ally. I don't remember all the specific information provided.

Q. Do you think you would have sent -- would you have sent a document to Ally that you didn't think was accurate?

A. Not intentionally, but if it was a draft document as part of a working group, there may have been drafts that were sent back and forth as we worked through the project.

Q. Would you have reviewed documents that you submitted to Ally?

A. Yes, I would have reviewed them.

Q. Would you have provided comments to whoever prepared the documents if something struck you as inaccurate or incorrect?

MR. KERR: Objection.

A. Since they were working documents, we may have provided them each step along the way as we were working through issues. So I don't specifically recall if we were presenting them as complete documents or -- this was not a final

document.

Q. How do you know this was not the final document?

A. The final document was not completed until early 2012.

Q. How would I know if the document I'm looking at is the final document?

A. I believe it was sent to Ally indicating that that -- this would be the final document that we would be certifying, would be supporting our certification.

Q. Do you know whether that document was produced in connection with this litigation?

A. I believe it was, but I don't have direct knowledge of what was produced.

MS. MILLER: To the extent it was produced, we request under the protocol that Debtors provide us the specific Bates reference for that final document, and in the event that the document was not produced in connection with this litigation, we call for its production.

MR. KERR: Take it under advisement. That's fair.

BY MS. MILLER:

Q. Looking at the first attachment titled "Intercompany Process," the second-to-last bullet, black built-in bullet states that, "ResCap has a number of intercompany balances with ResCap legal entities that are created as a result of the cash management process that moves money regularly but does not completely settle and will need to be listed as an exception."

Is that the same cash management process and exception that we have been discussing --

A. Yes.

Q. -- this morning?

And the next step is, "To obtain approval from Ally; decide if balances should be reduced."

Was approval obtained from Ally?

A. Yes, Ally agreed. I wouldn't necessarily -- I can't necessarily state if they called it an exception or an exception approval, but they did approve that that was valid intercompany process and met the requirements for us to certify the balances.

Plaintiff's Objection 75:2-80:6 Lack of personal knowledge (FRE 620); lack of foundation (FRE 602, 901, 903)

Q. And do you know if Ally -- sorry. Strike that.

Do you know if a decision was made that any of the balances should be reduced?

A. To my knowledge, none of the balances were reduced.

Q. Looking at the second attachment, which is, based on your testimony, the working draft of the spreadsheet of intercompany balances, and turning to the fourth page, the worksheet titled "Intercompany Relationships Related to Cash Management and Do Not Settle," is the description of the cash management process or practice, rather, at the top of that spreadsheet consistent with your understanding of how the cash management process worked at ResCap?

MR. KERR: Did you read it?

THE WITNESS: I'm reading it.

MR. KERR: It's a little hard to read.

MS. MILLER: I should have brought magnifying glasses for everyone.

(Document review.)

THE WITNESS: Okay. Could you repeat

the question, please?

BY MS. MILLER:

Q. Sure. Is the description of the cash management process at ResCap and the resulting intercompany balances consistent with your understanding?

A. Yes, that fits with my understanding of the cash management process within ResCap.

Q. And are all of the intercompany balances listed on the spreadsheet -- strike that.

How is it decided whether an intercompany balance should be listed on this worksheet?

A. In this particular section of the worksheet?

Q. Yes.

A. If these were relationships where cash movement continued to occur because of the cash management process, so they would have been identified by looking at activity within those particular intercompany balances and determining whether they were involved in the process of the movement of cash.

Q. And the intercompany balance between RFC and ResCap in the first line is one of those intercompanies that were identified as relating to the movement of cash; is that correct?

A. This intercompany balance has cash movement within it.

Q. And the intercompany between Homecomings Financial and Res Funding Co., LLC on the second line is similarly identified as a relationship related to cash management, correct?

A. It's identified as a balance that has cash movement within that intercompany balance.

Q. And the same is true for the Passive Asset Transaction and GMAC Mortgage intercompany balance on the third line of the worksheet, correct?

A. Correct.

Q. And it's also the same for the Executive Trustee Services and GMAC Mortgage Trust -- sorry, and the GMAC Mortgage intercompany balance listed two lines below, right?

A. Correct.

Q. And also for the Residential Funding Co., RFC Asset Holdings LLC inter-balance, that balance was related to the movement of cash within the cash management process, correct?

A. I'm sorry, which balance is that?

Q. The one immediately below the Executive Trustee Services balance, the Residential Funding Co., LLC and RFC Asset Holdings II, LLC?

A. Yes.

Q. And going down six rows, the GMAC Residential Holding Corp., GMAC Mortgage intercompany balance also related to the movement of cash resulting from the cash management process, correct?

A. The cash management process created certain transactions within that balance, yes.

Q. And the same is true for the GMAC Mortgage and Home Connects Lending Services intercompany listed on the line below that, correct?

A. Yes.

Q. And moving down five rows, the GMAC Residential and ResCap intercompany balance was

also identified as an intercompany relationship that had activity related to the movement of cash resulting from the cash management process, correct?

A. Correct.

MS. MILLER: I'd like to mark as Westman Exhibit 5 a document that's been marked for identification in this case RCJSN00003340.

(Westman Exhibit 5, a document bearing Bates Nos. RCJSN00003340, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, do you recognize this document?

A. Yes.

Q. And what is it?

A. It is an internal certification process that was performed around intercompany relationships within ResCap.

Q. And who -- was this -- sorry. Strike that.

Was the certification submitted to anybody?

A. It was a ResCap internal certification process.

Q. Was it required to be sent to Ally?

A. It was not.

Q. Is this certification related to the Ally Global Intercompany Policy that we've been discussing?

A. Indirectly. It's not directly related to that policy.

Q. Do you recognize the signature on this document?

A. It is my signature.

Q. And this document is dated January 6, 2012. Have you prepared a similar certification for any period before this one?

A. I don't recall. I may have.

Q. Was it a requirement that the intercompany certification document be prepared in connection with the quarter-end?

A. Yes, I believe this was a quarterly required process.

Q. And would you have been the person responsible for signing these certifications on a quarterly basis?

A. I was one of several individuals that were required to sign the certification over various points of time.

Q. And who were the other individuals?

A. Other accounting directors that were responsible for intercompany relationships or activities.

Q. And who were those accounting directors?

A. I don't recall the specific names and any accounting director that would have had responsibility for accounting within the organization for the particular time period.

Q. Would more than one accounting director have to sign an intercompany certification document for the same quarter?

A. Yes.

Q. Would it be the same certification?

A. It would be the same document. Each director was certifying to a set population of activities, so they were responsible -- each director was responsible for signing for the transactions that they were assigned within the document that supports this.

Q. And which transactions were you assigned or were assigned to you?

A. A specific set of transactions that were performed by the General Ledger Team.

Q. And what are those specific set of transactions?

A. General -- generally were eliminations. This was a certification to ensure that elimination entries were prepared as part of the consolidation of the financial statements. So those were generally eliminations related to investment in subsidiaries and the intercompany balance is properly eliminated for consolidation purposes.

Q. Was it necessary for the elimination process to work properly that transactions be recorded in the proper accounts in the general ledger?

Plaintiff's Objection 83:16-24 Incomplete (FRE 106)

A. Yes, that's what this certification identified; the places where intercompany activities occurred so that we could ensure those were properly eliminated within the financial statements.

Q. And did you review intercompany

transactions during the period and assure that they were accounted for in the proper accounts?

MR. KERR: Objection.

A. I reviewed the supporting documentation behind this that indicated the types of intercompany relationships that were covered by the certifications. It was not a certification of transactions but of types of activities, so I would have reviewed that documentation prior to signing.

Q. And what type of documentation would have been provided?

A. There's a spreadsheet that supports the certification.

Q. Do you know who prepared that spreadsheet?

A. I don't specifically recall. It was prepared by various accounting individuals over different periods of time.

Q. Do you recall in late 2011, early 2012 who would have been responsible for preparing that document?

A. I believe it would have been Jake Bazella.

Q. Do you know whether the documents supporting the certification has been produced in connection with this litigation?

A. I'm not sure what has been -- everything that has been produced.

MS. MILLER: I'm going to ask that under the discovery protocol the specific document, Excel spreadsheet document described by Ms. Westman be identified by Bates range.

MR. KERR: Okay.

MS. MILLER: And to the extent that it's not in the repository, we call for the production of that document.

BY MS. MILLER:

Q. Have you signed more than one intercompany certification document during your time at ResCap?

A. I don't recall how many of this particular certification I signed.

Q. Do you know if it was more than this one?

A. I don't recall.

Q. But someone would have signed this

type of certification for each quarter?

A. Correct.

Q. Did there come a time after the first quarter of -- did there come a time within the first quarter of 2012 that you engaged in another review of intercompany balances?

A. We continued the review that we had started under the Ally project, and we continued that review in conjunction with information that would be needed for bankruptcy filings.

Q. And who was responsible for that review?

A. I don't know a specific individual that was responsible. I would have been involved in that process.

Q. And who told you what information was necessary relating to intercompany transactions for the bankruptcy filings?

A. I worked with my supervisor Cathy Dondzila.

Q. Did there come a time that the law firm of Morrison & Foerster was retained by ResCap to represent it in connection with the restructuring?

A. Yes, Morrison & Foerster was involved. I wasn't specifically involved in when or how that occurred.

Q. And did FTI work as a financial advisor to ResCap and its counsel in connection with the anticipated bankruptcy filing?

A. Yes.

Q. Did you receive requests from FTI for information relating to intercompany transactions?

A. Yes.

Q. A lot of requests?

A. Yes.

Q. Did you respond to the requests?

A. I responded to many requests.

Q. Did you provide FTI with as much information as you had available to you?

A. Yes, to my knowledge.

Q. Did you provide FTI with any information that you believed was false or inaccurate?

A. Not knowingly.

Q. Did you receive requests for information relating to the intercompanies from

your counsel?

A. I don't specifically recall if I did or not.

Q. Who was the main person you liaised with on the intercompany review leading up to the bankruptcy filing?

A. From -- from Morrison & Foerster or anyone?

Q. Generally.

A. Generally, with Cathy Dondzila, and there were several different people involved with FTI.

Q. Who at FTI do you recall specifically being involved in the intercompany balances?

A. Mark Renzi. Liz Parks. Those are the two I probably specifically recall.

Q. And did you have any meetings with FTI where you discussed intercompany balances?

A. I don't specifically recall. I'm sure we did.

Q. How frequently did you -- were you speaking to FTI in the first quarter of 2012?

A. I don't recall.

Q. Weekly?

A. Most likely there would have been some communication weekly, whether it was e-mail or physically speaking with them.

Q. Do you think it would have been more frequently than weekly?

A. I don't recall.

Q. And what type of information was FTI requesting relating to the intercompany balances?

A. I don't specifically recall the nature of all the requests. I know that we did work on compiling a list of intercompany balances leading up to the bankruptcy date.

Q. When you say "we," who are you referring to?

A. Myself, Cathy Dondzila and other members of Cathy or my team that assisted in that preparation.

Q. And were you and Cathy primarily responsible for the list of intercompany balances?

A. Yes, individuals within our teams would have been responsible for maintaining those transactions.

B. WESTMAN

Q. What other information did you provide to FTI regarding the intercompany balances?

A. I don't specifically recall. There were many requests. I don't recall the details.

Q. Do you have a sense of how much time you spent researching, compiling information, and responding to their requests?

A. We were responding to many requests outside of intercompany, but we spent a significant amount of time researching and gathering data related to intercompany balances.

Q. And did the review of intercompany balances leading up to the bankruptcy continue for a matter of months?

A. I believe so. I don't remember the specific dates, but I believe we worked on it beginning at least a few months prior to bankruptcy and worked on it through bankruptcy date.

Q. Do you recall when you first started getting requests for information from FTI?

A. I don't recall specifically. I believe I would have brought -- been brought into the bankruptcy process perhaps in March. I

don't recall specifically.

Q. Do you recall specifically when the company filed for bankruptcy?

A. In May of 2012.

Q. And do you believe that from the time you were brought into the bankruptcy process through the filing you were actively involved in responding to requests related to intercompany balances?

A. I don't specifically recall which requests were related to intercompany balances. I was actively involved in responding to requests. I can't say whether they were related to intercompany through that entire time period.

Q. Did you provide information to FTI regarding the intercompany balances?

A. I'm sure I did.

Q. Did you prepare a spreadsheet of top ten intercompany balances?

A. I don't recall who prepared the spreadsheet. I'm familiar with the spreadsheet.

MS. MILLER: I'm going to mark an exhibit. It's being marked as it was produced, but it seems to be -- possibly be

a compilation of two different exhibits. So I'm going to -- I'm going to mark as Westman Exhibit --

MR. KERR: 6 I think we're up to.

MS. MILLER: -- 6 a document Bates-stamped RCUCCJSN30016049 with its attachment.

(Westman Exhibit 6, a document, with attachment, bearing Bates Nos. RCUCCJSN30016049, marked for identification, as of this date.)

MS. MILLER: Can I have one of those?

MR. KERR: Sure.

(Document handed.)

MS. MILLER: So I'll represent that this document, as I have it printed from the original, begins with the document -- the e-mail that was the first -- that is the first page of Westman Exhibit 6, but then somewhere about halfway through --

MR. SILVERSCHOTZ: Do you have another copy?

MS. MILLER: I'm going to pass it down in one second.

B. WESTMAN

-- after the first attachment, actually attaches a second e-mail, which then attaches the same agreement and then attaches another document. So it probably was intended to be produced as two separate documents, and what happened here in the copy that's been marked is it looks like the second e-mail reattaching the first attachment was dropped, and so the range actually -- in the exhibit actually runs from RCUCCJSN30016049 through 16100 and then goes to RCUCCJSN30016164, and the e-mail in the original document that is not included in the exhibit is an e-mail in the chain of the original cover e-mail "Re: Waterfall Questions."

MR. KERR: So that's not part of what you marked as --

MS. MILLER: So that's not part of this exhibit, but in case anyone wants to know what it is, it's just more of that same chain -- actually less of that same chain, reattaching the documents that are attached at the beginning, but also, the spreadsheet

of top ten intercompany balance -- Top Ten Intercompany Relationships Spreadsheet.

And I note for the record that this is not our production. No explanation.

BY MS. MILLER:

Q. So, looking at the very confused exhibit Westman Exhibit 6, do you recognize this e-mail?

A. Yes.

Q. And did you prepare this e-mail?

MR. KERR: Are you talking about the cover e-mail or the attachments?

MS. MILLER: The cover e-mail. The e-mail.

THE WITNESS: It's portions of the e-mail I prepared.

BY MS. MILLER:

Q. I'd like to refer you to the last page of the exhibit, which is a spreadsheet titled Summary of Top Ten Intercompany Relationships.

Are you familiar -- I see the witness flipping pages and looking confused. I share your confusion. I think that there are actually two different versions of this Top Ten

Intercompany Relationship that are part of what is in the database as a single document. The first one appears as the fourth page of the exhibit Bates-stamped 16053.

MR. KERR: That's --

MR. LAWRENCE: Not in my document.

MR. KERR: Yes, it's not in the document.

MS. MILLER: It's not?

MR. KERR: No. It goes from, just so you know, it goes from 16052 to 16054. Just so -- I noticed it, but it's obviously missing a page.

MS. MILLER: Right. Okay. So that is probably our error because this looks like it was produced --

MR. KERR: Do you want to make a copy of that.

MS. MILLER: Yes, so maybe -- well, this is going to have my notes on it. So, no, I don't want --

MR. LAWRENCE: You want to come back after a break?

MS. MILLER: Yes, let's come back

after this. We'll get -- if we get a copy e-mailed, can we --

MR. KERR: Yes.

MS. MILLER: Can we pull it from the repository?

MR. KERR: That's fine. So you want to come back to this document?

MS. MILLER: Yes, we'll come back to this document. I apologize for the confusion that created.

MR. KERR: No, don't worry about it.

BY MS. MILLER:

Q. Sorry, just looking back at the cover e-mail in Westman Exhibit 6, Ms. Westman, do you see that the e-mail is dated March 23, 2012?

A. Yes.

Q. And does this document, does this e-mail chain which starts on March 19, 2012, relate to intercompany balances, in part?

A. Yes.

Q. And is this an e-mail between you and certain people at FTI concerning their requests for information regarding this intercompany balances?

B. WESTMAN

A. Yes.

MS. MILLER: I'd like to mark as Westman Exhibit 7 a document Bates-stamped RCUCCJSN20064737 through 4801. It's an e-mail with multiple attachments.

(Westman Exhibit 7, an e-mail with attachments, bearing Bates Nos. RCUCCJSN20064737 through 4801, marked for identification, as of this date.)

(Document review.)

MR. LAWRENCE: They do seem to be missing pages in this as well.

MR. KERR: Yes, I think page 64743 is missing.

MR. LAWRENCE: Unless it's double-sided.

MR. KERR: I don't see it. 64751 -- no, that's double-sided.

MS. MILLER: 45 appears to be missing and 47. I wonder if these are the slip sheets that say "produced in native."

MR. KERR: Could be. Could be. I don't know.

MS. MILLER: That's at least

Plaintiff's Objection 97:3-10Lack of foundation (FRE 602, 901, 903)

consistent with the printout that I have of that document. So we'll check and see if there are in fact any pages missing and I'll supplement the exhibit.

MR. KERR: I know that in some of the productions there was a -- there would be a slip sheet that would said "produced in native" or something like that, so that may be a part of it.

MR. LAWRENCE: But there would still be a native document.

MR. KERR: Yes. Whatever. We'll figure it out.

BY MS. MILLER:

Q. Ms. Westman, have you had an opportunity to review the cover e-mail?

A. Yes.

Q. You see that this e-mail is from April 20, this e-mail chain is from April 20, 2012?

A. Yes.

Q. And looking down at the opening e-mail in the chain, can you describe what that e-mail is?

A. My -- my comments?

B. WESTMAN

Q. No, the one below yours.

A. This appears to be a request from Mark Renzi for certain information related to intercompany balances.

Q. Did you understand why Mark Renzi was asking for this information?

A. I don't know specifically, other than we were working on gathering information related to intercompany balances.

Plaintiff's Objection 99:6-10: lack of personal knowledge (FRE 602)

Q. Did you provide Mr. Renzi with all of the information that you had relating -- responsive to his questions?

A. I don't know.

Q. Do you believe that there's any information that you have that you did not provide to FTI in response to their requests for information related to the intercompany balances?

A. I don't believe there's information that I had. I don't specifically recall responding to this request. This is not a response to this request. So I'm not sure what I responded to Mark.

Q. Do you believe that you or Cathy would

Plaintiff's Objection 99:25-100:8: lack of personal knowledge (FRE 602)

have collected and provided as much information to FTI in response to their specific requests as you had available?

MR. KERR: Objection.

A. Yes, I believe we would have. I don't specifically recall what we provided or that we were able to answer these questions.

Q. Do you recall looking for information in response to requests from FTI related to intercompany balances?

A. Yes.

Q. And do you recall providing the information that you found in response to those requests to FTI?

A. In general, yes.

Q. Do you recall any instances where you found information responsive to a request from FTI but did not provide that information to FTI?

A. Not that I'm aware of.

Q. Going to -- looking at the first attachment, it's an e-mail from -- sorry, it's Bates-stamped RCUCCJSN20064740, and it's an e-mail from you to Janel Farley regarding agreements from March 20, 2012?

B. WESTMAN

MR. KERR: Actually, I think if you're talking about the top one, I think that's from Janel to Barb. The one below is from Barb. It's a different date.

MS. MILLER: You're right.

BY MS. MILLER:

Q. So either the March 19 e-mail from -- focusing first on the March 19 e-mail from you to Janel?

A. I'm sorry, could you repeat the question?

Q. Do you recognize the e-mail, the March 19 e-mail from you to Ms. Farley?

A. Yes.

Q. Do you know what this e-mail is about?

A. Yes.

Q. What's it about?

A. This was as part of research attempting to document the reasons behind certain intercompany transactions, and these particular transactions I had requested that Janel determine whether she was familiar with these, if she had recently worked on a project that might have made her familiar with these

particular balances.

Q. And did you -- do you understand her response in the March 20 e-mail?

A. She basically is -- isn't responding. She's indicating that the one particular transaction may look familiar but that she was working on other issues and then she would look further to research this issue.

Q. So what is a topside entry?

A. That was another project that she was working on unrelated to this. Simply a reference of what -- of her time commitment and what her first priority was before she could look at this particular transaction.

Q. Does it relate at all to intercompany balances?

A. I don't specifically recall. It's not related to this request.

Q. Do you know if the topside entry for GMAC are to include RFC advances relates to intercompany balances between those entities?

A. I believe so. I believe it's referring to the servicing advances.

Q. Would those servicing advances have

been accounted for in the intercompany balances?

A. I have no knowledge about that.

Q. Looking at the document with the Bates range ending in 4744, there's an e-mail from Michaeline Dugan to you dated February 23, 2012 regarding Executive Custody Services.

On the second page of that exhibit, there's an e-mail from you to Michaeline on February 23, 2012 in which you state there's a $250 million intercompany balance between EST and GMAC -- sorry, ETS -- I think there's a typo there. "ETS has the receivable. Gary was looking into this and just noted it was 'Recovery income and foreclosure trustee fees.' Can someone expand on this?"

Do you see that?

A. Yes.

Q. And do you know in what context you were looking into the intercompany balance between ETS and GMACM in February of 2012?

A. In an attempt to look at the intercompany, the larger intercompany balances and gain an understanding of what might have created those balances or what could be

contained within those balances.

Q. And was that part of your review leading up to the bankruptcy filing?

A. Yes, it was during that time period.

Q. And do you understand the response that you get from Michaeline about the ETS balance?

A. Generally.

Q. Can you explain how the ETS GMAC intercompany balance arose?

A. I think Michaeline is laying out the various journal entries here, indicating in this -- that ETS generates cash in its normal, daily operations and that cash generally makes its way up to GMAC Mortgage, so this is indicating the types of entries that would have been made reflecting some of that activity.

MS. MILLER: I'd like to mark as Westman Exhibit 8 a document Bates-stamped EXAM122636518 through 521. It's an e-mail with an attachment.

(Westman Exhibit 8, a document bearing Bates Nos. EXAM122636518 through 521, marked for identification, as of this date.)

Plaintiff's Objection 104:19-15: Lack of foundation (FRE 602, 901, 903)

B. WESTMAN

MR. KERR: Atara, I'm just looking at this document and we may have a privilege issue on this. I don't know. I need to speak to somebody separately. Can we put this aside?

MS. MILLER: You want to table it?

MR. KERR: Yes.

MS. MILLER: And we'll come back to that.

MR. KERR: And we may not. I just --

MS. MILLER: I'm going to use the document to establish the fact of the communication and then will not touch the substance until --

MR. KERR: If you want to just establish the fact of the communication, that's fine. I just -- I've got to check on the substance of it. I just, I just don't know the answer, but if --

MS. MILLER: Understood. So I won't touch the substance until you get back to me.

MR. KERR: Okay. Fair enough.

BY MS. MILLER:

Q. Ms. Westman, were, in light of your counsel's stated concern that this document may be privileged, and subject to his further review of that question and giving us an answer on it, I'm not going to ask you to comment on the substance of this document so I'd like you to focus only on the identifying information at the top of the document.

A. Okay.

Q. Ms. Westman, do you see that this is an e-mail dated April 23, 2012, from Mark Renzi to Todd Goren and Alex Barrage, copying a number of people, including yourself?

A. Yes.

Q. And that the subject of the e-mail is "Bounce - Intercompany Follow-Up - request for call tomorrow at 1 to 2"?

A. Yes.

Q. And it attaches a document titled "Intercompany Questions Version 2.xls"?

A. Yes.

Q. In or around the April 2012 timeframe, were you having calls with FTI regarding intercompany balances?

A. It appears as such from the e-mail. I don't specifically recall dates of calls.

Q. Do you recall throughout the February to May 2012 time period conferring with FTI regarding intercompany balances?

A. Yes. During that time, I would have talked with FTI.

Q. You mentioned that you continued to work on the intercompany balances -- a review of the intercompany balances beyond the May 2012 bankruptcy petition. Was that in response to continuing requests from FTI?

A. I don't recall who would have requested that.

Q. Do you recall if -- strike that. Did you continue to provide information to FTI regarding intercompany balances even after the filing of the bankruptcy petition?

A. I don't recall the dates that we provided information. We would have continued to respond to requests from any parties that were requesting it. I don't remember the dates.

MR. LAWRENCE: I'll just note that lunch is outside, so whenever anyone wants

to --

MS. MILLER: Okay.

MR. LAWRENCE: I'll let Barb decide when she wants to stop.

MS. MILLER: Do you want to take a break?

THE WITNESS: It's 1. It might be good.

MS. MILLER: Okay.

MR. KERR: How long do you want to take? A half an hour or less?

MS. MILLER: I'm thinking maybe a little bit more so we can all circle our teams --

MR. KERR: Oh, sure. Sure. Sure.

MS. MILLER: -- and get the document issue situated.

MR. KERR: That's fine.

MS. MILLER: Can we go off the record?

MR. KERR: Let's go off the record.

THE VIDEOGRAPHER: The time is 1:06. This is the end of tape labeled number 2. We're going off the record.

B. WESTMAN

AFTERNOON SESSION

THE VIDEOGRAPHER: This is the start of tape labeled number 3. The time is 1:54. We are back on the record.

B A R B A R A W E S T M A N, resumed and testified further as follows:

FURTHER EXAMINATION BY

MS. MILLER:

Q. Good afternoon, Ms. Westman.

A. Good afternoon.

Q. Welcome back.

A. Thank you.

MR. KERR: Atara, let me just make a statement about this.

MS. MILLER: Sure.

MR. KERR: I have had an opportunity over lunch to look at what has been marked as Westman Exhibit 8, and after reviewing it and reviewing the text of the e-mail more carefully, we're not going to assert privilege over this specific e-mail and you are fee to question Ms. Westman about it.

Obviously if she -- your questioning leads into conversations she might have had

with MoFo, we'll have to deal with that issue, whatever it is, but with respect to this e-mail, you are free to question her as much as you wish.

MS. MILLER: Thank you.

On that note, I'm going to ask the reporter to mark as Westman Exhibit 9 the Schedule of Assets and Liabilities for RFC Asset Holdings II, LLC, filed in the bankruptcy proceedings of Residential Capital, LLC, et al., Docket No. 586.

(Westman Exhibit 9, Schedule of Assets and Liabilities for RFC Asset Holdings II, LLC, filed in the bankruptcy proceedings of Residential Capital, LLC, et al., Docket No. 586, marked for identification, as of this date.)

(Document review.)

BY MS. MILLER:

Q. Ms. Westman, have you had an opportunity to review this document?

A. Yes.

Q. And have you seen this document before?

A. At least parts of the document, if not the full document.

Q. And what parts of the document do you specifically recall having seen before?

A. I would have looked at intercompany balances and I may have looked at other schedules. I don't recall each particular portion.

Q. And this Schedule of Assets and Liabilities was filed with the court on June 30, 2012; is that correct?

A. Correct.

Q. And turning your attention to the document -- sorry, to the page marked page 6 of 50 on the top or page 5 on the bottom, you see there's a paragraph describing intercompany transactions? It's the first full paragraph on the page.

A. Okay. Yes.

Q. The second-to-last sentence states that, "The Debtors have made every attempt to properly characterize, prioritize and classify all intercompany transactions." Do you see that?

A. Yes.

Q. Would you have reviewed this paragraph?

A. I don't recall reviewing this paragraph.

Q. Do you believe that that's an accurate description of the Debtors' efforts leading up to July 30 -- sorry, June 30, 2012 regarding intercompany balances?

MR. KERR: Objection. Lack of foundation.

Plaintiff's Objection 112:7-15: lack of personal knowledge (FRE 602)

A. I believe when we provided information for the SOAL, that we believed it was accurate to the best of our knowledge at the time.

Q. Turning now to the page 44 of 50, do you see that Residential Funding Company is listed as a creditor of RFC Asset Holdings II?

A. Yes.

Q. And the consideration -- the "Date claim was incurred and consideration for claim" notes that it is an intercompany payable?

A. Yes.

Q. And the total amount of the claim is listed as $231,862,293.11?

A. Yes.

Q. And do you believe that that was an accurate reflection of the debt owing from RFC Asset Holdings II to Residential Funding Company, LLC as of June 30, 2012?

MR. KERR: Objection to form.

A. That was the intercompany payable between those two entities. Again, there would have been other intercompany receivables as well. This schedule was filed on a gross basis, so that would have been an intercompany payable.

Q. And would you have been responsible -- strike that. Do you know how the total amount of the claim was derived?

MR. KERR: I'm sorry, I'm not sure I understand. What was the claim you were referring to?

MS. MILLER: The Residential Funding Company, LLC total amount of claim listed in the last column.

MR. KERR: Objection to form.

THE WITNESS: This would have been supported by our listing of intercompany balances between the entities, again, on a

gross basis.

BY MS. MILLER:

Q. And were you involved in preparing the listing of intercompany balances on a gross basis?

A. Yes, I was involved in that.

Q. And do you believe that that $231-plus million number was accurate as of the time that this was filed?

A. It was an accurate reflection of the payable balance between these entities.

MS. MILLER: Thank you. I would like to mark as Westman Exhibit 10 the Amended Schedules of Assets and Liabilities for Residential Capital, LLC dated July 3, 2012 and bearing docket -- filed in the bankruptcy proceedings of In re Residential Capital, LLC, et al. at Docket No. 683.

(Westman Exhibit 10, Amended Schedules of Assets and Liabilities for Residential Capital, LLC dated July 3, 2012, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, do you recognize this

document?

A. Yes.

Q. And have you reviewed this document in the past?

A. I may have seen this document or parts of the document.

Q. Were you involved in preparing the schedule of certain claims against Residential Capital, LLC?

MR. KERR: Objection.

A. Can you repeat the question?

Q. Strike the question.

Can you turn to -- please turn to page 5 of 26 in the document. See the last line identifies Residential Funding Company, LLC as a creditor holding an unsecured claim against Residential Capital, LLC in the amount of 1,955 -- $1,955,105,299.08?

A. Yes, I see the balance.

Q. And would you have -- would you have been responsible for -- strike that.

Were you involved in preparing this listing of the intercompany balance between Residential Capital, LLC and Res Funding Co. on

a gross basis?

A. I would have been responsible for providing information that went into these schedules.

Q. And do you believe that the information that you provided was accurate as of July 3, 2012?

A. The information we provided was accurate to the best of our knowledge.

MS. MILLER: I'd like to mark as Westman Exhibit 11 the Amended Schedules of Assets and Liabilities for Residential Funding Company, LLC filed on July 3, 2012 in the bankruptcy proceedings of In re ResCap, LLC, et al., at Docket No. 684.

(Westman Exhibit 11, Amended Schedules of Assets and Liabilities for Residential Funding Company, LLC filed on July 3, 2012, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, were you responsible for providing information relating to the intercompany balances that were included in the schedule?

A. Yes.

Q. And looking at the page marked 11 of 139 on the top, or 7 of 17 on the bottom, a little more than halfway down, Homecomings Financial, LLC is listed as a creditor holding an unsecured claim against Residential Funding Company in the amount of $1,251,521,436.97.

Is that the information that you would have provided relating to intercompany claims that was included in the schedule?

MR. KERR: Objection.

A. That would have been based on information that we provided for intercompany transactions on a gross basis that were in our general ledger from a GAAP perspective.

Q. And do you believe that the information that you provided was accurate as of the time you provided it?

A. Yes.

MS. MILLER: I'd like to mark as Westman Exhibit 12 -- Exhibit 12, the Amended Schedules of Assets and Liabilities for GMAC Mortgage, LLC filed in the bankruptcy proceedings In re Residential

Plaintiff's Objection 117:3-16: objection to form; vague and ambiguous; lack of personal knowledge (FRE 602)

Capital, LLC, on July 7 -- on July 3, 2012, at Docket No. 685.

(Westman Exhibit 12, Amended Schedules of Assets and Liabilities for GMAC Mortgage, LLC filed on July 3, 2012, at Docket No. 685, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, were you responsible for providing information relating to the intercompany balances that were included in the schedules?

A. Yes.

Q. And does that include information relating to the general unsecured claim of Executive Trustee -- sorry, looking at page 20 of 623, page 16 of 52, does that include the claim identified as being -- the general unsecured claim that's being identified as being held by Executive Trustee Services, LLC in the amount of $276,515,932.65?

MR. KERR: Objection.

A. I'm sorry, could you repeat the question?

Q. Would you have provided the information underlying the gross balance identified in the middle of page 16 of 52 relating to the claim held by Executive Trustee Services against GMAC Mortgage, LLC in the amount of $276,515,932.65?

Plaintiff's Objection 119:2-11: lack of personal knowledge (FRE 602)

MR. KERR: Objection.

A. Yes, I would have provided information regarding the intercompany payable balance from our general ledger that supported this balance.

Q. And would you also have provided information underlying the gross balance identified on the bottom few lines on page 23 identified as intercompany payable claims from amounts owing to GMAC Residential Holding Company, LLC in the amount of $1.528 million -- $1,528,088.16 as well as the balance -- the scheduled claim of GMAC Residential Holding Company, LLC in the amount of $108 million?

Plaintiff's Objection 119:12-24, lack of personal knowledge (FRE 602)

MR. KERR: Objection.

A. I would have provided information from our general ledger showing the intercompany payable balances for these two items.

Q. Do you believe that the information

from your general ledger would have supported the balances included in the Schedule of Assets and Liabilities?

A. I believe the information we provided was accurate to the best of our knowledge.

Q. And it's consistent with the numbers that are reflected in the schedule?

MR. KERR: Objection.

A. We would have provided a support schedule that would have tied to this number.

Q. And looking at page 40 of 623 on the top, page 36 of 52 on the bottom, is the same true for the information that you would have provided in support of the Schedule of Claims of Passive Asset Transactions, LLC in the amount of $7,768,304.09 and in the amount of $689,191,786.68?

MR. KERR: Objection.

A. I would have provided the same support schedule that were tied to those balances.

MS. MILLER: I'd like to mark as Westman Exhibit 13 the Amended Schedules of Assets and Liabilities for GMAC Residential Holding Company, LLC filed on July 3, 2012,

in the bankruptcy proceedings of In re Residential Capital, LLC at Docket No. 687.

(Westman Exhibit 13, Amended Schedules of Assets and Liabilities for GMAC Residential Holding Company, LLC filed on July 3, 2012, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, would you have identified intercompany payables to Debtors' advisors in connection with the schedules?

A. We provided a list from the general ledger of intercompany receivable/payable balances for the Debtors.

Q. Is it your understanding that the list of general ledger intercompany receivables and payable balances were accurate when you provided them to the Debtors -- or, when you provided them for the Debtors?

MR. KERR: Objection.

A. They reflected the information from our general ledger to the best of your knowledge.

Q. Do you have any reason to believe that

the information in your general ledger was inaccurate?

A. No.

Q. Do you have any reason to believe that the transactions as characterized -- strike that.

Turning to page 4 of 13 in Westman Exhibit 13, would you have provided the information -- schedules to support the four identified intercompany payable amounts included in this schedule?

A. Would have provided a support schedule from the general ledger for the intercompany payables on a gross basis in the schedule.

Q. And so that includes the intercompany payable from GMAC Residential Holding Company to GMAC Mortgage, LLC in the amount of $58,173,460.04, correct?

A. Correct.

Q. And it would also include the intercompany payable from GMAC Mortgage -- sorry, GMAC Residential Holding Company, LLC to Home Connects Lending Services, LLC in the amount of $54,584,051.22, correct?

A. Correct.

Q. And it would also have included the intercompany payable between GMAC Residential Holding Company, LLC and Residential Capital, LLC in the amount of -- sorry, $38,284,486.27 and in the amount of $3,295,635,793.50, correct?

A. Correct.

(Discussion off the record.)

MS. MILLER: I would like to mark as Westman Exhibit 14 an e-mail chain dated July 31, 2012, and marked for identification in this matter with Bates No. RCJSN10028118 through 28119.

(Westman Exhibit 14, an e-mail chain dated July 31, 2012, bearing Bates Nos. Bates Nos. RCJSN10028118 through 28123, marked for identification, as of this date.)

MR. KERR: Actually, I think the Bates numbers run to 28123.

MS. MILLER: Yes, there are two -- e-mails or two attachments? I think that the document is actually just the first two pages and then there's another e-mail that starts after that. I think it's two

documents stapled together.

MR. KERR: Okay.

(Document review.)

BY MS. MILLER:

Q. Ms. Westman -- sorry, are you still reviewing? Are you still reviewing the document?

A. Oh, no. I'm fine. Thank you.

Q. Did you continue to receive requests for information related to the intercompany payables after the Debtors filed their Statement of Assets and Liabilities?

A. Yes, there were requests from various different parties throughout the year.

Q. And was one of those parties the Unsecured Creditors Committee?

A. Most likely, yes.

Q. Looking at Westman Exhibit 14, does this refresh your recollection that UCC, beginning at least in July of 2012, requested information regarding intercompany relationships and intercompany balances?

MR. KERR: Objection.

A. This indicates that a list was

reviewed with the UCC.

Q. Do you recall having discussions with the UCC or any of their advisors relating to intercompany balances?

MR. KERR: You're talking about Ms. Westman herself?

MS. MILLER: Yes.

THE WITNESS: I don't specifically recall. I had discussions with several different creditors. I don't recall that I had a direct conversation with the UCC.

BY MS. MILLER:

Q. Do you know who the UCC's financial advisors were or are in connection with this matter?

A. I don't know them all by name, no.

Q. Do you know which firm is acting as financial consultant to the UCC?

A. There were different firms over different periods of time. I don't know all the names.

Q. Do you know whether Alix Partners is acting as financial advisor to the UCC in this matter?

A. I don't recall which firm represents each creditor.

Q. Do you know whether people within ResCap had communications with the UCC or their advisors relating to intercompany balances?

A. I don't know about others, meetings with other people.

MS. MILLER: I would like to mark as Westman Exhibit 15 a document Bates-stamped for identification in this case UCC12846 through UCC12852.

(Westman Exhibit 15, a document bearing Bates Nos. UCC12846 through UCC12852, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, have you ever seen the attachment -- the document attached -- the first attachment to this e-mail? It's a chart titled "Intercompany Balance Analysis Based on Summary of Top Ten Intercos."

A. Yes, I've seen it.

Q. Did you review this document?

A. I've seen it. I don't believe I was

ever asked to review it.

Q. Do you know what the column Debt -- what the columns Debt and Equity are referring to in this chart?

A. I don't.

Q. Looking at the e-mail, it's an e-mail dated September 17, 2012, from Mark Renzi to a number of people at Alix Partners and at MoFo and at FTI and at other places that I can't identify based on the e-mail addresses. Do you see that?

A. Yes.

Q. Did you understand that there was an analysis being done regarding whether or not the intercompany payables and receivables were properly -- were proper debt transactions?

MR. KERR: Objection.

A. I was aware that there was discussion around the intercompany receivable/payables and how they would be treated in the bankruptcy. I wasn't involved in specific discussions.

Q. But you have seen a copy of this document?

A. Over the course of the year, I've seen

this document, yes.

Q. And what's your understanding of what this document is?

MR. KERR: Objection.

A. It's a document that's talking about the top ten balances and providing some information about those balances.

Q. What kind of information is it providing about those balances?

A. I didn't prepare the document, so I'm not sure I can answer that. It must be someone's analysis, but...

Q. And there are facts included in both the Debt and the Equity column for the listed transactions, correct?

A. There's information listed there.

Q. In both columns, correct?

A. There's information in both columns.

Q. And just so that the record is clear, there are facts and information listed with respect to transactions number 1, 2, 3, 7 and 8 in both the Debt and the Equity columns, correct?

A. I'm sorry, can you repeat the

question?

Q. There -- is it correct that there are facts and information listed with respect to transactions number 1, 2, 3, 7 and 8 in the column -- in both the column titled Debt and the column titled Equity, correct?

A. There is information in both columns.

MR. KERR: Atara, just so the record is clear, I would note that the document -- the attachment you're referring to says on it it's for settlement discussion purposes only, so...

MS. MILLER: Understood.

I'd like to mark as Westman Exhibit 16 an e-mail with attachments, Bates-stamped RCUCCJSN30002758 through 2769.

(Westman Exhibit 16, an e-mail with attachments, bearing Bates Nos. RCUCCJSN30002758 through 2769, marked for identification, as of this date.)

Plaintiff's Objection 129:15-21 Lack of foundation (FRE 602, 901, 903)

BY MS. MILLER:

Q. Ms. Westman, do you recall receiving requests for information relating to intercompany balances in 2013?

A. Yes.

Q. Do you recall who you received those requests for information from?

A. I don't know all the individuals I received requests from.

Q. Do you remember which groups or representative parties?

A. I do not.

Q. Looking at the document that's been marked Westman Exhibit 16, the e-mail that starts on the first page of the document is a e-mail dated March 4, 2013 from you to Mark Renzi, Brian McDonalds -- sorry, Brian McDonald, CC-ing Jacob Bazella and Jill Horner, attaching a number of documents, and you write, "Here are two responses to the UCC questions in the attached document Intercompany Questions 25 -- 2_25_13."

Does that refresh your recollection that in March -- in or around February and March 2013 you were receiving and responding to inquiries from the UCC regarding intercompany balances?

MR. KERR: Objection.

Plaintiff's Objection 130:10-131:4: objection to form; compound; vague and ambiguous

A. In this e-mail I was responding to a request looks like from FTI from Mark Renzi for information related to UCC questions.

Q. And what did you understand "UCC questions" to mean?

A. The UCC had asked questions about the intercompany balances and we were working to respond to those requests.

MS. MILLER: I'd like to mark as Westman Exhibit 17 a document that was Bates-stamped in this case RCJSN00025680, which at least for right now is an e-mail without the attachment.

(Westman Exhibit 17, an e-mail bearing Bates Nos. RCJSN00025680, marked for identification, as of this date.)

MR. KERR: This is number 17, right?

MS. MILLER: This is 17, and I promise I won't ask questions about the attachment.

BY MS. MILLER:

Q. Ms. Westman, this e-mail is an e-mail from you to Mark Renzi and Filip Szymik dated -- with a subject line "Additional Intercompany Information," and you start by writing in this

document, you start by stating, "A couple additional documents or explanations for the deck."

Do you recall what deck you are referring to?

A. I don't recall. We responded to many different requests.

Q. Do you recall that FTI was preparing a PowerPoint presentation relating to intercompany transactions?

A. FTI prepared many documentations. I don't know which specific deck you're referring to.

Q. And in this e-mail you include excerpts from an older e-mail that we have somewhere in the repository in which Cathy explained the general cash movement within the company and the development of the intercompany balances. Do you see that?

A. Yes.

Q. And in this e-mail -- I'm going to refer to it as what Cathy said, even though you're including it in your e-mail, but based on what you said, is it your understanding that the

indented portion is -- was actually written by Cathy Dondzila?

A. That's correct.

Q. And Ms. Dondzila explains that, "In the beginning," and it sounds very Biblical, I'm not sure what was meant by "in the beginning," but in the beginning, the intention was that ResCap, the parent entity, would be receiving money and pushing it down to its operating entities.

Is that your understanding of how the ResCap structure and use of cash worked in the beginning?

MR. KERR: Objection.

A. That was my understanding from discussion with Cathy.

Q. Do you have any sense of what timeframe "in the beginning" is referring to?

A. I don't.

Q. During your time -- throughout your time -- sorry. Strike that.

Was that the cash flow situation at any point while you were a ResCap employee?

MR. KERR: Objection.

A. ResCap issued public debt to the JSNs in 2008 after I was a contractor with the organization.

Q. Have there been any other instances since that time of ResCap parent entity generating money that then got pushed down to its subsidiaries?

MR. KERR: Objection.

A. I'm not aware of all the instances where ResCap may generate cash. There could be a variety of ways they would generate cash.

Q. And how does Ms. Dondzila explain the market changing or the -- sorry, strike that.

How does Ms. Dondzila explain that the flow of cash changed within ResCap after the credit crisis and the market implosion?

MR. KERR: Objection. You're asking her what Cathy said in the document, in the inserted part of the e-mail?

Q. What was your understanding of how the flow of cash changed within ResCap following the credit crisis and the market implosion?

A. I believe this is a reference to the fact that the underlying subsidiaries, RFC and

GMAC Mortgage, became borrowers and generated cash through borrowings and/or through their operations, and that cash would have flowed through the organization up to ResCap as part of that cash management process.

Q. And would that include also the operations at their subsidiaries?

A. Yes.

Q. Is it your understanding that the daily sweep process described in the next paragraph refers to the cash management process we were discussing earlier?

MR. KERR: Objection.

Plaintiff's Objection 135:10-16: hearsay (FRE 802), lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402)

A. Yes, that would be my understanding of what she's describing.

MS. MILLER: I would like to mark as Westman Exhibit 18 -- as Westman Exhibit 18 a document Bates-stamped EXAM0034894 through 905.

(Westman Exhibit 18, a document bearing Bates Nos. EXAM0034894 through 905, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, do you recognize this

document?

A. I do.

Q. And can you tell me what this document is?

A. It was a deck regarding intercompany transactions put together by FTI.

Q. Do you know what purpose this deck was put together for?

A. There may have been a couple versions of this. This looks similar to a deck that was put together for the SUN. I can't say if that is in fact that exact deck.

Q. And would you have provided information to FTI that was included in this deck?

A. Yes, this would have been based on information we provided --

Q. And specifically --

A. -- in that regard.

Q. And specifically, would you have provided the Net Payable Balance information listed on page 3 of the deck?

A. That would have been -- we would have provided a support file from the general ledger

with the intercompany receivable/payable balances that would support that.

Q. Looking at page 6 of the deck, looking, for example, at Accounts Receivable entity number 2, Residential Funding Company, RFC, the comments say, "Balance generally arose out of operation of the company's centralized cash management system."

Do you know what centralized cash management system the FTI is referring to in this deck or is being referred to here?

A. The information in this deck, these were general assumptions or high-level explanations that we were looking to gather about these individual balances. That particular statement would have been referencing the cash management process where cash is swept through the organization.

Q. So there isn't another formal system that's in place, just a general process?

A. Correct.

MR. KERR: Objection.

Q. Would you have provided information to FTI to support their comments?

B. WESTMAN

MR. KERR: Which specific comments are you talking about? The ones -- which comments?

MS. MILLER: The ones in support of -- sorry, the ones listed on pages 6 through 8.

THE WITNESS: I can't speak to every comment, whether we provided information for each of the comments. We provided information as input, but I don't know whether that was for every item, every comment in this deck.

BY MS. MILLER:

Q. Would you have provided information regarding whether a balance arose out of the company's centralized cash management system?

A. When we provided information that a balance was related to the cash management system, that means that that is a possible explanation or a partial explanation for those balances.

So those particular entities would have been impacted by that situation of managing cash. It doesn't imply that that's the complete explanation for that balance. It's an example

of the type of activity that could create intercompany balances.

Q. So looking, for example, at the first line relating to Res -- to the RFC balance, it says, "Balance generally arose out of operation of the company's centralized cash management system."

Would you have provided information to FTI to support the statement that "the balance generally arose out of operation of the company's centralized cash management system"?

MR. KERR: Objection.

A. We would have provided commentary that said that that is a situation that's applicable and that our belief would be that that was a -- an example of what would have created this transaction or this balance.

It doesn't imply that that's the complete explanation. It's a portion or a part of the way that this balance is created; that this entity is impacted by that cash management situation.

Q. Understood. Is it -- do you believe that it's accurate to say that the balance

Plaintiff's Objection 139:24-140:9 Lack of personal knowledge (FRE 602)

generally arose out of the operation of the company's centralized cash management system?

A. Because it's very, very difficult to tie individual transactions to the reason for the transaction, to the best of our knowledge, that was our belief; that that is a reason for those balances, but there isn't specific documentation to support that.

MS. MILLER: We've been I think going for about an hour. I don't know if you want to take a break on.

MR. KERR: Sure. You want to take a break?

THE VIDEOGRAPHER: The time is 2:51. This is the end of tape labeled number 3. We'll be going off the record.

(Recess.)

(Recess.)

THE VIDEOGRAPHER: This is the start of tape labeled number 4. The time is 3:07. We're back on the record.

MS. MILLER: I would like to mark as Westman Exhibit 19 a document Bates-stamped EXAM00107037 through 41.

(Westman Exhibit 19, a document bearing Bates Nos. EXAM00107037 through 41, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, do you recognize this document?

A. Yes.

Q. And what is it?

A. This is a loan agreement between ResCap and GMAC Residential Holding Company.

Q. Is it also a loan agreement between ResCap and GMAC Mortgage Corporation and Residential Funding Corporation?

A. Yes.

Q. And do you understand what this agreement relates to?

A. This is an intercompany agreement that we identified in our research representing a relationship between the entities within this agreement. It's an old document so I'm not familiar with the origin of it.

Q. And before you started doing your research in connection with the intercompany claims that we've been talking about starting in

the fall of 2011, were you familiar with any agreements that governed the intercompany relationship between ResCap and its subsidiaries?

MR. KERR: Objection.

A. Can you repeat the question?

Q. Yes. Sorry. Let me restate that.

Prior to the fall of 2011, were you familiar with any loan agreements governing intercompany balances between ResCap and any of its subsidiaries?

A. I think prior to that I didn't personally have occasion to look at the loan documents.

Q. And since you started collecting documentation relating to the intercompany loan balances -- let me strike that.

You have no personal knowledge of whether or not there are any other loan agreements other than the ones you identified in connection with your collection of materials related to the intercompany balances, correct?

MR. KERR: Objection.

A. Could you restate the question?

Q. Do you know personally whether there are any loan agreements between any ResCap entities regarding -- that you have not collected in connection with your review of intercompany balances?

A. No.

Q. When you say this is an old document, specifically the agreement is dated as of January 1, 2006, correct?

A. Correct.

MS. MILLER: I'd like to mark as Westman Exhibit 20 a document Bates-stamped EXAM001030 through 35.

(Westman Exhibit 20, a document bearing Bates Nos. EXAM001030 through 35, marked for identification, as of this date.)

Plaintiff's Objection 143:12-144:3 Lack of foundation (FRE 602, 901, 903)

BY MS. MILLER:

Q. I've marked as Westman Exhibit 20 an Amended and Restated Intercompany Advance Agreement dated as of June 30, 2006 between Homecomings Financial Network, Inc. and Residential Funding Corporation.

Ms. Westman, have you seen this document before?

A. I don't specifically recall this document. I may have.

Q. When you collected documentation relating to the intercompany balances, did you review the agreements?

A. When we identified agreements, we looked for agreements between the parties. For instance, if we were looking related to the top ten, we would have looked specifically for agreements between those particular entities.

We also looked for agreements that had intercompany, so did searches for those agreements, and we produced whatever documents we found. We weren't necessarily able to connect those agreements to the balances other than that they impacted the parties that we were looking for.

Q. You have no understanding of whether this agreement would govern the situation where the lending relationship contemplated by the agreement is reversed, do you?

A. No knowledge of that. This is a very old document as well.

Q. Is there anyone within ResCap who

would have context for these agreements?

MR. KERR: Objection.

A. I'm not aware of anyone left within ResCap that would have knowledge of these agreements.

Q. Do you know if at the time that you started collecting documentation related to the intercompany balance there was anyone within ResCap who had personal information regarding these agreements?

A. Not to our knowledge. We attempted to reach out to parties who might have knowledge to get information about those relationships and what they might know, but we were not very successful on finding individuals that could speak to any particular agreement or a particular relationship.

MS. MILLER: I'd like to mark as Westman Exhibit 21 a document Bates-stamped EXAM00107022 through 29.

(Westman Exhibit 21, a document bearing Bates Nos. EXAM00107022 through 29, marked for identification, as of this date.)

BY MS. MILLER:

Plaintiff's Objection 145:19-24: lack of foundation (FRE 602, 901, 903)

B. WESTMAN

Q. Ms. Westman, do you recognize this document?

A. I don't specifically recall this document. I may have seen it.

Q. Is it your understanding that there is an agreement that governs the lending relationship between Residential Capital, LLC and RFC Asset Holdings II, LLC?

MR. KERR: Objection.

A. I'm aware that this agreement exists. I don't know any information about the agreement. I'm not familiar with the arrangement.

Q. In the process of -- this document -- sorry. The document that's been identified as -- that's been marked as Westman Exhibit 21 is an Intercompany Advance Agreement dated as of June 1, 2009 between Residential Capital, LLC and RFC Asset Holdings II, LLC.

Do you have any reason to believe that this is not an accurate copy of the agreement that it purports to be?

A. This is a document that we identified. I don't know anything more about the document.

Q. And this document is a lot less old than the other ones. Did you attempt to find anybody within ResCap in the process of your collection of materials who was personally familiar with this agreement?

A. We did not find anyone who was personally familiar with it.

Q. Did you make those inquiries?

A. I don't remember specifically inquiring about this agreement, but we did make inquiries in general about the relationships. I don't remember anyone specifically calling out this agreement or indicating they were aware of it.

Q. And so you don't know if an agreement between Residential Capital, LLC and RFC Asset Holdings would also govern intercompany payables that arise out of money flowing from RFC -- sorry, from money flowing to RFC Asset Holdings through Residential Funding Company, do you?

A. We can't tie transactions to an agreement. So, no, I don't have any knowledge of that.

Q. So you don't know one way or the

other?

A. Correct.

MS. MILLER: I'd like to mark as Westman Exhibit 22 a document Bates-stamped EXAM00107300 through 307.

(Westman Exhibit 22, a document bearing Bates Nos. EXAM00107300 through 307, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, is there anyone within ResCap who would have more information about these agreements than you?

A. Not to my knowledge.

Q. We marked as Westman Exhibit 22 an Intercompany Advance Agreement dated as of June 1, 2009 between Residential Capital, LLC and Passive Asset Transactions, LLC. Do you see that?

A. Yes.

Q. And do you recognize this agreement?

A. Yes.

Q. You don't know whether this agreement would also govern intercompany transactions that flow from Passive Asset Transactions to GMAC

Mortgage LLC, do you?

A. No, I don't know anything about this agreement.

Q. And so you don't know if it could also include subsidiaries of Residential Capital?

MR. KERR: Objection.

Q. Correct?

A. I don't know. It doesn't indicate anything about subsidiaries, but we were not able to find anyone with knowledge about this agreement.

MS. MILLER: I'd like to mark as Westman Exhibit 23 a document Bates-stamped EXAM12263381 through 406.

(Westman Exhibit 23, a document bearing Bates Nos. EXAM12263381 through 406, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, we have marked as Westman Exhibit 23 an e-mail chain with some attachments. The top e-mail is dated March 22, 2012, and it's an e-mail from you to Jeremy Stern and Mark Renzi with a CC to Liz Park and Cathy Dondzila regarding waterfall questions,

and it attaches a spreadsheet entitled Top Ten Intercompany Relationships and a zip file which appears to have three files contained within it.

Looking at the e-mail that you sent to Jeremy, you note in the second sentence of the second paragraph that, "Some of the balances have flipped and the subs are now lending money instead."

Do you have an understanding of why that's the case?

A. No, it was simply an observation. Again, we were attempting to find agreements with the parties on the top ten list, and so this was -- I was providing documentation that we found that could in any way be related or that was intercompany, and so simply noting that, while we found agreements, they may not be between the correct parties that we were looking for or they may not go in the direction as specified in the agreement. So it was just calling out what we had identified and what we had found. I don't have any knowledge about the agreements themselves.

Q. Okay. And looking at the second

attachment, which is -- there's the Bates stamp EXAM12263385 through 90, does this refresh your recollection that you have in fact previously seen the Amended and Restated Intercompany Advance Agreement dated as of June 30 between Homecomings Financial Network and Residential Funding Corporation?

A. Yes.

Q. And that is the same agreement that we previously marked as Westman Exhibit 20, correct?

A. Yes.

Q. Do you have an understanding whether interest was to be accrued and paid under each of the intercompany loan agreements we looked at?

A. I don't without looking at the documents.

Q. Can we look back at Westman Exhibit 19. Sorry. If you could look -- focusing first on Westman Exhibit 20, which was the Homecomings agreement we were just looking at, can you tell whether interest was to accrue on this balance?

A. Within this agreement, or whatever is

being referenced by this agreement, it does have an interest provision in item number 2.

Q. Did ResCap accrue interest on intercompany balances that weren't specifically governed by an agreement that interest would accrue?

MR. KERR: Objection.

A. Certain balances had interest accrued and other balances did not. They were generally historical practice and so don't necessarily have a reason why interest was accrued in certain instances and not in others.

Q. Do you know what the basis was for the historical practices?

A. Historical practice. So, from my knowledge, certain balances were accruing interest and they continued to accrue interest. I don't know the -- when it started or the reason that interest would have accrued on certain balances.

MS. MILLER: I'd like to mark as Westman Exhibit 24, a document Bates-stamped RCJSN10034044 through 050. The natives threw it off.

(Westman Exhibit 24, a document bearing Bates Nos. RCJSN10034044 through 050, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, I'd like to refer you to the document with the number -- that ends in the number 049. This is a January 11, 2012 e-mail from Jacob Bazella to Cathy Dondzila copying you with a "re" line "forward: Missed allocation in December." Do you recall this e-mail?

A. Yes, somewhat.

Q. Can you explain what this e-mail is dealing with?

A. For certain entities within the RFC side of the organization, interest accruals were run through a system entry that ran through the PeopleSoft system, and in this particular instance, it appears that that interest entry didn't run.

Q. Is there a specific intercompany balance that interest was supposed to accrue on that this -- sorry. Let me start over.

Is there a specific intercompany

balance that interest did not accrue on in this situation that's being addressed in the January 11, 2012 e-mail?

A. This indicates that the interest accrual between RFC and HFN, which is Homecomings Financial, did not run.

Q. Is it your understanding that, in the intercompany balance that's being referred to in this e-mail, Homecomings Financial is the lender and RFC is the borrower?

MR. KERR: Objection.

A. In this particular intercompany balance, Homecomings was receiving the interest income. So it would have been the entity that held the receivable.

Q. And it says in the next paragraph that, "This allocation is based off an interest rate that is received by Treasury during close and I believe represents a blended COF rate across ResCap."

Do you know where that interest rate is derived from?

A. I don't. It was a normal input into the month-end close process. I don't know how

it was derived.

Q. Do you know what "COF" means?

A. Cost of funds.

Q. Can you turn back to Westman Exhibit 20, please, which is the Amended and Restated Intercompany Advance Agreement between Homecomings Financial Network and Residential Funding Corporation.

In looking at paragraph number 2, can you tell me how interest -- what rate interest was supposed to accrue at under this agreement?

A. At a rate per annum equal to the lender's cost of funds for such date, but in no event at a rate per annum greater than the highest rate permitted by applicable law.

MS. MILLER: I'd like to mark as Westman Exhibit 25 a document Bates-stamped RCUCCJSN10895541 through 5550.

(Westman Exhibit 25, a document bearing Bates Nos. RCUCCJSN10895541 through 5550, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, I have marked as Exhibit

25 a e-mail chain between different groups of people, so I'm not going to go through them all, beginning on May 31, 2012, through June 1, 2012, "Re: Resi interest - May," and if you would flip to the end -- the beginning of that chain, which is at the end of the document, do you recall the situation that was being discussed in this e-mail chain?

A. Yes.

Q. And what happened?

A. An interest payment on intercompany balance between ResCap and Resi Holdings was generated through a system process post-bankruptcy, and because of the bankruptcy, that interest should not have been generated.

Q. Is it your understanding that the interest that accrued between ResCap and Resi Holdings accrued in the ordinary course of business?

MR. KERR: Objection.

Q. Sorry. Let me restate that.

Is it your understanding that this was a regular accrual of interest between ResCap and Resi Holdings?

A. Yes.

MS. MILLER: I'd like to mark as Westman Exhibit 26 a document Bates-stamped RCUCJSN10692261 through 2266.

(Westman Exhibit 26, a document bearing Bates Nos. RCUCJSN10692261 through 2266, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, I have marked as Westman Exhibit 26 an e-mail. It's an e-mail chain with the top e-mail being an e-mail dated December 1, 2012, from you to Brian McDonald, Mark Renzi and Liz Park at FTI, copying Cathy Dondzila and Jill Horner, relating to open items for various requests. Do you see that?

A. Yes.

Q. And it attaches three documents, do you see that?

A. Yes.

Q. And in specific, item number 4, which is titled "Schedule of Intercompany Interest payments for Alix Partners," you note, "Complete. ResCap intercompany interest

schedule attached. Please forward to the UCC."

MR. KERR: Objection.

MS. MILLER: The basis of your objection?

MR. KERR: Actually, I see. I withdraw my objection. I read the e-mail wrong. No objection.

BY MS. MILLER:

Q. Ms. Westman, did you prepare a schedule of intercompany interest?

A. I did not prepare the schedule.

Q. Do you know who did prepare it?

A. I don't know who prepared it.

Q. Did you review the schedule?

A. I passed the schedule on. I don't recall if I reviewed it. I believe it might have been prepared by Matt McGarvey.

Q. Do you have any reason to believe that the information in the schedule is not accurate, an accurate reflection of ResCap's business records?

A. No.

Q. Looking at the schedule, which is the second attachment to the e-mail, starting at

Bates No. RCUCCJSN10692265, the schedule identifies interest being accrued on intercompany balances between GMAC Residential Holdings and Residential Capital on the balance of $38-plus million, do you see that?

A. I'm sorry, could you rephrase your question?

Q. Yes. Which intercompany balances does the schedule reflect interest being accrued on?

A. I'm not sure I fully understand the schedule.

Q. Do you understand that the schedule identifies certain intercompany balances and whether interest was accrued and/or paid on those balances?

A. Yes.

Q. Can you identify those intercompany balances that, according to this schedule, had interest accrue on?

A. For the first set of items between GMAC Residential Holding and Residential Capital, that relationship had interest accrued. The $38 million in this instance is the interest accrual on the balance.

Plaintiff's Objection 159:13-160:4 Incomplete (FRE 106)

The schedule also indicates that RFC Asset Holding II and Residential Funding Company balance had interest accrued but not paid.

Q. What does it mean when interest was accrued and not paid?

A. It means that interest was calculated and recorded in the general ledger as interest receivable/payable, but it was not cash-settled.

Q. And would it have increased the net intercompany balance -- or, sorry, would it have increased or decreased -- let me start over.

Would it have increased the net intercompany balance between the two entities?

A. It was reflected within the intercompany balances between the entities. It was included in the interest accruals on either side.

Q. Which other intercompanies are reflected as having interest accrued?

A. GMAC Mortgage and GMAC Residential Holding Company had interest accrued but not paid. Residential Funding Company and RFC Asset Management had interest accrued but not paid.

Q. And again, when you say "interest

accrued but not paid," that means a change in the intercompany balance as opposed to a transfer of cash, correct?

A. Yes, it means we would have -- would have recorded an interest receivable, an intercompany interest receivable, an intercompany interest payable transaction, and that would have been included in the intercompany balances.

Q. Ms. Westman, did any of the ResCap entities file financial statements on an unconsolidated basis?

A. Several ResCap subsidiaries filed their own consolidated financials for that subsidiary where they're consolidated subsidiaries. There may have been entities that filed on a standalone basis in prior periods.

Q. And which entities -- how would you refer to the filing of a rolled-up consolidated filing at a subsidiary level?

A. Would -- for instance, a consolidated financial statement for GMAC Mortgage would have included GMAC Mortgage and all of its subsidiaries consolidated.

Q. So which entities within the ResCap group filed consolidated financial statements?

A. That varies for different periods of time.

Q. Starting when you first started working with ResCap in 2008, do you know which ResCap entities filed consolidated financial statements?

MR. KERR: Objection.

A. To my knowledge for 2008, ResCap RFC and GMAC Mortgage created consolidated financial statements.

When you indicate "filed," I'm not sure how you're defining that term, but they did have audited financial statements produced.

Q. And were those audited financial statements submitted to any third parties?

A. The ResCap financial statements for 2008 and a period of 2009 were filed with the SEC, and after that, they were privately filed on a Website.

They were also provided -- may have been provided to various regulatory agencies and/or creditors under various agreements.

Q. Do you know which regulatory agencies ResCap submitted its financials to?

A. I do not.

Q. Do you know which regulatory agencies GMAC Mortgage submitted its financials to?

A. GMAC Mortgage submitted their financials to HUD, and copies of financials would have been submitted to Compliance, who may have provided them to other entities.

Q. Do you know whether GMAC Mortgage filed its own tax returns, state tax returns?

A. I'm not familiar with the filing of tax returns.

Q. Do you know whether Residential Funding Company submitted -- which regulatory agencies RFC submitted its financials to?

A. RFC would have also submitted financials to HUD and to Compliance.

Q. What do you mean by "Compliance"?

A. The Compliance Department handled various state licensing or other regulatory licensing, so they received copies of the financials. I don't know who they provide them to.

Q. Is it your understanding that they do in fact provide them to certain licensing agencies?

A. I don't have any knowledge of what they do with them.

Q. Do you know -- do you know if they're -- do you know whether in 2009 any ResCap subsidiaries other than GMAC Mortgage and Residential Funding Company filed consolidated financial statements?

A. To my knowledge --

MR. KERR: Objection.

A. To my knowledge, after --

MR. KERR: Objection.

Q. Okay. Do you know whether in 2009 any ResCap subsidiaries other than GMAC Mortgage and Residential Funding Company prepared audited consolidated financial statements?

A. Not to my knowledge.

Q. Is it your understanding that in 2009 GMAC Mortgage and RFC prepared audited consolidated financial statements?

A. Yes.

Q. Is it your understanding that GMAC

Mortgage and RFC prepared audited consolidated financial statements for 2010?

A. Yes.

Q. And for 2011?

A. Yes.

Q. And in 2000 were GMAC Mortgage's audited consolidated financial statements submitted to HUD in 2009, '10 and '11?

A. To my knowledge, yes.

Q. And were they also submitted to the Compliance Department for purposes of evaluating compliance with state licensing requirements?

A. To my knowledge, yes.

Q. And were RFC's audited consolidated financial statements for 2009, '10, '11 submitted to HUD?

A. To my knowledge, yes.

Q. And were they also submitted to the Compliance Department for consideration of whether RFC was in compliance with certain state licensing requirements?

A. To my knowledge, yes.

Q. And do you know whether RFC had to affirmatively report compliance to certain state

licensing agencies?

A. I'm not aware of what the licensing requirements were or reporting requirements.

Q. Do you know if there were any net worth requirements?

A. I don't know for the various states.

Q. Do you know if any state had a net worth requirement?

A. I don't have any knowledge of that.

Q. Do you know if HUD had a net worth requirement?

A. Yes, HUD had a net worth requirement.

Q. And do you know whether the standalone consolidated financial statements for GMAC Mortgage reflected its intercompany receivables and intercompany payables?

A. Could you repeat the question?

Q. Do you know whether -- sorry. Strike it.

A. Excuse me. Could I correct my answer? You had earlier asked about state, whether any state licensing had net worth, and in fact, there were states that had a net worth requirement that were monitored.

Q. And do you know which states?

A. I don't recall which states offhand. We had a spreadsheet where for certain periods of time those were monitored. If there was a requirement, whether it was a particular state for a particular license, if there were net worth requirements, those were monitored.

Q. And do you know if ResCap reported compliance to those states where there were net worth requirements?

A. I don't know how the reporting of that information worked.

Q. Is it your understanding that some of the amount -- is it your understanding that some amount of reporting of net worth was required?

MR. KERR: Objection.

A. We monitored net worth requirements. I'm not aware of -- of what Compliance did with that information or how they received that information.

Q. Were intercompany balances receivable -- payables and receivables reflected in the consolidated audited financial statements of GMAC Mortgage?

A. Intercompany receivables and payables with GMAC Mortgage and any of its subsidiaries would have been eliminated in those financial statements under GAAP rules. Any intercompany balance with an entity outside of the GMAC Mortgage consolidation point would have been included in those financial statements.

Q. And so that would have included any intercompany balance between GMAC Mortgage, LLC and GMAC Residential Holding Company, LLC, correct?

A. Correct.

Q. And it would have also included any intercompany balance between GMAC Mortgage, LLC and Residential Funding Company, LLC, correct?

A. Correct.

Q. Were intercompany receivables and payables outside of the Residential Funding Company consolidated group reflected in Residential Funding Company's audited financial statements?

A. Yes.

Q. And that would include the intercompany balance between -- payable or

receivable between Residential Funding Company, LLC and Residential Capital, LLC, correct?

A. To the extent there was a balance, yes.

Q. And it would also reflect any intercompany payable or receivable between Residential Funding Company, LLC and GMAC Mortgage, LLC, correct?

A. Correct.

Q. What impact, if any, did intercompany balances have on net worth calculations?

A. A specific net worth calculation, there were different calculations for different state licenses or HUD licenses, et cetera, for different reasons.

Q. What impact, if any, did intercompany balances have on net worth calculations for HUD?

A. For HUD, intercompany receivables were not an allowed asset. They were removed as an asset.

Q. And how are intercompany payables treated?

A. Intercompany receivables and payables were netted within a relationship. So, to the

extent that a balance created -- the net balance was a receivable, it was ignored. To the extent that the net balance was a payable, it was included in the calculation. So it was a very conservative calculation.

Q. Do you know whether GMAC Mortgage reported financials to Fannie Mae?

A. I don't specifically recall if they did.

Q. Do you know whether GMAC Mortgage had to -- whether Freddie Mac had net worth requirements that GMAC Mortgage had to comply with?

A. I don't recall. I believe that that was included in our net worth calculations; that there was monitoring of those net worth balances. I don't know how that information was provided, who it was provided to.

Q. Do you know if GMAC Mortgage had to monitor its net worth for Ginnie Mae requirements also?

A. If it's in the net worth monitoring schedule, then we were monitoring it.

Q. You mentioned also that consolidated

Plaintiff's Objection 170:25-171:12: lack of personal knowledge (FRE 602)

financial statements of GMAC Mortgage and Residential Funding Company were provided to creditors. Which creditors received audited financial statements?

MR. KERR: Objection.

Q. Of GMAC Mortgage or Residential Funding.

MR. KERR: Objection.

A. The audited financials were provided to Treasury, who posted them to an Intralink site. I don't know who had access to that.

Q. Do you know -- do you know which agreements required reporting of audited financial statements for GMAC Mortgage?

A. I don't.

Q. Do you know any lending agreement that required reporting of financial statements for GMAC Mortgage?

A. I don't offhand. I assume the Ally revolver may have required it, but I don't know in particular.

Q. And do you know of any specific credit agreements that required reporting of the Residential Funding Company, LLC audited

financial statements?

A. I believe those were also required by the Ally revolver. Beyond that, I don't.

Q. To the best of your knowledge, those audited financial statements were also given to Treasury and then posted on an Intralink site for the appropriate creditors to access?

A. Correct.

Q. And would intercompany balance -- sorry. Would intercompany payables and receivables outside of the consolidated subsidiary group be reflected in its financial statements?

A. Yes. At the consolidation, any intercompany balance outside of that consolidation would have been reflected in those audited financial statements.

Q. And where would they be reflected?

A. Various places depending on if it was an intercompany receivable or an intercompany payable, and depending on the size of the balance, the receivables may have been reported in other assets. They may have been called out as a separate line item. Payables would have

been reported in borrowings.

Q. Do you know whether GMAC Residential Holding Company ever prepared its own consolidated financial statements?

A. I believe historically it did.

Q. And do you know whether Homecomings Financial, LLC ever prepared its own financial statements?

A. Again, historically, I believe it did.

MS. MILLER: Do you want to take a break or keep going?

THE WITNESS: I'm fine.

MR. KERR: Keep going. That's fine. Keep going. When you do want to take a break, just let us know.

MS. MILLER: I'm having fun, but...

(Pause in the proceedings.)

THE WITNESS: We can take a break.

MR. KERR: Why don't we take a break.

THE VIDEOGRAPHER: The time is 4:10. This is the end of tape labeled number 4. We'll be going off the record.

(Recess.)

THE VIDEOGRAPHER: This is the start

of tape labeled number 5. The time is 4:21. We are back on the record.

MS. MILLER: I would like to mark as Westman Exhibit 27 a document Bates-stamped EXAM00123277 through 336, and it is the consolidated financial statements for the years ended December 31, 2010 and 2009 of Residential Funding Company, LLC.

(Westman Exhibit 27, a document bearing Bates Nos. EXAM00123277 through 336, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, could you identify for me where in Exhibit 27 intercompany payables and receivables are reflected?

A. So, within page 4 in the consolidated balance sheet, in the assets, there is a receivable from parent and within liabilities there's also a line for borrowings from parent and affiliates.

Q. Do you have an understanding of which affiliate Residential Funding Company had a lending relationship with?

MR. KERR: Objection.

Plaintiff's Objection 174:22-175:, lack of personal knowledge (FRE 602)

A. Within the borrowings, it indicates borrowings from parent and affiliate. The only reference to affiliate is within the borrowings footnote.

Q. And what page is that on?

A. On page 36 and indicates Cerberus Secured Model Home Revolving Loan.

Q. Do you know whether intercompany --

MR. KERR: I'm sorry, have you finished looking into the document?

THE WITNESS: Uh-huh.

BY MS. MILLER:

Q. Do you know whether intercompany payables and receivables would also be reflected in the related-party transactions note on page 58?

A. Yes, to the, again, to the extent that there was a balance that survived this consolidation, it would be reflected on page 58 in Receivable From Parent and Borrowings - Parent and Affiliates.

MS. MILLER: I would like to mark as Westman Exhibit 28 a document Bates-stamped EXAM00234281 through 4349, which is the

consolidated financial statements for the years ending December 31, 2011 and 2010 for GMAC Mortgage, LLC.

(Westman Exhibit 28, a document bearing Bates Nos. EXAM00234281 through 4349, marked for identification, as of this date.)

MR. KERR: Atara, do you want her to do the same exercise?

MS. MILLER: Yes.

BY MS. MILLER:

Q. I was going to say I'm going to ask you to identify for me where in this document intercompany payables and receivables are reflected.

(Document review.)

THE WITNESS: Okay. Are we ready?

MR. KERR: Go ahead.

THE WITNESS: On page 4 within the balance sheet, there could be intercompany receivables included in the Other Asset line item and also under Liabilities in Borrowings From Parent.

Also would be included on page 31 in

Other Assets. It could be included under Receivables From Affiliates. On page 32 within the Borrowings footnote, Intercompany Balances could be reflected in the Borrowings From Affiliates.

On page 34, under the heading Borrowings From Parent and on page 65 in the Related Party footnote, it's Receivable from ResCap and Receivable from other affiliates, with Borrowings from RHC.

BY MS. MILLER:

Q. Would consolidated financial statements prepared by GMAC Residential Holding Company, LLC similarly reflect intercompany payables and receivables outside of the consolidated group?

Plaintiff's Objection 177:13-23: objection to form; vague and ambiguous; lack of personal knowledge (FRE 602)

A. I'm sorry, which financial statements?

Q. GMAC Residential Holding Company, LLC?

MR. KERR: Objection.

A. I'm not familiar with the GMAC Residential Holding Company financial statements. I'd have to look at them.

MS. MILLER: I'm going to mark as what has been Exhibit 29 a document Bates-stamped

EXAM00125358 through 416, which is the consolidated financial statements as of and for the years ending December 31, 2007 and 2006 of GMAC Residential Holding Company, LLC.

(Westman Exhibit 29, a document bearing Bates Nos. EXAM00125358 through 416, marked for identification, as of this date.)

THE WITNESS: So on page 1, this financial statement has liabilities for affiliate borrowings. I don't know what affiliates are included within that balance, but that could include intercompany payable balances.

On page 36 under Borrowings footnote, the same affiliate borrowings. There's also page 53, Related Party Transactions, that may or may not include information on receivables. This is listing out transactions with related parties.

BY MS. MILLER:

Q. Also on the consolidated balance sheet on page 56, there's a line item under Assets that says "Accounts receivable intercompany"?

MR. KERR: What page?

MS. MILLER: 56.

MR. KERR: Oh, 56. Okay.

BY MS. MILLER:

Q. And then Affiliate Borrowings or Accounts Payable Intercompany under Liabilities. Those would also reflect intercompany payables or receivables?

A. Yes, this is a -- yes, it would be included in those balances, to the extent they exist.

Q. Just so the record is clear, that was the consolidated balance sheet of GMAC Residential Holding Company and its subsidiaries supplemental schedule?

MS. MILLER: I would like to mark as Westman Exhibit 30 a document Bates-stamped RCUCCJSN30014296 through 299.

(Westman Exhibit 30, a document bearing Bates Nos. RCUCCJSN30014296 through 299, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, is it your

understanding -- sorry. Ms. Westman, were GMAC Mortgage's financial statements prepared in accordance with GAAP?

A. For what time period?

Q. For 2008 through 2011?

A. Yes.

Q. And were Residential Funding Company's financial statements prepared in accordance with GAAP for that same period?

A. Yes.

Q. Looking at the document that I have marked Westman Exhibit 30, it's an e-mail chain from July 10 and 11, 2012, regarding legal entity trial balance. Tell me what this document is relating to.

A. We produced a ResCap-level proforma trial balance that identifies assets and the particular facility that those assets are collateral for, and we also prepare a version of that document at each individual legal entity FTI used for various presentations, and this e-mail is discussing questions about how to identify certain balances within that schedule.

Q. Do you know what it means that

recoveries on interco are pledged assets?

A. That's not my statement so I can't interpret that statement.

Q. Looking at the e-mail at the bottom of the page numbered with the Bates number ending 296 from you to Liz Park and Filip Szymik, copying Mark Renzi and Rob Joslin, you state, "When we break these out by each individual legal entity, there are very large intercompany balances that show for each legal entity."

Do you know why you mentioned that in this context?

A. We produced this workbook at the ResCap level and the only intercompanies, as we have been discussing, that survived are with affiliates outside of ResCap. That is what normally at the ResCap level appears within this balance.

However, when we produced that workbook for every individual legal entity, while all those intercompanies eliminating consolidation, the question was how would we present them. Those particular intercompanies don't give the relationships, et cetera, and FTI

was using other intercompany documents to reflect however they were presenting those intercompany balances, so we were simply asking how they wanted it produced in the schedule so that they could use it appropriately for their purpose.

Q. And do you recall what the instruction you received was?

A. In reading Liz's response, she indicates that, "we can show the intercompany under revolver."

Q. What does that mean?

A. There's a column within the spreadsheet that indicates revolver. It indicates the collateral islands and she indicated we could leave it there; they would be removing them and replacing it with other information.

MS. MILLER: I would like to mark as Westman Exhibit 31 a document Bates-stamped RCJSN10015251 through 15268.

(Westman Exhibit 31, a document bearing Bates Nos. RCJSN10015251 through 15268, marked for identification, as of this

date.)

BY MS. MILLER:

Q. I've marked as Westman Exhibit 31 an e-mail chain -- well, an e-mail exchange between you and Janel Farley in March 2012 relating to an exchange that occurred in April, late April of 2011. Do you see that?

A. Yes.

Q. Is that an accurate description of what this e-mail chain is?

A. Yes.

Q. Do you remember the issue that was being addressed in April of 2011?

A. I don't. I need to read the e-mail chain.

Q. Sure. Take your time.

(Document review.)

Q. I'm going to direct your attention specifically to page 10015254 and the comment toward the bottom under Intercompany that says, "Inquiry of the appropriateness of considering collectability for intercompany receivables for standalone financial statements when the ability to be settled is in question. The facts for

this question is that RFC has a $2.3 billion receivable from its parent ResCap."

Does that refresh your recollection about what this e-mail chain in April of 2011 was about?

A. I'm familiar with that statement. I'm not necessarily familiar with this particular e-mail chain. It seems to be about a variety of topics, but I'm familiar with that statement.

Q. And what does that statement mean?

A. As part of our financial statements for RFC, there is a receivable from ResCap on its financial statements, and we had to evaluate that receivable for collectability as part of our year-end audit. And we did that evaluation and I think that question was coming up in this e-mail string of whether that was an open issue or a closed issue.

Q. And do you recall whether it was an open issue or a closed issue?

A. It was a closed issue.

Q. And what was the determination?

A. The determination was, from a GAAP perspective, that that intercompany receivable

could be reflected within the financial statements and it met the GAAP determination for collectability.

Q. And what is the GAAP determination for collectability?

A. It's just an analysis that we did and discussed with the auditors on whether that receivable could be collectable for GAAP purposes.

Q. So looking now, turning now to the page ending in 258, there's an e-mail about a week later in which Janel says to Kim Walsh, "The affiliate balance repayments aren't tied directly to any specific collateral cash flows, but we have a reasonable expectation that ResCap will have the capability to meet its obligations so no entry was recorded."

Is that consistent with your recollection of the conclusion of this inquiry?

MR. KERR: Objection.

A. The conclusion from the inquiry that we had with D&T was that the receivable could remain on the balance sheet of RFC Financial.

Q. And was that based on an assessment of

whether ResCap had the ability to meet its obligations?

A. Yes, it was based on a GAAP assessment of that.

MS. MILLER: I'd like to mark as Westman Exhibit 32 --

(Discussion off the record.)

MS. MILLER: I'd like to mark as Westman Exhibit 32 an document Bates-stamped EXAM12412896 through 897.

(Westman Exhibit 32, a document bearing Bates Nos. EXAM12412896 through 897, marked for identification, as of this date.)

BY MS. MILLER:

Q. I've marked as Exhibit 32 an e-mail dated March 22, 2012 from you to Cathy Dondzila regarding RFC/ResCap Receivable Support Memo and attaching a 12/31/12 Receivable Support Memo.

Do you recognize this document?

A. I do.

Q. Is it a document --

MR. KERR: Just I think the top e-mail is from Cathy to Barb.

MS. MILLER: Oh, sorry. You're right,

from Cathy to Barb.

BY MS. MILLER:

Q. The bottom e-mail is from you to Cathy Dondzila, but the top e-mail is in fact from Cathy to you.

MR. KERR: Right.

Q. Do you recognize the attachment to this e-mail?

A. Yes.

Q. And is it a document that you drafted?

A. Yes.

Q. Why did you prepare this intercompany -- this memo regarding the intercompany receivable between RFC and ResCap?

A. I drafted this memo to provide support to D&T as part of the year-end audit of RFC Financial statements in response to their question on that intercompany receivable reflected in those financial statements.

Q. And was the memo that you provided intended to support the recording of that intercompany receivable as a valid debt?

MR. KERR: Objection.

A. The memo was intended to support that

receivable being on our balance sheet within those financial statements and that it was a valid receivable to reflect in the financial statements.

Q. What was the basis for determining -- upon which you concluded that it was a valid receivable?

A. That it was a valid receivable as there was an ability for that to be collected, if necessary.

Q. And specifically, did you state that ResCap has $2.6 billion in equity and other major operating subsidiaries -- in its other major operating subsidiary GMAC Mortgage, and if required, ResCap could support its payable to RFC through sales or other liquidations of its GMACM holdings and that ResCap also maintains a $3.6 billion receivable from GMACM and could move assets from GMACM to RFC to reduce both outstanding balances?

A. Yes, that's stated in the memo.

Q. So is your conclusion that ResCap maintains the ability to support its intercompany obligations with RFC based in part

on ResCap's receivable from GMAC Mortgage?

MR. KERR: Objection.

A. Could you rephrase your question?

Q. You conclude in the memo that, "ResCap maintains the ability to support its intercompany obligations with RFC," correct?

A. Correct.

Q. Is that -- is that, based on your assessment of -- strike.

That conclusion is based, at least in part, on the intercompany receivable that ResCap has from GMACM, correct?

A. That the financial statements reflect that there is a receivable from GMAC Mortgage and that that could support the ability for ResCap to meet that obligation to RFC for financial statement purposes.

Q. And did you meet with Deloitte & Touche about this?

A. We did.

Q. Deloitte & Touche was GMACM's auditor; is that right?

A. And ResCap's auditor.

Q. And was Deloitte -- did Deloitte &

Plaintiff's Objection 189:25-190:4: lack of personal knowledge (FRE 602), hearsay (FRE 802)

Touche get comfort based on your memo that there should be no impairment to the receivable that RFC has from ResCap?

MR. KERR: Objection.

A. D&T signed off on the RFC Financial statements as they were presented.

Q. And as they were presented, included the full value of the receivable, correct?

A. It included the receivable from ResCap.

MS. MILLER: I'd like to mark as Westman Exhibit 33 a document Bates-stamped RCJSN10074531 through 536.

(Westman Exhibit 33, a document bearing Bates Nos. RCJSN10074531 through 536, marked for identification, as of this date.)

MS. MILLER: Let me just clarify that. Westman Exhibit 33 is -- has the Bates range RCJSN100074531 through 540. I have marked as Westman Exhibit 33 a Bill of Sale and Transfer Agreement dated as of April 22, 2011 by and between GMAC Mortgage, LLC and Residential Funding Company as well as a

related letter agreement re netting relating to transferred mortgage loans between Residential Funding Company, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, and Residential Capital, LLC.

BY MS. MILLER:

Q. Ms. Westman, have you ever seen these documents before?

A. I don't specifically recall if I have seen this.

Q. Looking at the document, do you see that the Bill of Sale and Transfer Agreement states that, "The seller, GMAC Mortgage, in consideration of $171,323,565.91 does hereby absolutely sell, transfer and assign to the Purchaser, without recourse except as set forth in this Bill of Sale, all right, title and interest in and to the Mortgage loans listed on Exhibit A"?

MR. KERR: I'm sorry. I apologize. Where are you reading from? You're reading from the --

MS. MILLER: The very first sentence of the agreement.

B. WESTMAN

MR. KERR: I see. Okay. Thank you. Apologize.

THE WITNESS: Yes, it says that.

BY MS. MILLER:

Q. And turning now to the netting, the letter agreement re netting relating to transfer mortgage loans, have you ever seen this document before?

A. I don't recall seeing it.

Q. Do you see that this document refers back to the Bill of Sale and Transfer Agreement that we just looked at?

A. Yes.

Q. And the netting letter says that, at the end of the first paragraph, "The purchaser, pursuant to the Bill of Sale, the purchaser is obligated to pay the seller $171-plus million as the purchase price for the mortgage loans?

A. Yes.

Q. Then if you look at page 2, can you read page 2 and tell me what's going on in this agreement? What's being accomplished by this netting agreement?

MR. KERR: She said she's never seen

this agreement before, so if you want her to read the words, she can, but I --

MS. MILLER: I believe this was -- I believe this document was produced as Ms. Westman as the custodian, but we'll confirm that.

MR. KERR: Okay. That's fine.

THE WITNESS: "In order to avoid cash transfers between themselves and to discharge their payment obligations in the amount set forth above, the parties hereto each agree that the obligations: (A) of the purchaser to pay the purchase price to the seller as consideration for the purchase of the mortgage loans pursuant to the Bill of Sale; (B) of the seller to pay $171,323,565.91 to GMAC-RHC as repayment of certain intercompany loans, of GMAC-RHC to pay $171,323,565.91 to ResCap as repayment of certain intercompany loans and of ResCap to pay $171,323,565.91 to the purchaser as repayment of certain intercompany loans will be netted against each other so that the respective obligations will be discharged

without a cash payment having been made as of the date thereof."

Do you want me to continue reading?

BY MS. MILLER:

Q. Sure.

A. "As a consequence of the foregoing netting (W) the seller hereby fully and finally discharges the purchaser from its obligation to pay the purchase price as consideration for the purchaser of the Mortgage loans pursuant to the Bill of Sale; (X) GMAC-RHC hereby fully and finally discharges the seller from its obligation to repay $171,323,565.91 to GMAC-RHC under the intercompany loans and subtract such amount from the total amount due by the seller to GMAC-RHC under the intercompany loans; (Y) ResCap hereby fully and finally discharges GMAC-RHC from its obligation to repay $171,323,565.91 to ResCap under the intercompany loans and subtract such amounts from the total amount due by GMAC-RHC to ResCap under the intercompany loans; (Z) the purchaser hereby fully and finally discharges ResCap from its obligation to repay $171,323,565.91 to the

purchaser under the intercompany loans and subtract such amounts from the total amount due by ResCap to the purchaser under the intercompany loans."

Q. In your experience at ResCap, have you seen other instances where the transfer of real assets were accomplished by intercompany receivable -- payables and receivable in lieu of actual transfer of cash?

MR. KERR: Objection.

A. I'm not aware of particular transactions, but yes, that's one of the reasons that we indicated can create intercompany or reduce intercompany balances is the transfer of assets without the exchange of cash.

Q. You see a reference in this document to intercompany loans between the seller GMAC Mortgage and GMAC-RHC?

A. Yes.

Q. And do you see a reference to intercompany loans in -- sorry, between GMAC-RHC and ResCap?

A. Yes.

Q. And do you also see a reference to

intercompany loans between ResCap and Residential Funding Company, LLC, the purchaser here?

A. Yes.

MS. MILLER: I've confirmed that Ms. Westman was the custodian for these documents.

MR. KERR: Okay.

MS. MILLER: A lot of paper goes across your desk, I understand.

I'd like to mark as Westman Exhibit 34 a document Bates-stamped RCUCCJSN30003025 through -- through 3029, and the documents I handed out, you can just pull off the pages after the second loose slip sheet.

Plaintiff's Objection 196:12-197:19 Lack of foundation (FRE 602, 901, 903)

MR. KERR: I'm sorry, what are you pulling off?

MS. MILLER: Pages after the second slip sheet are not related to this document.

(Westman Exhibit 34, a document bearing Bates Nos. RCUCCJSN30003025 through 3029, marked for identification, as of this date.)

MR. KERR: So just so we're clear, the

document that -- the exhibit that has been marked goes from RCUCCJSN30003025 to 3029, right?

MS. MILLER: Yes. Exactly.

MR. KERR: Okay. Thanks.

BY MS. MILLER:

Q. Ms. Westman, I have marked as Exhibit 34 a document chain that seems to trail over a number of months from November 30, 2012, through February 8, 2013 re: "Interco file," and in the top e-mail in that chain, the most recent one from February 8, 2013, which is an e-mail from Jacob Bazella to you and Mark Renzi, with a copy to Cathy Dondzila, Jake Bazella attaches a spreadsheet called "IC Relationships Balances Jan. 2008 through March 2012 to 2/8/13."

Do you see that?

A. Yes.

Q. Can you look at the attachment to the e-mail? Do you know what's identified, what's being identified on the first page of the attachment Bates-stamped 30 -- they're all Bates-stamped 3029, the first page of that spreadsheet?

A. This reflects a section of our intercompany receivable/payable spreadsheet for the top six balances. It was providing information about those balances.

Q. And can you tell me, looking at the second page to the sheet titled "IC Relationships January 2008 through March 2012," can you describe this document to me?

A. This document was created to attempt to research the intercompany -- these intercompany relationships and the types of transactions that created the intercompany receivable/payables.

So this is a monthly roll-forward of our monthly depiction of those balances looking for fluctuations in the balance to try to a identify and pinpoint transactions that may have generated portions of the balance.

Q. Looking at this spreadsheet which records changes in intercompany balances for each of the top six intercompany relationships for -- on a monthly basis for the years 2008, 2009, 2010, 2012 and the first quarter -- sorry, 2011 and the first quarter of 2012, is it

accurate to say that the balances in each intercompany account changed on a monthly basis within this period?

A. I'm going to take a while to confirm that every balance changed on a monthly basis on this spreadsheet for every month.

MR. KERR: We're all going to go blind while you do that, but that's okay.

A. I can't really see the numbers to a hundred percent verify that.

Q. Do you have any reason to doubt that the balances changed every month during that period?

A. I wouldn't know without reviewing them.

Q. You can go ahead and review them.

A. Okay.

(Document review.)

MR. KERR: Atara, we can have her read this if you want. I have noticed ones where they haven't changed. Many do change.

THE WITNESS: One did change.

MR. KERR: Having her sit here and look at all this stuff in this thing is --

you can use your time as you wish, but that -- if you look at the, for example, if you look at the GMAC Mortgage to Passive Asset Transaction for the first and second quarters of 2012. Those are just ones I found.

BY MS. MILLER:

Q. Ms. Westman, having reviewed this document and in particular the schedule, would you agree that in the vast majority of months, the balances -- the intercompany balances changed month over month for the -- in the years 2008 through Q12012?

A. For the ones that I have reviewed so far, yes.

Q. And is that consistent with your understanding of how these intercompany account balances were changed over time?

MR. KERR: Objection.

MS. MILLER: That's not a question. Strike it.

BY MS. MILLER:

Q. Is that consistent with your understanding of how these intercompany payables

and receivables were incurred?

A. I can't make a general statement about intercompany payables and receivables. Some of them may change and some of them did not change. It depended on whether transactions were recorded for those particular entities.

MS. MILLER: How do you want to deal with what we previously marked as Westman Exhibit 6 that we now have --

MR. KERR: Should we make it 6A?

MS. MILLER: -- a full set?

You want to replace 6?

MR. KERR: However you want to do it.

MS. MILLER: I guess 6A would be good.

MR. KERR: You replace it. Whatever you want to do. I'll do anything you want to do.

MS. MILLER: And we'll have a whole record discussion, but that's irrelevant.

You know what, let's just mark it where we are.

MR. KERR: Sure.

MS. MILLER: Okay. I'm going to mark as Westman Exhibit 35 the complete version

of the document that we previously marked as Westman Exhibit 6, which has a Bates range of RCUCCJSN30016049 through 16164.

(Westman Exhibit 35, a document bearing Bates Nos. RCUCCJSN30016049 through 16164, marked for identification, as of this date.)

BY MS. MILLER:

Q. So, as we discussed on the record a little bit earlier, this document seems to include two different portions of an e-mail chain, one that begins on the first page of the exhibit and one that begins at RCUCCJSN30016101.

I'm going to ask you to turn to the second iteration of this e-mail chain. In the e-mail on the bottom of page 16102, it's a March 20, 2012 e-mail from you to Jeremy Stern copying Cathy Dondzila in which you state, "Jeremy, attached is a listing of the top intercompany balances and some information about each. As I noted on the phone, this is still rough. I was just starting to work on it."

A. I'm sorry, which document were you reading? The front document?

Q. No, 16102. It's infinitely confusing.

If you turn to the very last page of Exhibit 35, is this the top ten intercompany listing that you referred to in your e-mail to Jeremy?

MR. KERR: Objection.

Q. If you look at the beginning of that e-mail on page 16101, the e-mail chain attaches two documents, one titled Top Ten Intercompany Relationships -- actually, three documents. One titled Top Ten Intercompany Relationships.xls, and one titled GMAC ResCap Note Issuance Facility Deed, and the third one "Note Certificate, 12/19/11.pdf."

Looking at the last page of Westman Exhibit 35, are you familiar with this document?

A. Yes.

Q. Can you tell me what it is?

A. It's a list of top ten intercompany balances and some information about the balances.

Q. Is this a list that you prepared?

A. To my knowledge, I did not prepare this list.

Q. Did you provide the information that's contained in this list?

A. I may have provided some of the information that's contained in the list.

Q. Are you familiar with the information contained in this list?

A. I've seen the document.

Q. Looking at the second entry for ResCap and Residential Funding Co., do you know what kind of transactions generated the intercompany balance between ResCap and Res Funding Co.?

A. I can't specifically say for any particular intercompany balance exactly what generated them because they're made up of thousands of different transactions.

Q. Do you know generally what kind of transactions?

A. So, generally, this is one of the relationships we have indicated that RFC was generating cash and pushing that up to ResCap through the cash management process. It's one of the ways that parts of this balance could be created.

Q. Okay. And looking at the intercompany

balance between Res Funding Co. and Homecomings Financial, do you know what type of transactions resulted in this intercompany balance?

A. The information provided in here was the best estimated reason why that balance was created. So, again, this was created -- this information was provided through conversations and looking at transactions to determine possible reasons, and so this was one of the reasons.

It was one of the activities that the two entities had with each other and could have created that balance.

Q. And what was that activity?

A. It indicates that loans were sold from Homecoming to its parent RFC and no cash was exchanged and an intercompany was recorded.

Q. So if I understand that, that's an exchange of assets for -- in exchange for an intercompany receivable?

A. Correct. That would be one example of an activity with those entities.

Q. And looking now at the intercompany between GMAC Mortgage and Passive Asset

Plaintiff's Objection 205:24-206:10 Incomplete (FRE 106)

Transaction, do you know what type of activities resulted in this -- in this intercompany balance?

A. Passive Asset Transactions was a holder of international notes and it would receive cash as a holder of those international notes in receipt of that cash through the cash management process, it would have pushed that cash up to its parent, GMAC Mortgage.

And so, again, that's an example of a relationship that we are aware of between those entities and a way that cash would be generated. It's not connected to any particular transaction or balance but a type of activity that would have occurred.

Q. And what about for GMAC Mortgage Servicer Advance and GMAC Mortgage?

A. GMAC Mortgage Servicer Advance, GMAC Mortgage Service -- excuse me, GMAC Mortgage Servicer Advance is not a ResCap owned legal entity, so this is a GAAP transaction to record GAAP accounting that's required between those entities because of the consolidation of that entity. And that GAAP recording of those

balances creates an -- can create intercompany transactions.

Q. Looking down to transaction 7 or intercompany relationship 7, "Balance Between GMAC Mortgage and Executive Trustee Services," what type of activities resulted in that intercompany balance?

A. Generally, this is indicating that -- these are the types of activities that ETS performed in its normal operations, and those operations generated cash and that cash would have been swept through the intercompany process through the cash management process.

Q. And what about for the intercompany balance between RFC Asset Holdings II and Residential Funding Co.?

A. This indicates that this was used for accounts payable, taxes payable and interest expense, but we weren't able to find much other documentation of the types of transactions that went through those particular entities.

Q. Did you conduct further research into what types of activities would generate that intercompany balance?

B. WESTMAN

A. We researched as much as we could as much information as we could identify.

MS. MILLER: I'd like to mark as Westman Exhibit 36 a document Bates-stamped RC40000118 through 137.

(Westman Exhibit 36, a document bearing Bates Nos. RC40000118 through 137, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, I have marked at Exhibit 36 a document titled "Ally Accounting Policy 1040 Intercompany Accounting," effective date January 1, 2011. Do you see that?

A. Yes.

Q. Are you familiar with this document?

A. Yes.

Q. What is this document?

A. It's one of Ally's accounting policies that talks about intercompany accounting and how that should be reflected within the financial statements.

Q. And did this accounting policy govern accounting within ResCap entities as well?

A. Yes.

Q. And looking at the bottom of page 122, the page with the ending Bates 122, under Intercompany Reporting and Reconciliations, does it state that, "Intercompany transactions should be booked to proper intercompany accounts, for both balance sheet and income statement accounts, to ensure efficiencies and consolidation and proper elimination of intercompany transactions"?

A. Yes, it states that.

Q. And did the same proposition that intercompany transactions should be booked to proper intercompany accounts hold true within ResCap?

A. Yes, certain intercompanies were booked through intercompany accounts. As we discussed earlier today, certain balances may not have been within specified intercompany accounts.

Q. What kind of balances would not have been within specified intercompany accounts?

A. Gain and loss between two ResCap entities or service fee income, service fee expense, may not -- those portions of the

transaction would not have been in an intercompany account but were maintained in another way to ensure that they were eliminated upon consolidation.

Q. Would you expect to see those in the P&L statements for the individual entities?

A. Those accounts would be. Those transactions would be within their income statements, yes.

Q. But the piece of the transaction that doesn't relate specifically to the gain or loss would be booked through the intercompany -- would be recorded in the intercompany accounts; is that correct?

A. If the intercompany transaction created intercompany receivables or payables, it would have been booked within intercompany accounts.

Q. Looking at page -- the page ending with the Bates 123, under Intercompany Transactions, it states that, "Prior to implementation, significant intercompany transactions should be reviewed and approved by business unit management and the tax department.

These intercompany transactions should also be formally documented."

Did that happen within ResCap?

A. ResCap had a program to review significant transactions or significant changes and document those, and so items of this nature could be involved in that change management process or that change management review.

This would be for new transactions, so that wouldn't apply necessarily on an ongoing activity posted under a transaction, but if there was a new relationship or a new type of transaction between the entities, that would be covered by the change management program.

Q. So would you consider fluctuations in intercompany balances based on the cash management process and the movement of cash to fall within this policy?

MR. KERR: This specific paragraph of the policy?

Q. The specific paragraph of the policy?

A. No, I would not. Those would be ongoing -- the change management process would be to review something that was a new or a

significant item, and once an operational process was established around that, additional activity within, that would not be considered a significant event.

Q. And so it's your understanding that no formal documentation would be required for additional activity?

MR. KERR: Objection.

A. I would not interpret this paragraph as indicating we had some obligation under this policy to document ongoing cash management transactions.

Q. And looking at the document -- sorry, looking at the page ending 125, under Debt Transactions, is it also your understanding that -- well, the second paragraph under Debt Transactions state that, "Intercompany loans between LoBs should not be funded until signed note or loan agreement has been finalized."

Is it your understanding that additional activity under existing intercompany relationships are also not subject to that requirement under this policy?

A. This requirement is for intercompany

transactions between lines of business. All of ResCap was defined as one line of business, so this would have been applicable if ResCap was having dealings with other Ally entities.

Q. And so it didn't matter if you were on the RFC or the GMAC side of the house; you were all one line of business?

A. Correct. Mortgage operations was one line of business.

Q. And looking at page 128 under Dividends, there's a description, a specific description of how dividends paid from a subsidiary to a payment company should be accounted for and eliminated in consolidation -- sorry, recorded and eliminated in consolidation.

Is that how subsidiaries -- dividends paid from a subsidiary within the ResCap group was accounted?

A. I'm not familiar with specific transactions where dividends would have occurred, but that would meet my general understanding of how it would occur.

MS. MILLER: I would like to mark as Westman 37 a document Bates-stamped

RCJSN10131858 through 878.

(Westman Exhibit 37, a document bearing Bates Nos. RCJSN10131858 through 878, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, looking at Exhibit 36 at the very top, it says "Next Review Date: December 1, 2012," and if you look at Westman Exhibit 37 --

A. I'm sorry, I'm not --

MR. KERR: I think she's referring to Exhibit 36.

Q. I'm sorry, looking back at Exhibit 36, it says, "Next Review Date: December 1, 2012," and then Westman 37 has an effective date of November 28, 2011 and a last review date of November 17, 2011.

Do you know if Exhibit 37 is an updated version of the same policy in Exhibit 36?

A. To my knowledge, they're two separate policies.

Q. And Exhibit 37 is titled "Ally General

Intercompany Accounting Policy." What did -- what does Exhibit 37 govern?

A. This is a policy regarding intercompany transactions and guidance that should be followed when performing those transactions.

Q. And is it your understanding that intercompany transactions that are governed by this agreement include additional activity within existing intercompany relationships?

A. This would cover those intercompany relationships. I don't know whether it covers particular transactions, but it would cover the intercompany relationships.

Q. Was this intended to address intra-ResCap intercompanies?

MR. KERR: Objection.

Plaintiff's Objection 215:16-22: lack of personal knowledge (FRE 802), hearsay (FRE 802)

Q. Sorry. Let me restate it. Does this policy relate to intra-ResCap intercompany?

A. Yes, I would interpret this as applying to those balances.

Q. Looking under Intercompany Responsibilities on page 10131872, which of these functions were to be performed by ResCap

employees as distinct from Ally employees?

A. So Ally would have performed A, Corporate Controller. Ally would have performed B, Enterprise Global Intercompany Process Owner. C would have been applicable to ResCap as a business unit.

Q. Who specifically at ResCap would have been responsible for complying with this portion of the policy?

A. Of this policy, Cathy Dondzila.

Q. Do you know whether she was the designated intercompany process owner for ResCap?

A. I do not know who was the designated process owner. So D would have been applicable to ResCap.

Q. Just going back to C for a minute, did you ever provide information during this period to Cathy Dondzila regarding whether business units -- whether ResCap was recording intercompany transactions on a timely, accurate and consistent basis?

A. I don't recall providing specific information. That would have been part of our

normal month-end close process that intercompany transactions were recorded in the normal course of business.

Q. And that's something that you were responsible for; is that right?

A. I was partially responsible along with others for that.

MS. MILLER: It's 5:45. I'm happy to keep going. I have one topic left and then --

MR. KERR: How much longer do you think you'll be on that topic?

MS. MILLER: Maybe half an hour.

MR. KERR: Let's take a break. Take a break, okay?

THE VIDEOGRAPHER: The time is 5:52. This is the end of tape labeled number 5. We're going off the record.

(Recess.)

THE VIDEOGRAPHER: This is the start of tape labeled number 6. The time is 6:07. We're back on the record.

MS. MILLER: I'd like to mark as Westman Exhibit 38 a document Bates-stamped

RCUCCJSN20080786 through 80790.

(Westman Exhibit 38, a document bearing Bates Nos. RCUCCJSN20080786 through 80790, marked for identification, as of this date.)

BY MS. MILLER:

Q. Ms. Westman, I have marked as Exhibit 38 an e-mail chain, the top e-mail -- the top e-mail of which is an e-mail from Cathy Dondzila to Mark Renzi and yourself dated April 22, 2012 regarding balance intercompany follow-up and attaching a spreadsheet titled Intercompany Questions Version 2, do you see that?

A. Yes.

Q. Can you describe for me how ResCap determined whether to forgive intercompany balances?

A. From the time period that I was involved, intercompany balances were forgiven generally to meet certain obligations for the particular entities. That might be to meet net worth requirements, and with certain international notes there were rights to do debt forgiveness included within those documents.

Q. When you say to meet net -- certain -- sorry. When you say to meet certain obligations for the particular entities, including net worth requirements, are those the net worth requirements that we discussed earlier, both regulatory and under certain borrowing facilities?

A. Correct.

Q. And how was a debt -- the forgiveness of debt effectuated?

A. Generally, it would be determined that a particular debt was a balance that we would look to forgive to solve a certain net worth issue, et cetera. That balance would be identified and documentation would be put together in a request form.

That would -- that request would go through Cathy, generally, and would be provided to the CFO or on up to board of directors or Executive Committee, depending on where it -- where it needed to go for the particular balance and dollar amount, and it would be presented for recommendation and approval.

Q. Were debts ever forgiven without

receiving CFO and/or board approval or Executive Committee approval?

A. To my knowledge, all debt forgiveness received the appropriate approvals as required by the particular transaction.

Q. And how were debt -- how is debt forgiveness recorded in the -- in ResCap's books and records?

A. The intercompany receivable/payable balances that were being forgiven would be reversed and the transaction would be recorded through equity through, depending on the direction of the balance, as an additional paid in capital transaction, either additional capital or reversal of capital.

Q. What do you mean when you say that the intercompany receivable or payable was -- that was being forgiven would be reversed?

A. If there was an intercompany receivable/payable between two entities and the receiving entity was going to forgive that balance, then on the particular entity with the receivable, that receivable would be credited and there would be a debit on that entity in

equity and then the reverse transaction on the entity with the payable.

Q. Could the debt forgiveness have been effectuated through a write-down of the receivable?

A. That would be a write-down of a receivable, as I just explained.

Q. I'm sorry, could the debt forgiveness have been effectuated through a write-down of the receivable without a corresponding entry in the equity balance?

A. The only instance that I'm aware of where debt forgiveness was not performed through equity was again in regard to certain international notes, where the receiving entity was within the GMAC Mortgage structure and the paying entity was within the ResCap structure, so they were not considered parent and subsidiary, they were considered more sister organizations, and in that case, the accounting guidance was that that could be effectuated through the income statement and so there would have been an income statement impact for the reversal of the intercompany balance.

Q. Do you know if there was -- if the there would have been a different tax consequence for forgiving the -- for effectuating the debt forgiveness, not for the equity account?

A. I'm not aware of the tax -- I wasn't a tax -- in the Tax Department. I'm not aware of how Tax treated the balances.

Q. In the process of collecting information and documents related to the intercompany balances, did you also collect information and documents related to debt forgiveness?

A. I did.

Q. And did you attempt to link the -- or, did you schedule -- sorry. Strike that. Did you schedule the debt forgiveness within the ResCap entities?

A. Could you rephrase the question? I'm not sure what you're referring to?

Q. Did you prepare a schedule of debt forgivenesses from 2008 forward within the ResCap entities?

A. I didn't personally create the

schedule, but yes, a schedule was created.

Q. And were efforts -- strike that.

Did you confirm that there were appropriate approvals for each debt forgiveness on that schedule?

A. We gathered all the debt forgiveness documents, so I gathered documents that I had in my team's possession and I believe Legal also provided additional documents so that, to my knowledge, documentation was obtained on all of the transactions.

MS. MILLER: I'm going to mark as Westman Exhibit 39 a document Bates-stamped RCUCCJSN00030215 through 3 -- it's all 30215. It's a native document, a document that was produced in native form.

(Westman Exhibit 39, a document bearing Bates Nos. RCUCCJSN00030215, marked for identification, as of this date.)

BY MS. MILLER:

Q. This is an example of a debt forgiveness schedule that was prepared in connection with your review of intercompany transactions and debt forgiveness?

MR. KERR: You are testing our eyes.

MS. MILLER: I promise I won't make her read it.

THE WITNESS: Yes, this is a version of the schedule.

BY MS. MILLER:

Q. Do you know how frequently cash -- do you know how frequently transactions that ran through -- that resulted from the cash management process were recorded in the general ledger?

A. Daily.

Q. And who aggregated the transactions that occurred during the day?

MR. KERR: Objection.

A. The general ledger.

Q. Were all transactions that occurred during that day -- sorry. Did all transactions that occurred through the cash management process happen at the same time in a given day?

A. I don't know what time of day they occurred.

Q. Is it possible that there were two transactions that occurred at different times?

A. Yes.

Q. From the same entity?

A. Yes, it's possible if there were two different wire transactions or two transactions that occurred.

Q. And would those be reflected in the general ledger as two different transactions or would they be aggregated on a daily basis and input in the general ledger?

A. Every journal entry transaction or wire transfer would be entered in the general ledger. It depends on how the transaction was fed to the ledger. If the transaction was fed through certain systems, I still believe each individual transaction would be recorded, but from those system feeds I'm not a hundred percent aware of how the system feed recorded those transactions.

Q. Was there any other system that tracked cash management process generated transactions?

A. There were other systems involved in Treasuries. There was a Quantum system where certain transactions or wire transfers were

performed through the Quantum system.

Q. Any other systems?

A. That's the main system that I'm aware of. There may be others from a Treasury perspective.

Q. What is the Quantum system?

A. The Quantum system was a system used by Treasury to perform certain transactions. So wire transfers could be effected through that system. They could also set up certain instruments in that system. For instance, the Ally revolver may be set up as an instrument within that system.

Q. And would Quantum then feed information to the general ledger?

A. Yes. Quantum produced its own trial balance and that would be uploaded to the general ledger.

Q. And how frequently was the Quantum trial balance uploaded to the general ledger?

A. I'm not aware of the cycle for uploading Quantum to the general ledger.

Q. Who at ResCap is the most knowledgeable person about the Quantum system?

B. WESTMAN

A. Currently, I -- I would say Paul Grande as the treasurer.

Q. Is there a central distributing agent within the cash management process?

A. I'm not sure what you mean by that.

Q. I mean was there a centralized account from which most disbursements on behalf of ResCap family entities were made?

A. Each entity may have an operating account, so GMAC Mortgage had an operating account and RFC had an operating account, and so in general, ordinary-course transactions might go through those operating accounts.

Q. And was cash aggregated at the ResCap level?

A. Yes. Generally, cash would be aggregated up to ResCap for payment to Ally under the line of credit or to ResCap to push back down to one of its other subsidiaries, so not all cash. If one of the operating entities needed cash, they may aggregate cash from their subsidiaries and use it.

Q. Who determined whether cash flowed up to ResCap or not or was held at the subsidiary

Plaintiff's Objection 227:7-23 Incomplete (FRE 106)

level?

A. Treasury.

MS. MILLER: That's all that I have. Thank you.

THE WITNESS: Okay. Thank you.

MR. KERR: You all done?

MS. MILLER: I'm done.

MR. KERR: I just have a couple quick questions.

EXAMINATION BY

MR. KERR:

Q. Can you pull out Exhibit 35.

MS. MILLER: Give me a minute. Mine are on the floor.

MR. KERR: Sure. It's this (indicating).

BY MR. KERR:

Q. If you could turn, Ms. Westman, to Bates page 16101.

MR. SILVERSCHOTZ: Which exhibit are you on?

MR. KERR: 35.

Q. Okay. And that is -- that was an e-mail that Ms. Miller asked you questions

about, do you recall that?

A. Yes.

Q. And there is a reference to attachment of Top Ten Intercompany Relationships.xls. Do you see that?

A. Yes.

Q. Okay. If you would turn to the first attachment after this e-mail, which is -- at the top of the page says "Document Produced Natively" and that is 16106?

A. Yes.

Q. And right after that is a spreadsheet. Do you know what that is?

A. Yes, that's an excerpt from our intercompany spreadsheet that we maintained --

Q. Okay.

A. -- within my team.

Q. And if you turn to the last page of this exhibit, which Ms. Miller asked you some questions about?

A. Yes.

Q. Is this a document that you prepared?

A. No.

Q. Is it a document that ResCap prepared?

B. WESTMAN

A. Not to my knowledge.

Q. Okay.

MR. KERR: No further questions.

Anybody else?

(No response.)

MR. KERR: You're done? Thank you.

MS. MILLER: Thank you.

THE VIDEOGRAPHER: The time is 6:28. That's the end of today's deposition. We'll be going off the record.

oOo

_____

BARBARA WESTMAN

Subscribed and sworn to
before me this day
of 2013.

_____

B. WESTMAN

CERTIFICATE

STATE OF NEW YORK )
: ss
COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That BARBARA WESTMAN, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 16th day of October, 2015.

---

KATHY S. KLEPFER, RPR, RMR, CRR, CLR

B. WESTMAN

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B. WESTMAN

NAME OF CASE: In Re Residential Capital LLC
DATE OF DEPOSITION: October 15, 2013
NAME OF WITNESS: Barbara Westman
Reason Codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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BARBARA WESTMAN

RESCAP

Adam J. Hunt
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104

Adam,

Attached is my signed and notorized deposition and errata sheet.

Thank you.

Barb

**Barb Westman**
RESCAP
Senior Director / Controller
952-857-7789
barbara.westman@gmacrescap.com

B. WESTMAN

A. Not to my knowledge.

Q. Okay.

MR. KERR: No further questions.

Anybody else?

(No response.)

MR. KERR: You're done? Thank you.

MS. MILLER: Thank you.

THE VIDEOGRAPHER: The time is 6:28. That's the end of today's deposition. We'll be going off the record.

oOo

Barbara J. Westman

BARBARA WESTMAN

Subscribed and sworn to before me this 7th day of November 2013.

KAY TURNER
Notary Public Minnesota
My commission expires
January 31, 2015

Kay Turner

**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.,***
**Case No. 12-12020(MG)**

Deponent: Barbara Westman
Deposition Date: October 15, 2013

| Citation | Testimony |
|---|---|
| 8:14-19 | However, if there is an issue of privilege that comes up ~~that~~ and you're not able to respond to the question without knowing whether or not you might be stepping into privilege areas, for that I think you should let Atara know and then we can discuss it at that time. |
| 15:10 | An~~d~~ HIA, Health Insurance Associate; |
| 17:2-4 | I moved to Minnesota and joined an organization called North American Life and Casualty, which later changed its name to Allianz Life. |
| 17:8 | I held several positions. |
| 17:20-25 | For a time period I worked within the Claims Department and ~~Managed Claims~~ managed claims. I managed financial claims audits. I don't recall other specifics while a manager.<br>Q. And did you have any other positions at North ~~America~~ American Life and Casualty? |
| 18:2-22 | Yes. I also held several ~~comptroller~~ controller and/or CFO positions for several divisions of the organization.<br>Q. And did you hold those ~~comptroller~~ controller and CFO positions contemporaneous with your financial manager positions?<br>A. No, those were promotions.<br>Q. Okay. And so how long -- when did you move into a ~~comptroller~~ controller position?<br>A. I don't recall the date.<br>Q. Do you remember approximately what year?<br>A. I don't.<br>Q. Do you recall how long you were in ~~comptroller~~ controller or CFO positions?<br>A. Ten to fifteen years.<br>Q. And how long were you at North ~~America~~ American Life in total?<br>2. Twenty years.<br>Q. And what were your responsibilities as ~~comptroller~~ controller? |
| 19:9 | Financial~~, financial~~ consulting for businesses. |
| 21:7 | Ally, as part of the revolver facility. |

| Citation | Testimony |
|---|---|
| 23:25-24:8 | I was responsible for financial controls, which included continuing with the Ally revolver and Ally line of credit funding facility~~,~~ reporting process~~;~~. I was also responsible for Sarbanes-Oxley or ~~SOx~~ SOX work for ResCap, and ~~also managed the~~ – I was responsible for the general ledger functions within ResCap and a change management function. |
| 25:-18-24 | The team that managed month-end process reported to me, so my responsibilities were ensuring ~~that the month-end~~ – that transactions were entered, that the month-end was properly closed and consolidated, and that we produced monthly trial balances and financial statements in a timely manner. |
| 27:14-16 | Again, if one entity sold assets to another entity, ~~that~~ the purchasing entity would record that asset. |
| 28:10-13 | I'm currently a senior director. I am also currently the ~~comptroller~~ controller.<br><br>Q. And when did you become the ~~comptroller~~ controller? |
| 30:6-8 | Are you asking for her to explain your understanding of ~~it or~~ an intercompany transaction – she's been using "intercompany balances." |
| 30:19-21 | That had to be forecasted on a daily basis to make ~~ensure~~ sure that we met the requirements of that agreement. |
| 41:24-42:6 | I don't know the specific process, but there was a forecasting process and ~~cash~~ —the Treasury Department managed those cash balances so it would know what cash was available and could calculate —~~calculate~~ that cash and determine what was required to be repaid or what borrowing might need to occur to meet the cash needs. |
| 47:5-11 | The policy generally discussed that transactions would be settled on a regular basis, and we determined that due to the functions of the cash management process, ~~that that~~ the policy would meet the requirement~~,~~ and did not need to be fully cash-settled, which would be counterintuitive to the cash management process. |
| 60:25 – 61:7 | Because I was involved in other functions or other processes within the line of credit so had a general knowledge of the agreement and the processes within the organization, and also, due to work on Sarbanes-Oxley, may have been aware of various ~~process~~ processes. |
| 71:22-23 | I know ~~the~~ that spreadsheets were sent. I don't recall how many versions were sent. |
| 75:21-25 | I wouldn't necessarily – I can't necessarily state if they called it an exception or an exception approval, but they did approve that that was a valid intercompany process and met the requirements for us to certify the balances. |

| Citation | Testimony |
|---|---|
| 101:19-102:2 | This was as part of research attempting to document the reasons behind certain intercompany transactions, and ~~these particular transactions~~ I had requested that Janel determine whether she was familiar with these particular transactions, ~~if~~ as she had recently worked on a project that might have made her familiar with these particular balances. |
| 102:23-24 | I don't believe so. I believe it's referring to the servicing advances. |
| 103:4-7 | Looking at the document with the Bates range ending in 4744, there's an e-mail from Michaeline Dugan to you dated February 23, 2012 regarding Executive ~~Custody~~ Trustee Services. |
| 109:17-23 | MR. KERR: I have had an opportunity over lunch to look at what has been marked as Westman Exhibit 8, and after reviewing it and reviewing the text of the e-mail more carefully, we're not going to assert privilege over this specific e-mail and you are ~~fee~~ free to question Ms. Westman about it. |
| 121:23-24 | They reflected the information from our general ledger to the best of ~~your~~ our knowledge. |
| 164:20 | Other than Ditech, not to my knowledge. |
| 165:7-9 | And ~~in 2000~~ were GMAC Mortgage's audited consolidated financial statements submitted to HUD in 2009, '10 and '11? |
| 181:20-182:7 | However, when we produced that workbook for every individual legal entity, while all those intercompanies ~~eliminating~~ eliminate in consolidation, the question was how would we present them. Those particular intercompanies don't give the relationships, et cetera, and FTI was using other intercompany documents to reflect however they were presenting those intercompany balances, so we were simply asking how they wanted it produced in the schedule so that they could use it appropriately for their purpose. |
| 185:21-24 | The conclusion from the inquiry that we had with D&T was that the receivable could remain on the balance sheet of ~~RFC Financial~~ RFC's financials. |
| 187:16-20 | I drafted this memo to provide support to D&T as part of the year-end audit of RFC ~~Financial~~ financial statements in response to their question on that intercompany receivable reflected in those financial statements. |
| 193:9-194-3 | "In order to avoid cash transfers between themselves and to discharge their payment obligations in the amounts set forth above, the parties hereto each agree that the obligations: (a) of the Purchaser to pay the Purchase Price to the Seller as consideration for the purchase of the mortgage loans pursuant to the Bill of Sale; (b) of the seller to pay $171,323,565.91 to GMAC-RHC as repayment of certain intercompany loans; (c) of GMAC-RHC to pay $171,323,565.91 to ResCap as repayment of certain intercompany loans; and (d) of ResCap to pay $171,323,565.91 to the Purchaser as repayment of certain intercompany loans; will be netted against each other so that the respective obligations will be discharged without a cash payment having been made as of the date thereof." |

| Citation | Testimony |
|---|---|
| 194:7-195:5 | "As a consequence of the foregoing netting: (w) the seller hereby fully and finally discharges the Purchaser from its obligation to pay the Purchase Price as consideration for the purchaser of the mortgage loans pursuant to the Bill of Sale; (x) GMAC-RHC hereby fully and finally discharges the Seller from its obligation to repay $171,323,565.91 to GMAC-RHC under the intercompany loans (and subtracts such amount from the total amount due by the Seller to GMAC-RHC under the intercompany loans); (y) ResCap hereby fully and finally discharges GMAC-RHC from its obligation to repay $171,323,565.91 to ResCap under the intercompany loans (and subtracts such amounts from the total amount due by GMAC-RHC to ResCap under the intercompany loans); (z) the Purchaser hereby fully and finally discharges ResCap from its obligation to repay $171,323,565.91 to the Purchaser under the intercompany loans (and subtracts such amounts from the total amount due by ResCap to the purchaser under the intercompany loans)." |
| 198:16-19 | So this is a monthly roll-forward ~~of our~~ or a monthly depiction of those balances looking for fluctuations in the balance to try to ~~a~~ identify and pinpoint transactions that may have generated portions of the balance. |
| | |
| 208:2-3 | We researched as much as we could. We looked at as much information as we could identify. |
| 211:23-12:5 | Those would be ongoing – the change management process would be to review something that was a new or a significant item, and once an operational process was established around that, additional activity within~~,~~ that would not be considered a significant event. |
| 213:11-16 | And looking at page 128 under Dividends, there's a description, a specific description of how dividends paid from a subsidiary to a ~~payment~~ parent company should be accounted for and eliminated in consolidation -- sorry, recorded and eliminated in consolidation. |
| 220:10-16 | The intercompany receivable/payable balances that were being forgiven would be reversed and the transaction would be recorded through equity ~~through~~. Depending on the direction of the balance, it would be recorded as an additional paid in capital transaction, either additional capital or reversal of capital. |
| 222:20-21 | Could you rephrase the question? I'm not sure what you're referring to~~?~~. |
| 225:23-226:2 | There were other systems involved in ~~Treasuries~~ Treasury. There was a Quantum system where certain transactions or wire transfers were performed through the Quantum system. |

Date: 11-7-13

Signed: Barbara J Westman

Barbara Westman

C. Dondzila

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020(MG)

In re: )

RESIDENTIAL CAPITAL, LLC, )

et al )

Debtors. )

# DEPOSITION OF CATHY DONDZILA

Washington, D.C.

October 17, 2013

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Designation & Counter-Designation
Orange Highlighting = Joint Designation

Reported by: Mary Ann Payonk, NCRR

Job No. 66921

C. Dondzila

October 17, 2013

10:04 a.m.

Deposition of CATHY DONDZILA, held at the law offices of Morrison & Foerster, 2000 Pennsylvania Avenue, N.W., Washington, D.C., pursuant to Notice before Mary Ann Payonk, NCRR, Nationally Certified Realtime Reporter and Notary Public of the District of Columbia.

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ON BEHALF OF DEBTOR and THE WITNESS:

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ALSO PRESENT:

Jordan Mummert, Legal Video Specialist
Jennifer Scoliard, Esquire
V.P., Assistant General Counsel
Ocwen Financial Corporation

C. Dondzila

THE VIDEOGRAPHER: This is the start of the tape labeled number 1 of the videotaped deposition of Cathy Dondzila In Re: Residential Capital LLC.

This deposition is taking place at 2000 Pennsylvania Avenue, Northwest, Washington, D.C. on October 17, 2013, at approximately 10:04 a.m.

My name is Jordan Mummert from TSG Reporting, Inc. I'm the legal video specialist.

The court reporter is Mary Ann Payonk, in association with TSG Reporting.

Will the counsel please introduce yourselves?

(Whereupon, counsel placed their appearances on the video record.)

THE VIDEOGRAPHER: The reporter may swear the witness.

C. Dondzila

CATHY DONDZILA,

called as a witness, having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PERRY:

Q. Good morning, Ms. Dondzila.

A. Good morning.

Q. So have you been deposed before?

A. I have not.

Q. Let me just go over a few of the ground rules for you.

I'm going to be asking you some questions. You're going to be giving answers. For the court reporter to take everything down, I'd ask that you let me finish my question before you start giving an answer. If you remember verbal responses, she can't take down head nods and the like. And I'll try and remind you as we go through the day.

If you don't understand one of my questions, please let me know and I'll do my best to rephrase it and make it more clear to you.

If you have a concern or a question about privilege, you're entitled to consult with your counsel. Otherwise, you may be hearing objections being made during the course of the deposition. I'd ask that you answer the question unless the objection involves privilege.

Do you have any questions?

A. I do not.

Q. Okay. Can you give me a run-through of your resume?

A. I am a graduate of Washington University in St. Louis, graduating in December of 1983. Immediately went into the employ of Touche Ross, now Deloitte & Touche. Worked with them for approximately nine years, left for a short turn with Credit Suisse First Boston in their internal audit department, and after probably six or eight months, left Credit Suisse First Boston and joined Bear Stearns. Left Bear Stearns in January of 2004 to join Freddie Mac, and in 2006 left Freddie Mac, did some private consulting with various clients, including GMAC, now Ally Financial, and in I

believe April of 2008 joined Residential Capital as a full-time employee. And left there in February of 2013 and am now employed at Ocwen Financial.

Q. So let's go back. Did you obtain a degree from Washington University?

A. I did. I have a Bachelor of Science with a concentration in accounting and finance.

Q. Are you a CPA?

A. I have passed the CPA exam. I am not active.

Q. Do you currently hold any professional licenses?

A. I do not.

Q. And other than the CPA license, have you ever held any other professional licenses?

A. I have. When I was at Bear Stearns, I believe, I had several Series 7, and there could have been another possibly Series 63. I don't remember exactly the number, but I did have some licenses at Bear Stearns.

Q. And what did you do at Touche Ross?

A. I was a member of the audit department and progressed from assistant to

senior manager performing audits for various clients.

Q. And what did you do at Credit Suisse?

A. I was a manager in the internal audit department.

Q. And how about at Bear Stearns?

A. I was part of the accounting department, progressing through the course of my career to be the senior managing director, business unit, controller for fixed income sales and trading.

Q. And what was your position at Freddie Mac?

A. I was a senior vice president, business unit -- I forget if we called ourselves business unit controllers or business unit accountants, but I was responsible for all of the accounting for the various business units within Freddie Mac.

Q. What was the nature of the private consulting work that you did for GMAC before you started there?

A. I was engaged to assist with a corporate objective of improving their close

process and worked to project manage across the organization to achieve that objective.

Q. And when you start with -- did you start with ResCap in 2008?

A. In --

Q. Let me ask this. What entity did you begin work for in April 2008?

A. I was employed by ResCap in 2008.

Q. And did you remain employed by ResCap for the entirety of your employment?

A. I did not. There was a period of time where we were switched to become employees of Ally, GMAC at that point, but now Ally Financial. And subsequently, we were then rebadged back to ResCap.

Q. Did your job responsibilities change when you were switched to Ally?

A. No.

Q. What were your responsibilities during the first time that you were employed at ResCap?

A. I started as the controller for the residential finance group, which was a segment then of ResCap.

Q. Do you know what entities, legal entities were housed in the residential finance group?

A. It would have cut across various legal entities, the most significant of which would have been GMAC Mortgage Corporation and Residential Funding Company, but would have included activities that were recorded and executed by other subsidiaries of those two entities.

Q. Did your title as controller for the residential financial group change during your five years with ResCap and Ally?

A. My role and my title did change, yes.

Q. Okay. When did that change occur?

A. The -- I believe it would have been in January or February of 2009. The then-controller of Residential Capital resigned and I was asked to take that role, which I did, and so in early 2009, I would have stepped into the role of controller for Residential Capital.

Q. And what additional responsibilities were involved in being the controller of Residential Capital?

A. There were a variety of segments within Residential Capital, so within my role I would have been responsible for the entire consolidated results -- the accounting process related to the entire consolidated results, and additionally, the preparation and review and issuance of financial statements for Residential Capital and any of its subsidiaries that required separate financial statements.

Q. Why did -- which of Residential Capital's subsidiaries required separate financial statements?

MR. LIPPS: At what particular point in time?

MR. PERRY: From 2009 forward.

A. Residential Capital as a condition of their indentures and as, at the time, a registered public company with the SEC, GMAC Mortgage in connection with its various state licenses, certain of its liquidity facilities and certain of its other contracts, including HUD and Ginnie Mae, Residential Funding Company for similar reasons as GMAC Mortgage, Ditech, I believe it was Ditech Financial but I may not

be getting the full name of that entity correct, but Ditech again for state licenses. And I don't know exactly what year Homecomings Financial stopped issuing financial statements. It may have been 2008 was the last set of financial statements for Homecomings, but Homecomings Financial also as part of its licensed activities had separate company financial statements prepared.

Q. Why did Homecomings stop issuing separate financial statements?

A. All of its business activities were sold, transferred, or discontinued, and it no longer had any licensing requirements that required financial statements.

Q. Was Homecomings -- when you say Homecomings, are you referring to Homecomings Financial LLC?

A. Yes.

Q. Did it stop conducting business activities in or around 2008?

A. I don't know the exact year that it stopped doing its business activities.

Q. And at the point that it stopped

doing its business activities did it maintain any assets?

A. It did.

Q. And what were its assets?

A. I don't know.

Q. And do you know why it wasn't wound up at the point in time when it stopped doing business?

A. Homecomings was listed as the named servicer for a variety of different, I believe private label securitizations, and the cost, effort, and exercise of having that changed was prohibitive, but until that was completed, it could not be shut down.

(Dondzila Exhibit No. 1 was marked for identification.)

BY MR. PERRY:

Q. Before you is Deposition Exhibit Dondzila 1. It purports to be a consolidated financial statement for Homecomings Financial LLC for the year ended December 2008. I'll represent to you, Ms. Dondzila, that we've looked in the production of documents that have been made in

the case. This is the last financial statement for Homecomings that we see produced. Can you just take a moment to review it?

My question to you is: Do you have any reason to believe that financial statements were prepared for Homecomings at any point after the year ended December 31, 2008?

MR. LIPPS: Objection. I think she answered that before, but go ahead.

A. I have no reason to believe that financials would have been issued for Homecomings Financial LLC after the period presented.

Q. And in terms of Homecomings' assets, are you able to identify from your review of Dondzila Exhibit 1 the nature of Homecomings' assets, at least as of year ended December 31, 2008?

MR. LIPPS: Objection to form. Go ahead.

A. I can review and see the balance sheet as presented, the consolidated balance sheet, and could recite certainly the assets and liabilities presented.

Q. Well, there's a notation on the balance sheet -- and this for the record is the page stamped 2 and Bates labeled 122168. Do you see there it says affiliate receivables net? Is that a billion-dollar number?

A. The amount presented is $1,051,047,000.

Q. Okay.

A. Rounded, presented in thousands.

Q. And do you know the nature of the affiliate receivable that was carried on the balance sheet of Homecomings?

A. I don't recall.

Q. Do you know which entities owed funds to Homecomings?

A. I don't know that without either closer review of the financial statements in the event that it's disclosed. I don't know that.

Q. Do you know whether there was ever any attempt to reconcile or pay, cash-settle the affiliate balances with Homecomings LLC?

A. There were monthly activities that ensured that balances between affiliates

reconciled, so I can confirm that there would have been reconciliation activities that occurred.

I am not aware of any activities related to settlements or payments related to those.

Q. Are you aware of any debt forgiveness with respect to Homecomings Financial LLC?

A. No.

Q. Is it correct that Homecomings Financial LLC was a guarantor on the junior secured notes, to your knowledge?

A. Not that I recall.

Q. Did the -- did your department maintain a list or an organizational chart that identified which entities served as guarantors and borrowers under the various facilities that the Residential Capital business had in place?

A. We would have as part of our SEC filings been required to provide schedules that identified guarantor entities.

Q. Did there come a time when -- strike that.

Did there come a time when you and

the people that reported to you began to scrutinize the intercompany balances among the various entities under Residential Capital LLC?

A. As I mentioned earlier, there would have been monthly activities that would have reconciled to ensure that all intercompany balances and activity was properly eliminated and also that any balances reconciled. So that would have been an ongoing, recurring close activity.

Separately, at some point, Ally -- well, sorry. So we would have then periodically had occasion to review intercompany balances and other intercompany activities to the extent that we were looking at solvency and calculating various calculations for adjusted net worth, which would have occurred on a monthly basis, because we had to first off make sure that all entities were solvent under the definition as provided in the legal documents and contracts.

We also would have had as applicable calculations of adjusted net worth which did involve in certain states, in certain

instances, evaluations of intercompany balances.

We would have also, in connection with the dissolution of entities and legal entity minimization type initiatives on behalf of the organization, would have looked at, had occasion to look at intercompany balances.

We would have also looked at intercompany balances if or when there were circumstances that suggested we might need to use debt forgiveness as a means of maintaining compliance with adjusted net worth calculations and regulatory compliance with requirements.

We also then separately, sometime in 2012, as a result of the implementation of our parent, Ally Financial, of a certification requirement, and also due to the issuance of a policy, would have undertaken an initiative to determine whether or if we were in compliance with that policy, and in order to support our certification.

Q. Okay. Let me try and unpack that a little bit.

Focusing on the first item that you

referenced in your prior answer, as I understood it, you -- there was an effort on the part of the controller's office to make sure that all of the entities under the ResCap LLC umbrella were solvent. Is that correct?

MR. LIPPS: Objection. Go ahead.

A. We monitored for solvency as part of the requirements of various of our liquidity facilities.

Q. And which of your liquidity facilities had solvency requirements in them?

A. The Ally Financial revolver, Ally Financial line of credit, and then I believe by -- at some point, all other liquidity facilities had it in large part because they all began to reference, mirror and sort of attach to each other in some fashion, so if changes were made to one, they were effective for all.

Q. And when you say monitor for solvency, what do you mean by that?

A. The definition of solvency was prescribed within each of the documents, and we would, on a monthly basis, be required to

ensure that each entity to which that solvency requirement applied met the threshold.

Q. And was there a document that you had that you would refer to that contained the definition of solvency prescribed in the documents?

A. Yes.

Q. Did you look at the lending documents themselves, or did you have some form of sheet that provided a test for you?

A. There was a sheet that was circulated by the treasury department that had summaries of the relevant certification requirements under each of the agreements that we used.

Q. And for purposes of making your solvency determination, did you consider intercompany balances for each of the individual entities for which you were evaluating solvency?

A. They would have formed assets or liabilities of the entities as recorded and so they would have been considered. There were no special adjustments for them, but they would have been considered as assets or liabilities

of the respective companies.

Q. Okay. So just to be clear, when you were evaluating solvency of, let's just say, GMAC Mortgage LLC, any receivables that GMAC Mortgage had from its affiliates pursuant to an intercompany was taken as an asset for purposes of your solvency analysis; correct?

A. That's correct.

MR. LIPPS: Objection to form.

A. Sorry.

Q. And do you -- maybe I asked this before, and if I did, I apologize. Do you recall which of the entities were monitored for solvency, let's just say, in 2009 forward?

A. I don't recall all of them. Obviously, GMAC Mortgage and Residential Funding Company were part of that, but there were certainly other entities that were monitored under those provisions.

Q. Was GMAC Residential Holding Company LLC monitored for solvency purposes?

A. I don't recall.

Q. Was Home Connects Lending Services LLC monitored for solvency purposes?

A. I don't recall.

Q. Was Passive Asset Transactions LLC monitored for solvency purposes?

A. I believe, yes, that that entity was.

Q. Was Residential Capital LLC monitored for solvency purposes?

A. Yes.

Q. And was Executive Trustee Services LLC monitored for solvency purposes?

A. I don't recall.

Q. Was RFC Asset Holdings II LLC monitored for solvency purposes?

A. I don't recall.

Q. And was Homecomings Financial LLC monitored for solvency purposes?

A. I don't recall.

Q. Okay. Turning to the -- you've testified there was solvency monitoring for purposes of the liquidity facilities. You also referenced regulatory compliance requirements with certain states. Can you explain what you meant by that?

A. In connection with the state licenses held by one or more of the entities within the

ResCap family, states would have a variety of different requirements, some of which were financial, and a member of my team would monitor the financial requirements that could -- and those states could involve establishment of a minimum net worth amount, each having their own definition of net worth. We did not monitor every state license requirement. We monitored the most restrictive of them.

In certain states, there were also requirements that could be linked to the size of the serviced portfolio. That was also monitored by us, and that would set sort of the amount of net worth that was required to be held.

Q. Now, did the state solvency requirements or the state net worth requirements, were they -- were the requirements the same or did they vary from state to state?

MR. LIPPS: Objection, asked and answered. Go ahead.

A. They varied by state.

Q. Okay. And what about on a state-to-state basis, were the assets and liabilities you could consider for purposes of the net worth analysis the same or did they differ?

A. Each had their own definition of what was allowable and what went into the calculation or didn't.

Q. And is it fair to say that in some states, intercompany balances were allowable and in other states, they were not, for purposes of the net worth calculation?

A. Yes, that's fair to say.

Q. Now, you also referenced a -- let me back up for a second.

Was there -- would Residential Funding have to make an affirmative certification to the various state regulators as a result of the net worth analysis that you did?

A. I don't know if there were any affirmative certifications that were provided.

Q. Who would have provided those certifications if they were required?

A. People in the compliance department.

Q. And would you send the results of the analysis that your department did on net worth to the compliance department on a regular basis?

A. I don't know if we sent them the actual results or if we just sent a notification that we were in compliance.

Q. And who from the compliance department was in charge of ensuring compliance with the adjusted net worth requirements of the various states?

A. I don't recall who in compliance did that.

Q. You also mentioned in your answer a certification requirement that came down in 2012. What did you mean by that?

MR. LIPPS: Objection, form. But go ahead.

A. In connection with the issuance of their public financials on a quarterly and annual basis, Ally Financial required each of the business segments, as they define them, to provide certifications in support of the

signatures that executives would be -- and affirmations that executives of Ally Financial would be making in connection with those financial statements.

A component of those certifications, in 2012, there was a part that was added that related to compliance with the recently issued intercompany accounting policy.

Q. Do you know what led to the issuance of an intercompany policy in 2012?

A. I don't recall.

Q. Do you recall the nature of that policy?

A. No.

Q. In terms of certifying compliance with the policy, did you have occasion to evaluate whether the intercompany balances that were reflected on ResCap's books and records were actually collectable?

A. I don't recall all of the specific requirements of the policy.

Q. Was it more than simply ensuring that intercompany balance is eliminated in consolidation?

C. Dondzila

MR. O'NEILL: Objection, form.

A. I don't recall all the components of the policy.

(Dondzila Exhibit No. 2 was marked for identification.)

BY MR. PERRY:

Q. Before you, Ms. Dondzila, is Dondzila Deposition Exhibit 2. It's an email with an accompanying Excel spreadsheet. It bears the Bates label RCUCCJSN20085254. Can you just take a moment to familiarize yourself with the document?

Have you completed your review of Dondzila Exhibit 2?

A. I have.

Q. First question: The subject line -- well, who's Barbara Westman?

A. Barbara Westman at the time of this email, February 23, 2012, was reporting to me as a senior director of accounting operations and compliance.

Q. And she writes you an email with the subject line "Intercompany Questions."

First question: Who was it that had

raised questions about intercompanies in or around February of 2012?

A. I don't recall.

Q. Do you know for what purpose the Excel spreadsheet attached to the email in Dondzila Exhibit 2 was prepared?

A. I do not.

Q. And if you go to the first page of the spreadsheet, there's some analysis of five intercompany balances. Do you see that?

A. I do.

Q. Focusing in the first instance on the description of the balance between Residential Capital and GMAC Residential Holdings, you see it says, "This balance acts as an LOC where GMACM can borrow funds, or contribute funds to ResCap as needed. This borrowing is funneled through its parent, Resi Holdings." Do you see that?

A. I do.

Q. Do you understand the term LOC to mean letter of credit?

A. I do.

Q. And is this, in your view, an

accurate statement of how the balance between Residential Capital and GMAC Residential Holdings functioned in or around February 2012?

A. Can you repeat the question, please?

Q. Is the description contained on this document consistent with your understanding of how the intercompany balance between GMACM or GMAC Residential Holdings and Residential Capital functioned in 2012 and previously?

A. Yes, I would say that that's consistent for the period of time that I was part of ResCap. I cannot speak to any time prior to my taking a permanent role within ResCap.

Q. Okay. And focusing your attention on the description one down of the Residential Capital/Residential Funding Company relationship, would you agree that that relationship was similar to the Residential Capital/GMAC Residential Holdings intercompany balance, at least insofar as the balance acted as a letter of credit where Residential Funding Company could borrow funds or contribute funds to ResCap as needed?

MR. LIPPS: Objection to form.

A. I first need to correct my earlier agreement with your statement that it's a letter of credit. I would actually call it a line of credit, not a letter of credit. But I would say that it -- again, for the period of time that I was there, this relationship would have been similar between Residential Capital and Residential Funding Company to the one above.

Q. Okay. And just so I understand it, the main operating companies were GMACM and Residential Funding Company; correct?

A. Those were the primary operating companies, yes.

Q. And when they needed capital, they were able to access it from Residential Capital LLC through intercompany transfers; correct?

A. Residential Capital, as the holding company that issued public debt, would then use those funds, yes, would deploy those funds into its operating companies, Residential Funding -- principally, Residential Funding Company and GMAC Mortgage.

Q. And the concept was it was like a line of credit where, when the operating companies needed money, they'd have access to it, and then when they -- conversely, when they generated funds, they would upstream them to the parent in satisfaction of the line of credit; correct?

MR. LIPPS: Objection to form.

A. I don't believe that I can definitively state that the repatriation of cash back was, in fact, in a form intended to be a repayment. It was cash that was cycled up -- back to the holding company, but I would -- I do not have knowledge that it was specifically and solely intended to function as a repayment of debt.

Q. Okay. But whatever the intention was, the cycling of cash up would result in a reduction of the line of credit; correct?

A. That is correct.

Q. Looking at the third balance between Residential Funding and Homecomings Financial, it says the majority of this balance was created in 2008 when loans were sold from

Homecomings to its parent. No cash was exchanged.

Do you have any knowledge of how the Homecomings intercompany balance was created?

A. I don't have detailed knowledge of how that balance was created, no.

Q. And by this point in time, the only reason that Homecomings had not been wound up was because of the testimony you provided earlier about it being prohibitively expensive to do so, given its role as servicer under certain of the private label securitizations and other related issues; correct?

MR. LIPPS: Objection, form, characterization. And it's already been asked and answered and testified to by her. Go ahead.

A. I don't believe that my response was solely limited to the prohibitive expense. There were also administrative and other issues in addition to expense, so it wasn't solely limited to just the cost of doing it.

But my understanding is that that was a significant reason for why those were not --

Q. Okay.

A. -- liquidated. That entity, sorry, was not liquidated.

Q. Going down to the balance of GMAC Mortgage and Passive Assets Transactions. Is Passive Asset Transactions, did you call it PATI internally?

A. We did.

Q. And do you have any personal knowledge about the nature of the balance between PATI and GMAC Mortgage?

A. PATI was the owner of notes issued by two special purpose entities that were secured in whole by assets from our international operations. Those notes were as -- as those special purpose vehicles liquidated those assets, proceeds from those asset liquidations would have been distributed to the noteholders, which PATI was, and that would have generated cash within PATI, and as part of the sweeps that would occur, cash would be taken out of entities and swept up to a consolidated sort of treasury cash management function. And the sweep of cash would have resulted from the

creation of intercompany balances.

Q. How frequently did the cash sweeps occur?

A. I don't know how quickly -- how frequently those happened.

Q. Was it on a monthly, daily, weekly basis?

MR. LIPPS: Objection. Go ahead.

A. You'd have to check with treasury.

Q. And by this point in time in 2012, did PATI have any remaining assets, or had all the loans that served as its assets been sold?

A. Those were not the only assets within PATI that I recall. So it's possible that there were other assets within the entity.

Q. And going down to the next intercompany balance between GMAC Mortgage and Executive Trustee Services. What was the business of Executive Trustee Services?

A. To my knowledge, the business activities -- the principal business activities of Executive Trustee Services, which was composed of more than just a single entity, but that group of companies were attempts at

recovery against losses that were incurred for liquidated loans. So attempting to collect from borrowers any amounts that had been lost through other avenues, and also providing trustee services around the foreclosure process, so -- and for that, they received revenue.

Q. And is it the case that the revenue was then swept up as part of the process you described earlier in your testimony?

A. The revenue of the organization less the expenses that it incurred in connection with its business activities would have been part of the treasury centralized cash management process and would have been swept up.

Q. Okay. And similar to PATI, after the -- when the cash was swept up, Executive Trustee Services would receive a receivable in the form of an intercompany notation; correct?

A. That is correct.

Q. Okay. Now, do you know whether Executive Trustee Services pledged its equity in connection with the junior secured notes?

A. I don't recall.

Q. And do you -- similarly, do you know whether PATI was a pledger of its equity under the junior secured notes?

A. I don't recall.

(Dondzila Exhibit No. 3 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Exhibit 3. It appears to be a draft -- well, is this document -- can you identify this document as a draft of the GMAC Mortgage LLC consolidated financial statements for the years ended December 2011 and December 2010?

MR. LIPPS: Talking about the attachment to the email?

MR. PERRY: The attachment, yes.

A. It's not obvious from the review of the attachment that it's a draft, but based on the cover memo, which I assume included the documents that were printed as the attachment, I would assume that that -- these would be drafts, yes.

Q. Why were you preparing financial

statements for two years rather than just a single year?

A. I don't recall.

Q. Was it always the case that the financial statements for GMAC Mortgage LLC contained two years of financial information?

A. To my knowledge for the period while I was there and responsible for the issuance, yes, it included two years.

Q. Okay. And was it prepared annually, or every two years?

A. It was prepared annually.

Q. Now, at some point in time, did you begin meeting with representatives of FTI Consulting?

A. Yes, in connection with the ResCap bankruptcy.

Q. Do you recall roughly when you began meeting with representatives of FTI Consulting in connection with the ResCap bankruptcy?

A. I don't recall the exact date.

(Dondzila Exhibit No. 4 was marked for identification.)

BY MR. PERRY:

C. Dondzila

Q. Before you is Dondzila Exhibit 4. It's an email bearing the hopelessly complex Bates label RCJSNII10014735, and it's an email from Jeremy Stern to you and others.

First question: Is this in or around the time that you first began meeting with FTI?

A. I don't recall when our first interactions began.

Q. And do you recall FTI being interested and asking you to focus on ResCap intercompany information?

A. We -- yes, FTI was interested in intercompany information.

Q. Did they explain to you why they were interested in intercompany information?

A. As I recall, it was in part in connection with their waterfall analysis, and it was in part in connection with inquiries coming from various interested parties in the bankruptcy.

Q. And what did you understand FTI's waterfall analysis to be?

A. An analysis of the possible outcome of -- upon disposition of the ResCap assets and

settlement of its liabilities, the disposition of proceeds or net proceeds, I guess, to the various parties with an interest in the bankruptcy.

Q. And did they explain to you how the treatment of intercompanies would affect their waterfall analysis?

A. For the interactions that I had with them, we ignored the intercompany balances.

Q. What do you mean by that?

A. The information that I provided with regard to intercompany balances was more in response to inquiries from parties to the bankruptcy. In any documentation information that I sent or interacted with them in terms of the waterfall, the intercompany balances were excluded or separated.

Q. Okay. Did you ever ask them why they were separating the intercompany balances from the waterfall analysis they were running?

A. I did not, that I recall.

Q. Did they ever explain to you why parties to the bankruptcy were interested in the intercompanies?

A. I don't recall a specific conversation about why other parties would be interested.

Q. Did you understand at the time you were talking to FTI whether the treatment of the intercompanies as debt versus equity would have an impact on the waterfall analysis?

A. Over the course of my interactions over the course of the ResCap bankruptcy -- whether it was at this specific time or not, I do not know -- but I was aware of the -- I was aware that there could be different views about the treatment of these balances as either debt or equity. And yes, I was aware that that could have an impact on the financial disposition of the net assets of the company.

Q. And did FTI express a view to you at any point in time about whether they viewed the intercompanies as debt or equity?

A. Not that I recall.

Q. Did you sense that they were resistant to treating the intercompanies as debt?

MR. LIPPS: Objection to form.

A. I have no idea.

Q. Did you ever express a view to FTI about your views about whether the intercompanies were more properly expressed as debt or equity?

A. I view that as a legal decision, and if I did share any view, it would have been that that's up to lawyers to decide.

Q. Okay.

MR. LIPPS: Yeah, and I don't want you disclosing any conversations you had with lawyers.

Q. Putting aside conversations with lawyers, is it fair to say as a -- from a financial perspective, the intercompanies were debt, in your view?

MR. LIPPS: Objection to characterization. Go ahead.

MR. O'NEILL: Objection.

A. The characterization of intercompany balances in accordance with generally accepted accounting principles would have classified certain of them as receivables and payables and certain of them as debt.

Q. And in terms of -- what -- in accordance with generally accepted accounting principles, what intercompany balances are classified as payables and receivables?

A. Those would be more likely to be balances driven by activities that were not governed by a legal document, indicating more structure or form to the activity.

They would have involved transfers between entities for more ancillary activities, such as an erroneous payment of a -- I don't know, a -- an invoice by one or the other, or a payment of an invoice by one entity that was applicable to both that then needed to be charged over to the other.

So receivables and payables were, generally speaking, not interest bearing and would not have been governed by a legal contract document that would be otherwise characterized as debt.

Q. And did you form a view, just going back to a prior exhibit that we looked at, that listed -- is it Dondzila 3?

A. Okay.

C. Dondzila

Q. Did you form a view from a finance perspective, not from a legal perspective, whether -- actually --

MR. LIPPS: So we're going to Exhibit 2?

MR. PERRY: Exhibit 2.

MR. LIPPS: First page of the Excel attachment?

MR. PERRY: Yes.

Q. So did you form a view of, from a finance perspective, which of the balances reflected on this chart were debt and which ones were payables and receivables?

MR. LIPPS: Objection, form.

A. To look at the financial statements. I don't recall.

Q. Okay. So ultimately, if one wanted to determine how Residential Capital LLC was treating these balances from a financial perspective, you'd simply look at the financial statements of each of the entities reflected on the chart on Dondzila 2; correct?

MR. LIPPS: Objection, form.

A. The conclusions in terms of financial

statement presentation, yes, would be in there to the extent that one or the other was obviously disclosed.

MR. PERRY: Do you want to take a break? We have been going for an hour.

MR. LIPPS: Sure.

THE VIDEOGRAPHER: The time is 11:11. We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:19. We're on the record.

(Dondzila Exhibit No. 5 was marked for identification.)

BY MR. PERRY:

Q. Before you, Ms. Dondzila, is Dondzila Deposition Exhibit 5. It's an email from Ms. Westman to you dated March 19, 2012. There's some description at the top of her email to you about an allocation of the GMACM management fee. Do you have an understanding of what Ms. Westman's telling you there?

A. Ally Financial allocated costs. Those allocations and charges related to those allocations were recorded initially to RFC,

Residential Funding Company, and then the appropriate portion would then be moved from Residential Funding Company down to GMAC Mortgage.

Q. When you say down to GMAC Mortgage, were they sister companies?

A. They are sisters, so it would have been over.

Q. Across or over; correct?

A. Uh-huh, correct.

Q. Do you know why Ally didn't just allocate a portion directly to GMACM?

A. I don't know.

Q. And did the allocation of management fees from Residential Funding to GMACM create an intercompany balance?

A. Yes, the -- yes, it would have created an intercompany balance between GMAC Mortgage and Residential Funding Company.

Q. And were there other transactions between Residential Funding Company and GMAC Mortgage that led to an -- intercompany balances between the two companies?

A. Yes.

Q. And what were those items?

A. I'm sure there are many. There was thousands of opportunities for activity. The most significant of which I know of would be the subservicing agreement between GMAC Mortgage with service, subservice loans on behalf of RFC.

Q. And as a result of subservicing on behalf of RFC, what was the -- was that -- was compensation for that activity handled through the intercompany accounts?

A. Yes, it would have been.

Q. And were there actual cash transfers that would go back and forth in consideration for that activity?

A. I don't recall.

Q. Was the intercompany account between GMAC Mortgage LLC and Residential Funding Company LLC cash-settled from time to time?

A. I don't recall.

Q. Just look at the schedule of other liabilities in Ms. Westman's email to you. And I'm focused -- does the liability payable to RFC reflect the intercompany balance between

GMAC Mortgage LLC and RFC?

A. Given this isn't the final draft of the financial statement, so not knowing if it officially and finally ended up with that being the balance, yes, at whatever point in time this email was drafted, that would represent what we believed to be the balance of the payable to RFC.

(Dondzila Exhibit No. 6 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Deposition 6. It's an email with a group of attachments. I'm interested in the first attachment, and specifically the second page of the attachment, which describes relationship number 7.

MR. LIPPS: It's the page that ends with the Bates number, last three, 113?

MR. PERRY: That's correct.

MR. LIPPS: Okay.

Q. Can you take a moment to review the description of relationship 7?

A. I've read it.

Q. Is the description provided -- well,

first of all, did you participate in the creation of this document?

A. I don't recall.

Q. Is the description contained concerning relationship 7 consistent with your understanding of the intercompany relationship between GMAC Mortgage and Residential Funding Company?

A. Yes, the three bullets that are called out are consistent with my understanding.

Q. Okay. Do you see there's a notation that says the last pre-petition settlement was in May 2012?

Do you have any knowledge of a cash settlement in connection with this intercompany in May of 2012?

A. I don't recall.

Q. And how would a -- would it require your approval for there to be a cash settlement of some or all of an intercompany balance --

A. No, it did not require --

MR. LIPPS: Let -- did you finish the question?

MR. PERRY: Yeah.

Q. You can answer.

THE WITNESS: I'm sorry.

A. No, it did not require my approval.

Q. Okay. And who would be the person or people that would determine whether to cash-settle an intercompany balance?

A. I don't recall.

Q. Is it people that reported to you, people that you reported to? How did it come to be that balances were cash-settled?

MR. LIPPS: Objection to form. That's about two questions. But go ahead.

A. I don't know.

Q. If you go to relationship number 9, you see there's a description of the relationship between GMAC Mortgage and GMAC Residential Holding Company. Is GMAC Residential Holding Company something that people called Resi --

A. No.

Q. -- Holdings?

MR. LIPPS: Well, that's a

different question.

Q. What was GMAC Residential Holding Company called internally?

A. In short form, if it was ever referred that way, it would have been Resi Holdings.

Q. Resi Holdings? Okay.

And just so I understand it, cash flowed from Residential Capital LLC to GMAC Residential Holding Company LLC and then down to GMACM; is that correct?

A. That is correct.

Q. And do you -- there's a notation here that says the interest rate under this agreement fluctuates monthly and is a stated margin agreed to between the company and RHC, which is generally between 100 and 300 basis points above a quoted short-term market rate. Do you see that text?

A. I do.

Q. Do you believe that to be accurate?

A. I would have to look at the agreement.

Q. Okay. Did you -- did your group

participate in the determination of the interest rate to be charged on this particular intercompany balance at any point in time?

A. I don't recall.

Q. It says interest was accrued on a monthly basis until the petition date. Who would have been in charge of determining the interest accrual on this particular balance?

A. A member of my team would have calculated and recorded the accrual.

Q. Do you know why some of the intercompany relationships contain written credit facilities while others do not?

A. I don't.

Q. Was there any policy or procedure in place while you were controller that spoke to when an intercompany relationship had an underlying agreement and when it didn't?

A. Until the implementation of the Ally Financial intercompany policy, and only to the extent that that required it, which I don't recall, there was nothing during my term there that required it.

Q. Okay. And do you know why some of

the balances accrued interest and others did not?

A. I do not.

Q. Where were the contracts between the affiliated entities kept at Residential Capital?

A. I don't know with certainty who would have had them.

Q. Did your group have contracts between the -- between these entities?

A. We might.

Q. But you don't know one way or another?

A. Correct.

MR. LIPPS: Objection, asked and answered.

(Dondzila Exhibit No. 7 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Exhibit 7. It's an email from Barbara Westman to Jeremy Stern. You're copied on the email. It attaches a -- back at the page ending 5117, something called ResCap restated loan

agreement.

Were you aware prior to receiving this email that there was a loan agreement between ResCap, Residential Capital LLC, and GMAC Mortgage -- well, strike that.

Were you aware prior to receiving this email that there was a loan agreement between Residential Capital Corporation and its wholly owned direct and indirect subsidiaries GMAC Residential Holding Corp., GMAC Mortgage Corp., and Residential Funding Corp.?

A. Yes.

Q. And what did you -- what was your understanding about the nature of that agreement?

A. My understanding of the agreement was what we disclosed in both of the respective GMAC Mortgage financial statements and in the Residential Funding Company financial statements, that there was a -- well, we'd have to look at the financial statements to see exactly how they were described. It would have been in accordance with the disclosures that we made.

Q. And did you understand that loan agreement to be in effect in 2011 and 2010?

MR. LIPPS: Let me object to the extent you're asking for some legal conclusion. But go ahead.

A. Yes, I was aware the agreement was outstanding during those periods.

Q. So your understanding -- I'm not asking for a legal conclusion, I'm just asking for your understanding as a financial professional -- was that there was a loan agreement, it was outstanding in 2010 and 2011.

A. That's correct.

Q. Okay. And was interest charged on any of the balances in connection with the loan agreement that's before you as Dondzila Exhibit 7?

A. I can confirm that it was in connection with a loan with Residential Holdings. I do not recall whether it was on the loan with Residential Holding Corp., or Residential Funding Corp.

Q. And who was it who would have been in charge of analyzing and assessing interest with

respect to this particular loan agreement?

A. A member of my team.

Q. Do you know who?

A. Matt McGarvey in the 2011, certainly, period. I don't recall when he joined the company.

Q. And would he have kept schedules of the interest charged?

A. Yes.

Q. And did -- who made -- was there a decision made not to charge interest on other of the balances between Residential Capital LLC and, say, Residential Funding Company LLC?

A. I don't recall if interest was charged.

Q. Okay. May have been, may not have been, you just don't know?

A. Correct.

MR. LIPPS: Objection, asked and answered.

THE WITNESS: Sorry.

Q. And so to the extent that interest was not charged, do you know who would have made that judgment?

A. The accountant responsible for review of the contract and in the context of the entries that were required each period.

Q. And how would interest have been recorded to the extent it was charged?

A. We would have debited -- well, if it's a receivable, you would debit interest receivable and credit interest income; and if it was a payable, it would credit interest payable and debit interest expense.

Q. So if I had an accounting professional that I wanted to direct to check whether interest was either credited or debited between, say, Residential Capital LLC and Residential Fundings LLC, could that professional in fact do that through reviewing the company's books and records?

A. Yes, they should be able to.

Q. Okay. And do you think -- are there individual entries on the general ledger for the interest charges?

A. I don't know that level of granularity.

Q. Could it also be the case that

intercompany transactions are recorded net of any interest charge?

MR. LIPPS: Objection to form, but go ahead.

A. Is your question on the balance sheet or on the income statement?

Q. Well, on the balance sheet.

A. It is possible that the interest could have been recorded to an intercompany balance that would have been netting against the principal amount of the receivable or payable.

Q. Okay. And in that circumstance, how would somebody go back to figure out if and how much interest was charged in that particular period?

A. In regards to interest that was charged or earned, the best way to do it would be to go to the income statement.

Q. And how would that be recorded on the income statement?

A. It would have either been part of a journal entry to interest income or expense, or would have been the journal entry. And if it

was part of a journal entry, there would presumably be documentation that would provide more granular detail of the components of that journal entry.

Q. And what would that documentation be?

MR. LIPPS: What, the journal entry?

MR. PERRY: Yeah.

Q. You referenced supporting documentation for a journal entry on the income statement.

MR. LIPPS: Oh.

A. It could include an Excel spreadsheet, could be a handwritten document saved in a file.

Q. Do you know whether Ms. Westman or anybody else ever undertook that particular review in connection with the prebankruptcy process where you're meeting with FTI?

A. The efforts that I'm aware of that Barb or others would have been involved in were reviews of the balance sheet, not the income statement.

Q. And do you know if anybody from FTI

ever asked Barb or others to review the income statement in connection --

A. I'm not aware.

Q. Okay. In terms of identifying the loan agreement that's before you on Dondzila 7, do you know what efforts were undertaken to find the agreement?

MR. LIPPS: I'm not sure I understand -- objection. I'm not sure I understand that question, but go ahead if you do.

A. Since I didn't provide it, I don't know what efforts went into procuring it.

Q. And nobody told you what efforts went into procuring the contract for Mr. Stern; right?

A. Not specifically.

Q. Now, did there come a time when you began evaluating whether to impair the intercompany between Residential Capital LLC and Residential Funding Company LLC?

A. In accordance with the issuance of separate company financial statements, we would have an obligation to evaluate all of the

assets of those entities for valuation or potential impairment under GAAP.

Q. And that would include intercompany payables or receivables; correct?

A. That is correct.

Q. And so just to summarize, if, in fact, you determined that Residential Capital LLC was not able to pay back the intercompany payable to Residential Funding Company LLC, Residential Funding Company LLC would then need to take an impairment on its books and records; correct?

MR. LIPPS: Objection.

MR. O'NEILL: Mischaracterizes the testimony.

A. In the event that based on qualitative and quantitative assessment, there's an impairment of an asset, there would be, in fact, a charge to the income statement of the entity on whose books that asset sat.

Okay. Before you is Westman Deposition Exhibit 31. It's a series of emails. Directing your attention to the second page of the exhibit, there's an email from you

to Mary Riskey and Janel Farley. Second page.

MR. LIPPS: Well, she's still looking through the exhibit.

THE WITNESS: Oh, the second exhibit.

MR. LIPPS: Second page.

MR. PERRY: Second page of the email.

MR. LIPPS: The one that has cc to Brandy Frank?

MR. PERRY: That's correct.

Q. So is it the case that at least as of April of 2011, your view was from a financial perspective, there was a reasonable expectation that Residential Funding Company LLC -- strike that. Strike that.

In April of 2011, is it accurate that, in your view, there was a reasonable expectation that Residential Capital LLC would have the capability of meeting its intercompany obligations to Residential Funding Company LLC?

A. This document doesn't make clear what I thought at that point in time related to ResCap to -- any payable that ResCap had to

RFC.

Q. Okay. So why don't you go to the second attachment, which is an email from Ms. Farley to Ms. Riskey, copying you.

MS. BARRAGE: The Bates number?

MR. PERRY: It ends 15262.

Q. First of all, who's Kim Walsh?

A. Kim Walsh had several roles within the company, and I don't -- so at one point in time, she was the chief accounting officer for Ally Bank. She left and then came back at some point, and the dates, I don't know, but at some point, she came back and was a member of the accounting policy team working for Ally Financial.

Q. Okay. Looking at the second page, ending 15263, based on the time frame that this was sent, are you able to -- and Ms. Walsh's email signature, are you able to deduce whether she was a chief accounting officer or member of the accounting policy group at the time she sent this email?

A. At this point, she was part of the accounting policy group.

Q. And do you recall Ms. Walsh ever taking the view that the receivable between ResCap, Residential Capital LLC and Residential Funding Company LLC ought to be written down?

A. Not that I recall.

Q. And who's Janel Farley?

A. Janel Farley was a member of my team who assisted us with accounting policy questions.

Q. And who's Mary Riskey?

A. Mary Riskey was a director responsible for certain aspects of the accounting for ResCap.

Q. Okay. And if you go one paragraph down in Ms. Farley's email, she writes, "Based on Cathy's response earlier, I would recommend we respond to Kim, indicating that we have a reasonable expectation that ResCap will have the capability to meet its obligations. Since the receivable is not considered impaired, no entry was required. Do you agree?"

Do you have any recollection of what Ms. Farley's referring to there in that paragraph?

A. I don't recall.

Q. Do you recall Ms. Farley or anybody else from your group doing an assessment of whether the Residential Capital LLC, Residential Funding Company LLC needed to be impaired in 2011?

A. As I'd indicated earlier, we would have, in connection with the issuance of the separate company financial statements, needed to undertake an evaluation as to whether there were any impairments to any of the assets required.

Q. And do you recall any impairment taken with respect to the intercompany between Residential Capital LLC and Residential Funding Company LLC in 2011?

A. I do not.

Q. Do you have any knowledge -- well, do you believe -- well, strike that.

(Dondzila Exhibit No. 8 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Exhibit 8. It's an email from you to Ms. Westman and it

attaches a memorandum from Ms. Westman to the files. Can you take a moment to review the email and the attached document?

A. I've reviewed it.

Q. Okay. Do you recall the circumstances that led Ms. Westman to prepare this memo to file?

A. This would have been prepared in connection with the issuance -- the preparation and issuance of the annual financial statements for Residential Funding Company.

Q. And the -- this would have been the 2010/2011 annual financial statements of Residential Funding Company; correct?

A. That is correct.

Q. Okay. And do you recall -- D&T I take it is a reference -- in the email is a reference to Deloitte & Touche?

A. That would be correct.

Q. And Deloitte & Touche was the independent auditor for Residential Funding Company LLC in 2010 and '11; correct?

A. They definitely were in 2011. We did switch auditors from PriceWaterhouse to

Deloitte & Touche at some point. I don't recall if that was 2009 or 2010.

Q. Okay. But at least by the time that you had written your email to Ms. Westman, Deloitte & Touche was the independent auditor; correct?

A. That's correct, for the 2011 financial statement, they were absolutely the auditor.

Q. And do you recall Deloitte & Touche raising concerns that the receivable from the -- the RFC receivable from ResCap ought to be impaired?

A. They -- we did not take an impairment, and they issued an unqualified opinion with an emphasis paragraph in connection with those financial statements, so no, they did not have an issue with the decision to not impair.

Q. Okay. But is it fair to say that you engaged in dialogue with them about the decision not to impair in March of 2012?

A. In connection with the audit, we dialogued with the auditors in regards to every

significant matter, and this was one.

Q. And do you recall a meeting, an in-person meeting with somebody from Deloitte & Touche on this particular issue?

A. I don't recall a meeting specific to this.

Q. Do you recall a telephone call, discussions with Deloitte & Touche on this particular issue?

A. During the course of the year, and particularly during reporting cycles, I had weekly calls with Deloitte.

Q. And I'm just focused on whether you have a specific recollection as you sit here today of the content of a call or a meeting with Deloitte & Touche on this particular issue.

A. I do not.

Q. Okay. Turning to the conclusion paragraphs on page 2 of the memorandum, is it accurate that at least in March of 2012, management had concluded that ResCap maintained the ability to support its intercompany obligations with RFC, and therefore, no

impairment of this receivable was warranted for the RFC standalone financial statements? Is that accurate?

A. It is accurate.

Q. And the preceding paragraph contains some analysis. Is that an accurate statement of the reason that management of ResCap Funding LLC believed no impairment was warranted in March of 2012?

MR. LIPPS: Objection to form.

MR. O'NEILL: Are you talking about the entirety of the preceding part?

MR. PERRY: I am.

A. Now I've forgotten the question. I'm sorry.

Q. Okay. The preceding paragraph, which begins with the text "ResCap has 2.6 billion in equity," and continues on, was that -- that paragraph the basis, the analytical basis for your conclusion that no receivable was warranted?

MR. LIPPS: No receivable? You mean no impairment.

MR. PERRY: No impairment was

warranted. Thanks.

A. Taking as fact the 2.6 billion, yes, that would be the support for that conclusion.

Q. Okay. Were there any other factors, including factors that may not be expressed in this paragraph, that played into your conclusion that no impairment of the receivable was warranted?

A. As documented on the preceding page ending 065, under "Analysis," there are reference to other matters that would have been considered, including but not limited to the fact that the receivable was not tied to any specific collateral cash flows, etc. So yes, there were other factors that were considered.

Q. Okay. And those -- all of the factors that you considered are reflected in this memorandum that's before you as Dondzila Exhibit 8; correct?

A. To my knowledge, this would be the considerations, yes.

Q. Okay. There's some discussion in the last paragraph of the first page of the memo, and it reads: "Intercompany balance repayments

under the receivable are not tied directly to any specific collateral cash flows. The company does have a practice of impairing receivables in situations where repayment is tied directly to specific cash flows."

And then there's a reference to the PATI notes. Can you explain what this paragraph means?

A. PATI held notes issued by special purpose entities that were collateralized by assets that came from our international operations. And as the value of those assets were declining and/or as those assets were sold, we performed an assessment of the availability of future cash flows, and to the extent we determined that there were insufficient cash flows likely to manifest themselves, we impaired the notes that were held by PATI.

Q. I see. The -- who was the Deloitte & Touche auditor or auditors that you interacted with on the 2010 and 2011 Residential Funding Company LLC audit?

A. The partner, the signing partner for

ResCap and its subsidiaries was Tom Robinson. And there were two other senior members of his team. I don't recall their positions at the time. Brad Stevenson and Dave -- his last name is escaping me.

Q. Now, when you were meeting with FTI in connection with their consideration of the intercompany receivables, did you reference or discuss with them the conclusions that you had arrived at in Dondzila Exhibit -- the memo in Dondzila Exhibit 8?

A. I don't recall having a specific conversation with them about that.

Q. Do you know whether FTI was provided with a copy of the memorandum set forth on Dondzila Exhibit 8?

A. I don't.

Q. I take it you would have no reason not to provide it to them if they asked. Right?

MR. LIPPS: Objection to form, but go ahead.

A. We provided thousands of documents that were requested, so no, we wouldn't have

had any reason to withhold it.

Q. Do you recall them ever asking for any impairment analysis that you or your staff had done on the various intercompany receivables?

A. No, I don't recall that.

Q. Before you is Westman Deposition Exhibit 28. Do you know -- just directing your attention to the first --

MR. LIPPS: Did you say 28?

MR. PERRY: What number is it?

MR. LIPPS: 7 on mine.

MR. PERRY: Okay. Thank you.

Q. Before you is Westman Deposition Exhibit 7. Directing your attention to the second email in the group, you're not copied on it, my question is: Do you understand what the issue here being discussed is?

MR. LIPPS: This is the one from Janel Farley to Barbara Westman?

MR. PERRY: Yes.

A. I don't know exactly what the context was for the request.

Q. Do you have any knowledge of the

topside entry for GMACM to include RFC advances made in or around March of 2012?

A. In or around that time, we were working on ensuring that the separate legal entity accounting for the GSAP entity, which is GMAC Mortgage Advance Service, or Advance -- I forget the name of the entity, but it was a servicer advance facility, which is a special purpose entity but was required to be consolidated under GAAP because we had a controlling interest in the entity. And we were making some adjustments to the actual individual legal entity recordation to comply with a requirement from our parent, Ally Financial, that each entity's individual standalone financial statements were prepared appropriately.

Q. When you say prepared appropriately, do you mean prepared in accordance with GAAP or was there some other standard that Ally required?

A. The standard was that they were in the general ledger uniquely and identifiably and in accordance with GAAP.

C. Dondzila

Q. Did Ally have any -- from the purposes of -- from the perspective of Ally the lender, did they have any requirements with respect to the intercompany transactions between the ResCap entities that we have been talking about today?

MR. O'NEILL: Objection.

A. Not that I'm aware of.

Q. What is the reference to STM1388?

A. STM means significant transaction memorandum. 1388 would be the numerical reference that was assigned when that significant transaction was entered into the log, the transaction log.

Q. So can you describe to me what the significant transaction memorandum is?

MR. LIPPS: Generally what they are?

MR. PERRY: Yeah.

A. Okay. Generally, Residential Capital had a program related to change management, and the administration of that change management was through the identification of significant change matters. And those significant change

matters that were identified would be logged into the change management process and would be assigned a number and a significant transaction memorandum would be completed.

Based upon the significance of the matter, it could be an abbreviated form or it could be the full form, just depended on what the assessment of the amount of change and the significance of the change was.

That document required notification to a variety of different people, including the tax department, the financial reporting team, and had to be signed off by various people, including the business owner of the change up to and including the accounting policy representative.

Q. Were significant transaction memorandums prepared from time to time with respect to intercompany transactions?

A. It's possible.

Q. Do you -- there were times where significant intercompany balances were written off in 2008 and 2009. Are you aware of that fact?

A. Are you referring to debt forgiveness?

Q. Debt forgiveness, yes.

A. Yes, I'm aware that debt forgiveness was executed during that time period.

Q. Okay. Do you know whether significant transaction memorandum -- memoranda were prepared in connection with that debt forgiveness?

A. I can't say for certain that it was in all cases, but yes, those would be transactions that would meet the threshold of being included in the process.

Q. And do you know whether Ms. Westman or you reviewed the significant transaction memoranda in connection with the review of the intercompany accounts that were conducted at FTI's direction in early 2013?

A. I'm sorry, I need you to repeat the question.

Q. Did anybody look at the significant transaction memoranda in connection with the intercompany review in early 2013?

A. I don't know that we pulled any

significant transaction memos directly in response to requests for the intercompany review.

Q. Okay.

(Dondzila Exhibit No. 9 was marked for identification.)

BY MR. PERRY:

Q. Before you, Ms. Dondzila, is Dondzila Exhibit 9. Can you take a moment to review and familiarize yourself with the document?

A. Okay.

Q. Am I correct that you wrote the text in the first page and a half of the document and then interlineated some response to Mr. Renzi's email to you that starts halfway down the second page?

A. Yes.

Q. Now, at the bottom of the second paragraph, you talk about you take a walk down Memory Lane and you note that in the beginning, ResCap takes on some debt and distributes cash down through the entity, which is then used.

Then you note this would have created a receivable on the books of the ResCap holding

company and a payable on the operating company books. These were likely interest-bearing agreements. Do you see that?

A. I do.

Q. What was the basis for your conclusion that these initial distributions were likely interest-bearing agreements?

MR. LIPPS: Objection to form. Go ahead.

A. The previous agreement that you had shown me.

Q. I see. Okay. You see the fourth paragraph down, the first sentence, "The company also uses a daily sweep process to consolidate all of its available liquidity at the parent."

Is that a reference to the cash sweep process that you testified about earlier?

A. That would be a reference to the centralized cash management, yes.

Q. Okay. And does this refresh your recollection that the centralized cash management sweeps were performed on a daily basis?

A. It doesn't refresh my recollection, but it's obviously a statement that I've made.

Q. Moving to the next paragraph on the second page, top paragraph, you write -- you're talking about debt forgiveness.

You write: "In most cases but not all the forgiveness has been treated as equity. In limited cases where the forgiveness occurred with respect to collateralized borrowing, it may have been treated as income expense." Do you see that?

A. I do.

Q. And the limited cases that you're referring to, is that the testimony you gave earlier, I believe, about the PATI transaction and the notes in PATI? Is that the reference here?

A. That is correct.

Q. Okay. And in those circumstances, what was the -- what was the intercompany balance that was being forgiven? What were the two entities where it was being forgiven?

MR. LIPPS: You're talking about the PATI?

MR. PERRY: In the PATI transaction.

A. The special purpose entity -- well, so the -- so I'm forgetting the name of the international entity that originally held the assets, but we would have had an entity that would have owned these international mortgage loans.

That entity would have sold those assets through a transferor entity that was part of our consolidated group, onto the special purpose entities Flume and Viaduct.

Under GAAP, we failed sale for the first sale from the originator entity to the transferor and also from the transferor to the special purpose entity. But we also were the primary beneficiary of the special purpose entity; therefore, we consolidated the Flume and Viaduct special purpose entities into our financial statements. So those, by all appearances, would look to be subsidiaries of Residential Funding Corporation.

And so at a consolidated level, it would have appeared to be between Residential

Funding Company and GMAC Mortgage. In fact, it was going to be between PATI, Passive Asset Trust, and the Flume and Viaduct special purpose entities that were over in the RFC consolidated group.

Q. And so when you're assembling intercompany balances, the top, you know, seven or nine or 15, whatever the number is for FTI, does it include any of the PATI-related balances that you were just talking about?

A. I believe the PATI -- the notes related to Flume and Viaduct that PATI held were extinguished by that time.

Q. Okay.

A. Or were so immaterial that they did not meet the threshold for the -- the dollar threshold for the top intercompanies.

Q. Now, with respect to the top intercompanies that were the focus of your analysis in 2013, in circumstances where there was forgiveness of debt, was it always for purposes of those intercompanies treated as equity?

A. There may have been some other

situations in regards to legal entity minimization where we might have had smaller situations of forgiveness between siblings as opposed to parents and child, that would have been accounted for similar to how PATI was held.

So I can't say with certainty that all of them were, but that was more -- the equity was the more likely form of debt forgiveness than the income statement treatment.

Q. Just so I've got it right, was there any accounting policy that required you to treat the debt forgiveness as equity?

A. I can't quote chapter and verse of the actual standards, but as I recall, the GAAP requirements would presume that debt forgiveness between a parent and a child, or a child and a parent, would be in the form of equity, as opposed to debt forgiveness between two sibling entities would be treated through the income statement.

Q. So if for whatever -- well, let me ask you this: Was debt forgiveness done as

equity because that was the way the accounting rules required you to execute the debt forgiveness?

A. Any debt forgiveness would have been recorded in the financial statements in accordance with GAAP. That might not be the reason why we did the debt forgiveness, but we would record any debt forgiveness in accordance with GAAP.

Q. That's my question. In other words, there was no effort to treat it as equity rather than debt, for example, to avoid cancellation of indebtedness income being attributed to one of the entities; right?

MR. LIPPS: Objection to form.

A. I'm not aware of any preference or attempt to structure anything for that purpose.

Q. Okay. So from your perspective, it was purely the fact that GAAP required the forgiveness of indebtedness to be structured as an equity transaction when you were talking about forgiveness between a parent and subsidiary relationship; correct?

MR. LIPPS: Objection. Objection

to form.

A. We would have reviewed every transaction against the standards under GAAP, and so we would have followed whatever the final conclusion suggested.

Q. Okay. Do you know whether the standard in question is paragraph 27 to 28 of the AICPA Practice Alert? Is that something that sounds familiar?

A. I don't recall.

MR. O'NEILL: Object to form.

THE WITNESS: Sorry.

MR. O'NEILL: Go ahead.

A. I don't recall the exact standard references.

Q. I'll try to dig something out at lunch and maybe we can walk through it. Okay. Go to -- now focusing on Mr. Renzi's email, I'm looking at 1A. And am I correct that Mr. Renzi asks the question: "Explain intent for each balance, loan, or equity." And you interlineate the response -- and the second question: "Was there an expectation of repayment?" And you interlineate the response,

"This is not a question accounting can answer. To the extent we have deemed a collateralized affiliate balance impaired, we've impaired it through earnings. Otherwise, we have concluded for GAAP financial statement purposes that the balances were expected to be repaid."

MR. LIPPS: You want to know if that portion that you just read, beginning with "This is not a question," if that's her interlineation?

MR. PERRY: Yes.

Q. If that's your text.

A. It's not clear, but it seems like a reasonable conclusion, yes.

Q. Looking at 1C, there's a series of questions, and then my question is, does it appear that you provide the textual response, "Yes, the company expects to continue to follow its cash management practices post-petition"?

A. Yes, that's reasonable.

Q. Okay. And to your knowledge, did ResCap's cash management practices change in any respect post-petition?

A. No, I believe under the -- whatever

those motion things -- first day motions are called, or whenever they filed it, I believe it continued the practice, the same practices.

Q. Okay. So there never -- at least in your -- by your recollection, there never came a time where anybody said to you, you know, we have been doing things incorrectly pre-petition, we've got to change how we do it post-petition? That never happened; right?

MR. LIPPS: Objection to form. But go ahead.

A. I don't recall that ever coming up.

Q. Anybody ever from FTI criticize the way you had done things pre-petition in terms of cash management practices?

A. I don't recall them talking to me about that.

Q. Okay. The next question is, "Were the funds used for capital improvements or operating expenses?" Is that your text where you say, "Yes, among other things, including running its servicing business activities and funding the purchase of new assets"?

A. That's a reasonable assumption, yes.

C. Dondzila

Q. Okay. And do you consider running the servicing activities and funding the purchase of new assets to be capital improvements or operating expenses?

A. I believe them to be neither.

Q. How would you characterize running servicing business activities and funding the purchase of new assets?

A. It's core business activities.

Q. Core business? Okay.

And so it's fair to say that the intercompany transfers were used to fund core business activities; correct?

MR. LIPPS: Objection to form.

MR. O'NEILL: Object.

A. It is fair to say that, among other things, cash that was required by the operating companies was used for its core business activities, yes.

Q. Are you aware of the operating companies using cash for capital improvements at any point in time while you were controller?

A. As the owner of two physical real properties, meaning ResCap, I would expect that

there would have been capital improvements, yes, that were done during the period that I was there.

Q. Okay. And what were the physical real properties?

A. There's the data center in Eden Prairie, Minnesota, and the call center, servicing center in Waterloo, Iowa.

Q. And other than fixing up the data center and the call center, are there any other capital improvement funds -- are there any other funds that you can think of that would have been used for capital improvements during the time that you were the controller?

A. I'm sure there were.

Q. And would those capital improvements be reflected as such in the financial statements of the varying operating companies?

A. We did maintain a fixed asset register that was specific to the entities that had possession of those fixed assets, and it would have included leasehold improvements, real property, other improvements to real property, etc. Would have included the

acquisition of other ancillary fixed assets, desks, desktops, all hard assets would have been included on that register.

Q. And do you have any sense of the size of the capital improvements that would have been undertaken during your time as controller?

A. I would characterize it as not material.

Q. Okay. If you go down to F, it says, "Have principal payments been made? If so, when, how, how often, and how much?"

And my first question is, do you believe your response starts with the text "My guess is that certain of these balances," and goes on? Do you believe that to be your response to Mr. Renzi's questions?

A. Yes.

Q. Okay. And you phrase it here as a guess and you ask -- at least you state, you'll see if Barb can have someone evaluate. Do you know whether anybody ever did the evaluation of whether there were regular principal repayments and draws?

A. I don't recall.

C. Dondzila

Q. And by principal repayments and draws, what you mean is essentially accessing and distributing up on the line of credit that we talked about earlier in your testimony? Is that what you're referring to here?

MR. LIPPS: Objection to form.

MR. O'NEILL: Objection.

A. Yes, that would be a reasonable reference, yes.

Q. Okay. Go to number 4. I'm interested in the text that says, "On a monthly basis, the outstanding balances on the revolving and LOC are recorded to the operating companies in proportion to their pledged collateral. As such, each month there will be changes in the balance of the interchange generated." Do you see that text?

A. I do.

Q. Can you explain what you mean there?

A. The revolver and a line of credit are liquidity facilities that were outstanding between Ally Financial and Residential Capital and named borrowers.

The outstanding balance -- both --

there are a variety of different -- and there are named borrowers, specifically named borrowers, of which two are Residential Funding Company and GMAC Mortgage. There are others, I believe. And each of those entities have assets that are pledged as collateral to one or both of those agreements. That collateral sits within those individual borrower entities.

We concluded that the line of credit and the revolver should both be represented on the financial statements of each of the borrower -- actual borrower entities as opposed to having the revolver and line of credit at the Residential Capital holding company level. And as such, because the documents, the governing documents were not specific about how those borrowings were split between the borrower entities, they were only specific in terms of the collateral that was pledged by each of those entities, we used our judgment. And our judgment was such that we on a monthly basis would evaluate the collateral value that was pledged to both of those by each of the borrower entities, and would allocate the

outstanding borrowings to each based on the proportion of collateral that they had pledged.

Q. Okay. So let me just make sure I understand that. I'm going to try and work with a hypothetical just to use easy numbers, and you tell me if it's confusing or I get it wrong.

Assume there was a $2 million facility, the Ally facility was $2 million, and in month one, ResCap Funding Company LLC had pledged half the collateral and GMAC Mortgage LLC had pledged half the collateral. Is it the case that --

MR. LIPPS: Talking about the collateral value pledged?

MR. PERRY: The collateral value pledged.

Q. Is it the case that each of those entities would then have a million dollar loan on its books from Ally? Is that how it would be accounted for?

A. We would have recorded a payable, yes, on the books of each of the respective entities for a million dollars in that example.

Q. Okay. And then in month two, the collateral value changed such that Residential Funding Company LLC had all of the collateral and GMAC Mortgage LLC had none of the collateral.

MR. LIPPS: Talking about collateral value?

MR. PERRY: Collateral value.

Q. So disappears on the GMAC side and increases by a million dollars on the Residential Funding side. How would that change on a month-to-month basis be recorded on the books of the company?

A. We would have increased the payable or the liability to Ally on the books of Residential Funding Company from 1 million to 2 million, so the outstanding liability at that point in time would be 2 million. And the GMAC Mortgage financial statements would have shown a reduction of their payable such that their outstanding balance was zero.

In order for those entries to balance, because we have to make entries balance, there would have been an offset

through intercompany accounts which I suspect -- I cannot confirm, but I suspect would have been not with each other but actually up through ResCap and back down through ResCap --

Q. Okay.

A. -- as if -- as if the money from Ally Financial had actually sort of moved its way through the food chain, if you will.

Q. Right. And by the food chain, if we're talking about GMAC Mortgage, it would go up to GMAC Residential Holding Company, up to Residential Capital LLC and then down to Residential Funding Company LLC?

A. No, it actually would have gone the other way. So by increasing the liability on the books of Residential Funding Company, there could have been a de facto sort of assumption that cash would have been raised by them, and so the cash would have -- it wasn't truly cash, but it would have said that then $1 million in your example, an additional $1 million would have moved from Residential Funding Company up to ResCap, and then ResCap would have moved it

down into GMAC Mortgage so that GMAC Mortgage could actually repay in a virtual sense its liability that had been on its books.

Q. Okay. I understand that.

And was this calculation done on a monthly basis?

A. It was.

Q. And was there a schedule that was prepared that reflected the changes in collateral valuation for this particular purpose?

A. I don't have direct knowledge of it but I would expect that there would be a schedule that would support the journal entry that would be posted to the financial statements.

Q. And do you know whether that was a standalone journal entry or done as a part of a group of intercompany journal entries?

A. I don't know.

Q. If you go to 7, there's a question, "Was the ResCap restated loan agreement dated as of January 1, 2006 amended or extended beyond its termination date"?

Do you recall ever learning the answer to that question?

A. I don't recall.

Q. Okay. But at least from your perspective, by 2011, beginning of 2012, the ResCap restated loan agreement was in effect insofar as at least interest was being charged on that agreement?

MR. LIPPS: Well, objection to form. And I know you're not asking her for a legal conclusion.

MR. PERRY: Yeah, not --

Q. From your perspective as the controller of the company.

A. So assuming that the ResCap restated loan agreement is the form of the agreement that governed the relationship between GMAC Mortgage and Resi Holdings and Resi Holdings and ResCap, I think I've stated that, yes, I believe that that was still in existence and that interest was being charged. I do not know if correspondingly interest was being charged on the piece that was between Residential Capital and Residential Funding Company.

Q. Okay. Go to the next page, the text under A. Does this -- does your response to Mr. Renzi's question begin with the text "This results from the cash management activities," and goes on?

A. I believe so, yes.

Q. There's a reference to Project Rodeo in Mr. Renzi's email. Do you have an understanding of what that is?

A. I believe Project Rodeo is what Ally Financial called their view of the ResCap bankruptcy.

Q. So Ally had named the ResCap bankruptcy Project Rodeo?

A. That's what I believe.

Q. And at least as it relates to the ETS, intercompany balance between ETS and GMAC, there was actual cash that was being generated by ETS's business?

MR. LIPPS: Objection, asked and answered. Go ahead.

A. Yes, that's correct.

Q. And that the cash was swept up as part of the cash management process; right?

MR. LIPPS: Objection, asked and answered. Go ahead.

A. Yes, that's my understanding.

Q. And you make a note here that the intercompany is awfully close to the retained earnings. Why is that significant to you?

A. That was more to provide some context around the linkage between the cash management, which would have been revenues received less operating expenses paid, and that is a reasonable proxy for retained earnings.

Q. Okay. And I take it if the -- well, strike that. The retained earnings of which entity?

A. I'm sorry, ETS.

Q. Okay. And if at some point in time ETS determined that the intercompany receivable from GMACM was impaired or GMACM was not capable of paying it, would it have to adjust the retained earnings figure?

MR. LIPPS: Well, objection. I'm not sure that's what -- proper foundation, but go ahead.

A. Not seeing the form of whatever

transaction that might be, if it was impaired, it would in all likelihood under GAAP be deemed to be an equity -- it would have been deemed to be a component of equity, which would have been recorded as a dividend, so it would have been recorded as a dividend from ETS to its parents, GMAC Mortgage.

Q. After the -- giving effect of the dividend, would the retained earnings figure need to change?

A. No, retained earnings would stay the same but equity would decline.

Q. I see. Okay. And do you know, was there ever any -- was there ever any forgiveness of debt between GMACM and ETS?

A. Not that I recall.

MR. PERRY: Now is a good stopping point.

MR. LIPPS: All right.

THE VIDEOGRAPHER: The time is 12:51. We're off the record.

(A luncheon recess was taken from 12:51 p.m. through 1:32 p.m.)

BY MR. PERRY:

Q. Before you, Ms. Dondzila, is Westman Deposition Exhibit 28. Can you identify the document?

A. These are the audited consolidated financial statements for GMAC Mortgage LLC for the periods December 31, 2011 and 2010.

Q. Do these appear to be the financial audited financial statements?

A. They do by the appearance of the independent auditor's report.

Q. If you could go to page 36 in the document, ends with 4316 if you are looking at the Bates stamps. We had earlier in your testimony been focused on the other liabilities table, and particularly the payable to RFC. Do you see the payable to RFC reflected in the other liabilities table contained on Westman Deposition Exhibit 28?

A. I do in footnote 9, yes.

Q. And am I correct that it reflects a payable to RFC of 69,785,000 at the end of 2011?

A. That is correct.

Q. And there was no similar payable at

the end of 2010; correct?

A. That is correct.

Q. Does that suggest to you that the -- any payable was cash-settled at the end of 2010?

MR. LIPPS: Do you mean the absence of the entry?

MR. PERRY: The absence of an entry.

A. Can you repeat the question?

Q. Does the absence of an entry under the line item "payable to RFC" on the table under 2010 suggest to you a cash settlement of an intercompany balance between those two entities at the end of 2010?

A. No, it doesn't suggest that to me.

Q. What are the possible reasons for the absence of an entry under the "payable to RFC" column in 2010?

A. It could have been a receivable to RFC at the end of 2010; or there could have been no relationship that would have driven a balance at the end of 2010; and/or it could be that there was a relationship and there was a

settlement of some sort, or a continuing recordation of activity such that that -- what was previously a payable flipped to a receivable.

Q. Do you know whether the practice of allocating corporate expense in the first instance to RFC and then having RFC charge GMAC Mortgage was in place in 2010?

A. I don't recall.

Q. Do you recall the practice of allocation of corporate expense changing at any point in time while you were controller?

A. I don't have a recollection of it, no.

Q. And if I wanted to figure out whether there was a receivable from RFC at the end of 2010, is there some place in this document that I could discern that information?

A. Absent being shown on the face of the balance sheet uniquely, to the extent it was material, we would have included a footnote for other assets or other accounts receivable, here presented in footnote 6 on page 31, Bates number ending 311, or footnote 7, other assets,

same page.

Q. And looking at footnotes 6 and 7, do you see any receivable -- well, would a receivable -- would a receivable from RFC be listed under the "Receivables from affiliates" line item in the other assets table, note 7?

A. It's possible, yes. I can't say with certainty, but it's possible, yes.

(Dondzila Exhibit No. 10 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Deposition Exhibit 10. Can you identify the document?

A. Yes. This is the audit -- the annual financial statements, consolidated financial statements of Residential Funding Company LLC for the years ending December 31, 2011 and 2010.

Q. Does this appear to be the final consolidated financial statements?

A. It does, by inclusion of the independent auditor's report.

Q. What's the principal place of business of Residential Funding Company LLC?

C. Dondzila

MR. LIPPS: Did you ask her where it is?

MR. PERRY: Yeah, where.

A. I believe that its corporate address was in Bloomington, Minnesota.

Q. Go to the statement of income. You had testified earlier, I believe, that you were not certain whether interest was charged on the receivable that Residential Funding Company LLC held from its parent, Residential Capital LLC, and you had directed me to the income statement. My question is, reviewing the income statement, are you able to deduce whether interest was in fact charged on the balance, the intercompany balance between Residential Capital LLC and Residential Funding Company LLC, at least during these periods?

MR. LIPPS: Objection to characterization of prior testimony. But go ahead and answer the question if you can.

A. From the face of the income statement, no, you cannot discern that.

Q. Are you able to discern that based on

your review of any other portion of the document?

A. I would direct you in all cases to the related party transaction footnote, in this case starting on page 60, Bates number ending 298, and continuing on Bates number 299, page 61. And in regards to material related party balances, both income statement, balance sheet and statement of changes in equity, we would have disclosed again material amounts that existed as of the dates of the financial statements.

And I do not see in any case under the statement of income any reference to interest income with Residential Capital.

Q. There is a reference to interest expense with affiliates. Do you see that?

A. I do.

Q. Do you know what that refers to?

A. I do not.

Q. There's also a reference to discontinued operations interest expense, parent and affiliates. Do you know what that refers to?

A. Discontinued operations in the context of generally accepted accounting principles are business operations that meet -- the elimination or discontinuation of certain business operations that meet certain standards can be classified as discontinued operations.

What that, generally speaking, means is that there's a reclassification of amounts in the income statement that would have otherwise been in other parts of the income statement line items of revenue and other revenue. It removes current and prior period amounts and moves them down to a single line called gain or loss from discontinued operations.

In this case, if you look at footnote 2 on page 19, Bates last three 257, you can see here that in October of 2010, we completed the sale of certain of our international operations, principally the United Kingdom and continental Europe. Those platforms in fact met the requirements for classification as discontinued operations. As such, we made reclassifications of prior period amounts.

Correspondingly, the reference in the related party transaction footnote 19, again on page 61, taking you back there, would purport to represent the interest expense that those operations would have incurred and -- or would have recognized.

And I'll take you back. This may be in part but not wholly -- this is likely interest expense that RFC and the entities would have recognized on those PATI notes and other notes of that nature. That is, interest expense that would have been recorded in all likelihood in Viaduct and Flume, but in a more complicated way that's not necessarily helpful, would have been recorded previously in the financial statements of RFC.

Q. I see.

A. But that would show as interest expense that was paid to parent and affiliates.

(Dondzila Exhibit No. 11 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Deposition Exhibit 11. It's an email and a series of

attachments. If you could take a moment and review Ms. Westman's email to Mr. Stern and Mr. Renzi. You're copied on it at the top of the first page.

A. Got it.

Q. You give some description of intercompany agreements that existed at least in 2012. Do you see that?

MR. LIPPS: Where are you referencing?

MR. PERRY: She says: "Note, in many cases we have agreements that support ResCap lending money to the subsidiaries; however, some of these balances have flipped and the subs are now lending money instead. The agreements are sometimes with ResCap, but the intercompany balances are with the direct parent, not with ResCap itself."

Q. Do you see that text?

A. I do.

Q. And Ms. Westman writes, "Unfortunately, this is a little rough, but the

best we have."

Do you have any understanding of how it came to be that, for example, there were intercompany balances with the direct parents, not with ResCap itself, but intercompany agreements between ResCap and the subsidiary in question?

A. Can you repeat the question, please?

Q. Well, it's a bad question so let's just go to one of the agreements. It ends with the Bates label 30819.

A. I have it.

Q. This is an agreement between Residential Capital LLC and PATI; correct?

A. That is correct.

Q. And Residential Capital LLC is the ultimate parent; correct?

A. Yes.

Q. And the intercompany balances, at least as they respected PATI, were between PATI and GMAC Mortgage LLC; correct?

A. The balances that we've covered previously were between, yes, PATI and GMAC Mortgage.

Q. Are you aware of any direct balances between PATI and Residential Capital LLC?

A. I'm not, no.

Q. Do you know whether -- first of all, did you participate in the drafting of this intercompany advance agreement?

A. I did not.

Q. Do you know how it came to be that the advance agreement was put in place in June of 2009?

A. I would expect this to have been executed in or about the time of the ResCap debt restructuring.

Q. Okay.

A. Or was that 2008? Was that 2008? So no, I don't know. I don't know why this would have been done in June of 2009.

Q. Do you see there's a block on the top right-hand corner that says T930? What does that mean?

A. I don't know.

Q. Is there some centralized system at ResCap where contracts for each of the relevant legal entities was kept?

A. Not that I'm aware.

Q. Was there any general policy about when an intercompany relationship needed to be memorialized with a contract or an advance agreement or something like that, versus just simply having an intercompany relationship recorded on the books and records of the company?

A. Not that I was aware.

Q. And if you go to the signature page, the signature by John Peterson, do you know who Mr. Peterson is?

A. He was serving within -- I knew him to be serving within the treasury department. It clearly indicates here that his title at that point was assistant treasurer.

Q. I take it Mr. Peterson didn't report to you. Right?

A. He did not.

Q. Who did he report to?

A. I believe he reported to the chief financial officer, Jim Young, at the time.

Q. If you look at Exhibit A to the intercompany agreement, there's a promissory

note. Did your department keep promissory notes reflecting the intercompany relationships anywhere within the department?

A. Not that I'm aware.

Q. Is this type of agreement something that would have been maintained by treasury?

A. Yes.

Q. And do you know what attempts were made -- strike that.

Was there an attempt in 2012 to try and identify all of the intercompany agreements, at least as they respected the intercompany obligations?

A. In 2012, we undertook to analyze our intercompany balances and relationships for compliance with the newly issued Ally Financial policy, but I'm not aware of any other reason why we would have undertaken in 2012 any other comprehensive review of our intercompany relationships.

Q. I guess the reason I'm asking is Ms. Westman appears to be transmitting a series of agreements to folks from FTI.

MR. LIPPS: So what's the question?

Q. I'm wondering if you're aware of FTI making a request for intercompany policies or agreements of Ms. Westman.

A. So my mistake. Clearly, we were headed toward filing for bankruptcy, or -- no, actually -- yeah, we filed in 2012 for bankruptcy, so this would have been in anticipation of the bankruptcy.

Q. So just to orient you, I think you filed in May of --

A. Correct.

Q. -- 2012.

A. That is correct.

Q. Do you know of any effort to search the treasury department for potentially applicable agreements between these -- the legal entities with -- under Residential Capital LLC?

A. You'd have to ask Barb. Barb was primarily the one that was searching those out, Barb Westman.

Q. And if I want to talk to somebody from treasury about how records were -- records and contracts and agreements were kept in the

ordinary course in that department, who would be the person best to speak with?

A. Well, certainly for the period -- for some part of the period, it would be John Peterson. After he left, I believe Joe -- there's a gentleman, Joe Ruhlin, who also served in a capacity within the treasury department. I think there was someone that served in a treasury capacity in between those two, but I don't recall his name.

Q. By the time you left in 2013, or at the time you left in 2013, who were the folks in charge of the treasury department?

A. Joe Ruhlin.

Q. I don't want you to speculate, but if you go back to the PATI intercompany agreement that we were looking at, remember I asked you about the box in the upper right-hand corner?

A. Uh-huh.

Q. And it said T930. Does the use of the letter T -- well, are you able to identify this as some filing system or marking system that the treasury department used for their contracts?

C. Dondzila

MR. LIPPS: Objection, asked and answered already. But go ahead.

A. I don't know if that corresponded to a filing system that they used.

Q. Okay. Were there entities within the ResCap system that could not perform debt forgiveness without approval from a federal agency?

MR. LIPPS: Just note my objection to the extent you're asking her for some legal conclusion on that. But go ahead if you know.

A. I'm not aware that any of the entities within the ResCap family -- I guess I'll take that back. It's possible that in the international entities, although I don't have direct knowledge of it, it's possible that in the international space that there could have been restrictions on debt forgiveness in connection with some regulatory guidance or other. But domestically, I'm not aware of anything that would have required approval by a federal agency.

Q. Was there ever an effort in 2012 to

Plaintiff's Objection 117:25-118:18 Objection to form; vague and ambiguous

track the intercompany, the largest intercompany balances on a year-by-year basis and track how they moved?

MR. LIPPS: Objection to form. I'm not sure I know what you're asking. But go ahead.

A. In connection with satisfying data requests from parties with interests in the bankruptcy, we did go back and, to the best of our abilities, pull year-end intercompany balances for certain relationships based on those requests.

Q. And do you have any understanding of why parties were seeking that information?

A. I wasn't interested in why they were seeking that information. I was just providing what they asked us for.

Q. Anybody ever tell you why they were interested in that particular information?

A. Not directly.

Q. What about indirectly?

A. I could infer that it was in relation to the question of whether it was debt or equity.

Q. And on the question of whether it was debt or equity, is that an issue that you ever arrived at any conclusion about?

MR. LIPPS: Objection. I think you've already asked that and she's already answered it, but go ahead.

A. The answer's no.

Q. Were you ever asked to provide a conclusion about that --

A. I was not.

MR. LIPPS: Note my objection. I think that was asked and answered too.

Q. Did there come a point in time when AlixPartners began analyzing the intercompany balances?

A. And who did AlixPartners represent?

Q. The unsecured creditors. Creditors committee. Do you know?

A. There were a lot of people who were asking us for things. The name is familiar. I don't --

Q. Who other than FTI did you -- did you have any meetings with professionals other than FTI about the intercompany balances?

MR. LIPPS: I don't want you to talk about any meetings you may have had with lawyers.

A. Yes, FTI would facilitate phone calls where we would participate to be available to answer questions in regard to documentation that we had provided in response to some inquiry they'd made.

Q. Okay. And do you have any particular recollection of the names of the firms that you met with during one or all of the phone calls?

A. No. I don't have any particular recollection.

Q. Did you -- your counsel objected earlier. Without going into -- I don't want any detail, but just yes or no. Did you meet with lawyers about the intercompany balances in the beginning of 2012?

MR. LIPPS: I think that that question assumes some specific communications which would intrude on the privilege.

MR. PERRY: I think the question -- I tried to frame the question generally

enough --

MR. LIPPS: Yeah, but you got the subject matter. You're asking her particular meetings that she had on a particular subject, and I think that invades the privilege.

MR. PERRY: Right. But you would put a subject matter, broadly, as broadly as I expressed it, on a privilege log. So I don't think that level of question with that level of specificity invades the privilege.

MR. LIPPS: I'll let her answer it yes or no as long as you agree that that's not going to be argued that that's some waiver of the privilege.

MR. PERRY: So stipulated.

THE WITNESS: The question again, please?

MR. LIPPS: Did you ever meet with lawyers.

Q. Did you meet with lawyers about the question of -- about the issue of the intercompanies?

A. Yes.

Q. Did you meet with lawyers from the Kramer Levin firm about the issue of the intercompanies?

MR. O'NEILL: The beginning of 2012 still?

MR. PERRY: Or the beginning of 2013.

Q. At any point in time, let me put it that way.

A. I don't recall if it was with representatives of Kramer Levin, no.

Q. What did you do to prepare for your deposition here?

MR. LIPPS: I don't want you to talk about any specific conversations that you had, but you can certainly identify what you did.

A. We met first to acclimate me to what the process is, given that I've never been --

Q. Don't go into detail.

MR. LIPPS: Don't go into detail. Just you had a meeting.

A. Yes, we had a meeting. We had a

meeting. Thank you. We had a meeting.

Q. Who were the lawyers present at your meeting?

A. Mr. Lipps to my left, to my far left; Alex Barrage across the table and to my left. And I'm forgetting the other Alex from Morrison & Foerster who is not here today.

Q. And roughly how long did you prepare for?

A. Our meeting lasted a little bit over probably three and a half hours.

Q. Just one meeting?

A. Just one.

(Dondzila Exhibit No. 12 was marked for identification.)

BY MR. PERRY:

Q. Directing your attention to Mr. McDonald's email to Ms. Westman at the bottom of the second page, you're copied on it. Mr. McDonald writes to Ms. Westman, "I think to the extent that any of these are 'off the shelf' and easily answered, we should provide these answers." Do you see that?

A. I do.

C. Dondzila

Q. Do you -- were there requests for information provided by third-party advisors that you were ultimately not able to satisfy in connection with your review of the intercompany loans?

A. I'm sure that there were requests we did not satisfy to the extent that the requester would have liked us to respond. But we did respond to every request, to my knowledge, to the best of our abilities.

Q. And so you never ignored a request because it was too difficult to respond to or because the answers weren't off the shelf and easy; right?

MR. LIPPS: Objection to form, characterization. Go ahead.

A. We frequently negotiated with the requesters in the event that it was either time-consuming or the request could not be fulfilled in the way that they had asked it to be fulfilled. So there was a significant amount of give-and-take, generally speaking, arbitrated and intermediated by FTI on our behalf. But again, I'm not aware of anything

that we did not provide that someone asked for.

Q. Between March of 2012 and the time you left the company, how much work did you and your staff do on the intercompany balance issue?

A. I couldn't even estimate. Lots.

Q. A lot of time spent?

A. Yes, a lot of time.

Q. And Ms. Westman spent a lot of time working on the issue; correct?

A. She would have been the principal -- the principal contact for that, yes.

Q. Okay. And who else was tasked with doing that review, assisting Ms. Westman?

A. She would have delegated portions of the work to members of the general ledger team that would have included Jake Bazella and others under his day-to-day management.

Q. Is it fair to say this was a substantial project that your staff worked on between March of 2012 and the time you left the company?

MR. LIPPS: Objection, form.

A. I don't think I'd put it in the class

of substantial, but I would put it on one of the higher lists that did require a lot of resources.

Q. From your perspective, this was an important issue in the bankruptcy case. Is that fair?

MR. LIPPS: Objection. Go ahead.

A. From my perspective, it was a topic that required a lot of follow-up and a lot of analysis on our part to satisfy requests.

Q. If you go to the last page of this document, there's an email from Marc Landy to Mark Renzi and Brian McDonagh, and I'm interested in the very last page that says "Other Follow-up."

MR. LIPPS: Bates number 7040 is the last four?

MR. PERRY: You know what? Go to the Bates number ending 7034.

A. Uh-huh.

MR. LIPPS: Okay, 7034.

Q. You see question number 2?

A. I do.

Q. Do you know whether you or your staff

was ever able to answer this question?

A. I believe there was follow-up work on that item.

Q. Do you know what the answer was?

A. I don't recall what the final conclusion was.

Q. You understand the question as you sit here today?

MR. LIPPS: Objection, but go ahead.

A. The question as it's written, the way that I read this question, is asking why if there was 2.6 billion of forgiveness, 3.3 billion minus 2.6, which would be 700 million, why the balance between GMAC Mortgage and -- why there was a disparity of differences because it was 51 million versus 700 million. And there was an expectation that these two balances moved in tandem.

Q. And I take it -- did the two balances move in tandem?

A. They did not in all cases, no.

Q. Okay. So Res Holdings is purely a holding company; right?

A. That is correct.

Q. Why would they have not moved in tandem?

A. I don't have the details of exactly why they didn't move in tandem.

Q. Do you recall being told that the waterfall team at FTI was trying to analyze cash balances without the intercompany movement of cash?

A. I don't recall that.

(Dondzila Exhibit No. 13 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Exhibit 13. Just take a minute to familiarize yourself with the document.

A. Okay.

Q. Do you have any understanding of the purpose of the exercise identified in Mr. McDonagh's email at the bottom of the third page of the document?

A. No, I don't actually understand what the purpose of -- what his actual purpose was for doing this, from this email.

C. Dondzila

Q. Do you know whether this project was ever completed?

A. I don't know definitively if it was ever completed, no.

Q. Is it a project that you participated in in any meaningful way?

A. Clearly from the email I was provided a copy of something that I reviewed. I provided comments and received feedback in regards to those comments. I wouldn't say that that was substantive or significant, but I clearly was part of the process.

Q. Other than receiving a copy of a document and commenting on it, do you recall doing anything else in connection with this project?

A. I don't.

Q. Were you involved in the decision to schedule the intercompany loans on the debtor's statement of assets and liabilities filed in connection with the bankruptcy?

A. Yes. My team and I prepared the SOFA and SOL.

Q. Do you recall whether there was an

issue about how the intercompanies would be characterized on those documents?

A. I don't recall any issue with that, no.

Q. Were you aware of anybody giving any consideration to not scheduling the intercompanies on the SOFA and the SOL?

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

Q. Is it fair to say that by the time the SOFA and the SOL were filed, you and your staff had done a significant amount of work analyzing the intercompany balances?

A. We would have done -- yes, we would have done a fair amount of analysis on the intercompany balances by then, yes.

Q. And as part of that analysis -- strike that.

(Dondzila Exhibit No. 14 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Exhibit 14. It's an email from Ms. Westman to you, and it appears to forward a string of emails to Mr. Renzi -- starting on the second page, to

Mr. Renzi from folks at Houlihan.

Do you have any understanding of who Houlihan represented?

A. I don't recall.

Q. You believe there's some bolded text that appears to be interlineated in Mr. Lewis from Houlihan's email. Are you able to tell either by the face of the email or through recollection whether that's your text or Ms. Westman's?

MR. LIPPS: Just so the record's clear, you're talking about the bolding on 512 and 513?

MR. PERRY: Yes.

A. It's not clear to me that it's mine or Barb's.

Q. Well, do you have any recollection of writing any of the bolded text?

A. No, I do not.

Q. If you look at -- go to 513, Mr. Lewis writes: "We know the schedules will be published this week, but since we have not seen them, we do not know how the intercompany claims will be described/detailed in the

schedules. We anticipate we'll start getting calls on the schedules starting on Monday. We'd like to be able to say more than, dot, dot, dot, the company has indicated the intercompany claims should be treated as equity contributions."

And then there's some bolded text that reads, "I believe this is what is holding things up. We are not disclosing that these claims should be treated as equity contributions, therefore, we haven't responded as of yet."

Did you write those words?

A. I don't know. I don't recall.

MR. LIPPS: Objection, asked and answered.

Q. Do you have any understanding of the -- well, were the schedules held up for a period of time before they were published in June of 2012?

A. I'm not sure what the reference to schedules means, so no, I'm not aware of anything being held up. I'm not aware we didn't file everything that we were required to

file timely.

Q. Regardless of timely or not timely, my question is, do you recall there being a delay while people considered how to characterize certain things on the schedules, for example?

MR. LIPPS: Doesn't delay assume timely, or untimely? Go ahead and answer. I'll object.

MR. PERRY: Linguistically, no.

Q. Do you understand my question?

A. I do. Given that none of us on the ResCap side had been through a bankruptcy before and were not familiar with the specific requirements around certain of the filings that we had to make, I am positive that we took time to understand how things should be presented, and I'm equally positive that there were things that came up where we had questions about how to present something in a schedule. But I'm not aware of anything that got held up because of disagreements or, as this seems to imply, that there was some question about how something would be disclosed here.

Plaintiff's Objection 133:3-134:3 Beyond the scope of affirmative testimony

But I'm positive we had questions about how to disclose things.

Q. Okay. And particularly with respect to whether the intercompany balances would be disclosed as debt, equity, or something else, do you recall that being an issue that you and your staff had questions about in preparing the schedules?

MR. LIPPS: In answering that I don't want you to disclose any conversations that you may have had with counsel.

A. I don't recall there being any questions about how -- that we raised about how to present those in the SOFAs and the SOLs.

Q. Did you raise questions about how those balances should be presented somewhere else? You limited your answer to the SOFAs and the SOLs. Was there some other place that you were contemplating disclosing them and opted either to disclose or not to?

MR. O'NEILL: Object to form.

MR. LIPPS: Objection. Objection.

A. As I mentioned before, they were

excluded -- for my purposes and how we interacted with the waterfall, they were not -- we were not privy or party to any of that and how they were presented there, so that was the cause for my exclusion, I guess, or whatever I said by limiting my response. I'm not aware of anything else.

Q. So they were listed in the schedules, but not taken into account in the waterfall; correct?

A. I was not part of any decision of how or if they were included in the waterfall.

Q. Okay. Do you know whether -- well, strike that. By the time the SOFAs and the SOLs were filed in the bankruptcy, are you able to estimate how much time you and your staff had spent on the intercompany issues?

A. No.

Q. Fair to say hundreds of hours?

MR. LIPPS: Objection.

A. I don't know that I could put numbers around it.

Q. Certainly a lot of time, though; correct?

MR. LIPPS: Objection, asked and answered. Go ahead.

A. It was definitely an area where we -- a focus, definitely an area of focus.

Q. And you understood at least at the time the SOFAs and the SOLs were filed, there were differing potential treatments that would be significant in the context of the bankruptcy, either debt or equity; right?

MR. O'NEILL: Objection.

MR. LIPPS: Objection. I think you've already asked her about this, but go ahead with the caution I don't want you to reveal any conversations that you had with counsel.

A. I was aware that there would need to be -- that there was a -- I was aware that the characterization of intercompany balances as debt or equity was a topic in the context of the bankruptcy, yes.

Q. And you were aware of that prior to the filing of the SOFA and the SOLs; right?

A. Yes.

MR. PERRY: We take a break?

C. Dondzila

THE VIDEOGRAPHER: The time is 2:31. We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 2:42. We're on the record.

(Dondzila Exhibit No. 15 was marked for identification.)

BY MR. PERRY:

Q. Ms. Dondzila, before you is Dondzila Deposition Exhibit 15. It's a copy of a Notice of 30(b)(6) Deposition served by the ad hoc group of junior secured noteholders in the Residential Capital bankruptcy case. It's addressed to Residential Capital LLC and its affiliated debtors.

My understanding, ma'am, is that you've been designated as a representative of ResCap LLC and its affiliated debtors to give testimony on behalf of the debtors in connection with topic number 16. Is that consistent with your understanding?

MR. LIPPS: Yeah. I'll just put on the record I think we did confirm that in an email, and I spoke to you briefly

about it, that she is somebody that we have designated for that topic as we understand it.

MR. PERRY: Okay.

Q. Is that consistent with your understanding, Ms. Dondzila?

A. Yes, with 16 being all matters concerning negotiations undertaken through the Brokering Consumer Loans Project.

Q. And other than conversations with your counsel, have you had discussions with anybody from the debtors in which they authorized you to provide testimony on behalf of the debtors with respect to number 16?

A. I did not speak with anybody from the debtors. I only spoke to counsel.

Q. Okay. What is your understanding of the dispute between the debtors and Ally with respect to the Brokering Consumer Loans Project?

MR. LIPPS: I'll object.

MR. O'NEILL: Objection.

MR. LIPPS: Object to the form.

I'm not sure that's an accurate

characterization. But go ahead.

A. I'm not aware that there's a dispute, that there was a dispute between the debtors and Ally.

Q. Okay. Did you -- you participated in -- well, did you sit for any interviews with the examiner appointed in these bankruptcy cases?

A. I sat for two interviews with a special examiner that was appointed in the ResCap bankruptcy case, yes.

Q. And did you understand the examiner to be, among other things, investigating causes of action that the debtors might have against Ally?

A. Generally, that was my understanding, yes.

Q. And did you understand that one of the causes of action the examiner was reviewing was breach of contract claims arising out of the Brokering Consumer Loans issue?

MR. LIPPS: Objection to form.

MS. WU: Objection to form.

A. I understood that he asked me

questions about that matter. I had no reason to know what his goals or objectives were in that regard.

Q. Have you reviewed any portion of the examiner's financial report?

A. I did not.

Q. In connection with preparing to be a 30(b)(6) witness on topic number 16, did anybody summarize the examiner's conclusions with respect to the Brokering Consumer Loans Project?

MR. LIPPS: Well, I don't want you to disclose any conversations that you had with counsel, so I don't know what you're asking her other than trying to get into that discussion.

MR. PERRY: She's a 30(b)(6) witness. I guess --

MR. LIPPS: She's not a 30(b)(6) witness on what the examiner did.

MR. PERRY: If her testimony is not going to rely upon and she's not going to give answers with respect to what she learned from counsel, that's fine.

C. Dondzila

MR. LIPPS: That's right. And she said --

MR. PERRY: If she's being prepped and part of the way that you're preparing her is telling her these are the facts and these are not the facts, and she's going to testify on behalf of the business, I'm entitled to examine her on these subjects.

MR. LIPPS: I understand that. But the way you've asked the question I think gets you inside of the discussion with counsel. She's already said she didn't review the examiner report, so I don't know what more you need on it.

Q. Do the debtors have a view about whether they have strong claims against Ally with respect to the Brokering Consumer Loans Project?

MS. WU: Objection.

MR. O'NEILL: Objection.

MR. LIPPS: Objection.

MR. PERRY: What's the nature of the objection?

C. Dondzila

MR. O'NEILL: I say it's work product.

MR. LIPPS: Yeah, it is asking for a legal conclusion.

MR. PERRY: I'm asking for the debtor's view.

MR. LIPPS: On what?

MR. O'NEILL: They have strong legal claims?

MR. PERRY: Yeah.

MR. LIPPS: No, no.

MR. PERRY: So you're not going to permit the company to answer the question about whether it has strong legal claims?

MR. LIPPS: The company will answer questions about the brokering project and the investigations that followed on from that, but they're not -- the company's not going to answer whether it believes it has legal claims or not legal claims.

MR. O'NEILL: She's a 30(b)(6) on negotiations undertaken through the

C. Dondzila

Brokering Consumer Loans Project.

That's it. Not on claims the company might think it has.

MR. PERRY: Okay.

Q. Did you participate personally in the negotiations undertaken through the Brokering Consumer Loans Project?

A. I did not participate directly in the negotiations, no.

Q. Who participated in those negotiations?

MR. O'NEILL: Objection.

MR. PERRY: What's the nature of the objection?

MR. O'NEILL: It's unclear. You're asking her about your 30(b)(6) topic, not something she necessarily understands. You phrased the --

MR. LIPPS: She can answer, try and answer what you've asked. I didn't stop her from doing that.

MR. PERRY: I know you didn't, but I was intrigued about the objection.

MR. LIPPS: Yeah, go ahead.

A. Jim Young, as the chief financial officer, would have been involved. I do not know who would have been involved on the Ally Bank side.

Q. Well, what's your understanding of pre -- let's take pre-2009, what the arrangement was between GMACM and Ally with respect to the Brokering Consumer Loans Project?

MR. LIPPS: Pre-2009? There wasn't a broker's agreement.

MR. PERRY: Okay.

MR. LIPPS: So I'm not sure I know what you're asking. But if you know what he's asking, go ahead.

Q. Let's do it this way, Ms. Dondzila. What is your understanding as the corporate representative of the debtors what the Brokering Consumer Loans Project was?

A. There was an initiative at the end of 2008 that would change the operational and business interactions between Residential Capital, broadly, including its affiliates, and Ally Bank specifically in connection with the

origination of and holding of loans, residential mortgage loans, prior to their sale to the -- into the secondary markets.

Q. Okay. And prior to the change in the operation and business relationship between the two entities, can you describe the operation and business relationship of the two entities with respect to -- with respect to this particular project?

A. Prior to the implementation of the broker to bank agreement, using that as the nomenclature for the actual form of the agreement, GMAC Mortgage would have been the named originator and would have funded loans in its name, residential mortgage loans. Some portion of those loans would have been subsequently sold to Ally Bank. Ally Bank would have held those loans and held them on their balance sheet until such time as they were pooled and sold -- well, sold from Ally Bank back to GMAC Mortgage, who would then pool those loans and sell them into the secondary market.

Q. What was the purpose of the sale of

the loans to Ally and then back?

A. Ally provided -- would finance the loans, so by the purchase, they would be holding and financing those loans.

Q. And the loans were pooled and then sold by GMACM?

A. That is correct.

Q. Okay. And if the value of the loans went down below the amount of funds -- strike that.

If the value -- if the loans were not able to be sold for the amount that they were acquired for, the funding that was provided for the loans, who bore that risk of loss prior to 2009?

MR. LIPPS: Objection to form, but go ahead.

A. There were separate agreements that existed between the companies, GMAC Mortgage and Ally Bank, one of which was an -- a derivative contract between the two entities that would have resulted economically in GMAC Mortgage bearing the risk of a decline in value of the loan, conversely benefiting from an

increase in the value of the loan.

Q. And did that change at any time during 2009?

A. No. There were no changes to that agreement. There were no changes to the derivative agreement.

Q. Okay. Were there changes to any other agreements -- well, let's start this way. What were the varying agreements that memorialized the relationship between GMACM and Ally about this particular subject?

MS. WU: Just to clarify, by "Ally," you mean Ally Bank?

MR. PERRY: Sure.

MR. LIPPS: As it relates to the sale and purchase of loans.

MR. PERRY: Yes.

A. There was a master mortgage loan purchase and sale agreement, there was the derivative that I just referenced. It would have been by differing people called the held for sale swap or the pipeline swap. And, once executed, there was the broker agreement. There was also a client agreement I believe is

how we refer to it in the financial statements.

The client agreement governed the sale of loans from -- or the -- I believe the client agreement covered the purchase and sale of loans between the two entities. The primary, though, in principal agreement that did that was the master mortgage loan purchase and sale agreement.

Q. So broadly speaking, the idea was GMACM would broker loans, Ally Bank would in turn provide the funding for the loans. Correct?

MR. LIPPS: Talking about under the broker agreement?

MS. WU: Object.

Q. Under the broker agreement.

A. Under the broker agreement, Ally Bank would underwrite and would fund in its name the residential mortgage loan, yes.

Q. And after Ally Bank funded in its name the residential mortgage loan, it would sell the loan to GMACM? Is that right?

A. Yes.

Q. Okay. And how long would that take

for the sale to occur? Did Ally hold the loan on its books for a material amount of time?

MR. O'NEILL: Object to form.

MR. LIPPS: Two different questions. Which one do you want to answer?

MS. WU: Object to form.

Q. Did Ally hold the loans on its books for a material amount of time?

MR. LIPPS: Ally Bank?

MR. PERRY: Ally Bank.

MR. O'NEILL: Objection.

MS. WU: Objection.

MR. LIPPS: Objection.

A. No.

Q. It would instantaneously sell them back to GMACM; is that correct?

MR. LIPPS: Objection.

MS. WU: Objection.

A. No.

Q. Okay. How long was it held on Ally Bank's books, the loans?

A. On average, 25 days.

Q. And the loans were then sold back to

GMACM; correct?

A. Yes.

Q. And then the loans were pooled by GMACM; is that right?

A. Yes.

Q. And GMACM, after it pooled a number of loans, would ultimately sell them as part of a securitization or some other transaction; right?

MR. LIPPS: Objection to form, but go ahead.

A. In 2009, it would have been pooled and sold through either a Freddie, Fannie, or a Ginnie securitization. There would have been no private label.

Q. And how long were the loans pooled? How long did it take for the pooling process to occur, on average?

MR. LIPPS: Objection.

A. That part of the process was effectively instantaneous.

Q. And if the loans declined in value for the roughly 25 days that they were held at Ally Bank, who bore the risk of loss under

these agreements? Which entity?

A. GMAC Mortgage.

Q. And conversely, if the loans appreciated in value, is it correct that GMAC Mortgage would be able to recognize the profit on the loans?

MR. LIPPS: Talking about the broker agreement?

MR. PERRY: On the sale of the loan.

MR. LIPPS: Under the broker agreement.

MR. PERRY: Under the broker agreement.

MR. LIPPS: Sale into secondary market; there's a gain.

MR. PERRY: Yes.

A. So you're talking about two different things, but the answer is yes, GMAC Mortgage would benefit from an increase in value from the point a loan was locked to the point that a loan was ultimately resold back to GMAC Mortgage. And to the extent that there was any gain recognized on the sale of that mortgage

into the secondary market through the pooling process, GMAC Mortgage would have been entitled to that gain as well.

Q. Okay. And under this arrangement, what gain -- what was the profit opportunity for Ally Bank?

MR. LIPPS: Under the broker arrangement?

MR. PERRY: Yes.

MR. LIPPS: Note my objection. Answer if you can.

A. Ally Bank's profit would have been similar to any other underwriter who underwrites and funds mortgage loans. To the extent there are fees that are collected, to the extent that there are, you know, points collected, to the extent that those are in excess of their costs, those would be the profits that they would have recognized.

Q. Now, in August of 2009, did Ally Bank change the way it recognized the revenue and expenses from this arrangement?

A. No.

Q. Was there a switch to fair value

accounting by Ally Bank in August of 2009?

MR. LIPPS: That she's aware of.

Q. That you are aware of?

MR. LIPPS: Because she's not Ally Bank's designated. Go ahead.

A. Yes, I'm aware that Ally Bank for loans funded after July 31 of 2009 made a fair value election.

Q. And did that affect, Ally Bank's fair value election affect the economics from GMACM's perspective?

A. No.

Q. So as a result of the fair value election, it's your testimony that GMACM did not retain -- receive less profit on the sale of the loans than it otherwise would have?

MR. LIPPS: Objection to form, but go ahead.

MS. WU: Objection to form.

A. There was no impact from the fair value election on the value of the loans.

Q. Did Ally do anything in August of 2009 that led to GMACM receiving less profit on the sale of the loans in connection with the

brokering arrangement?

MS. WU: Objection to form.

MR. LIPPS: Same objection.

A. To my knowledge, Ally, in this case, Bank, did not do anything to affect the profitability recorded.

Q. Now, did there come a time where Ally required GMACM to reimburse Ally for revenues that had been recognized in the first half of 2009?

A. There was a reimbursement from GMAC Mortgage to Ally Bank that related to that period that was the result of an error in the implementation of changes to the accounting process.

Q. And can you describe the error in implementation of changes to the accounting process?

A. The profiles that were established, which profiles direct the systems to put debits and credits -- and debits and credits meaning revenues and expenses -- and to record those in the financial records of the company, there was one item that continued to post and shouldn't

have, and that increased the revenues or decreased the expenses, whichever way you want to think about it, of GMAC Mortgage. And that was at the detriment of Ally Bank.

Q. What was the item that continued to post and shouldn't have?

A. It was a line, I think the name of the line on the ledger was a FAS 91 was the descriptor. It included some reference to FAS 91.

Q. And do you have any knowledge of the size of the purported error?

A. The error that was identified and reimbursed was approximately $48 million. I don't know if that includes the lost interest or not, but it was in or around $48 million.

Q. How was the error identified?

A. In late 2011, a member of the Ally Bank organization raised concerns about recordation and recognition of revenue in the context of this arrangement between Ally Bank and GMAC Mortgage/ResCap. That concern led to a much more significant analysis on the part of the finance team, finance and accounting team

at GMAC Mortgage, and included some members of the Ally Bank accounting team.

That analysis was -- continued all the way through to, I believe, the end of February, early beginning of March, at which point, after a fairly comprehensive review of underlying documents, discussions with other parties throughout the organization who were part of the accounting or part of other parts of the business process, that -- and also a review of the governing legal documents, including with outside counsel, we concluded that there had been an error.

That information was summarized, was shared with -- in my part, I'm aware was shared with the audit committee at ResCap, and the correction was made and the settlement was, I believe, executed in March of 2012.

Q. That's two months before the bankruptcy; right?

A. Yes, that is correct.

Q. Okay. And the individual that raised the concern was Adam Glassner; is that correct?

A. That is my understanding, yes.

C. Dondzila

Q. Did Mr. Glassner leave the company thereafter?

MR. LIPPS: By the company, you mean Ally Bank?

MR. PERRY: Ally Bank.

A. I believe Mr. Glassner left Ally Bank at the end of January of 2012 or the early part of February 2012.

Q. Do you know if he left as a result of his concerns about this particular issue?

A. I am not privy to that information, as he was an -- an Ally Bank employee.

Q. Now, KPMG was retained to perform an investigation; right?

MR. LIPPS: Retained by? Are you asking her whether she did it?

Q. Do you know whether KPMG was retained to perform an investigation?

A. The head of internal audit, Ann Cummings, an Ally Financial employee to my knowledge, in partnership with the head of global security of Ally Financial, did engage KPMG to perform an investigation under their collective direction.

Q. So Ally retained KPMG to perform the investigation; correct?

A. That is correct.

Q. Did ResCap or GMACM retain their own advisors to perform an investigation on behalf of GMACM?

A. We did not.

Q. Why not?

A. Ally Financial, in terms of internal audit and in terms of global security, provided services to ResCap in those capacities, and we leveraged the work of those experts jointly.

Q. Did you understand the experts to represent GMACM as well as Ally Financial?

A. I did not understand that directly.

Q. Did GMACM rely on the work of KPMG in connection with their decision to -- well, strike that.

How was the alleged accounting error dealt with on GMACM's books?

A. We reopened the -- well, they weren't closed officially, but we recorded the loss that -- the amount of the error that we had calculated as an expense or loss in the income

statement of GMAC Mortgage for the fiscal year ended December 31, 2011.

Q. Why wasn't it dealt with by just a straight cash settlement?

A. Debits have to equal credits, so we -- if you -- I can make a cash settlement, which would credit cash, but I have to have a debit, and so my debit was that I had a loss, which that was my earnings were overstated in a prior period, so I had to recognize that loss.

Q. Okay. Was there any -- was there any cash paid by GMACM in connection with the settlement?

A. That, I do not recall.

Q. Do you know -- can you describe what it was about the accounting practices between the beginning of 2009 and later in 2009 -- well, strike that.

The -- were the accounting practices with respect to the line item that you discussed earlier in your testimony consistent throughout 2009?

A. No.

Q. When were they changed?

A. On or about the fair value election.

Q. And when did the fair value election occur?

A. All loans funded subsequent to January -- or July 31, 2009.

Q. Okay. And at the time of the fair value election, why did no one go back to the beginning of the year and change the accounting treatment that ultimately was changed at the time of the fair value election?

A. It was a control issue and should have been something that we would have picked up, hence the designation as an error.

Q. And Mr. Glassner's concern was not the pre-July 31, 2009 error. Mr. Glassner had a concern that the post-July 31, 2009 change was, in fact, detrimental to GMACM; right?

MR. LIPPS: Objection to the characterization, but go ahead.

MS. WU: Objection. Same objection.

A. I never spoke directly with Mr. Glassner, and I don't know him to have time-banded it to a period of post-August 1 or

any other period. I was aware that he raised concerns that ResCap was entitled to more revenue than they had been recognizing.

Q. Okay.

A. The period, I am not certain that he made that clear.

Q. And what did you understand Mr. Glassner's concerns to be, particularly about why ResCap was entitled to more revenue than they were getting?

A. Again, I never spoke directly with Mr. Glassner. I was just aware that he had spoken to members of the leadership team and that his concern was that ResCap was entitled to more of the revenue than they were receiving. I had subsequently understood it to be something to do with the revenue recognition around what people internally started calling premium pricing, but points, premium pricing, etc.

Q. And do you understand what Mr. Glassner's position was about how points or premium pricing ought to be recognized as between Ally Bank and GMACM?

A. We explored all the facets once the issue was raised. We were not limiting ourselves to one direction or another. We I believe fairly comprehensively explored all aspects of the relationship for the entire time period covered. So that included a consideration of whether more revenue -- whether the revenue splits should have been in a different direction, but we did review both sides.

Q. And when you say "we," who was it who reviewed both sides?

A. We had a fairly extensive team internally within ResCap and certain representatives from Ally Bank as well. Myself, Jim Whitlinger, Nikki Rock, Ryan McKendrick, Colleen Cowley. We probably brought in, you know, subject matter experts from a variety of different parts of the finance and accounting department. Joe Cortese was contributing and participating as the controller at the time of Ally Bank.

Q. Did Mr. Cortese attend all of the meetings that you had on this subject?

MS. WU: Objection to form.

A. I don't know that he attended every meeting.

Q. Did he attend most of the meetings on this subject?

A. Again, he was involved. I don't know if it was most, if it was some, or if it was -- I know it wasn't all.

Q. It was between you and Mr. -- did Mr. Cortese take the lead from the Ally Bank side on the investigation?

MS. WU: Objection to form.

A. Yes, my understanding is that Joe Cortese was -- in terms of the work that we were doing prior to the investigation that was undertaken by internal audit and global security, that Joe Cortese was participating on behalf of Ally Bank and was reporting to his leadership team.

Q. How many people were involved on the Ally Bank side of the investigation?

A. Well, so the investigation that internal audit and global security performed, there were more people because they conducted

interviews. I would say that we probably had working with our group, which predated that, it would have been Joe Cortese, and then again as there were subject matter experts that were part of the original working group or otherwise had knowledge, I'd say it was probably three or four other people from the bank that would have participated in some capacity.

Q. About how long did -- prior to the internal audit, global security investigation, how long did the review that Mr. Cortese and others did take?

A. We started in the middle of December. I recall that the issue was first brought to my attention, you know, sort of the middle of December of 2011. And I believe that internal audit was brought into the process in late January of 2012.

Q. Did ResCap have an internal audit staff, its own internal audit staff?

A. We did not.

Q. Were ResCap's auditors at Deloitte & Touche advised of the issue?

A. Absolutely.

Q. When were they advised?

A. I would expect it would have come up in January. I can't be certain of the exact date, but it would have come up in January of 2012.

Q. Who were Ally's outside auditors?

A. Deloitte & Touche.

Q. And did you advise Deloitte & Touche of the issue or did Mr. Cortese or somebody else from Ally?

MS. WU: You mean the bank?

MR. PERRY: Sure.

A. So I would have only dialogued with Deloitte & Touche in the context of ResCap. However, we would have obviously disclosed that it was a matter that we were exploring that related to a contract or an arrangement that we had with Ally Bank. And the same -- I believe we at that point in time had the same partner on our engagements, so they would have been aware even though I was not representing Ally Bank.

Q. Did the FTI firm become involved in the issue at all?

C. Dondzila

A. I don't recall FTI being involved in this one.

Q. Did ResCap retain outside counsel in connection with this issue?

A. We did not uniquely retain outside counsel for this issue in and of itself, no.

Q. What do you mean by that answer?

A. We used counsel that were -- we were already working with.

Q. Okay. Was that restructuring counsel?

A. It was.

Q. Was that Morrison & Foerster?

A. Morrison & Foerster.

Q. Did Ally Bank retain outside counsel in connection with this issue?

A. I don't know the answer to that question.

(Dondzila Exhibit No. 16 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Deposition Exhibit Number 16. Can you identify this document?

A. Yes, I can.

Q. What is the document?

A. This is the materiality analysis under the Professional Guidelines SAP 99 and 108 related to the determination of the significance of the error to previously issued and currently to-be issued financial statements.

Q. Who drafted the memo?

A. I did, sir.

Q. Did you review any memos prepared by Mr. Cortese with respect to this subject?

MR. LIPPS: By "this subject," you mean her materiality analysis?

MR. PERRY: Yeah.

A. I don't recall reviewing the Ally Bank materiality memo, but I would not be surprised if I had been provided a copy. But I don't recall reviewing it.

Q. Did you cut and paste any pieces of the Ally Bank materiality analysis?

A. I did not.

Q. Do you know whether -- well, let's do number 7.

C. Dondzila

(Dondzila Exhibit No. 17 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Deposition Exhibit 17. Can you identify this document?

A. It's a memo from Joe Cortese, the Ally Bank chief accounting officer, to the Ally Bank 2011 financial statement files. And it -- the subject line being there "Materiality analysis under professional standards SAP 99 and 108 in regards to the error."

Q. And you'll see his subject line is the exact same subject line as your subject line; correct?

A. Correct.

MR. LIPPS: Objection. The document speaks for itself.

Q. Did you review Mr. Cortese's memo before it was finalized?

MR. LIPPS: Objection, asked and answered. Go ahead.

A. I would have no reason to have reviewed his document, but could have received it, but would have had no reason to have seen

this.

Q. Did Mr. -- did you provide Mr. Cortese with a copy of your memo prior to finalizing?

A. I do not recall it -- if I provided it to Joe.

Q. Do you recall Mr. Cortese reviewing and commenting on your memo, Dondzila Exhibit 16?

A. I do not.

Q. Who else reviewed Dondzila Exhibit 16 before it was finalized?

A. I would have shared it with Jim Whitlinger, chief financial officer at the time. Barb Westman in all likelihood also participated in -- and had an opportunity to review and comment on the memo. It ultimately was obviously provided to members of the audit committee and other executive team members.

Q. Did Mr. Cortese -- well, strike that.

Was this memo, Dondzila Exhibit 16, provided to the audit committee?

A. Yes.

MR. LIPPS: Objection, asked and

answered.

THE WITNESS: Sorry.

A. Yes.

Q. Do you know whether Mr. Cortese's email, memorandum, was provided to the ResCap audit committee?

A. Joe Cortese's memo in regards to materiality of Ally Bank would not have been provided to the ResCap audit committee.

(Dondzila Exhibit No. 18 was marked for identification.)

BY MR. PERRY:

Q. Before you is Dondzila Deposition Exhibit 19 [sic]. Can you identify the document?

A. I know this to be 18.

MR. PERRY: Is it 18 or 19?

THE REPORTER: It's 18, sir.

A. These were materials that were distributed to the members of the Residential Capital LLC audit committee in connection with a meeting on Tuesday, March 20, 2012.

Q. Do you recall -- it says here the meeting occurred at 7:30 a.m. Is that

accurate, to the best of your recollection?

A. To the best of my knowledge, that's the time the meeting was held.

Q. Was that a telephonic meeting?

A. It was.

Q. Where were you during the meeting?

A. I don't recall where I was.

Q. Did you take the call with other members of your staff or your colleagues?

A. I don't recall.

Q. Were any representatives of Ally Bank present at the meeting?

A. No.

Q. Did any representative of Ally Bank receive any of these materials distributed to the ResCap audit committee prior to the distribution?

A. The report of Ann Cummings and global security would in all likelihood have been distributed to Ally Bank, and that is a component of the materials included.

There is an -- and that would include various appendices that are attached to that report, and also summaries of the global

security investigation report. They could have received copies of those. I'm not privy to whether they did or not, but those are not -- it would not surprise me if they had received that information.

Q. Your memorandum was supplied to the audit committee; correct?

A. It was.

MR. LIPPS: Objection, asked and answered.

Q. And that's reflected at RC40022125; correct?

MR. LIPPS: It's the first page of it.

A. Correct. The first page of the memo is at that Bates number, correct.

Q. If you go to the conclusion on the last page, it says we -- the very last in brackets, "We shared this memo with external auditors who have concurred with the conclusion. We also shared the results of this analysis with the audit committee on March" -- and then it's got an open date, "prior to March," then it's got another open date,

"filing of the December 31, 2011 ResCap and GMAC Mortgage annual financial statements." Do you see that?

A. I do.

Q. Was the memo updated at some point after the meeting to reflect the fact that the meeting had occurred?

A. That would be consistent with my expectation, yes.

Q. Now, we looked at Dondzila Exhibit 16 previously. It's dated March 10. Do you know whether Dondzila Exhibit 16 was edited in advance of the audit committee meeting?

A. I don't know. It's possible.

Q. Just to -- well, you'd agree with me that Dondzila Exhibit 16 is a 12-page document, whereas the copy of the memorandum provided to the audit committee is a 13-page document; right?

MR. LIPPS: Objection. The document speaks for itself, but you can make the comparison.

A. Yes, that's correct.

Q. In the intervening ten days between

your initial memoranda at Dondzila Exhibit 16 and the memorandum provided to the audit committee, do you recall changes being suggested by Ally Bank personnel?

A. No.

Q. Do you recall sharing Dondzila Exhibit 16 with Ally Bank personnel?

MS. WU: Objection.

MR. LIPPS: Objection, asked and answered. Go ahead.

MS. WU: Same. Same objection.

A. I don't recall, but could have.

Q. And go back to the audit committee meeting. About how long did it last?

MR. LIPPS: On the 20th?

MR. PERRY: On the 20th.

A. I don't recall that it went over the scheduled hour.

Q. And who spoke at the meeting?

A. As I recall, Ann Cummings -- we'd need to consult the minutes, but the chairman of the audit committee would have called it to order, Pam West, and Ann Cummings, along with potentially could have been introduced by

Mr. Solomon, but Ann Cummings and the global security representatives would have presented their report, and upon completion of the audit committee members' review of those materials and any questions or answers for Ann, it would have been handed over to me and I would have been responsible for presenting the materiality analysis.

Mr. Tom Robinson and Carol Larson, who was the lead partner on the Ally Financial audit, and the sort of relationship partner, could have also been called upon to speak about their conclusions, concurrence or otherwise, with management's conclusion in this regard. But we'd have to look at the minutes for certainty.

MR. PERRY: Why don't we -- I'm getting a note on the tape so why don't we give him a chance to change the tape, and if you want to take a break.

THE VIDEOGRAPHER: The time is 3:41. We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is

3:48. We're on the record.

BY MR. PERRY:

Q. Who is Ann Cummings?

A. Ann Cummings was the head of internal audit for Ally Financial, Inc. at the time of this investigation.

Q. And who is Carol Larson?

A. Carol Larson is the relationship and lead partner from Deloitte & Touche for the Ally Financial services that Deloitte provides.

Q. Who is the audit partner at this point in time for Residential Capital LLC?

A. Tom Robinson.

Q. Did Mr. Robinson provide any audit services for Ally Bank as far as you know?

A. I believe that Mr. Robinson did, in fact, provide audit services to Ally Bank at the time.

Q. Was anybody from the Morrison Foerster firm at the meeting?

MR. LIPPS: By the meeting, you mean the March 20 audit committee meeting?

MR. PERRY: Yeah.

Q. Was anybody from the Morrison Foerster firm at the March 20, 2012 audit committee meeting?

A. No, I don't believe any of the attendees were from Morrison & Foerster.

Q. And who did most of the talking at the meeting?

MR. LIPPS: I think that's been asked and answered, but go ahead. So I'll note my objection.

A. I don't know exactly how to split the time, but I would guess that both Ann Cummings on behalf of the work performed by herself and global security, and in terms of presenting the information from the experts that they hired, KPMG, she and I would have probably shared the -- done the lion's share of the talking at the meeting.

Q. Was anybody from KPMG actually at the meeting?

A. As I recall, there was at least one representative on the phone from KPMG.

Q. Is that -- did that person talk at all?

A. I don't recall if he spoke.

Q. Was that person identified on the distribution here?

A. No, I do not believe, no.

Q. Did members of the audit committee ask any questions during the meeting?

A. Yes.

Q. Who asked questions?

A. We have a very active audit committee, so I would not be surprised to have gotten a number of questions from the chairman of the audit committee, Pam West, and Ted Smith. I do not recall if Mr. Ilany or Mr. Mack had any specific questions that they asked.

Q. Did anybody from the audit committee -- well, strike that.

Was there any discussion at the audit committee meeting about whether the accounting treatment that was changed in August of 2009, whether ResCap approved that change?

MR. LIPPS: Objection to form.

MS. WU: Same objection.

A. What accounting change in 2009?

Q. Well, as I understand your testimony, when there was a change to fair value accounting, that resulted in the accounting for the brokered consumer loans being changed in a way that affected the accounting and the revenue recognized going forward. Is that fair?

A. I wouldn't characterize it as an accounting change. I would characterize it as an error in the underlying accounting process, but it wasn't an accounting change.

Q. Okay. So it was an error that was corrected in August of 2009?

A. No, it's an error that was identified in 2012 and corrected in 2011 financial statements.

Q. Okay. But here's my question. So in August of 2009, something changed; right?

MR. LIPPS: Objection, asked and answered, but go ahead.

MS. WU: Same objection.

A. In August in 2009, yes, there was a change to the operational accounting process as a result of the fair value election.

Q. And the change in the operational accounting process, at least in your view, corrected the error in the accounting process at least up to July 31, 2009; right?

A. So the answer is yes, but the error actually persisted past August 1 of 2009 because it related to loans that were brokered to the bank, and the error would manifest itself when they were finally sold.

So as loans that were brokered to the bank all the way up through July 31, those loans -- we had losses that we incurred, or we had -- the error manifested itself and continued to manifest itself through the end of 2009 because it was more attached to the timing of when the loans were funded and then sold.

So there was no issue with loans that were funded after July 31 of 2009.

Q. I think I understand. And so when you say that the error persisted past August 1, 2009, it persisted at least as it respected loans brokered prior to August 1, 2009, but not sold until after August 1, 2009; right?

A. That is correct.

Q. Okay. And there was a change in the operational accounting process which resulted in loans brokered after August 1, 2009, not having this error; correct?

A. That is correct.

Q. And so that I understand it, what was the nature of the error that existed prior to August 1, 2009?

MR. LIPPS: On loans brokered prior to?

MR. PERRY: On loans brokered prior to that date.

MR. LIPPS: Just note my objection. It's been asked and answered. But go ahead.

A. There was a component of the transaction that was included in the recordation of those loans into the financial records that carried a title that included in some way, shape, or form, may not have solely said this, but said FAS 91. And for loans that were brokered prior to July 31 or prior to August 1 of 2009, that amount resulted in an understatement of revenue for Ally Bank and an

overstatement of revenue for GMAC Mortgage. For loans originated after August -- after July 31 of 2009, because there are no FAS 91 deferrals, the operational team removed that line from the profiles in the accounting recordation and it was no longer distorting the revenue split between the two entities.

Q. When you say distorting the revenue split, so just focusing pre-August 1, 2009, what was the revenue split that resulted from the FAS 91 deferral being applied?

A. Again, that was the approximately 47 or $48 million that we -- again I'm not sure if that does or doesn't have the interest number in it, but it was in that range.

Q. And is there a way to break it out on a particular loan-by-loan basis what aspect of the loan was being -- resulted in revenue to GMACM that changed after August 1, 2009?

MR. LIPPS: Objection to form.

A. If you look at the loan examples for the respective periods, yes, you would be able to identify what I'm describing.

Q. Okay. Do you recall as you sit here

today what the particular items were that changed after August 1, 2009?

MR. LIPPS: Objection, asked and answered. Go ahead.

A. Again, it was -- I don't remember the individual components of what was going to that line that I just described that had the name in whole or in part FAS 91. But it's that amount.

Q. Okay. Now, did -- at the time the change occurred and FAS 91 deferrals were no longer applied, was there any GMACM employee that either agreed or disagreed with that change?

A. We understood -- we, myself and my team -- building the accounting that we did because we, actually, GMAC Mortgage, did a fair amount of the accounting, operational accounting on behalf of Ally Bank, and we understood that FAS 91 deferrals were no longer appropriate in a fair value election schema, accounting scheme.

Q. And when did you come, you or your team come to that understanding?

A. As we were working through the

implementation to make that change on behalf of the bank.

Q. So this was in 2009?

A. This would have been in 2009, yes.

Q. Okay. And did you discuss the deferral -- this change in accounting treatment with anybody that you reported to?

A. Jim Young was aware at the same time that Ally Bank made the election, Residential Capital/GMAC Mortgage made the same election, and so Jim Young as the chief financial officer at the time would have been aware and would have been required to approve us making the fair value option election on behalf of GMAC Mortgage and Residential Capital.

Q. Well, did you have a conversation with Jim Young where you said, look, in words or in substance, making the fair value election will result in less revenue to GMACM because of the FAS 91 deferral issue?

A. The fair value election did not create or change the revenue distribution between the two entities. Implementing the change that we needed to make for the fair

value election, unbeknownst to us, corrected an error that we had that should have been made in the broker to bank implementation.

Q. Okay. It's the unbeknownst part to us that I'm focused on. At some point, there's a change to fair value accounting, and that corrects what you've described is an error that was previously extant for loans brokered prior to August 1, 2009.

And my question is: When did it become known to you that the error had been corrected in August 1, 2009?

MR. O'NEILL: Objection, mischaracterizes the witness's testimony.

MR. LIPPS: Same objection.

MS. WU: Same objection.

MR. LIPPS: Go ahead.

A. That would have become known in February of 2012.

Q. Now, did the audit committee consider taking the position, at least at the meeting you were involved at -- involved with, taking the position that the $47 million was not

Plaintiff's Objection 185:5-187:16 Beyond the scope of affirmative testimony

payable to Ally Bank?

MR. LIPPS: You know there was more than one meeting, so I -- do you want it just to be confined to one meeting or the meetings that the audit committee had?

Q. Well, let me ask you this: How many audit committee meetings were you at concerning this particular issue?

A. I attended all audit committee meetings unless I had a conflict, so I was an expected attendee at every audit committee meeting.

Q. And how many audit committee meetings do you recall the brokering agreement FAS 91 deferral issue being discussed?

A. At least a handful.

Q. Okay. Was the meeting that occurred on March 20, 2012 the final meeting on this particular issue?

A. I believe the answer to that is yes.

Q. Okay. And in -- during the March 20, 2012 audit committee meeting, do you recall any discussion of GMACM taking the position that

the $47 million payment was not due, or the $47 million correction was not appropriately due to Ally Bank?

A. Not at this meeting. I don't recall that being a topic of conversation.

Q. Okay. Do you recall GMACM -- do you recall the topic of GMACM taking the position that the $47 million payment was not due to Ally Bank being the subject of conversation at any other audit committee meeting that you attended?

A. I don't recall it coming up explicitly in an audit committee meeting. I don't recall it being an explicit topic that we discussed.

Q. And with respect to the March 20, 2012 meeting, was there any discussion about whether Residential Capital LLC had sufficient -- or GMACM had sufficient solvency to make the $47 million payment to correct the FAS 91 deferral issue?

MR. LIPPS: Objection to form, assumes facts not in evidence. Go ahead.

A. As I recall, Residential Capital was already in violation of its net worth requirements at that point. This would have obviously made that situation -- would have compounded that situation, but as I recall, we were already below our requirement. And there could have been conversation about the fact that this would put us below our required threshold or would keep us below that.

Q. Do you recall one way or another?

MR. LIPPS: That discussion, or --

MR. PERRY: Yeah, that discussion at an audit committee meeting.

A. I do recall discussing whether, at this or potentially a previous, the -- a previous meeting the applicability, if any, of the outstanding commitment that Ally Financial had made in connection with the December 2009 financial statements in terms of capital support and what impact, if any, that would have on our presentation or our materiality analysis in the context of a prior period error, meaning would we need to restate the 2009 financial statements, and what standing,

if any, would the agreement that Ally had had at that point in time to support the net worth of ResCap have on that analysis. So I do recall discussing that with the audit committee. I do not know which meeting it was at.

Q. So, just big picture, was Ally Bank a lender to ResCap in any of these liquidity facilities?

A. Ally Bank was not a lender to ResCap, it was a counterparty to various contracts but was not a lender to ResCap.

Q. Was there any concern either at the March 20, 2012 audit committee meeting, or any other meeting, that here you have a -- an entity that's providing substantial credit support to ResCap; right? And they're demanding a $47 million payment in March of 2012, when the entity is obviously in a lot of financial distress, was that subject generally discussed at any of the audit committee meetings?

MR. LIPPS: Objection to form.

MS. WU: Same objection.

MR. LIPPS: Compound.

A. I'm not -- there were no conversations that I would characterize consistent with the way you described it that occurred in any audit committee meetings I attended.

Q. Was there a concern that if ResCap took a different view with respect to the $47 million payment or settlement, that Ally could or would take action with respect to any of the liquidity facilities that it had provided to ResCap?

MS. WU: Talking about Ally Bank or Ally Financial? Because they're two separate entities.

MR. PERRY: Either Ally Bank or Ally Financial.

MR. LIPPS: Objection to form.

MS. WU: Same objection.

A. My involvement with the matter was to determine what had happened and to participate with the rest of management in concluding what the answer was. I was not party to any conversations such as you're suggesting

about -- that there could be adverse consequences to reaching a conclusion that was different than what we ultimately reached.

MR. PERRY: Give me 5 minutes.

THE VIDEOGRAPHER: The time is 4:12. We're off the record.

(Recess taken.)

(Dondzila Exhibit No. 19 was marked for identification.)

THE VIDEOGRAPHER: The time is 4:34. We're on the record.

BY MR. PERRY:

Q. Okay. Before you is Dondzila Deposition Exhibit 19. Can you identify this document?

A. Yes, I can. These are the minutes of the meeting, the telephonic meeting of the Residential Capital audit committee that had been held on March 20, 2012, at 7:30 a.m. Eastern.

Q. There's a reference to Jack Levy from Morrison Cohen. Do you know who he represented?

A. I do not know who he represented.

Q. Going to the second page, there's a -- the middle paragraph starting with the text "Referring to the written materials that have been previously distributed," it goes down and it says: "Discussion included, among other topics, quantitative and qualitative assessments, matters associated with the capital support agreements in place with Ally at December 31, 2009 and '11, and consideration of the 2009 restatement."

What do you recall the discussion about -- what do you recall about the discussion of matters associated with the capital support agreements in place with Ally at this audit committee meeting?

MR. LIPPS: Objection, I think that's been asked and answered, but go ahead.

A. That would have been in the context of what impact, if any, those agreements that were in place had in the matter of the possibility of a restatement of the financial statements, and the materiality of the error on those previously issued 2009 financial

statements, and anything that would ultimately, if we decided it was not going to be restated, be recorded in 2011's financial statements.

MR. PERRY: I have no further questions.

MR. LIPPS: All right. Anybody else have any questions? All right, concluded. We'll reserve the right to read and sign.

THE VIDEOGRAPHER: The time is 4:36. We're off the record.

(Deposition adjourned at 4:36 p.m.)

_____

CATHY DONDZILA

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 2013.

_____

(Notary Public)

My Commission expires: _____

C E R T I F I C A T E

DISTRICT OF COLUMBIA:

I, MARY ANN PAYONK, Shorthand Reporter, do hereby certify:

That the witness whose deposition is hereinbefore set forth was duly sworn, and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2013.

_____

MARY ANN PAYONK, Shorthand Reporter

Washington, D.C.

C. Dondzila

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CATHY DONDZILA PAGE

Examination by Mr. Perry 7

- INDEX TO EXHIBITS -

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C. Dondzila

NAME OF CASE: In Re Residential Capital

DATE OF DEPOSITION: October 17, 2013

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription error.

Page _____ Line _____ Reason _____
From _____ to _____
Page _____ Line _____ Reason _____
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CATHY DONDZILA

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 2013.

_____
(Notary Public)
My Commission expires: _____

statements, and anything that would ultimately, if we decided it was not going to be restated, be recorded in 2011's financial statements.

MR. PERRY: I have no further questions.

MR. LIPPS: All right. Anybody else have any questions? All right, concluded. We'll reserve the right to read and sign.

THE VIDEOGRAPHER: The time is 4:36. We're off the record.

(Deposition adjourned at 4:36 p.m.)

Cathy Dondzila

CATHY DONDZILA

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 18 DAY OF November, 2013.

(Notary Public)

My Commission expires: 12/31/2013

ABRAHAM DOGU NOTARY PUBLIC REG # 7254225 MY COMMISSION EXPIRES 12/31/13 COMMONWEALTH OF VIRGINIA

**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.,***
**Case No. 12-12020(MG)**

Deponent: Cathy Dondzila
Deposition Date: October 17, 2013

| Citation | Testimony |
|---|---|
| 19:6-7 | would have been reconciled |
| 20:14 | and ~~regulatory compliance with requirements~~ compliance with regulatory requirements. |
| 20:16 | implementation ~~of~~ by our |
| 35:25 | sweep of cash would have resulted ~~from~~ in the |
| 40:25 | of -- upon disposition of ~~the~~ ResCap's assets and |
| 45:16 | I'd have to ~~To~~ look at the financial statements. |
| 48:3 | There ~~was~~ were |
| 48:7 | Mortgage ~~with~~ to service |
| 58:10 | it was a payable, ~~it~~ you would credit interest |
| 63:11 | ~~Brandy~~ Brandee Frank? |
| 77:8 | form, it just depended |
| 84:22 | two sibling entities which would be treated through |
| 92:14 | ~~revolving~~ Revolver and LOC are recorded |
| 123:5 | Mr. Lipps to my left, Robert to my far left; |
| 123:7 | And I'm forgetting the last name of the other Alex from |
| 127:24 | ~~Res~~ Resi Holdings |
| 159:10 | which was that ~~was~~ my earnings |
| 167:5 | Professional Guidelines ~~SAP~~ SAB 99 |
| 168:11 | ~~SAP~~ SAB 99 |
| 182:13 | approximately $47 |
| 183:15 | We understood -- ~~we~~ me, myself and my |

Date: 11/17/13

Signed: Cathy Dondzila
Cathy Dondzila

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

In re: Case No. 12-12020(MG)

RESIDENTIAL CAPITAL, LLC,

et al.,

Debtors.

----------X

30(b)(6) DEPOSITION OF RESIDENTIAL CAPITAL, LLC

and AFFILIATED DEBTORS

by TAMMY HAMZEHPOUR

New York, New York

October 18, 2013

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Counter-Designation
Orange Highlighting = Joint Designation

Reported by:

Bonnie Pruszynski, RMR

JOB NO. 67067

October 18, 2013

10:05 a.m.

30(b)(6) deposition of Residential Capital, LLC and affiliated debtors by TAMMY HAMZEHPOUR, held at the offices of Morrison & Foerster , 1290 Avenue of the Americas, New York, New York, before Bonnie Pruszynski, a Registered Professional Reporter, Registered Merit Reporter, Certified LiveNote Reporter and Notary Public of the State of New York.

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BY: DAVID KOCHMAN, ESQ.

T. Hamzehpour

THE VIDEOGRAPHER: This is the start of tape labeled number one of the videotape deposition of Tammy Hamzehpour in the matter of In Re: Residential Capital, LLC, et al, in the United States Bankruptcy Court for the Southern District of New York.

This deposition is being held at 1290 Avenue of the Americas, New York, New York, on October 18th, 2013, at approximately 10:05 a.m.

My name is Robert Rinkewich from TSG Reporting, Incorporated, and I am the legal video specialist. The court reporter is Bonnie Pruszynski in association with TSG Reporting.

Will counsel please introduce yourself?

MR. KERR: Charles Kerr of Morrison & Foerster on behalf of the debtor and the witness.

MR. LAWRENCE: Alex Laurence from Morrison & Foerster.

MS. MARINES: Jennifer Marines from Morrison & Foerster on behalf of the debtor.

T. Hamzehpour

MR. MARINUZZI: Lorenzo Marinuzzi, Morrison & Foerster, on behalf on the debtors.

MS. WU: Jodi Wu from Kirkland & Ellis on behalf of Ally.

MR. KAUFMAN: Philip Kaufman, Kramer Levin, on behalf of the creditors committee.

MR. HAO: William Hao from Alston & Bird on behalf of Wells Fargo Bank.

MR. KOCHMAN: David Kochman from Reed Smith on behalf of Wells Fargo.

MS. DeKRAKER: Hailey DeKraker of Milbank, Tweed, Hadley & McCloy on behalf of the junior secured noteholders.

MR. PERRY: Dan Perry from Milbank Tweed. I'm with Ms. DeKraker.

THE VIDEOGRAPHER: Do we have somebody on the telephone?

MR. KERR: Yeah, there is.

Everybody who is on the phone, if you could note your appearance.

MR. BINGHAM: Bob Bingham with Zolfo Cooper.

MR. POLSKI: Larry Polski with Cleary

Gottlieb.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

(Witness sworn.)

TAMMY HAMZEHPOUR,

called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PERRY:

Q Good morning, Ms. Hamzehpour.

A Good morning.

Q Have you ever been deposed before?

A Yes.

Q How many times?

A Twice.

Q Have you been deposed in this case before?

A Yes.

Q And were both instances in this case?

A No.

Q Okay. What was the other deposition?

A The other deposition was a number of years ago in connection with a business

transaction that we did not complete, completely unrelated to this.

Q Okay. So I'm not going to go over the -- and you are an attorney; correct?

A Yes.

Q I'm not going to go over the ground rules in great detail, but a couple of important rules.

One, if you don't understand a question that I am asking, please ask me to rephrase, let me know, so I can clarify the question, make sure we are both on the same page.

From time to time, counsel and, you know, probably literally everybody at this table, will object. Unless the basis of the objection is privilege, I would ask that you -- you answer the question.

If you have a concern that my question may cause you -- answering my question may cause you to disclose privileged information, you are entitled to ask for a break and consult with your counsel about that. Otherwise, I would ask that you answer any pending questions before we take a break.

On the subject of breaks, just let me know when you want to break. This is not an endurance contest, and I am happy to break as frequently as you'd like.

A Okay.

Q Do you have any questions for me before we start?

A No.

Q Before you is a copy of Westman Deposition Exhibit 1. It's a 30(b)(6) notice served on Residential Capital, LLC and its affiliated debtors.

Do you understand, ma'am, that you are appearing today pursuant to this notice?

A Yes.

Q And are you in fact authorized to give sworn testimony on behalf of Residential Capital, LLC and its affiliated debtors?

A Yes.

Q And just to make sure the record is clear, am I correct that you will be giving testimony with respect to deposition topic two, sub-point four?

MR. KERR: It's on page nine.

Q It starts on page nine.

A Yes.

Q And am I correct that you will be giving deposition testimony on topic two, sub six?

A No. It's the MBIA settlement.

Q No.

MR. KERR: No, no.

MR. KOCHMAN: Sub six.

MR. KERR: Not sub six. Two, six up here.

A Sorry about that, romanette six.

MR. KERR: Romanette six.

A Romanette six. Yes, that is correct.

Q Okay. And you will -- you are also authorized to give testimony on topic four?

A Yes.

Q And topic 22; correct?

A Yes.

Q As to topic 22, do you have any information with respect to the subject matter identified in topic 22, in addition to -- in addition to what might be gleaned from the face of the contractual arrangements between the JSNs and the debtors?

T. Hamzehpour

MR. KERR: Objection.

A I -- I don't -- I'm not sure I understand what you are asking. I know there are contractual agreements between the debtors and the junior secured noteholders, but I don't -- I don't know what you mean by "additional information."

Q Okay. You understand that there is a dispute about whether Executive Trustee Services LLC and Equity Investment I LLC are obligors under the JSN security agreement and indenture; correct?

A Yes. We discussed that.

Q And one could simply go look at the JSN security agreement and indenture and come up with the answer about whether these two entities, Executive Trustee Services LLC and Equity Investment I LLC, are obligors under that agreement; right?

A Yes.

Q And the debtors have one reading of the agreement, and the JSNs have a different reading of the agreement; right?

A That's what I have been told.

Q Okay. And putting aside just simply reading the agreements, is there any information

that you have that would suggest that Executive Trustee Services LLC and Equity Investment I LLC are not obligors under the JSN security agreement/indenture?

MR. KERR: Objection.

A I'm not aware of anything outside the bounds of the documents.

Q In other words, so I take it you are not aware of any negotiations between representatives of the company and representatives of the JSNs in connection with the security agreement or the indenture that would bear on the question of whether Executive Trustee Services LLC and Equity Investment I LLC are obligors under that agreement?

MR. KERR: Objection.

A That's correct.

(Hamzehpour Exhibit 1 marked for identification as of this date.)

MR. KERR: What's this being marked as?

MR. PERRY: Hamzehpour 1.

Q Before you -- before you, Ms. Hamzehpour, is Hamzehpour Deposition

Exhibit 1. It's an e-mail from Barbara Westman to you dated March 26, 2010, and it attaches a number of documents.

Can you turn to the first attachment to the document, which is a document entitled? "RFC/GMACM Debt Forgiveness Procedures."

A Yes.

Q And I'm going to ask you to review the document, and my question is: Is this an accurate summary of the pre-petition policies and procedures with respect to debt forgiveness for the debtors?

A There is more detail in here than I would be normally aware of, in terms of what the accounting team does to monitor these, but this is my understanding of how it worked, that the accounting team had processes in place to monitor upcoming changes in capital that might require or seem to indicate a need for debt forgiveness, bring those up through the CFO office for approval.

Q Okay. And you have nothing to believe, based on your review of the document, that anything in here is inaccurate --

A Right.
Q -- correct?
A Right.
Q Now, I want to focus on the various solvency or net worth requirements.
A Um-hum.
Q Did you understand that RFC had -- had net worth requirements for HUD and various state regulators?
A Yes.
Q And similarly, did you understand that GMACM had net worth requirements from Fannie Mae and various lenders?
A Yes.
MR. KERR: Objection.
Q And do you believe those requirements -- well, strike that.
Is -- directing your attention to the spreadsheet immediately following the document that we have just been focused on, is this an example of the accounting staff's analysis of RFC's compliance with its various regulatory net worth requirements?
A That's what it appears to be, yes.

Plaintiff's Objection 14:12-16: objection to form; vague and ambiguous

Plaintiff's Objection 14:17-25: lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903)

T. Hamzehpour

Q Okay. And directing your attention to the next attachment, which is separated by the --

A Separated by a blue sheet.

Q -- blue sheets.

A Okay.

Q If you go -- flip over to the next page. Does this document appear to be --

MR. KERR: What -- what page number are you referring to?

MR. PERRY: Exam 10362106. I guess this is a spreadsheet printed in native format, and so it all bears the same Bates label.

MR. KERR: So what -- what -- I'm sorry, what page within this?

MR. PERRY: So I am looking at the third page, which starts with a column entitled "GMAC Mortgage, LLC Net Worth Tests," and then reflects a summary of requirements and goes through it.

Q Ms. Hamzehpour, my question is: Does this appear to be an accurate summary of the various net worth requirements that GMACM was

Plaintiff's Objection 15:23-16:12 Lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903)

required to subscribe to in 2010?

MR. KERR: Objection.

A It appears to. I couldn't tell you if it's complete or not. There were a number of requirements, and I don't remember them all in detail, but it appears to be pretty comprehensive.

Q And this is -- these spreadsheets analyzing net worth, compliance with net worth requirements, you understood that the accounting department prepared and monitored compliance with those requirements in the ordinary course of business?

A Yes, that's true.

Q Now, as I understand it, if there was an expectation or a concern that either RFC or GMACM or other entities would fail one of the various net worth requirements, debt forgiveness was one of the ways that the debtors used to put that entity in compliance with the net worth requirements; is that correct?

A I think it's -- the CFO's office would look at that, and decide whether or not there were additional capital amounts that needed to be allocated to that company to keep -- to

maintain those requirements, yes.

Q And that was done beginning in 2008; correct?

A There were events, I'm sure, different times over the years when that was required. It, I don't believe, only began in 2008. I wouldn't -- I wouldn't know exactly, but I don't think it was a new concept --

Q Okay.

A -- in 2008.

Q Do you know, other than RFC and GMACM, which of the debtor entities had specific net worth requirements?

A Any of them that held certain state licenses would have the corresponding capital requirements in that state's regulation. So, for example, Homecomings Financial, during the time that it held state mortgage banking licenses, would have had capital -- regulatory capital requirements.

Q Would -- would Residential Capital, LLC have had net worth requirements?

A Not at the state level, but it had requirements in its credit agreements.

Plaintiff's Objection 17:3-11: lack of personal knowledge (FRE 602)

Q Okay.

A And with Fannie Mae.

Q What about Executive Trustee Services LLC?

A Yes. I think they held some state licenses.

Q And what were the debt facilities for the debtor entities that had net worth requirements?

A The GMAC revolver and line of credit, we had at one point a bank syndicate agreement that had net worth requirements in it. We had an MSR facility with Citi that -- a lot of the funding facilities were pretty consistent across-the-board, because all the lenders wanted the same level of covenant protections.

Q And were there typically cross-default provisions in the debt facilities?

A Yes.

Q And the -- the federal agencies, is it true that the federal -- well, can you list the federal agencies that had net worth requirements for one or more of the debtors?

A HUD, and although they are not

federal agencies, the GSEs had some level of capital requirement, Fannie, Freddie, and I think Ginnie Mae, but Ginnie Mae's may have fallen underneath HUD.

Q Before you is Westman Deposition Exhibit 20. It's an amended and restated intercompany advance agreement between Homecomings and Residential Funding. Do you see in the upper right corner there is a notation T222?

A Yes.

Q What is that?

A I would think that is a -- what we would call a T number, which is a number that identified a Treasury document, a funding facility.

Q There are -- there's been a number of these intercompany agreements produced in the case. Are those housed typically with the Treasury department?

A Yes.

Q And is it Joe Ruland who is in charge of the Treasury department?

MR. KERR: Objection.

A Joe Ruland most recently, although he

is no longer with the company. He went to one of the purchasers of our assets back in February.

Q And who is currently the head of the Treasury department?

A Paul Grande.

Q Does Mr. Grande have historical knowledge of the intercompany agreements that were put in place?

MR. KERR: Objection.

A I don't -- I don't know. He's been with the company a number of years, so I imagine he does, but I don't know personally.

Q Do you know when he started?

A No, I don't.

(Hamzehpour Exhibit 2 marked for identification as of this date.)

Q Before you is Hamzehpour Deposition Exhibit 2. It's an e-mail from James Young to Jim Jones. You are copied, and it attaches or it includes an e-mail below, and the document was produced with an attachment, several attachments.

A Not a lot of data here.

Q It's not my fault.

Let me ask you this: What -- do you

Plaintiff's Objection 20:18-25:23 Lack of personal knowledge (FRE 602)

recall a forgiveness of roughly $2 billion in intercompany debt by ResCap to the benefit of RFC?

A I don't -- I don't have a specific recollection of it. I mean, obviously that's what this is talking about, and you can see that from the top page of the e-mail.

Q Do you -- do you know why ResCap was being asked to forgive $2 billion of indebtedness to RFC in or around March of 2008?

A Well, just based on this e-mail note, it appears to be to replenish capital that's been diminished by losses, operating losses at the RFC level.

Q And was there a concern in -- in March of 2008, that RFC could be in default of its tangible net worth requirements?

A That is what it appears to say in this e-mail. There was a concern, they needed the 2 billion to proved adequate net worth to cover financial covenants, yes.

Q And just -- okay. And so, let me ask you this: What -- what would happen -- what would have happened to Residential Funding Company if it defaulted on its tangible net worth requirements?

Let's start with governmental agencies, state and federal agencies.

MR. KERR: Objection.

A My understanding is that if you report a quarterly financial to your licensing agencies that doesn't show the appropriate capital level, you are in danger of having them pull your license to do business in that state.

Q And would that be the case for federal agencies as well?

MR. KERR: Objection.

A The federal agencies are different. It's not a license to do business, it's an issuer approval to do business with them, so it's a different situation, and yes, if the company did not maintain required capital levels, they would be in danger of -- of having that issuer approval, seller servicer approval, whatever the GSE calls it, of having that revoked.

Q And as a practical matter, if Residential Funding failed to maintain the required capital levels in 2008, would it have been able to continue to operate?

MR. KERR: Objection.

A In 2008, Residential Funding was not conducting a large amount of business directly with the GSEs any longer because of the fact that the securitization markets had been shut down by then in the financial crisis, so, the impact is more a breach of financial covenants than it would be a fallout for that particular company from Fannie or Freddie.

Q And if it had breached its financial covenants in March of 2008, would it have been able to continue to operate?

MR. KERR: Objection. Asked and answered.

A It would have triggered a cross-default across all the company's credit facilities, putting in danger everyone's ability to operate.

Q And the forgiveness of the indebtedness in 2008 by Residential Capital at least alleviated the danger that you just testified to; correct?

A Correct.

Q And so, the forgiveness of indebtedness from the perspective -- strike that.

From the perspective of Residential Capital, LLC, it received something in exchange for the forgiveness of indebtedness from its subsidiary; right?

MR. KERR: Objection.

A I -- what it would have received is additional equity in that subsidiary. That would be the accounting impact of the debt forgiveness, is they would have an increased equity.

Q And from -- just from a practical standpoint, it also enabled the parent and the subsidiary to continue to operate, not in breach of its financial covenants and its debt facilities; correct?

A That's -- that's a result of it, yes.

Q Do you know, was the -- did the Ally board ultimately approve this particular debt forgiveness in 2008?

A I believe they would have. I don't have a specific recollection of it, but I believe they would have.

(Hamzehpour Exhibit 3 marked for identification as of this date.)

Q Before you is Hamzehpour Deposition

Exhibit 3. It purports to be a memorandum from James Young to the ResCap Executive Committee. I note that you are a copy.

The memo -- would you agree with me that the memo appears to describe a proposed forgiveness of $2 billion in indebtedness from GMAC Residential Holding Company, LLC for the benefit of GMAC Mortgage, LLC?

A Could I just have a minute to read it?

Q Yes, please.

A Okay. I'm sorry, now, what was the question?

MR. PERRY: Can you re-read the question.

(Record read.)

A Yes.

Q And did the forgiveness of indebtedness requested in Hamzehpour Deposition Exhibit 3 ultimately get consummated?

A Based on the executed consent of the Executive Committee, it appears that it was, yes.

Q And similar to the forgiveness of indebtedness that we just discussed between

Residential Capital, LLC and Residential Funding Company, LLC, did this forgiveness of indebtedness allow GMACM to continue to operate in 2009?

MR. KERR: Objection.

A What this request describes was a negotiation with Fannie Mae as to where in the organization it would test capital requirements. I don't read that to mean that GMAC Mortgage's ability to be a Fannie/Freddie issuer was in danger. This was just to test the capital limits at that level rather than at ResCap.

So, that is how I would read it. I don't -- I don't see this as being one where anything was being pulled away, just changing how Fannie Mae looked at our financial statements.

Q Do you know why -- as I understand the way the corporate structure works, there is an intercompany balance between Residential Capital, LLC and GMAC Residential Holding Company, LLC; correct?

A I think that's right, yes.

Q And then an intercompany relationship between GMAC Residential Holding Company, LLC and GMACM; correct?

A That's right.

Q And the forgiveness contemplated here was between GMAC Residential Holding Company, LLC and GMACM; correct?

A That's what this describes, yes.

Q Do you know why there wasn't a corresponding forgiveness of indebtedness between Residential Capital, LLC and GMAC Residential Holding Company, LLC?

A No, I don't know.

Q Now, from the perspective of GMAC Residential Holding Company, LLC, what were the benefits associated with the forgiveness contemplated in Hamzehpour Deposition Exhibit 3?

MR. KERR: Objection.

A Residential Holding is -- it's just a holding company, so, there wasn't any particular benefit to it, I don't believe, although it -- it has its own set of capital requirements. This would have been in 2009. It was a guarantor under the line of credit, the revolver, the bonds, so it has its own -- you know, it has to maintain its own solvency.

But I don't think it would have had

any particular benefit from this debt forgiveness.

Q Okay. And from the perspective -- you referenced solvency. From the perspective of the entity forgiving indebtedness, did either you or the accounting staff analyze whether, after giving effect to the forgiveness, the forgiving entity would remain solvent?

A I did not. It would not have been my job to do that. The finance team probably did. I don't know.

Q So, your belief is that the finance team analyzed the solvency of the forgiving entity?

MR. KERR: Objection.

Plaintiff's Objection 28:12-21: Lack of personal knowledge (FRE 602)

A I think the finance team analyzed the capital requirements in -- similar to the documents that we looked at earlier. That -- that's the analysis they go through, is checking to make sure they have maintained their required capital levels.

Q And as you testified, GMAC Residential Holding Company had -- in 2009, had its own liquidity and solvency requirements under at least the financing documents; correct?

A Right. As a guarantor, it had to comply with the financial covenants that were in the document that were applicable to it, yes.

Q And as between GMAC Residential Holding Company and GMACM, there were different sets of borrowers, entities to which there was a guarantee and the like associated with those two entities; right?

MR. KERR: Objection.

Q It's a bad question, let me rephrase it.

A Okay.

Q The -- as between GMACM and GMAC Residential Holding Company, there were different sets of creditors with respect to those two entities; right?

A It's possible that GMACM had a funding facility that its parent was not a party to. I don't remember specifically.

(Hamzehpour Exhibit 4 marked for identification as of this date.)

Q Before you is Hamzehpour Deposition Exhibit 4. Can you take a moment to review it. I have some questions. You will see there are

redactions.

A Sure.

Okay.

Q First of all, is -- whose text is -- is this your text that is in -- on the first page of Hamzehpour Deposition Exhibit 4?

MR. KERR: What do you mean, "your text"?

Q Did you write this? I mean, I can't tell from the entire e-mail whether you are cutting and pasting somebody else's writing or whether you, yourself, wrote this. Do you know?

A I believe I wrote this.

Q Okay. Now, directing your attention to the second-to-last full paragraph, you write: "It's not in ResCap or the group's best interest to release debt in excess of the amount needed to meet the above goals, and for this reason the GMAC Inc. board resolutions authorizing debt forgiveness for certain ResCap subsidiaries refer to releases up to a maximum amount."

Do you see that?

A Yes.

Q Okay. Why was it not in the -- well,

strike that.

Why was it in the interest of the lender to limit the amount of debt forgiveness being effected?

MR. KERR: Objection.

A In this instance, my recollection of this is that the intercompany receivables from the U.K. entities were one way that cash from operations were repatriated back, so when there was cash to be recovered, it would come back through this repayment of intercompany.

So, if you are releasing some portion of that because you need to for regulatory reasons, there is no reason to release any more than you need to.

Q Um-hum.

A That's what I take from this note, and that's my recollection of what happened here.

Q Isn't that generally true of a release of intercompany indebtedness?

A I don't know if that's generally true, but I know it was more formal with the international companies because of the cross-border nature.

Plaintiff's Objection 31:3-16: objection to form; vague and ambiguous

Plaintiff's Objection 31:20-25: lack of personal knowledge (FRE 602); objection to form; vague and ambiguous

Q Okay. Just by way of example, why would GMAC Residential Holding Company, LLC want to release any more of the intercompany indebtedness than required for the benefit of GMACM to facilitate GMACM's negotiations with Fannie Mae?

Plaintiff's Objection 32:2-10: lack of personal knowledge (FRE 602)

MR. KERR: Objection.

A I don't think it would have a desire to do that.

(Hamzehpour Exhibit 5 marked for identification as of this date.)

Q Before you is Hamzehpour Deposition Exhibit 5.

A Yes.

Q It's an e-mail, and there is an attachment. I am interested in the attachment.

A Um-hum.

Q The attachment purports to be a draft of an intercompany advance agreement between Residential Funding Company, LLC, acting as lender, and Residential Capital, LLC, as borrower.

Do you see that?

A Um-hum. Um-hum.

Q My question is: Was an intercompany

agreement of this nature ever executed?

A I don't know. Was this one executed?

Q This one was not. It's a draft.

A I can't tell from this -- I don't remember it. I don't -- well, I wouldn't hold in my memory every execution of an agreement, but I don't remember it, and this sounds like this was a first draft, so I don't know if it was later executed.

Q And I take it from your answer that you don't have a recollection of why a -- at least the Treasury folks were contemplating an intercompany advance agreement between ResFund and ResCap at this point?

Plaintiff's Objection 33:11-18: lack of personal knowledge (FRE 602); unduly prejudicial (FRE 403)

A I don't remember why. This also doesn't do anything to help prod my memory, but there is not enough information here, so...

Q Okay. And who would know within the debtors whether this agreement attached to Hamzehpour Exhibit 5 was ever executed?

A The Treasury team should know, because they should have an executed copy of it in their funding database. This is also -- actually, this e-mail doesn't even relate to the attached

document, so, this e-mail refers to an intercompany advance agreement between a U.K. company and Residential Funding Company.

Q Yeah. I -- just for your benefit, I see the text in the bottom paragraph is referring to the attachment.

A Oh, okay, sorry about that. Sorry. Just when I was reading it, it was like this doesn't make sense. But you are right, it does -- it must have had two attachments, so...

Q Do you -- as I understand the corporate allocation from Ally to the debtors, there was -- as relates to GMACM, the corporate allocation to GMACM and Residential Funding Company, LLC, the allocation was made to Residential Funding Company, LLC, and then there was an intercompany to GMACM?

A An allocation of what? What allocation are you talking about?

Q Corporate expense.

A Oh. I don't know.

Q Okay.

A I wouldn't know how they do that. You would have to ask finance.

T. Hamzehpour

Q Okay. Do you recall the practice of allocating corporate expenses from Ally to Residential Funding Company and GMACM changing at any point in time?

A I don't remember being aware of it. I knew generally that the parent allocated expenses down to the subs, but I don't remember having any knowledge or understanding of whether they did it fairly or correctly or not.

Q Okay.

(Hamzehpour Exhibit 6 marked for identification as of this date.)

Q Before you is Hamzehpour Exhibit 6.

A Yes.

Q It's an e-mail from -- covering the first page is an e-mail from Mr. Young to Mr. Marano. You are copied.

And he writes: "Tom, this is to give you a heads-up on the most effective/quick strategy we have to move cash out of RFC to ResCap."

What do you recall -- strike that.

Was there an effort to evaluate ways to move cash out of RFC sometime in late 2010?

Plaintiff's Objection 35:11-36:3: lack of personal knowledge (FRE 602)

A Well, that's what this e-mail says, so I imagine it was.

Q And do you recall -- other than what the e-mail says, do you recall the matters discussed in Hamzehpour Exhibit 6?

A Can I look at the rest of it --

Q Sure.

A -- because it will hopefully refresh my memory. Okay. So, based on these attachments, and the time frame, it does appear that there were, you know, concerns about RFC's net worth and discussions about how to manage as between RFC and ResCap the cash balances and net worth.

Q And do you know, ultimately, what the debtors determined to do to address the concerns about RFC's net worth?

A I don't remember this in particular, but the request for approval was to repay -- for ResCap to repay a portion of an intercompany payable and assume some liabilities. I don't know if that actually happened or not, but it looks like this was at least proposed to the ResCap board.

Q Now, if you go to the talking

points --

A Um-hum.

Q -- that are the first exhibit, the first attachment to the e-mail that is Hamzehpour 6, there is a couple of different suggested solutions. I'm interested in the bottom solution, which is default on requirement.

A Um-hum.

Q And my question is: Is that a fair summary of the consequences that would flow from RFC defaulting on --

A On the HUD --

Q -- the suggested HUD net worth requirement?

A The suggested HUD net worth.

MR. KERR: Objection.

A This, it looks like to me a reasonable list of things that could happen if -- if RFC did not meet the HUD requirement.

MR. PERRY: Can we take a five-minute break, Chuck?

MR. KERR: Sure. Sure, sure, sure.

THE VIDEOGRAPHER: The time is 11:03 a.m. We are off the record.

T. Hamzehpour

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:14 a.m. We are on the record.

BY MR. PERRY:

Q Ms. Hamzehpour, could you go back to, I think it's Westman 20, the 30(b)(6) notice that I showed you at the outset of the deposition. Westman 1.

A Yes.

Q Directing your attention to topic two, romanette six.

A Yes.

Q Is it the case that the debtors will not take the position that the intercompany claims are worthless or meritless at confirmation?

MR. KERR: Objection.

A I don't understand the question.

Q Do the debtors intend to take a position at confirmation about the value of the intercompany claims?

A My understanding is that the position is that the intercompany claims are being settled.

Q And they are being settled for no value?

Plaintiff's Objection 38:19-39:9 Irrelevant (FRE 401, 402)

T. Hamzehpour

A Without any assignment of value.

Q Okay. But the debtors will not take the position that the underlying claims themselves are worthless or have no merit; correct?

MR. KERR: Objection.

A I don't -- I'm not sure that -- I don't think I know the answer to that question, actually.

MR. PERRY: I have no further questions.

MR. KERR: Okay. Any other questions?

MR. KOCHMAN: I'm going to have a few questions on behalf of Wells Fargo, if we could take like five minutes.

MR. KERR: Sure. Sure, sure, sure.

THE VIDEOGRAPHER: The time is 11:16 a.m. We are off the record.

MR. KERR: Let's just take another break.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:23 a.m. We are on the record.

EXAMINATION

BY MR. KOCHMAN:

Q Good morning, Ms. Hamzehpour. My name is Dave Kochman of Reed Smith.

A Good morning.

Q I represent Wells Fargo in its capacity as third priority collateral agent, and I will continue with all of the rules that were previously abided by in this deposition. And I just really have a few questions here.

I believe you testified earlier that you have a familiarity with certain of the underlying documents, and to be specific, I'm talking about the indenture, the JSN security agreement and the inter-creditor agreement.

A I'm aware that they are -- that they exist, yes.

Q Have you reviewed those documents?

A Not in a long time.

Q When was the last time you recall reviewing those documents?

A Probably when they were put in place.

Q Could you tell me your understanding of the role of the third priority collateral agent

in the context or as it relates to these documents?

A My recollection is that the collateral agent for whichever funding facility we were working with had to be provided with certain types of lien release documents in order to release collateral as we were selling it or otherwise disposing of it.

Q Was that your understanding with respect to the JSN collateral?

A Yes. I think it applied across-the-board to Ally, second lien and the third lien.

Q Do you recall what documents were to be provided to the third priority collateral agent in order to effectuate the lien releases?

A Not in detail. I believe it varied by collateral. Depending on what kind of collateral and what was taking place, there were different notices or certifications.

Q Did there come a time that you yourself provided an opinion of counsel to effect certain of the releases?

A I do believe that that did happen

from time to time. I don't think I was -- I don't think it was always required, but I remember doing it from time to time.

Q Okay. And in those times that you recall doing it, what did you do to prepare your certification of counsel?

A Spoke to my capital markets attorneys, who would have been working directly on the transaction, and gotten comfort from them that they were comfortable with the documents and the release, and I rely on that.

Q Do you recall if certain of the documents -- strike that.

When you say you wanted to get comfortable with the documents, what do you mean by that?

A With whether it was appropriate to give the certification that was in the opinion.

Q Okay. And what -- how would you determine whether the certification would be appropriate?

A By speaking to my -- the lawyers who report to me, who worked directly with that unit, understanding what it was they were asking me to

sign, and getting any questions that I had answered.

Q Do you have a recollection, in providing your opinion of counsel, as to whether or not you would be certifying that certain provisions of the indenture agreement had been satisfied?

A I don't remember the text of what the opinions required or the certifications.

Q If I were to show you the indenture, might that refresh your recollection?

A It might. If it has a template in it, it's possible that -- yeah.

MR. KOCHMAN: Let's just go off the record for a second?

THE VIDEOGRAPHER: The time is 11:27 a.m. We are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:29 a.m. We are on the record.

BY MR. KOCHMAN:

Q Ms. Hamzehpour, I showed you Exhibit G to the indenture entitled "Form Opinion of Counsel for Release of Collateral." Did you

have an opportunity to review that?

A Yes.

Q Did that refresh your recollection as to the opinion that you would be providing in the -- pursuant to that form document?

A The form -- yes. The form document provides that the opinion is that the officer certificate is in the form required by the indenture, and that there aren't any other documents required to be delivered to the collateral agent in connection with this release.

So, it's says those two things.

Q And you have testified as to the factual inquiry that you conducted before providing this document?

A Yes.

Q Is there anything else that you did beyond that?

A No.

Q Did you have an understanding as to whether the third priority collateral agent was going to rely conclusively upon your opinion of counsel?

MR. KERR: Objection.

A I don't know what they rely on. We provide the documents that are required in the -- in the indenture, and I can't speak to anyone's reliance on that.

Q Did you have an understanding as to whether any other party would have an obligation to investigate the underlying facts upon which the opinion of counsel was resting?

MR. KERR: Objection.

A No, I don't. I don't know.

Q I'm sorry?

A I don't know.

(Continued on next page with witness jurat.)

T. Hamzehpour

MR. KOCHMAN: No further questions.

MR. KERR: Other questions? Good. Then I think we are done then.

THE VIDEOGRAPHER: The time is 11:31 a.m. We are off the record.

oOo

I, TAMMY HAMZEHPOUR, the witness herein, do hereby certify that the foregoing testimony of the pages of this deposition to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____

Subscribed and sworn to before me this _____day of _____,_____.

_____

NOTARY PUBLIC

C E R T I F I C A T E

STATE OF NEW YORK )
: SS.
COUNTY OF NEW YORK )

I, BONNIE PRUSZYNSKI, a Notary Public with and for the State of New York, do hereby certify:

That TAMMY HAMZEHPOUR, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th of October, 2013.

_____

Bonnie Pruszynski

I N D E X


| WITNESS | PAGE |
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E X H I B I T S


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| Hamzehpour Exhibit 2 EXAM11316929-932 | 20 |
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| Hamzehpour Exhibit 4 EXAM11148024 | 29 |
| Hamzehpour Exhibit 5 RCUCCJSN10745612-620 | 32 |
| Hamzehpour Exhibit 6 EXAM11150308-311 | 35 |

T. Hamzehpour

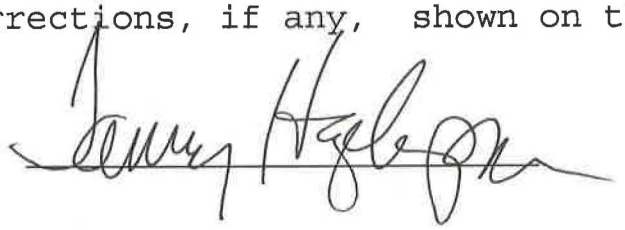
MR. KOCHMAN: No further questions.

MR. KERR: Other questions? Good. Then I think we are done then.

THE VIDEOGRAPHER: The time is 11:31 a.m. We are off the record.

oOo

I, TAMMY HAMZEHPOUR, the witness herein, do hereby certify that the foregoing testimony of the pages of this deposition to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.



Subscribed and sworn to before me this 6th day of November, 2013.



NOTARY PUBLIC

LAURA GUIDO
Notary Public, State of New York
No. 01GU6152891
Qualified in New York County
Commission Expires September 25, 2014

**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.,***
**Case No. 12-12020(MG)**

Deponent: Tammy Hamzehpour
Deposition Date: October 18, 2013

| Citation | Testimony |
|---|---|
| 3:17 | Alexander ~~Laurence~~ Lawrence, ESQ |
| 5:22 | Alex ~~Laurence~~ Lawrence from Morrison & Foerster. |
| 37:21-22 | Can we take a five-minute break ~~Chuck~~ Chet? |
| 42:8-12 | I spoke to my capital markets attorneys, who would have been working directly on the transaction, and gotten comfort from them that they were comfortable with the documents and the release, and I ~~rely~~ relied on that. |

Date: 11-6-13

Signed: Tammy Hamzehpour

W. MARX

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| In re: | Chapter 11 |
| RESIDENTIAL CAPITAL, LLC, et al., | Case No. 12-12020(MG) |
| Debtors. | Jointly Administered |
| 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. | |

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's designation or counter-designation
Orange Highlighting = Joint Designation

**The Debtors and Committee object to the JSNs' use of the deposition of Mr. Marx on the ground that this deposition may not be used under Bankruptcy Rule 7032.**

**The Debtors' counter-designations reflected herein are to be admitted, if at all, only upon admission of the JSNs' corresponding affirmative designation.**

VIDEOTAPED DEPOSITION
OF
WILLIAM MARX

New York, New York
October 18, 2013

Reported by: Kathy S. Klepfer Job No. 66941

W. MARX

October 18, 2013

9:54 a.m.

Videotaped deposition of WILLIAM MARX, held at Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

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W. MARX

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W. MARX

THE VIDEOGRAPHER: This is the start of tape labeled number 1 of the videotaped deposition of William Marx in the matter In re Residential Capital, LLC.

Today is October 18, 2013. The time is approximately 9:54 A.M. Appearances have already been noted by the court reporter.

Will the court reporter please swear in the witness.

* * *

W I L L I A M M A R X, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. COHEN:

Q. Good morning, Mr. Marx. I'm David Cohen with Milbank Tweed Hadley & McCloy. I represent the Ad Hoc Committee of Junior Secured Noteholders in the Residential Capital case. I'm with my colleague Matthew Maddox.

A. Good morning.

Q. Have you ever been deposed before?

A. Yes.

Q. How many times?

A. Once.

Q. How recently was that deposition?

A. Many years ago.

Q. Okay. Let me go over some ground rules that hopefully will move this along expeditiously this morning.

You understand that you are under oath?

A. Yes.

Q. That your answers are subject to penalties of perjury?

A. Yes.

Q. And that your testimony here is just like testimony you would give in front of the judge in court?

A. Yes.

Q. In order to keep the transcript clean, the reporter is going to take down everything we both say. It's very important that you let me finish my question before you begin your answer, and I'll do my very best to extend the same courtesy to you -- let you finish your answer before I begin my question. Okay?

A. Yes.

Q. It's very important that all of your answers be verbal. Although there is a videotape, the transcript must reflect all of your answers; so it won't reflect a nod or a gesture.

A. Understood.

Q. If any of my questions are unclear to you, please let me know and I'll do my best to clarify it. Okay?

A. Yes.

Q. If you need to consult with your attorney about anything, you can do that. The only thing I would ask is that you answer the question that I have posed before you consult with the attorney, unless it calls for matters of privilege.

A. Okay.

Q. If you want to take a break at any time, let me know. I'll do my best to accommodate you.

A. Okay.

Q. Who is your current employer?

A. Ally Financial Inc.

Q. What is your title at Ally Financial Inc.?

A. Executive Director of Tax Operations.

Q. How long have you held that position?

A. Just over seven years.

Q. So 2006?

A. Correct.

Q. What are your responsibilities as the Executive Director of Tax Operations at Ally Financial Inc.?

A. They varied over the years, but anywhere from, you know, administrative matters regarding the staff. At different times I had Tax Compliance, Tax Controversy, State and Local Tax all reporting up to me.

Q. What are your current responsibilities now?

A. My current responsibilities are really dealing with matters mostly related to ResCap.

Q. When you say "matters mostly related to ResCap," what specific matters are you referring to?

A. Well, for -- for financial reporting purposes, you know, ResCap has been written off

the books but, as a disregarded entity, they remain part of our tax return until our interest is canceled. So we still have, you know, tax data to gather periodically, tax returns to prepare.

We've, up until recently, we've had remote staffs in Fort Washington and Minneapolis. We're down to now one permanent employee in Fort Washington, and so the rest is helping to manage service providers to help us continue to get that work done.

Q. When you say "disregarded entity," what do you mean?

A. Entities that are disregarded for federal income tax purposes, meaning they are treated as a division of Ally rather than separate corporate entities.

Q. When did ResCap become a disregarded entity for federal tax purposes?

A. Sometime in 2006 before the GM sale was when it first became a disregarded entity.

Q. Why did ResCap become a disregarded entity in 2006 before the GM sale?

MR. McKANE: To the extent you know.

A. Yeah, that was all part of a restructuring. Prior to that period, ResCap, most of its subsidiaries and other GMAC subsidiaries were all C Corps included in the GM consolidated federal tax return. As part of the sale, there was a restructuring to create a large partnership. GMAC LLC was a partnership, and to effect that restructuring, pretty much all of the domestic subsidiaries beneath GMAC were converted to disregarded entities.

Q. Okay. Let me give you one more instruction. All of my questions, you can assume they include the phrase "to the extent you know."

A. Understood.

Q. I'm not asking you questions that --

A. Believe me, if I don't know the answer, I'll tell you.

Q. Okay. So we won't need your lawyer to remind you of that.

MR. McKANE: Well, let's be clear. To the extent that there's an objection for a lack of foundation or calls for speculation, I'll state it.

W. MARX

MR. COHEN: Okay. You didn't state an objection. You said --

MR. McKANE: I understand.

MR. COHEN: -- "to the extent you know."

MR. McKANE: We're talking now about going forward.

MR. COHEN: I understand. If you have an objection, you can make it.

MR. McKANE: I will.

BY MR. COHEN:

Q. When you say that ResCap was mostly written off Ally Financial Inc.'s books, what did you mean?

A. Meaning it was -- I don't -- if I used the word "mostly," I think I misspoke. It was -- it was written down to a value of zero on the books.

Q. When was it written down to a value of zero on the books?

A. I -- I don't recall precisely. I believe it was in the quarter when the bankruptcy filing occurred.

Q. What were your responsibilities as the

Executive Director of Tax Operations in the 2009 to 2010 period?

A. I believe at that time I would have had responsibility for all the state and local, federal tax compliance, again the operational aspects of running the staff, and the -- I think I had tax controversy at that time as well.

Q. When you say "operations of running the staff," what do you mean?

A. More administrative things. Budget matters; making sure we have appropriate contracts in place with our service providers; you know, making sure we're spending our budgeted money appropriately and trying to keep it between, you know, within that budget.

Q. Anything else?

A. No.

Q. When you say "tax controversy," what do you mean?

A. Audits.

Q. Anything else?

A. No.

MR. COHEN: Let's mark as the first exhibit a document that's entitled "Ad Hoc

Group of Junior Secured Noteholders Notice of Subpoena to Ally Financial Inc."

A. Okay.

Q. Would you take a moment to review this document?

(Marx Exhibit 1, Ad Hoc Group of Junior Secured Noteholders Notice of Subpoena to Ally Financial Inc., marked for identification, as of this date.)

(Document review.)

A. Okay.

Q. Have you ever seen this document before?

A. I don't recall if I have seen it or not. I probably have because I know I would have -- I may have been asked to submit documentation for anything around the tax allocation, but that may also be documents that were already submitted for prior proceedings. So I don't -- I just don't recall.

Q. Would you turn to page 7 of Exhibit 1.

A. I'm there.

Q. Would you look at item number 7, which says, "All matters relating to the first 2009

Tax Allocation Agreement and the Second 2009 Tax Allocation Agreement"?

A. Uh-huh.

Q. Do you know that you have been designated to testify on behalf of Ally Financial Inc. as to those topics?

A. Yes.

Q. When did you find out that you were designated to testify as to those topics?

A. I don't know. A number of weeks, perhaps a couple months ago. A while ago.

When is the date of this?

Q. This document was served on October 4 of this year.

A. So we scheduled my trip out here two weeks ago, so...

Q. What did you do to prepare for this deposition?

A. I reviewed documents that I could locate that related to those tax allocation agreements; discussed matters with our -- my counsel and other members of the tax staff that may have been knowledgeable about things going on at that time.

Q. How many hours did you spend discussing these matters with counsel?

A. Nominal amount with respect to this proceeding.

Q. When you say "nominal amount," can you give me an estimate of hours?

A. Less than ten.

Q. You said you also reviewed documents. Were those your own documents that you reviewed?

A. Some of them were and some of them were not.

Q. With respect to the documents that were not your own, where did you get them?

A. Many of them were documents that were produced as part of the independent examiner activity that went on earlier in the year.

Q. What documents do you recall reviewing to prepare for this deposition?

A. Various and sundry e-mails on the topic of tax allocation and tax attributes, some financial statement information; I have seen some ResCap Board resolutions related to the tax allocation agreements, and I'm sure there are others, but that's the major thrust of the

documentation.

Q. You said you also discussed this deposition with members of your staff. Which members of your staff did you discuss this deposition with?

Plaintiff's Objection 17:3-18:2 Irrelevant (FRE 401, 402)

A. The primary person that would have been involved would have been James Aretakis, who is our general tax counsel at this time, former chief tax officer, and also Jay Frucci, who is our current chief tax officer.

Q. Was Mr. Aretakis with AFI in the 2009 to 2010 period?

A. Yes.

Q. What was his position then?

A. As a part of that position he would have been general tax counsel and -- that timeframe, rather, he would have been general tax counsel and part of it he was chief tax officer. I believe it was sometime in 2010 he was elevated to chief tax officer.

Q. And the second man was James Frucci?

A. Jay, J-A-Y, F-R-U-C-C-I.

Q. And he is the current chief tax officer?

A. He is.

Q. What was his position, if any, in the 2009 to 2010 period?

A. His title would have been executive director something or other. He may have been senior -- senior director for part of that time as well. He was hired initially to be our liaison with ResCap, the senior liaison.

Q. When you say "hired to be the senior liaison with ResCap," liaison as to what?

A. As to understanding tax matters that were happening at ResCap and making sure they translated properly into our consolidated tax return.

Q. During the 2009-2010 period, did you have any responsibilities at AFI for interfacing with ResCap?

A. I may have been involved with -- I don't want to say random discussions -- discussions on certain matters, but it was not a primary focus of my responsibilities. But as a member of senior tax leadership, I might have been called to listen in, opine on things and, you know, help reach consensus on resolution of

certain matters.

Q. What was the reporting structure between Mr. Frucci and you in the 2009 to 2010 period?

A. It was independent. We both reported up to the chief tax officer.

Q. So you two were --

A. Peer level.

Q. Let me finish my question.

A. I'm sorry.

Q. So if I were to diagram it, you would be at a parallel level?

A. Yes.

Q. And you would report up to Mr. Aretakis?

A. Aretakis or his predecessor, Dina Shapiro.

Q. Do you know when Dina Shapiro stopped being the chief tax officer?

A. Let me clarify that. I misspoke. I just called Dina was the senior executive who hired Jay, but she left AFI almost immediately upon him joining, so he would never have, as a practical matter, reported to her. He would

have reported up to Jim.

Q. Okay. And do you recall when Mr. Frucci was hired?

A. Perhaps May/June timeframe of 2010, I think.

Q. What are the responsibilities of the chief tax officer?

A. Oh, boy. Management of worldwide tax matters; management of overall effective tax rate. It's really global management of all tax matters.

Q. Was one of the documents you reviewed in preparing for this deposition Judge Gonzalez' Examiner's Report?

A. I have seen that report, yes.

Q. Did you review that specifically in connection with your preparation for this deposition?

A. I reread portions of it.

(Marx Exhibit 2, Report of Arthur J. Gonzalez, As Examiner, marked for identification, as of this date.)

BY MR. COHEN:

Q. So, Mr. Marx, what the reporter has

Plaintiff's Objection 20:21 – 021:06 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

handed you is, and we have labeled as Exhibit 2, is a collection of pages from the Examiner's Report that we may be talking about during this deposition.

A. Okay.

Q. If for some reason you would like us to give you the entire Examiner's Report, I would be happy to do so.

MR. McKANE: Did you bring it?

MR. MADDOX: I have it on my iPhone.

MR. McKANE: I do too.

MR. COHEN: I could get it.

MR. McKANE: I saw three boxes. I was wondering what was in it.

MR. COHEN: That's the advantage of being a New York-based firm. You want it, you can have it.

THE WITNESS: Your generosity is noted, but I'll pass.

BY MR. COHEN:

Q. When the Examiner's Report first came out, did you read the report?

A. Again, I scanned the non-tax sections and read the tax sections.

Plaintiff's Objection 21:22-23:9 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

Q. Did you read all of the tax sections?
A. I believe so.
Q. Did you search for your name in the report --
A. I did.
Q. Okay. Did you read all of the sections where your name appeared?
A. I did.
Q. Did you find anything where the examiner was talking about you that you disagreed with when you read his report?
MR. McKANE: Objection. Overbroad. You can answer.
A. As I read through the report, I remember reacting negatively to some of the characterizations. I couldn't cite examples, specific examples of it, but I wasn't overly surprised by the nature and the character of the report given all of the interviews and discussion previously.
Q. So there's nothing that stands out in your mind as you sit here today that you would say the examiner just got this completely wrong?
MR. McKANE: Objection. Misstates

prior testimony.

Q. You can answer.

A. Sorry. Other than I didn't agree with generally the whole proposition, but, you know, the statements of fact were generally true and correct. I don't know that I agreed with the conclusions. I don't know that I didn't, but, you know, it's not my conclusion in the report.

Q. You also just testified that you weren't overly surprised by the nature and character of the report given all of the interviews and discussion previously. What did you mean by that?

A. Meaning it was fairly clear during the investigation that the direction of the conclusion was going to be that the treatment of ResCap with respect to tax allocation was not fair.

Q. How did that become fairly clear to you during the investigation?

MR. McKANE: And let me instruct you not, in answering that question, to the extent that you can, not to divulge any attorney-client communications that you may

have had during that time period.

Q. With your attorneys.

A. Understood.

Again, it was the overall tone and direction of the questioning that led me to believe that.

Q. Anything else?

A. No.

Q. Are you familiar with the phrase "the First 2009 Tax Allocation Agreement"?

A. I am.

Q. Are you familiar with that document?

A. Very.

Q. All right. Let's mark that.

(Marx Exhibit 3, Amended and Restated Agreement for the Allocation of United States Federal Income Taxes, bearing Bates Nos. RC40016379 through 16384, marked for identification, as of this date.)

BY MR. COHEN:

Q. What does "tax allocation" mean?

A. Tax allocation is a concept that arises when two or more companies join in filing a combined or consolidated tax return and

there's a sharing of the overall tax liability.

Q. Anything else?

A. That's how I would describe tax allocation.

Q. Does it also involve sharing of overall tax benefits?

A. Yes. When I say tax liability, I mean to say net tax liability, whether that's a plus or a minus.

Q. Okay. Thank you. With respect to the First 2009 Tax Allocation Agreement with ResCap, whose idea was it to propose this document?

MR. McKANE: Objection to form.

A. The -- it wasn't an idea to propose an allocation agreement; it was a requirement under the Operating Agreement.

Q. What was the date of the Operating Agreement?

A. I don't know, the initial Operating Agreement dates back to 2005, and I believe that requirement was in that Operating Agreement, and then there were more recent versions that continued that requirement.

Q. Between 2005 and the proposal of this

Exhibit 3, the First 2009 Tax Allocation Agreement, was there an allocation agreement between AFI and ResCap in place?

A. There would have been various forms of allocation agreements during that timeframe. From the beginning of ResCap in 2005 through 11/30/2006 when they were part of the GM consolidated group, there was an allocation agreement in place.

Then beginning 12/1/2006 through some date a year or two later, I don't recall, there was a lapse where we failed to put in place an agreement. It was an oversight. During that time, ResCap was part of a passthrough operation, so taxes were pretty nominal.

At some point in time, in connection I believe it was with an issuance of debt, somebody noted that, oh, there's supposed to be a Tax Allocation Agreement requiring these two-way payments, and there wasn't one in place. So at that point one was drafted to be effective retroactively to 12/1/06 up to that point in time, and that agreement stayed in place up until the provision of the new agreement.

W. MARX

Q. Okay. Who decided that the agreement that was in place up to the provision of the new agreement, and I saw you reference Exhibit 3, which is the first two --

A. Well --

Q. Let me finish my question.

-- which is the First 2009 Tax Allocation Agreement, who decided that that agreement that had been in place should be replaced with a new agreement?

MR. McKANE: Objection to form. Misstates testimony.

Go ahead.

A. Let me clarify my answer, my previous answer, and restate it. I miss -- misspoke.

The 2006 allocation agreement would have been effective until -- what was the effective date proposed on these? I believe it was 11/1, when -- when the 2009 allocation agreement was ultimately executed and put in place, that was effective 11/1/2009. So that 2006 agreement would have been effective up until that date.

Q. Okay. When you say when the 2009

JSN Objection 27:25-28:6:
FRE 402 (Not relevant)
FRE 602, 701, 702 (Lacks foundation, calls for expert opinion)

agreement was put into place, it was effective 11/1, you are referring to Exhibit 3?

A. No, I'm referring -- I'm referring to the second agreement, which I believe is the effective agreement.

Q. Okay. Is it your view that Exhibit 3, the First 2009 Tax Allocation Agreement, was never effective?

A. That is my view.

Q. What is the basis of that view?

A. It was never executed.

Q. It was never executed by whom?

A. By ResCap.

Q. Was it executed by AFI?

A. It was.

Q. Why was it executed by AFI?

MR. McKANE: Objection. Overbroad.

Go ahead.

A. It was, at that time, it was believed that that was the allocation agreement that would be put into place, so we were in the process of executing it.

Q. Who believed it was the allocation agreement that would be put in place?

A. Ally Tax did and apparently the signatories that signed the allocation agreement.

Q. So the signatories on the Ally side believed this was the deal that would be put in place?

A. At the time they signed it, yes.

Q. And who is the one who made sure that the logistics of getting it signed were done? Who at Ally did that?

A. That was me.

Q. On what basis did you determine that this was the agreement that Ally should sign?

MR. McKANE: Objection to form. Misstates prior testimony.

Q. This being -- at what point did you determine that AFI should sign Exhibit 3?

A. I'm not sure how to answer that question. There was -- it was drafted. It was reviewed by various parties. Various adjustments and amendments were made to it.

At some point, we believed we had consensus -- "we," being Ally Tax, believed we had consensus that this would be the form of the

agreement, so we set about to have it executed.

Q. All right. Did you have an understanding as to whether ResCap agreed that this was the form of agreement that should be executed?

A. I understand that the board had reviewed it. I know that the board's independent counsel to -- or, counsel to the independent directors had reviewed it and had -- we had some back and forth about some of the language in it, and I understand that the board had approved it to be executed.

Q. And when you say the board had approved "it" to be executed, you're referring to Exhibit 3?

A. Correct.

Q. All right. Who was responsible for getting ResCap's signature on this agreement?

A. I took control of gathering up signatures from all around, you know, all of the signatures.

Q. Why did you think it was appropriate to try and get ResCap's signature on this agreement?

Plaintiff's Objection 30:3-17 Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)

A. Because I did not believe the agreement was enforceable and in place until it was executed by all parties.

Q. All right. But it was your belief that this agreement embodied the deal that you had struck with ResCap; is that right?

A. At the point in time that we were beginning to execute it, yes.

Q. Who drafted this agreement?

A. Primarily, me.

Q. Did you use an example?

A. Restate. I don't understand what you're asking me.

Q. Did you start with a blank Word document or was there some other agreement that you --

A. No, it was --

Q. Let me finish.

Did you start with a a blank Word document or was there some other agreement you used as a model?

MR. McKANE: Objection to form.

A. I would have started with a previously drafted document.

Plaintiff's Objection 31:5-9 Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403)

Q. All right. Who negotiated this agreement with ResCap on behalf of AFI?

A. The primary parties would have been myself and probably Jim Aretakis was involved in some of those discussions.

Q. And with whom on the ResCap side were you negotiating this agreement?

A. It was -- I'm trying to recall. I believe I distributed it to Tammy Hamzehpour, who was their general counsel, and the businessperson would have been Jim Young.

Q. Are you aware of anybody else at ResCap who would have been involved in those discussions with the AFI people?

A. Cathy Dondzila was signatory. She may have proposed some comments at a point in time, but I would say the major driver would have been Jim Young and Tammy and outside counsel.

Q. Who was outside counsel?

A. Morrison -- I always say this wrong. It's either Morrison Cohen or Morrison Foerster.

Q. All right. Who on the AFI side had responsibility for accepting or rejecting changes that ResCap suggested?

Plaintiff's Objection 32:2-12: Irrelevant (FRE 401, 402)

A. The primary contact would have been through me and probably Jim Aretakis, and given the timeframe, Jim would have been the CTO by the time this was actually getting executed, I think. Is that right? '10, '11, yeah. So it would have been Jim and I.

Q. As between your responsibilities for negotiating this document and Jim Aretakis', how would you describe that divide?

A. I was the person who was primarily, you know, pushing the process along. I drafted the documents. Then interested parties would submit comments and suggestions and, you know, they would be accepted, modified, rejected, depending on what they were.

Q. On the AFI side, who were the interested parties who reviewed this document before you sent it to ResCap?

MR. McKANE: Objection to form.

A. The parties would have included myself, Jim Aretakis, probably Jay Frucci, David DeBrunner, Cathy Quenneville, who was an officer of one of the signatory companies, I believe, was one of them, Anita Bhama, tax attorney --

not tax attorney, attorney on legal staff. I don't recall others at this point.

Q. Who within AFI controlled the master document? Who was responsible for collecting all of the comments and implementing them and accepting or rejecting changes?

A. Me.

Q. When were the negotiations over the First 2009 Tax Allocation Agreement completed?

A. We began -- completed, it was sometime late in 2010. I don't recall the specific date. I believe it was presented at an August board meeting to the ResCap Board, and they approved it pending some wording changes that were to be suggested by their outside counsel, if I recall.

I might be mixing up the agreements. That last piece may have related to the second agreement, but it was sometime the second half, late third quarter, early fourth quarter of 2010, I believe.

Q. When did the negotiations over Exhibit 3, the First 2009 Tax Allocation Agreement, begin?

A. December of 2009.

Plaintiff's Objection 34:9-21 Irrelevant (FRE 401, 402), confusing (FRE 403), lack of personal knowledge (FRE 602)

Plaintiff's Objections 34:22-36:23 Irrelevant (FRE 401. 402), unduly prejudicial (FRE 403)

Q. Why did it take so long to negotiate this agreement?

A. Initially, we hoped to have an agreement in place for the year-end close in 2009, so it received a fair amount of attention early on. And then the urgency fell away, nobody seemed to think it was critical, and you know, the draft agreement sat in ResCap's hands waiting for them to act on it, respond, until I think it was mid 2010 when I started chasing Tammy again saying, you know, where is this? What's going on?

Their process of review with outside counsel and with the board just took an inordinate amount of time. It was out of my control.

Q. When you started the process of collecting signatures at AFI, you determined, though, by that point that negotiations had been completed, right?

A. I believed them to be at that time, yes.

Q. And when you sent it to ResCap for signature, you believed the negotiations had

been completed, right?

A. Yes.

Q. I believe you testified that you knew ResCap was presenting this agreement to its board of directors for approval, right?

A. Yes.

Q. You also believed that the document that was being presented to ResCap's board of directors for approval was the final agreement with respect to the matters contained in the document, right?

MR. McKANE: Objection to form.

A. At that point, I believe that was the final version that was proposed for execution.

Q. So the version that went to ResCap's board, Exhibit 3, was the final deal, right?

MR. McKANE: Objection to form.

A. It was thought to be the final version at that time.

Q. It was thought to be the final version at that time by you, right?

A. Yes.

Q. And do you have any reason to believe that ResCap's board didn't believe it to be the

final version at that time?

MR. McKANE: Objection to form. Calls for speculation.

A. Yeah, I can't speak for the ResCap Board.

Q. Did you have any expectation that ResCap was presenting a draft document that was subject to further negotiation to its board of directors?

MR. McKANE: Same objection.

A. I did not at that time.

Q. When you drafted this document, you did not add a provision that provided that the agreement would only be effective and enforceable upon being signed by all parties to the agreement, did you?

A. Those words are not in the agreement. However, I intended and believed that the signatory blocks made it clear that the document wasn't effective until it was signed by the parties.

Q. So it was your belief that just signature lines encompassed that point that I just raised?

Plaintiff's Objection 37:7-12 Irrelevant (FRE 401, 402), confusing (FRE 403), lack of personal knowledge (FRE 602)

W. MARX

MR. McKANE: Misstates testimony.

A. Yes.

Q. And none of the people, including the legal counsel at AFI, suggested to you that you add language including a provision that said the agreement would only be effective and enforceable upon being signed by all parties to the agreement?

MR. McKANE: I'm going to instruct you not to answer to the extent that you just asked him to divulge an attorney-client communication regarding AFI.

To the extent you can answer the question by setting aside any communications you had with AFI counsel regarding the contents of the agreement, you can answer.

A. I decline to answer.

Q. Let me ask you a broader question. Did any of the people at AFI who reviewed and provided comments to you suggest that the agreement -- that you include language that the agreement would be -- only be effective and enforceable upon being signed by all parties to the agreement?

W. MARX

MR. McKANE: Same instruction regarding privilege.

A. Yeah, I -- I decline to answer.

MR. McKANE: To the extent there are others -- to the extent you recall, and it's not an attorney at AFI, you can answer the question.

A. I'm quite certain that nobody would have advised that because it strikes me as language that perhaps would have been added. I don't know. I have no recollection of that.

Q. Okay. Certainly there's no reason you couldn't have included a provision like that in the contract, right?

A. I suppose it could have been included if it was deemed necessary.

Q. You testified earlier about the concept of disregarded entity.

Was there a relationship between ResCap's status as a disregarded entity and the desire to have a Tax Allocation Agreement?

MR. McKANE: Objection to form. Vague. Confusing. Ambiguous.

A. I'm not even sure I understand the

question.

Q. Okay. Well, let's look at Exhibit 2, which is the Examiner's Report, and if you would turn to the page marked V-315. Are you there?

A. Uh-huh.

Q. I'd like to direct your attention to the first paragraph on that page where the examiner says, "In connection with the discussions in December 2009 about making ResCap a disregarded entity for federal tax purposes around November 1, 2009, AFI drafted the First 2009 Tax Allocation Agreement between ResCap and AFI," and then in parens, "(and GMAC Mortgage, LLC) to become effective November 1, 2009."

Do you see that sentence?

A. I do.

Q. Was there a relationship between the discussions about making ResCap a disregarded entity for federal tax purposes and AFI's desire to have the First 2009 Tax Allocation Agreement put in place?

MR. McKANE: Same objections.

A. No, the -- it wasn't a desire, as I stated before, to have an allocation agreement

Plaintiff's Objection 40:18-41:15 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

in place. It was a requirement under the Operating Agreement, and since circumstances were changing and it was unclear whether or not the existing 2006 agreement was adequate to meet the needs in the changed circumstances, we decided -- we, Ally Tax, decided what to draft a more clear allocation agreement that would reflect the new reality.

Q. Okay. Let's stay in that paragraph and I'm going towards the middle -- I'll count. Seven lines down, the examiner writes, "AFI drafted the First 2009 Tax Allocation Agreement to treat ResCap generally as if ResCap were a standalone taxpayer."

Do you see that sentence?

A. I do.

Q. Do you agree with that sentence?

A. Yes.

Q. The next sentence says, "The agreement, however, was more favorable to ResCap than a pure standalone agreement or being left as a disregarded entity without a federal income tax allocation agreement in place because it entitled ResCap to be paid for its tax benefits

Plaintiff's Objection 41:16-19 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

Plaintiff's Objection 41:20-42:15, Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

that AFI could currently use even if ResCap could not yet use the tax benefits on a standalone basis."

Do you see that?

A. I do.

Q. Was that one of the goals of Exhibit 3, the First 2009 Tax Allocation Agreement?

MR. McKANE: Objection to form, and --

A. There was a provision in that draft agreement that would have resulted in this treatment as stated in the examiner's report.

Q. Who put that provision in the draft agreement?

A. Well, I did. I drafted the agreement.

Q. Why did you put that provision in the draft agreement?

A. The primary driving reason for it was ResCap, by the fourth quarter, was expected to have a net deferred tax asset on its books against which there would have been a full valuation allowance. In other words, an asset that would be written down to a value of zero for book purposes, impairing their equity by that amount.

The theory or the hope that we were pursuing -- we, Ally Tax -- at this time was that if we had language to this effect in the allocation agreement, and if the parent company was not in a valuation allowance situation, meaning a conclusion had been reached that it was more likely than not that at the top of that consolidated house all of those tax attributes would be utilized in the carry-forward period, the hope was that we would be able to, within the accounting guidance, be able to treat that as some type of a guarantee that would allow ResCap to not have a valuation allowance since at some point it would be likely that they would receive benefit for those losses.

Q. And you said that this was driven by a fourth quarter issue on ResCap's financials?

A. Just the facts that existed at the time. It wasn't a particular issue.

Q. Okay. But you understood that Exhibit 3, the First 2009 Tax Allocation Agreement, was a longer term agreement; it wasn't just going to deal with one quarter at ResCap?

A. Yes.

Q. Was that a benefit; that language in the agreement a benefit to ResCap?

A. If that provision had been invoked by the facts, it would have resulted in better treatment than ResCap would have been able to obtain if it were filing its own tax return on a standalone basis.

Q. And who would --

A. So it was a potential benefit.

Q. Who would have been providing that potential benefit to ResCap?

A. AFI.

Q. And that was a conscious decision on the part of AFI to provide that potential benefit?

MR. McKANE: Objection to form. Misstates testimony.

A. It was a conscious choice of the tax staff to propose that language. It was not vetted very far up the line with senior management.

Q. Did that language stay in the final document that you presented to AFI for signature?

A. Yes.

Q. Did it stay in the final document that was presented to the ResCap Board for signature?

A. The final version of the first agreement, yes.

Q. So that language was not removed by anyone at AFI?

A. Not in the first agreement.

Q. Was that benefit, that treatment consistent with tax allocation agreements that AFI had with other affiliates?

A. It was consistent with allocation agreements with our bank's subsidiary and our insurance subsidiaries, both of which are regulated entities, and that provision is required by the regulators. And there is no such regulatory provision that would require it in the ResCap situation.

Q. So, even though it wasn't required in the ResCap situation, when you drafted the agreement, you chose to put that language in, right?

A. Right, for the aforementioned goal of trying to preserve equity at the ResCap level.

Q. Are you familiar with the phrase "equity bump"?

Plaintiff's Objection 46:2-47:4, Irrelevant (FRE 401, 402)

A. Yes. That's what I was just referring to.

Q. What does "equity bump" mean?

MR. McKANE: He just answered the question.

A. Yes, it's the answer I gave with respect to removing the valuation allowance against the deferred tax assets, thereby increasing net equity.

Q. And that was one of the drivers for including this language in the first --

A. That was the primary driver.

Q. Let me finish my question.

A. Sorry.

Q. That was one of the drivers for including this language in the First 2009 Tax Allocation Agreement, right?

A. Yes.

Q. Why was that one of the goals?

A. Well, at the time the -- ResCap was consistently challenged with respect to maintaining adequate capital under its debt

covenants and anything that could be done to preserve equity seemed to be a -- a good objective.

Q. Was that provision in Exhibit 3, the First 2009 Tax Allocation Agreement, run by AFI's outside auditors?

MR. McKANE: Objection to form.

A. I don't know that we ever shared the draft agreement with them. We discussed the concept with them and, you know, the initial reaction back was, well, it's an interesting theory, let's think about whether that would work.

We never got to a point of a formal decision as to whether, under the accounting guidance, this idea would have worked.

Q. So they never gave you a final answer?

A. Well, the facts changed in such a way that it became moot. By the end of the fourth quarter, there were substantial losses recorded at the AFI level that resulted in AFI also being in a full valuation allowance with respect to its deferred tax assets. So that kind of made the whole possibility of this -- this -- this

guarantee notion go away.

Q. What was the date of the end of the fourth quarter?

A. December 31.

Q. 2009?

A. Yes.

Q. So, even though that issue went away because of the AFI loss, you didn't revise the draft Exhibit 3 to take out that language, did you?

A. I don't recall the significant time gap between December 31 and when this thing got picked up again, and the whole focus on tax allocation had -- there was -- there was not a lot of interest in it because it just was not an urgent matter during that interim period, and quite frankly, there was not a lot of thought that went back when -- when we picked it back up again, that issue was old and the -- it was an oversight to go back and re-think whether that should stay in the agreement or not.

Q. You testified that it was you who reached out to ResCap to get their comments back sometime in 2010 on the agreement. So you were

really pushing them to turn it; is that right?

A. Yes. This was one of those administrative tasks that fell under Tax Operations, and I knew it was out there and at some point we needed to have an agreement in place.

Q. Okay. So, notwithstanding that your view was that it wasn't an urgent matter, you were still trying to get it done, right?

A. Yes.

Q. And when you picked it back up, there was nobody who prevented you from reading the agreement again, right?

A. That's correct.

Q. And you understood what was in the agreement because you wrote the agreement, right?

A. That's correct.

Q. I'd like you to look in Exhibit 2, the Examiner's Report, on page V-316. Let me know when you're there.

A. I am there.

Q. In the first full paragraph on that page, the examiner writes, "The First 2009 Tax

Plaintiff's Objection 49:24-50:20 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

Allocation Agreement went through a series of revisions that resulted in substantial changes to its operative provisions. First, Morrison & Foerster, counsel to ResCap, and Morrison Cohen, counsel to the Independent Directors, reviewed a December 14, 2009 draft and submitted their collective comments on December 23, 2009. Their comments appear to have been rejected by AFI."

Do you recall when you got those comments?

A. I recall there were discussions with them and we went back and forth over some proposed changes. I would need to see the documentation of what the comments were to talk about them.

Q. But do you recall whether there were discussions on the draft that you originally provided to ResCap in December 2009?

A. Yes, there were discussions.

Q. Okay. And then the discussions went dormant to some point in 2010, right?

A. Yes.

Q. Okay. At what point did AFI start to analyze what it would cost AFI if this agreement

were implemented?

MR. McKANE: Objection to form.

A. I wouldn't characterize it as analyzing what it would cost. As part of our normal tax return filing process, once the return is completed, there's a 45-day period provided in all of our allocation agreements to settle up taxes amongst all of the subsidiaries.

So, immediately upon finalizing the consolidated tax return, there would be a process where we would start analyzing entity-by-entity what their taxable income was and, for the appropriate groups, what their allocated tax might be.

So sometime on or about September 15, I would estimate, of 2010, we would have had sufficient data from the tax return to start those allocation calculations, and what was put in as a placeholder for ResCap, even though we weren't finalized with the agreement, were proforma calculations that would have mirrored the first agreement.

Q. Okay. When you say you weren't finalized with the agreement, what do you mean?

A. Meaning the agreement wasn't finalized and executed yet.

Q. Well, AFI had executed it by that point, hadn't it?

A. I don't recall the dates. They were third quarter -- I believe, yes, I believe we had. I believe we had.

Q. Okay. And ResCap, to your understanding, had not executed it yet, right?

A. That's correct.

Q. And one of the reasons ResCap had not executed it yet is, even though it was your responsibility to get their signature, you hadn't sent them the packet; is that right?

A. That is correct.

Q. And after you started running the calculations in mid September and you realized what AFI's exposure under this contract would be, you tried to get ResCap not to sign the agreement, didn't you?

MR. McKANE: Objection to form.

A. I would not characterize it that way. The sequence of events was the agreements were executed in Detroit by the AFI people, and what

was intended to occur was Mr. Frucci was planning to be in Minneapolis for some other business reasons and we thought it would be appropriate for him to take the binder with him, sit down with Jim Young, walk him through, make sure he got all the signatures, and as silly as it may sound, he forgot the binder. So he ends up in Minneapolis without the binder, comes back, and we thought, well, just take it the next time you go.

Sat around a few more weeks, and we realized that he didn't have any immediately foreseeable travel plans, so said, you know what, let's just overnight this thing to Jim, which we did. And timing was kind of uncanny. It was right in that timeframe that we realized the -- the size and scale of the potential payments. We said, wait a minute. This feels like it's bigger than something tax staff should be doing on its own.

Q. Okay. When was Mr. Frucci supposed to go to Minneapolis to present the binder to Mr. Young to have ResCap sign it?

A. I don't know. Sometime in that --

sometime in September, I would guess.

Q. Early September?

A. I don't recall the dates.

Q. But when AFI signed Exhibit 3, the First 2009 Tax-Sharing Agreement, that signature indicated its intent to be bound by the agreement, right?

A. That signature indicated the signatories' understanding that that was an authorized agreement and that they were authorized to sign it.

Q. And if they were authorized to sign it, it signified AFI's intent to be bound by that agreement, right?

MR. McKANE: Objection. It calls for a legal conclusion.

To the extent you can answer based on your lay understanding, you can answer.

A. Yes, I would say that's correct.

Q. Okay. And if Mr. Frucci had taken the binder to Minneapolis, it may well be that the ResCap signature would have been on the binder. So it's happenstance that ResCap didn't sign at or about the time that AFI did, right?

Plaintiff's Objection 54:3-4, Incomplete (FRE 106), lack of personal knowledge (FRE 602), confusing (FRE 403)

Plaintiff's Objection 54:5-12 Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), calls for legal conclusion (FRE 701, 702, 703), lack of personal knowledge (FRE 602)

Plaintiff's Objection 54:13-20 Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), calls for legal conclusion (FRE 701, 702, 703)

Plaintiff's Objection 54:21-55:8 Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge/ speculative (FRE 602)

MR. McKANE: Objection to form. Calls for speculation.

A. Yeah, I can't -- I can't say with certainty that Mr. Young would have signed the agreements. Perhaps he would have, perhaps he would not have, but I can't say what would happen if it didn't happen.

Q. Well, certainly when you asked Mr. Frucci to take the binder to Minneapolis to have Mr. Young sign it, you knew that ResCap's board had approved the agreement, right?

A. Correct.

Q. Do you have any reason to believe that Mr. Young wouldn't have signed the agreement if Mr. Frucci had carried the binder with him?

MR. McKANE: Again, lack of foundation. Calls for speculation.

A. I'm simply not going to speak for Mr. Young. It's a question for him.

Q. So you have no reason to believe it?

MR. McKANE: Objection to form.

A. I have no reason to believe what? I'm sorry.

Q. That Mr. Young wouldn't have signed

Plaintiff's Objection 55:9-56:4 Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge/ speculative (FRE 602)

that agreement?

A. I have no reason to believe that, but I don't know that he would have signed it.

Q. Is there any reason during any point between December 2009, when AFI and ResCap began discussing this agreement, and August of 2010, when a final draft was presented to and approved by ResCap's board, that AFI couldn't have estimated its obligations under the agreement?

A. AFI could have done some proforma calculations based on estimated taxable income. However, our ability to estimate taxable income and get it parsed by group was quite limited. So those calculations would not have been terribly precise or reliable, but it's possible.

Q. Given that possibility, did AFI ever make any attempt during that time period between December 2009, when it first started negotiating the agreement, and August 2010, when ResCap's board approved the agreement, to model this at all?

A. No.

Q. Why not?

A. Probably -- I shouldn't say

"probably."

In my mind, and I've been responsible for reviewing and preparing tax allocations for a number of years, this particular provision that had been in place with respect to other -- the bank and the insurance companies had never resulted in the significant payment, it never -- simply had never been an issue of this magnitude, and quite frankly, we just didn't think down that next step and say, oh, let's make sure we know what's coming.

Q. Is it true that under Exhibit 3, if this were the operative agreement, it would have cost ResCap nothing; ResCap would not have been making payments to AFI?

MR. McKANE: Objection to form. Calls for speculation.

A. No. No. I can answer that. No, that's not correct.

Q. Under what circumstances would ResCap have been making cash payments to AFI?

A. Now let me clarify. On a net basis, for 2009, you're correct, there would have been a payment to ResCap, but it would have been

reduced by the tax on the excess inclusion income, which is a tax that cannot be offset by operating losses. So there -- there would have been theoretical cash flowing in both directions.

Q. Let's look again at Exhibit 2, the Examiner's Report. Let's go to page V-317, and in the first full paragraph about midway down, there's a sentence that starts with, "The joint ResCap-AFI tax memorandum..."

A. Yes.

Q. "...which was co-authored by Marx, Young and Hamzehpour, summarized the history of ResCap's federal tax classification and provided a detailed analysis of the terms of the First 2009 Tax Allocation Agreement, ResCap's deferred tax position, and the governance requirements relevant to the decision to approve the agreement." Do you see that sentence?

A. I do.

Q. Why were you part of the group that was writing a memo to ResCap's board?

A. I was asked to review -- the memo was drafted primarily by Ms. Hamzehpour, and I was

Plaintiff's Objection 58:7-61:3 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

asked to review it with respect to the tax matters that were discussed therein just to make sure that they were accurate, and I provided comments.

I had really no input or involvement with the governance portions of that memo and, you know, some of the other pieces, but where they talk specifically about what was in the agreement and how it would operate, I made some comments.

Q. Were your comments accepted by ResCap?

A. I -- I'm sure some of them were. I don't recall all the details of the comments back and forth. There was nothing controversial or -- or -- what's the word I'm looking for?

The memo that she initially drafted was largely on point.

Q. So the final memo you had an opportunity to review, and if there was anything wrong, you had an opportunity to comment on it?

A. Correct.

Q. Was there anything in the final memo that went to the board that you disagreed with?

A. I don't believe so.

Q. If you look at the indented paragraph at the end of this page, it says, the first bracket, "First 2009 Tax Allocation Agreement," close bracket, "generally provides that ResCap will be allocated income taxes under a hypothetical calculation that assumes ResCap to be a standalone taxpayer, filing its own tax returns, with full rights to make all accounting method choices and tax elections available under the law." Do you see that?

A. I do.

Q. Is that a true statement?

A. Yes.

Q. Next sentence says, "However, in cases where the consolidated return regulations allow the AFI group of companies to benefit from net operating losses, capital losses or foreign tax credits before ResCap could benefit from them on a standalone basis, the Agreement requires AFI to pay GMAC Mortgage Group, LLC and GMAC Mortgage Group LLC to currently pay ResCap for those tax attributes."

Do you see that?

A. I do.

Q. Is that a true statement?
A. Yes.
Q. "This is the only provision that differs from standalone treatment for ResCap, and in all cases can only be beneficial to ResCap, i.e., it may allow the monetization of tax benefits earlier, or in some cases where the benefits would have expired and been permanently lost by ResCap, if it had been [sic] a standalone taxpayer."
Is that a true statement?
A. It's imprecisely true. I would have said -- it says "in all cases can only benefit." It could be neutral. So it would be neutral or it could benefit. It could never be a detriment.
Q. Okay.
MR. McKANE: Can we go off the record for a second?
MR. COHEN: Sure.
THE VIDEOGRAPHER: The time is 10:56. We're going off the record.
(Recess.)
THE VIDEOGRAPHER: This is the start

Plaintiff's Objection 61:4-61:17 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

of tape labeled number 2. The time is 11:13. We're back on the record.

MR. COHEN: Would you read back my last question and the witness's last answer, please.

(Record read.)

(Marx Exhibit 4, Amended and Restated Agreement for the Allocation of United States Federal Income Taxes, bearing Bates Nos. RC00028796 through 28801, marked for identification, as of this date.)

Plaintiff's Objection 62:08 – 063:06 Incomplete (FRE 106)

BY MR. COHEN:

Q. Mr. Marx, the reporter has handed you a document marked Exhibit 4. Do you recognize this document?

A. I do.

Q. What is this document?

A. This is the, I believe the second -- what has been referred to as the Second 2009, I believe.

Q. With respect to the Second 2009 Tax Allocation Agreement, is it also true that this document could only be a benefit or neutral to ResCap?

A. As compared with?

Q. The First 2009 Tax Allocation Agreement.

MR. McKANE: Objection to form.

A. I'm sorry. Restate your question.

Q. You testified that the First 2009 Tax Allocation Agreement could only be a benefit or neutral to ResCap; do you recall that?

A. I do.

Q. Is that same statement true with respect to the Second 2009 Tax Allocation Agreement?

A. No.

Q. So the Second 2009 Tax Allocation Agreement could be detrimental to ResCap, correct?

A. No. It is less beneficial than the first, but not detrimental.

Q. In what way is it less beneficial than the first?

A. It did not provide for the possibility of the acceleration of monetizing tax attributes that could not yet be used by ResCap on a standalone basis.

Q. Why didn't it so provide?

A. Because that clause was removed -- why didn't it -- that's the whole change from the first draft to the second draft. The decision was made that AFI chose not to offer to accelerate that benefit.

Q. Why did AFI choose not to offer to accelerate that benefit?

A. My understanding is that matters of capitalization of ResCap, at least in large number, amounts over $50 million, was reserved to the board, and we -- the company did not choose to put in place an allocation agreement that could result in capital contributions that would not be subject to board approval.

Q. Now, you drafted Exhibit 3, which was the First 2009 Tax Allocation Agreement. Did you also draft Exhibit 4, which is the Second 2009 Tax Allocation Agreement?

A. I did.

Q. Were you the one who took out that provision?

A. Yes.

Q. Was it your view that that provision

should be removed?

A. I was not the decision-maker there, but I understood why it was removed.

Q. Who was the decision-maker there?

A. I would say it was -- well, I can't say. I was -- I was informed by Jim Mackey that he agreed that it should come out. He was the chief financial officer at the time.

Q. When you say you were informed that Jim Mackey agreed that it should come out, with whom was he agreeing?

A. With me. We had a discussion, an e-mail discussion back and forth, but I can't say whether Jim made that discussion -- that decision independently or if others were involved. I simply don't know.

Q. What was your recommendation with respect to whether that provision should come out?

A. I did not make a recommendation. I -- I proposed alternatives, one being leave the first draft as is or change the draft to remove this language.

Q. Did you have a view as to which was

the more desirable course for AFI?

A. Really not my call to make.

Q. So you didn't have a view?

A. No.

Q. Before -- let's go back to Exhibit 3. Before you embarked on getting the signatures to Exhibit 3, the first allocation agreement, did you check with in-house counsel as to whether additional approvals were needed?

A. The draft had been reviewed by in-house counsel and I was not told of any additional governance that was required. I don't recall if there was a specific discussion about it or not.

Q. Would you turn to page VII.K-29 in Exhibit 2, which is the Examiner's Report.

A. I'm sorry, K-29?

Q. Yes. Let me know when you're there.

A. I am there.

Q. Looking at the first full paragraph on that page, the examiner writes, "When DeBrunner signed the First 2009 Tax Allocation Agreement, he believed he was acting under 'delegated authority.'" Do you see that sentence?

Plaintiff's Objection 66:6-67:14 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106), calls for legal conclusion (FRE 701, 702, 703)

A. I do.

Q. Do you know what is meant by "delegated authority"?

MR. McKANE: Objection to the extent it calls for a legal conclusion.

A. I understand the concept of authority being delegated, yes.

Q. What is your understanding of that concept?

A. That certain levels of management -- the board and certain levels of management are granted various levels of authority to perform functions, and it starts from the board on down.

Q. Did you have an understanding as to whether Mr. DeBrunner was acting under delegated authority when he signed the First 2009 Tax Allocation Agreement?

MR. McKANE: Objection to form.

Are you asking now does he have an understanding or are you asking then?

MR. COHEN: I'll ask a different question.

BY MR. COHEN:

Q. Why did you ask Mr. DeBrunner to sign

Plaintiff's Objection 67:25-68:13 Irrelevant (FRE 401, 402)

the First 2009 Tax Allocation Agreement?

A. Because he was the chief accounting officer for AFI at the time and that seemed an appropriate level and function to be entering into the Tax Allocation Agreement.

Q. At the time you asked Mr. DeBrunner to sign the First 2009 Tax Allocation Agreement, did you have a belief as to whether he was acting under delegated authority?

A. Yes, I would have believed that or else I wouldn't have asked him to sign the document.

Q. Okay. The next sentence says, "AFI's in-house counsel was of the same belief."

Is that a true statement?

MR. McKANE: Objection. Calls for speculation.

A. If it was in a memo that I wrote, I'm sure that I was told that, yes.

Q. Okay. So let's go to the next sentence. "A September 9, 2010 memorandum circulated by Marx provides that AFI's in-house counsel advised that 'no additional governance is required at the AFI level' in connection with

Plaintiff's Objection 68:14-70:16: Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

the execution of the First 2009 Tax Allocation Agreement."

Do you see that?

A. I do.

Q. Is that a true statement?

A. I'm sure that it is. Now that I see this, I believe I remember that was perhaps part of the buck slip or the transmittal letter that circulated around for signature.

Q. So you sought legal advice as to whether AFI had authority to sign the agreement without board approval, and you were told yes, right?

A. Apparently I was told --

MR. McKANE: Objection to form.

A. Apparently I was told that there was no further governance needed to execute the agreements.

Q. What did you understand the advice that no further governance was needed to mean?

A. No further governance was needed. I mean, I don't know how more clearly to state that.

Q. What does "governance" mean in the

context of that sentence?

A. Approvals.

Q. Board approvals?

A. Any approvals.

Q. Okay. So it was your understanding at the time you asked Mr. DeBrunner to sign the document that no further approvals were required and that he could legally sign the document, correct?

A. At that time, yes.

Q. And that it was based on your advice with AFI -- your conversations and the advice you received from AFI's in-house counsel, correct?

A. Yes.

Q. Did there come a time when you tried to convince ResCap not to sign the agreement?

MR. McKANE: Objection to form.

A. I would not say I tried to convince them. I suggested that there may be a problem with the documents and that we would like to propose changes, but, you know, I did not tell them, you know, I didn't control what Jim Young did.

Q. What did you believe to be the problem with the documents?

A. The level of capital contributions that were going to be required under the agreement, and with the passage of time, understanding the sensitivity around capitalization of ResCap, I thought perhaps we need more senior management attention to this.

Q. Did you go back to in-house counsel on that issue?

A. I don't believe so. I don't recall that I did. I believe I went directly to Jim Mackey with the issue.

Q. Okay. So let me make sure I understand this. You went to in-house counsel to ask whether additional approvals were needed, you were told no, and then you went to Jim Mackey, who was the CFO, to ask the same question?

A. No.

MR. McKANE: Objection to form.

A. No. I went to Jim Mackey to inform him that we have a partially executed agreement out there, and the result of which would be this

capital contribution, and I was seeking his input as to how to proceed.

Q. Why didn't you go back to in-house counsel and raise the governance question again?

A. I didn't realize it was a matter of governance. It was, in my mind, a matter of a business issue, and in a large corporation, you typically start with up your chain of command when an issue arises.

Q. What was the business issue that you recognized?

A. The potential large capital contribution.

Q. So it was the economics of the deal that caused you to call Mr. Mackey?

MR. McKANE: Objection to form. Misstates testimony.

A. It was -- it was a concern that Ally Tax had gone beyond its authority or -- its authority, I guess, to put in place an agreement that was going to result in large capital contributions to ResCap at a time when I was aware that, over the passage of time, various issues and transactions had occurred where

capital contributions required board approval.

Q. Would you describe that as a governance issue?

MR. McKANE: Objection. Form.

A. I didn't know at the time specifically that it was a governance issue. It was more a business environment issue. I was observing this going on and thinking somebody above me needs to know what's happening here.

Q. At the time you raised this concern with Mr. Mackey, were you aware that there were signed copies from the AFI side of this agreement out there floating around?

Plaintiff's Objection 73:11-24 Incomplete (FRE 106)

A. Yes.

Q. Did you do anything to gather copies of those agreements?

A. I did.

Q. Why?

A. Because we were unsure whether it was appropriate to execute those documents.

Q. Well, the documents had already been executed, hadn't they?

A. Partially.

Q. Okay. Why did you go about gathering

the partially executed documents?

A. Because it was not clear to me that, at that point in time, that there had been an appropriate level of senior management involvement in the approval of these documents.

Q. At the time you gathered the AFI executed documents, did you have any belief as to whether the contract was enforceable?

A. I believed the contract not to be enforceable at that time because it had not been fully executed.

Q. If the contract was not enforceable in your view at the time, why would it matter if there were AFI signed documents within AFI?

A. Well, it wasn't -- if the documents remained partially unexecuted, it wouldn't have mattered. The point of gathering the documents was to hold off on full execution until such time that it had received appropriate review.

Q. Well, how would collecting documents at AFI prevent full execution when ResCap already had an AFI executed copy of the document?

MR. McKANE: Objection to form.

Misstates prior testimony.

A. The documents were not gathered from AFI. They were gathered from ResCap.

Q. So you called ResCap and said, will you send us back the AFI executed documents?

Plaintiff's Objection 75:5-12 Incomplete (FRE 106)

A. Yes.

Q. Who did you talk to at ResCap about that?

A. Jim Young's administrative assistant, and there was a subsequent discussion with Jim explaining the concern.

Q. What specifically did you discuss with Mr. Young explaining the concern?

A. The -- I'm just working from memory here. There was an e-mail that outlines the discussion with Jim Young basically letting him know that the agreement, as drafted, had an unintended or unexpected consequence of very large capital contributions that had not been fully vetted at this end, the Ally end, and I needed to talk to Jim Mackey about it and please hold off on executing the documents.

Q. What did he tell you?

A. His reaction was he understood the

concern and was, you know, agreeable that the document should not be executed if it was not consistent with what Ally's senior management would want to have in place.

Q. Did he explain why that was his view?

A. I don't recall that he did, no, not to me directly.

Q. Would you look at the Examiner's Report at K-27. Let me know when you're there.

A. I am there.

Q. Looking at the first paragraph after the indented portion where the examiner notes that, "AFI changed its mind after executing the agreement when it calculated its expected payment obligation to ResCap and realized that its payment obligation to ResCap would be hundreds of millions of dollars."

Do you see that sentence?

A. I do.

Q. Do you agree with that sentence?

A. I do not.

Q. What portion or portions of that sentence don't you agree with?

A. The characterization that AFI changed

Plaintiff's Objection 76:12-77:22 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

its mind. AFI Tax changed its mind, had concerns, and it became apparent that the decision to produce and, you know, move this -- to propose this first allocation agreement should have received more senior management review.

Q. Okay. So if that sentence changed to, "AFI Tax changed its mind after executing the agreement when it calculated its expected payment obligation to ResCap and realized that its payment obligation to ResCap would be hundreds of millions of dollars," you would agree with that reformulation as a true statement?

A. I would agree that AFI raised concerns that this agreement might not be acceptable to senior management; reached out to senior management for further review and advice.

Q. When you say "senior management," to whom are you referring?

A. Jim Mackey.

Q. Anyone else?

A. I don't believe I had any discussions with anybody more senior to Jim on this matter.

Q. Do you not consider that the head of AFI tax to be part of senior management?

A. He is senior to me, but he's not part of the Management Committee. He's not part of that top-level echelon of senior management.

JSN Objection 78:2-6 FRE 402 (Not relevant)

Q. Looking after the next indented paragraph, the full paragraph that states, "If there was any 'mistake' made here, it was AFI's unilateral mistake in failing to anticipate the magnitude of its monetary obligation under the First 2009 Tax Allocation Agreement." Do you see that sentence?

A. I do.

Q. Do you agree with that sentence?

A. I do not.

MR. McKANE: Objection. To the extent you're asking him to interpret unilateral mistake or bilateral mistake or any other legal term, I object; but to the extent you understand those terms in your lay understanding, please answer.

A. I do not agree with that.

Q. What portion or portions of that sentence do you not agree with?

A. I believe that Jim Young was in a position to understand the potential for large capital contributions. I believe -- I don't know if the ResCap Board was focused on that or not, but I believe on the ResCap side, I've subsequently learned about a restriction with respect to the approvals for capital contributions that I think ResCap would have been aware of.

Q. When you say, "I believe Jim Young was in a position to understand the potential for large capital contributions," what do you mean?

A. I think he understood what the agreement called for.

Q. And by that do you mean -- do you think Jim Young understood that there was the possibility that AFI would be making substantial capital contributions under the First 2009 Tax Allocation Agreement?

MR. McKANE: Objection to form.

Misstates the testimony.

A. I do believe that.

Q. And when you say that you've learned on the ResCap side subsequently "about a

JSN Objection 79:24-81:17 FRE 402 (Not relevant)

restriction with respect to approvals for capital contributions that I think ResCap would have been aware of," what do you mean by that?

A. I -- I don't know how to more clearly state that.

Q. What restriction are you referring to?

A. Subsequent to the drafting of these agreements, I learned that there was a reservation of authority at the Ally board level that required board approval for capital contributions in excess of $50 million, and I would expect and believe that the Ally -- I'm sorry, the ResCap Board and people at Jim Young's level would have been aware of that.

Q. So you believed at the time the ResCap Board approved this and you had sent the document to Jim Young for execution, ResCap was both aware of the potential for large capital contributions from AFI and was aware of the board restriction at AFI on capital contributions to ResCap?

JSN Objection 80:16-81:17 FRE 602 (Lacks personal knowledge; calls for speculation)

A. I don't know what they were aware of, but I'm saying that the characterization of this as, if there was a mistake, it was unilateral

doesn't strike me as correct.

I think ResCap was in the same situation of being able to understand. So if there was a mistake made, it was a mutual mistake, in my mind.

Q. What makes you think that AFI viewed receiving large capital contributions -- or, strike that. What makes you think that ResCap viewed receiving large capital contributions from AFI as a mistake?

A. If they understood there was governance required in order for such capital contribution to be made, yet would still enter into a agreement that would circumvent that requirement, if it were valid, that seems to be either a mistake or something else.

Q. Other than the governance issue, do you have any reason to believe that ResCap viewed a contract receiving large capital contributions from AFI as a mistake?

MR. McKANE: Objection to the form.

A. I can't say whether ResCap viewed this contract as a mistake or not. I can't speak for ResCap.

Q. Okay. When you requested that Mr. Young send you back the AFI signed copies of Exhibit 3, the First 2009 Tax Allocation Agreement, did he comply with that request?

A. Yes.

Q. So he sent them back to you?

A. Yes.

Q. What did you do with them?

A. Once the final agreements were executed, those were destroyed. They were not retained.

Q. When you say "final agreements," you're referring to Exhibit 4?

A. Is that the second signed agreement?

Q. Yes.

A. Correct.

Q. Did you discuss whether those agreements should be destroyed with anybody before they were destroyed?

A. No. It never occurred to me that they might be -- could be viewed as valid.

Q. Who actually destroyed them?

A. Probably me.

Q. Why did you destroy them?

Plaintiff's Objections
82:2-83:17
Irrelevant (FRE 401, 402), unduly prejudicial (FRE 403)

A. They served no further purpose once we had what I thought was the final allocation agreement in place.

Q. Were there signed copies of Exhibit 3, the First 2009 Allocation Agreement, also within AFI in its files?

A. They were, no, not -- they were all together in the binder. There were multiple copies in a binder, the intent being that each signatory company would receive an originally signed document once they were fully executed. So they were all together, partially executed, in one binder.

Q. Where is that binder now?

A. It's been disassembled and the contents destroyed.

Q. Did you destroy the AFI binder as well?

A. There was no AFI binder. It was one binder that was circulated around to all the signers and all of them were together. Only -- yeah, that's --

Q. Okay. I understand.

Would you look at page K-19 of Exhibit

Plaintiff's Objection 83:24-84:19, Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

2, the Examiner's Report.

A. I am there.

Q. Looking at the first sentence of the first paragraph on that page, the examiner writes, "Despite having already signed the 2009 Tax Allocation Agreement around September 13, 2010, in October 2010, AFI had a change of heart and decided that it did not want to move forward with implementing the agreement."

Do you see that statement?

A. I do.

Q. Do you agree with that statement?

A. Again, I would characterize AFI as AFI Tax.

Q. So if that -- if the word "tax" were added after "AFI" in that sentence, you would agree with that sentence?

A. Yes.

Q. Once you first determined that the monetary impact of Exhibit 3, the First 2009 Tax Allocation Agreement, what did you do?

A. I notified Mr. Mackey of the circumstances and asked for his input.

Q. What did he tell you?

JSN Objection
84:25-85:9
FRE 802 (Hearsay)
FRE 1002 (Best evidence)

A. There was a little back and forth on the e-mail, but he asked what the alternatives were, which I described to him, and I think the ultimate resolution was he communicated with Jim Young and they agreed not to execute the document because it hadn't been fully socialized or vetted at the Ally end and it was something that would be discussed ongoing.

Q. What period of time was AFI considering what to do about this issue?

A. It was a fairly short couple of days.

Q. Do you recall when in September -- the examiner says the contract was signed by AFI on September 13. Do you recall when this issue was discovered?

A. I don't recall the specific date, but there are -- there's e-mails in the record. The e-mail from me to Jim Mackey describing the circumstance would have been dated either that day or perhaps the day after we discovered it.

Q. Okay. Would you turn -- we're going back towards the front of the report to pages V-321 and V-322 of the report.

A. I'm there.

W. MARX

Q. All right. So I'd like to focus your attention on the last full sentence on page V-321. "Marx suggested that they let Young and DeBrunner know that AFI's senior financial management is reconsidering the tax allocation approach and he will get back to them in November 2010 with his modification plan."

Do you see that sentence?

A. I do.

Q. Is that a true sentence?

MR. McKANE: Objection to form.

Q. Is that a true statement?

A. I believe it is, yes.

Q. Okay. And if you look at the footnote there, it references an e-mail from you dated October 15, 2010.

Does that refresh your recollection as to the timing of when AFI discovered it didn't like the economics of Exhibit 3, the First 2009 Tax Allocation Agreement?

MR. McKANE: Objection to form. Misstates prior testimony.

A. It would have been -- that timeframe is consistent with when we would have been

Plaintiff's Objection 86:15-87:6 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

performing these initial calculations and when those communications would have occurred.

Q. So roughly a month after AFI had signed the agreement, correct?

A. Yes.

Q. All right. The next sentence says, "Mackey agreed that he did not want to make payments to ResCap, and he asked Marx, 'Do we have to go back to them [ResCap], or can we just ignore it? Jim Y. and team are very focused on other things, so they may not even think about it."

Do you see that sentence?

A. I do.

Q. Do you recall Mr. Mackey asking you that question?

A. I believe it was in an e-mail, yes.

Q. What did you understand him to mean when he said "do we have to go back to them"?

A. I think he was asking is this -- I don't know. I think it's clear. Do we have to go back to them? Since it's a two-way contract, it seemed clear to me, that, yeah, we're not going to have a contract in place until

everybody is in agreement and signed off.

Q. Well, what if Mr. Young, instead of returning all of the contracts to you, decided to sign it instead?

Plaintiff's Objection 88:3-9 Incomplete (FRE 106)

A. Then I think we would have had a binding contract unless there was a problem with authorization, which it appears there might have been.

Q. What do you mean when you say it appears there might have been a problem with authorization?

JSN Objection 88:10-14 FRE 402 (Not relevant)

A. I'm referring back to the $50 million restriction that we spoke about earlier.

Q. You, as a non-lawyer, don't have a view as to whether authorization was needed or not, do you?

A. It seems apparent to me that an agreement that could compel a capital contribution in excess of the levels reserved for the board would go beyond the authority of myself and people that signed it. That's my -- my lay view of it. So I don't know if that would be the ultimate conclusion or not.

JSN Objection 88:18-22 FRE 402 (Not relevant) FRE 602, 701, 702 (Lacks foundation, calls for expert opinion)

Q. Can you explain to me why you sought

legal advice before you asked Mr. DeBrunner to sign the document but not after you thought there may be a problem with authorization?

MR. McKANE: Asked and answered earlier in the day.

Q. You can answer.

MR. McKANE: No, you can restate your earlier answer.

A. As I believe my response was, and I do believe it, an issue arose and I felt that it most appropriate to start by going up my chain of command.

Q. And after you went up your chain of command, did you do anything else?

A. I did lots of things.

Q. What else did you do?

A. Well, eventually, we -- I redrafted the agreement and reproposed it to the ResCap people to represent to the board for approval. That's the short version of what was done.

Q. Is one of the things you did ask for legal advice on the issue of corporate governance?

MR. McKANE: Asked and answered.

A. I do not believe I asked that question at that point in time.

Q. Prior to drafting, negotiating and executing the Second 2009 Tax Allocation Agreement, Exhibit 4, did you ask for legal advice on the governance issue?

A. I don't recall. I would have go back and look at the -- the transmittal letter and the documentation around it. I just don't recall.

Q. In your conversations with Mr. Young when you presented Exhibit 4, which you have acknowledged is less beneficial to ResCap than the First Tax Allocation Agreement, why did you believe ResCap would be amenable to a revised contract?

A. Because I don't -- did not then, nor do I today, believe there's anything unfair or unreasonable about the second agreement.

Q. Why did you believe ResCap would want a less favorable agreement as opposed to a more favorable agreement?

A. I didn't say that. I'm sure they would have preferred to take more favorable

JSN Objection 90:21-91:25 FRE 602 (Lacks personal knowledge; calls for speculation)

treatment, but there was nothing unfair, and that that provision in the first agreement I would characterize as more than fair to ResCap but not something required to be provided by Ally.

Q. Do you have any understanding as to why ResCap was willing to give you back the Ally signed copy of the first agreement and take a less favorable agreement instead?

A. Yes.

Q. What is your understanding of that?

A. My understanding is that initially Jim Young recognized that, one, there might be some governance issues, but I've also learned subsequently that his view -- I'm paraphrasing and I'm sure you'll ask him the same question -- was that Ally had been very supportive of ResCap with respect to capitalization matters, had supported them in a number of transactions, and ResCap was very reliant upon Ally, and he did not think it prudent to play "gotcha" with an agreement that might not be what was appropriate in the board's eyes or what was intended by the board.

Q. Okay. You said you've subsequently learned that that was his view. When did you learn that that was his view?

A. I believe I may have read it in the Examiner's Report. It may have come up in discussions with counsel. I don't recall the specifics, but I know I have seen or heard that.

Q. Okay. Did you see or hear that directly from Mr. Young?

A. No.

Q. Okay. The examiner in his report concluded that AFI's obligations to ResCap under the first Tax Allocation Agreement if it were in effect would be approximately $1.77 billion.

Do you recall seeing that figure --

A. I do.

Q. -- in the report?

Do you have any reason to dispute that number?

A. I think there's a flaw in the calculation.

Q. What do you think is the flaw in the calculation?

A. The examiner included in the proceeds

available to settle the debt and the tax basis the settlement amount, $750 million at the time, would be $2.1 billion now, and it seems incorrect to me that you would take into account in a calculation of damages the payment of those damages. It just -- I think that calculation is circular and that piece should be removed.

Q. Other than that piece, do you have any reason to think that -- I recognize that the number changes, the $1.77 billion changes as a result of you changing the inputs, but other than that, did you have an issue with the way he approached what he would characterize as AFI's obligations under the First 2009 Tax Allocation Agreement?

MR. McKANE: Objection to form.

A. I think that the format of the calculation, having removed the settlement amount, is a reasonable approach, theoretical approach. I have no view as to some of the numbers he used as to proceeds, expected proceeds on the sale of assets and whatnot. That's a very subjective analysis.

So I would think that reasonable

Plaintiff's Objection 93:9-95:13 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

people could disagree as to what those numbers should be, but the approach seemed reasonable.

Q. Okay. Would you turn to page K-39 in the Examiner's Report.

A. I am there.

Q. Looking at the second paragraph, second sentence, the examiner writes, "When the agreements are compared," he's talking about the First and the Second 2009 Tax Allocation Agreements, "there is little doubt that the Second 2009 Tax Allocation Agreement placed ResCap in a much worse position and provided no benefit to ResCap at all."

Do you see that sentence?

A. I do.

Q. Do you agree that, as compared to the First 2009 Tax Allocation Agreement, the Second 2009 Tax Allocation Agreement placed ResCap in a much worse position?

A. I would agree that the second agreement was less beneficial to ResCap than the first.

Q. And by doing so, placed it in a much worse position?

A. Placed it in a -- there was the potential for it to be in a worse position, yes.

Q. In actuality, did it place it in a worse position?

A. Had the first agreement been in place and followed, ResCap would have received cash payments from Ally. Under the second agreement, it did not.

Q. And the magnitude of those cash payments would have been in the hundreds of millions of dollars, correct?

A. Yes.

Q. So it was in a much worse position by virtue of not receiving the hundreds of millions of dollars in payments it would have received under the first agreement that it did not receive under the second agreement, right?

MR. McKANE: Objection to form.

A. That was one outcome of the change. ResCap did, however, receive some wording changes around clarifying the treatment of carryovers as part of the settlement of the second agreement.

Q. And what benefit did that provide to

ResCap?

A. It clarified that losses would be available on a carryover and carry-back basis to be utilized by ResCap in their standalone calculation.

Q. Have you done any -- have you made any attempt to quantify that benefit to ResCap?

A. It hasn't -- the facts have not yet supported that. They have been in a cumulative loss pos- -- I should -- let me restate that.

I believe -- I want to say it was 2010 there was a positive taxable income at the ResCap level that the '09 losses offset. So they did not in fact make a payment in that year because the loss carryovers eliminated the need for payment.

Q. And do you know what the magnitude of that benefit was?

A. I'm working from memory. My recollection is the taxable income number was on the order of $150 million, so roughly $50 million of tax.

Q. Okay. So it gave up, in agreeing to the Second 2009 Tax Allocation Agreement in

place of the First 2009 Tax Allocation Agreement, it gave up hundreds of millions of dollars of benefit in exchange for realizing a $50 million benefit; is that right?

MR. McKANE: Objection to form. Misstates prior testimony.

A. Your statement presupposes that you cut off at that point in time, but the agreement would live on and work out, as it did, over time.

Q. But as we sit here today, if you look at the two agreements -- and I realize we're looking at it at a point in time -- it gave up hundreds of millions of dollars of benefit on the first agreement and realized a $50 million benefit on the second agreement; is that right?

MR. McKANE: Object to form.

Go ahead.

A. If you assume -- yes, if you assume the first agreement to have been valid and enforceable and we moved to the second agreement, yes, that's the math.

Q. So I take it, given the $50 million benefit that you just described, you disagree

with the examiner's conclusion that the Second 2009 Tax Allocation Agreement provided no benefit to ResCap at all?

A. That is correct.

Q. When AFI asked ResCap to send back the signed -- the copies of the First Tax Allocation Agreement that AFI had already signed and to agree to the Second Tax Allocation Agreement, did AFI provide any consideration to ResCap in exchange for doing that?

MR. McKANE: Objection to form. Asked and answered.

A. I believe the second -- there was a back and forth negotiation of the language in the second agreement, and one of the concessions we made was adding the language, the clarifying language around net operating losses carrying forward and backward.

Q. Would you look at page K-40 of the Examiner's Report.

A. I am there.

Q. It's the paragraph at the top of the page, looking at the second sentence, the examiner writes, "The only foreseeable

consequence of ResCap's entry into the Second 2009 Tax Allocation Agreement was the issuance of an obligation by ResCap to pay AFI amounts of tax on account of excess inclusion income -- an obligation that ResCap did not have prior to the Second 2009 Tax Allocation Agreement because it was a disregarded entity -- without any corresponding right to be compensated for its tax benefits."

Do you see that sentence?

A. I do.

Q. Do you agree with that sentence?

A. I do not.

Q. What portion or portions of that sentence do you disagree with?

A. I believe the first agreement as well as the second agreement would have required ResCap to pay tax on its excess inclusion income.

Q. Is there any other portion of that sentence you disagree with?

A. I thought that was the point of the sentence.

Q. Okay. The sentence that follows says,

"Again, the Second 2009 Tax Allocation Agreement contained no provision permitting any possibility of payments being made to ResCap."

Do you see that sentence?

A. I do.

Q. Do you agree with that sentence?

A. I do not.

Q. Why don't you agree with that sentence?

A. I believe both the first and the second agreements provided for two-way sharing -- tax-sharing payments, depending on the facts.

MR. COHEN: Why don't we take five minutes. We may be done.

MR. McKANE: That's the beauty of efficiency.

THE VIDEOGRAPHER: The time is 12:01 P.M. We're going off the record.

(Recess.)

THE VIDEOGRAPHER: The time is 12:12. We're back on the record.

MR. COHEN: Mr. Marx, we appreciate your time today. We pass the witness.

W. MARX

MR. McKANE: We have no questions at this time.

MR. SIMON: Nothing from us.

THE VIDEOGRAPHER: The time is 12:12. That's the end of today's deposition. We're going off the record.

oOo

_____

WILLIAM MARX

Subscribed and sworn to
before me this day
of 2013.

_____

CERTIFICATE

STATE OF NEW YORK )
: ss
COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That WILLIAM MARX, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 18th day of October, 2013.

_____

KATHY S. KLEPFER, RPR, RMR, CRR, CLR

W. MARX

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W. MARX

NAME OF CASE: In Re Residential Capital LLC
DATE OF DEPOSITION: October 18, 2013
NAME OF WITNESS: William Marx
Reason Codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------X
IN RE:
RESIDENTIAL CAPITAL, LLC, et al.

Civil Action No. 12-12020 (MG)
----------X

# VIDEO DEPOSITION OF JOE CORTESE

New York, New York
Wednesday, October 30, 2013

R E V I S E D

Reported by:
Rebecca Schaumloffel, RPR, CLR
Job No: 66994

Yellow Highlighting = JSN Designations
Pink Highlighting = Plaintiff's Designations & Counter-Designation
Orange Highlighting = Joint Designations
The Debtors' counter-designations reflected herein are to be admitted, if at all, only upon admission of the JSNs' corresponding affirmative designation.

Wednesday, October 30, 2013

9:17 a.m.

Video deposition of Joe Cortese, held at the offices of KIRKLAND & ELLIS, LLP, 601 Lexington Avenue, New York, New York before Rebecca Schaumloffel, a Registered Professional Reporter, Certified Livenote Reporter and Notary Public of the State of New York.

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ALSO PRESENT:

Matthew Smith, videographer
Francis Kuplicki, Esq,
David Kochman, Esq. Reed Smith

* * *

J. CORTESE

THE VIDEOGRAPHER: This begins tape labeled number one of the videotaped deposition of Joe Cortese, in the matter of In re: Residential Capital, LLC, et al., for the United States Bankruptcy Court for the Southern District of New York.

This deposition is being held at 601 Lexington Avenue in New York, New York, on October 30, 2013, at approximately 9:17 a.m.

My name is Matthew Smith for TSG Reporting, Incorporated. I am the legal video specialist. The Court Reporter is Rebecca Schaumloffel, in association with TSG Reporting. All appearances have been noted for the record.

Will the Court Reporter please swear in the witness.

J O E C O R T E S E, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

J. CORTESE

EXAMINATION BY

MS. MILLER:

Q. Good morning, Mr. Cortese.

A. Good morning.

Q. My name is Atara Miller. I am an attorney with Milbank, Tweed, Hadley, & McCloy. We represent the ad hoc group of junior secured note holders in this case.

I just want to start with a couple of rules that will help the day progress smoothly and quickly.

The first one is, as you know, there is a Court Reporter taking down everything that I say and everything that you say, and so to make her life easier, if you could not interrupt me when I am asking questions. Let me finish my question before you give an answer and I will try to do the same. That way she won't have to try to record two people at the same time. And, also, if you can give verbal answers instead of nods of the head or grimaces or other kind of nonverbal reactions or responses to questions, that would also make her life a

little bit easier.

There may be times during today's deposition that your counsel will object to a question that I ask. I am going to ask you to answer the question that I asked, unless you are specifically instructed by your counsel not to answer the question.

If at any time today you feel like you need or want a break, just let me know. I will be happy to take one. The only thing that I am going to ask, if I have asked you a question, that you answer the question that's pending before we take a break. Other than that, I think we should be good.

A. Okay.

Q. So can you describe for me your educational background?

A. I am -- I graduated from Widener University with a Bachelor of Science degree in accounting. I have an MBA from Saint Joseph's University in finance, and I am a CPA, and licensed in the state of Pennsylvania.

Q. When did you get your BS in

accounting?

A. When?

Q. Yes.

A. 1992.

Q. And when did you get your MBA?

A. I believe in 2001.

Q. Since when have you been a CPA?

A. Since 1996.

Q. Do you hold any other professional certifications?

A. I do not.

Q. Other than these formal degrees, have you ever had any professional training or courses?

A. Yes.

Q. What are those?

A. Various, you know, industry related training courses, you know, Green Belt type of, you know, process improvement type of things.

Q. And can you describe your employment history since the time that you graduated from undergrad?

A. Sure. Upon graduation, I was --

J. CORTESE

I was employed by Ernst & Young as -- in the audit capacity, audit function for the firm. I spent approximately three years with Ernst & Young. Then I went to work for IKEA International as -- in their internal audit department. Then, subsequently, in their accounting department. From there, I moved to GE Capital Mortgage Services, where I worked in their accounting department, as well. After GE Capital, I worked for GMAC Commercial Mortgage as their controller. From there, I worked for Equity One as their assistant controller. After Equity One, I moved to Luminent Mortgage Capital, again, as -- in the controllership function.

Q. Who was that, Lubinone?

A. Luminent. After Luminent, I with went to work for ResCap in an accounting policy role. From ResCap, I transferred to Ally Bank in my current function as chief accounting officer for Ally Bank.

Q. I am just going to walk through them and see if I can figure out how long you were -- get the chronology a little bit.

J. CORTESE

A. Okay.

Q. So how long did you work at IKEA?

A. Approximately five years.

Q. How many of those were in the audit department?

A. I believe four.

Q. So about one year in the accounting group?

A. Correct.

Q. Then, so I am at about 2000. So in about 2000, you went to GE Capital Mortgage Services?

A. Correct.

Q. And how long did you work there?

A. About a year and a half.

Q. Then how long did you work at GMAC Commercial Mortgage?

A. Approximately four years.

Q. At Equity One?

A. I believe that was two years.

Q. Luminent?

A. A year and a half.

Q. And then how long were you -- so when did you join ResCap?

J. CORTESE

A. I joined ResCap in 2008, July of 2008.

Q. How long did you work for ResCap?

A. One year.

Q. So you moved to Ally Bank in July of 2009?

A. August of 2009, yes.

Q. What were you -- I am going to focus on your accounting experience, and starting from your time at IKEA, what were your duties and responsibilities when you were in the accounting department?

A. Specifically at IKEA?

Q. At IKEA.

A. At IKEA, I was -- my title was Accounting Manager. So I was responsible for the accounting for the retail operations of their -- of the North America operations. So, you know, everything from recording revenue to their expenses, month-end closes, preparation of financial statements, that type of thing.

Q. And when you went to GE Capital Mortgage Services, what were your duties and

responsibilities?

A. I was responsible for the accounting for their servicing operations, specifically, their mortgage servicing rights, various mortgage-backed securities that the company owned.

Q. When you say "responsible for their mortgage servicing rights accounting," what does that mean?

A. It means recording the mortgage servicing rights on their financial statements.

Q. Were there other people responsible for that at GE Capital Mortgage?

A. Not specifically for their accounting. There were other teams responsible for the -- for the valuation of their MSR assets.

Q. So you were the person solely responsible, with sole responsibility for the accounting for the MSRs?

A. Correct.

Q. What about at GMAC Commercial Mortgage, when you were controller?

A. At GMAC Commercial, again, I was in the controllership function, so I was responsible for -- I was responsible for basically every aspect of their financial statements, their accounting for their loan originations, accounting for their servicing, expenses, month-end closes, preparation of financial statements.

Q. So is it fair to say that, starting in 2000, you have continuously had accounting responsibility for mortgage-based assets?

A. Correct.

Q. In any of your previous positions, were the companies that you were employed by, did they have brokering arrangements with third parties or affiliated entities?

A. If they did, I was not responsible for those operations or those accounting firms for broker services.

Q. Do you know, or did any of those other entities that you were employed by engage in swaps related to their MSR,

limiting their risk and exposure on the MSR?

A. GE Capital, I believe did hedge their MSR. I was not responsible for the accounting for their derivatives and their hedges of those assets.

Equity One also had MSR assets on its books. I was responsible for the accounting for their derivatives and hedges of that asset in my function there.

GMAC Commercial Mortgage did have commercial mortgage servicing rights. They did not hedge them.

Q. Luminent?

A. Luminent did not have mortgage servicing rights.

Q. So now, moving onto ResCap, in July of 2008 when you joined, what were your duties and responsibilities there?

A. I joined ResCap, specifically, in a technical accounting capacity. So I was responsible for new GAAP emergence and review, as well as implementation with their operational accounting teams for any new GAAP. Responsibilities also included

transaction review and technical accounting assessment of those transactions.

Q. What is technical accounting?

A. It's -- I would describe it as the analysis of general accepted accounting principles. Any other guidance, you know, accounting related guidance that may be issued by a -- by an authoritative body, and its application to your operations.

Q. So you were the GAAP guru?

A. I wouldn't necessarily characterize myself as that, but that was my function.

Q. So if there were questions about GAAP accounting, they got directed to you?

A. Typically.

Q. And it was your responsibility to review how ResCap was accounting for its activities and to ensure it complied with GAAP?

A. Yes, that was part of that function.

Q. You mentioned new GAAP emergence and review. What does new GAAP emergence

mean?

A. Again, if there was any new standards that were issued by accounting authoritative bodies.

Q. Were there particular new GAAP standards that were being issued in or around 2008 that you were specifically brought in to address or focus on?

A. There were. I cannot specifically name them at this time.

Q. Do you have a recollection of what they -- what subject matters they generally related to?

A. There was a number of, you know, different -- different emerging guidelines that came out during that time period. It was a very volatile time for the mortgage industry. So I don't recall specifically which ones they were.

Q. So when you say -- are you referring specifically to GAAP guidelines that related to the mortgage industry?

A. Some of it was relevant to the mortgage industry, and for those I would

review them.

Q. Would you review new GAAP guidelines that were not related to the mortgage industry?

A. Typically not. You know, we would do an assessment. We would do an assessment whether it was related to our operations and to our business. But that was about it.

Q. Do you recall the general -- do you have a general sense of what the new standards were intended to address?

A. I do not.

Q. Do you recall any particular standard or guideline that was emerging in 2008 when you joined ResCap?

A. I really don't recall.

Q. Do you recall any material change in the GAAP accounting guidelines during the time that you were at ResCap?

A. Again, not specifically at this time. I just don't remember.

Q. Do you know if there were any?

MR. SKIDMORE: Objection.

J. CORTESE

Q. Sorry, do you know if there were any material changes to GAAP accounting principles during the time that you were at ResCap?

A. I generally recall that there were -- that there were. Again, I don't specifically recall exactly which ones they were.

Q. What did you mean when you said that you were responsible for transaction review?

A. If there was a -- if the company entered into a certain transaction that was significant, unusual, maybe material in nature, then part of my responsibilities were to review that transaction and recommend accounting treatment for it.

Q. And how would you know if there was a transaction that met those criteria?

A. Typically, I was notified by my manager.

Q. And who was your manager?

A. Cathy Dondzila.

Q. Can you recall any transactions

that you were involved in reviewing while at ResCap?

A. I don't recall specifically at this time.

Q. Do you recall whether there were any transactions between Ally Bank and any ResCap entities that you were responsible for reviewing?

A. Yes, there were some transactions.

Q. Do you recall what those transactions were?

A. Again, not specifically.

Q. Do you recall if you were responsible for reviewing any brokering related transactions between Ally Bank and a ResCap affiliate?

MR. SKIDMORE: Objection. We are speaking about his time at ResCap; is that right?

MS. MILLER: Yes.

Q. Still focusing, while you were at ResCap?

A. No, I do not recall reviewing

anything related to brokering or brokerage operations.

Q. And do you recall reviewing any transactions related to hedging of MSRs between Ally Bank and ResCap while you were at ResCap?

A. Again, I do not specifically recall.

Q. Do you have a general recollection that you reviewed such transactions while at ResCap?

A. I would say there was a number of transactions that I reviewed. I do not specifically recall which ones.

Q. There were a number of transactions related to MSR swap hedging that you reviewed?

A. Specifically related to any number of different types of transactions.

Q. Including MSR swaps?

A. Potentially.

Q. Do you recall whether there were any overarching principles that governed agreements between Ally Bank and GMAC

Mortgage?

A. Related to any specific topic?

Q. Not related to any specific topic. Any agreements as between affiliate entities, the bank on the one hand and -- sorry, the bank on the one hand and ResCap on the other?

A. As affiliates that operate very closely amongst each other, there were a number of agreements that governed a number of different transactions between the two entities.

Q. Do you recall what those agreements were?

A. I don't have an inventory of them all, no.

Q. Okay. Can you identify the ones that you do remember?

A. As an example, I can provide a few. There is a mortgage -- mortgage sale and purchase agreement. There were swap agreements for the held for sale portfolios. There were swap agreements for the MSR asset. There were statements of work between the two

operations. There were correspondent agreements. There were broker agreements, to name a few. That is not an all-inclusive list.

Q. I am going to come back to these. Sorry, just so the record is clear and that we are clear, if I say "the bank," will you understand me to be including old GMAC Bank and Ally Bank as appropriate in the relevant time period that we are discussing?

A. Yes.

Q. If I say ResCap, I am referring to ResCap and it's affiliated entities, including GMAC Mortgage?

A. I understand.

Q. If I say GMAC, you will understand that that means GMAC Mortgage, right?

A. I understand.

Q. Okay. Was there also --

MR. SKIDMORE: Hold on a second. I'm sorry, I am not sure the last one is -- so you are saying that GMAC will

J. CORTESE

equal GMAC Mortgage, LLC?

MS. MILLER: The transcript is not accurate. I said if I say GMAC-M.

MR. SKIDMORE: Okay. That's fine. Because I heard GMAC, too. So I just want to make sure we're clear, because GMAC, clearly, does not, in this context, equal that.

MS. MILLER: Agreed. GMAC-M. Is that a term that you would use to refer to GMAC Mortgage?

THE WITNESS: I think we can refer to that as G-M-A-C-M.

MS. MILLER: All the letters. Okay. GMAC-M. I will try, but it is going be tough.

THE WITNESS: Whatever works for you.

MR. SKIDMORE: If you need clarification, just ask.

Q. Feel free. If, at any time, you are confused about what I am referring to, I will be happy to give you more specificity.

Was there also an operating

agreement between the bank and GMAC Mortgage?

MR. SKIDMORE: Objection.

A. I am not aware of a specific operating agreement. If you were specific, maybe I can answer that.

Q. Putting the agreements between the entities to one side, were there any other regulatory guidelines that governed the relationship between the affiliates?

Sorry, strike that.

Putting the agreements between the entities to one side, were there any regulatory provisions or principles that governed transactions between the bank and GMAC Mortgage?

MR. SKIDMORE: Object to form.

A. As a -- as a bank governed by the FDIC, the bank is subject to a number of regulatory requirements related to affiliate transactions.

Q. Is one of those Federal Reserve Act 23A?

A. Yes.

Q. Do you know what section -- can

you tell me what section 23A provides?

MR. SKIDMORE: Objection.

A. I think that's more of a -- I think that's more of a legal question and interpretation, as opposed to an accounting one.

Q. Did you consider Section 23A in your accounting analysis?

A. In my role as -- at ResCap?

Q. At ResCap, yes.

A. Working with -- if there was an analysis that I was performing, related to the bank and in a transaction -- in a transaction they may have with an affiliate, I would consult with their chief accounting officer for such considerations, yes.

Q. As an accountant, what was your understanding of the limitations that Section 23A placed on transactions between the bank and GMAC Mortgage?

A. Well, I will say, generally speaking, the regulations are designed so that the bank is not harmed by its affiliates. And with that, transactions have

to generally be market-based and no worse -- no worse to the bank than it will receive with the third-party transaction. And that's generally the principal that we operate under.

Q. Were there also limitations on the number of loans that Ally Bank could acquire from GMAC Mortgage?

A. I believe what you are referring to is -- is referred to as a 250.250 transaction. And, yes, it is my understanding that there were limitations.

Q. Do you recall what those limitations were?

A. I do not specifically recall what they are.

Q. And if I said that under the 250.250 exemption, "The amount of the loan aggregated with the amount of all other loans purchased from the affiliate during the preceding 12 calendar months by the bank and its depository affiliates can be no more than 50% of the affiliates' loan originations during that period."

Plaintiff's Objection 26:07-13, Irrelevant (FRE 401, 402)

J. CORTESE

Is that consistent with your recollection of the 250.250 exemption?

MR. SKIDMORE: Objection.

A. I think, again, that is more of a legal determination, and how it applies to the code.

Q. As an accountant, did you ever look at whether 50% or -- as an accountant, did you ever look at what percentage of loans were being originated by an affiliate?

A. Not in my capacity. There were others within the organization who were tasked with performing that analysis.

Q. Who was tasked with performing that analysis?

A. I believe it would be Deb Scott.

Q. Who did Deb Scott work for?

A. I believe -- I believe in 2009, she was reporting to Al Galene (phonetic.)

Q. Did you ever have any discussions about the results of the analysis that was being done by Deb Scott?

A. Not specifically that I recall.

Q. Did you ever hear anyone say that

the bank was getting close to meeting the limit of the 250.250 exemption?

A. Over various time frames? Yes, I do understand that there was discussion related to that.

Q. And do you recall what the discussion related to that was?

A. Not specifically.

Q. Let's step back for a minute.

Have you ever been deposed before?

MR. SKIDMORE: You can answer.

A. I was deposed by the Special Examiner.

Q. And how many times were you deposed by the Examiner?

A. Once.

Q. And in addition to being deposed by the Examiner, did you have informal meetings with the Examiner?

MR. SKIDMORE: Hold on. I just want to clarify. What he was calling the deposition was an informal interview by the Examiner. It wasn't

an official deposition. I just want to make sure the record is clear.

Q. Was there a Court Reporter who was recording the questions and answers during that interview?

A. I believe that interview was being recorded.

Q. Have you ever seen a transcript of that interview?

A. I have not.

Q. Have you ever asked to see a transcript of that interview?

A. I have not.

Q. Did anyone ever offer to provide a copy of that transcript of the interview to you?

A. No, they did not.

Q. And how many -- you said there was one, what you referred to as a deposition, but we will understand that it wasn't a formal deposition but a very informal meeting with a Court Reporter who was transcribing the discussions.

MR. SKIDMORE: Objection. He

didn't say that there was a Court Reporter. And he didn't say there was a Court Reporter, and there wasn't one.

Q. Who was transcribing?

MR. SKIDMORE: He didn't say that it was being transcribed, either. I believe he said it was being recorded.

Q. How was your interview recorded?

A. I believe it was via video, audio tape.

Q. Audio or video?

A. Audio.

Q. Audio, okay. And do you know whether that audio tape was ever transcribed into a written transcript?

A. I am not aware.

Q. Did you have any interviews with the Examiner that were not recorded by audio tape?

MR. SKIDMORE: Objection. If you know.

A. Not to my knowledge.

J. CORTESE

Q. Have you had more than one interview with the Examiner?

A. No.

Q. Have you read the Examiner Report?

A. I have read certain sections of it.

Q. Did you read sections that mentioned you?

A. Yes.

Q. Did you do a search for your name in the Examiner Report?

A. Yes.

Q. And you read the sections where your name was referenced?

A. Generally.

Q. And was there anything that, when you were reading the examiner reports, the portions of the Examiner Report discussing your testimony that struck you as inaccurate?

A. Yes. Generally, I thought that the -- that certain parts of it were incomplete, basically resulting in inaccurate conclusions.

J. CORTESE

Q. I don't need you to dispute his conclusions, but which -- were there any facts that you felt were inaccurate? We will get to the incomplete in a second.

But putting aside things that you think weren't in the Examiner Report, is there any -- were there any factual statements about things that you were involved in or that you said that were in the Examiner Report that you believed were untrue?

MR. SKIDMORE: Objection.

A. I don't specifically recall.

Q. Do you recall that when -- do you recall specifically thinking, "wow, that's really wrong" when were you reading a fact about something that you had said or done?

MR. SKIDMORE: Objection.

A. Again, generally, I thought that the thought analysis that the Examiner laid out was generally incomplete in nature. Again, therefore, ending in an inaccurate description.

Q. So I don't need you to opine on

J. CORTESE

his analysis or his conclusions because that's not your job and that's not my job. I want you to focus on factual statements.

Were there any facts that you recall reading and saying, "that's not true" in your head?

MR. SKIDMORE: Objection.

A. I don't specifically recall.

Q. And you mentioned that you thought that certain parts were incomplete. Can you tell me which factual points did you feel were not included in the Examiner's discussion?

MR. SKIDMORE: Objection.

A. I don't specifically recall which ones.

Q. Do you have any specific recollection about what portions of the Examiner Report you thought were incomplete?

A. I do not.

Q. What did you do to prepare for today's deposition?

A. My preparation consisted of meeting with my attorneys.

Plaintiff's Objection
033:22 – 036:04
Irrelevant (FRE 401, 402)

Q. How many times did you meet with your attorneys?

A. I met with them once.

Q. And for how long?

A. Approximately four hours.

Q. Did you review any documents in connection with your deposition today?

A. I did.

Q. What documents did you review?

A. There were a number of documents. Certain pieces of documents. But I don't have a complete list or inventory of those documents to provide you.

Q. Can you tell me which documents you remember?

A. We reviewed certain aspects of the MSR swap agreement. We reviewed certain sections of the Examiner Report. We reviewed certain e-mails related to various topics, internal e-mails. That was basically the breadth of what we reviewed.

Q. When did you meet with your lawyers?

A. Yesterday afternoon.

Q. Was that the first time you had read portions of the Examiner Report that related to you?

A. No, I had previously read certain sections of that report.

Q. When was the first time that you read it?

A. I don't have an exact date. It was probably three weeks ago.

Q. Have you read it more than twice, or portions of it more than twice?

A. I didn't read it more than once.

Q. Did you review portions of the Examiner Report yesterday?

A. We did.

Q. And you also reviewed portions of the Examiner Report three weeks ago, right?

A. Certain portions of it.

Q. Did you review the -- any of the same portions yesterday and three weeks ago?

A. Potentially.

Q. Why did you decide to review the Examiner Report three weeks ago?

A. Because I was notified of this

deposition, so I thought it would be interesting to see what that examination report actually said.

Q. And had you spoken to anyone at the bank or at ResCap about the Examiner Report before you actually read it three weeks ago?

A. No.

Q. Did you know generally what the Examiner concluded before you read it three weeks ago?

A. No.

Q. Have you spoken to anyone at Ally about your deposition today?

A. I informed my manager that I had a deposition.

Q. Did you speak to anyone at Ally about the Examiner Report?

A. No.

Q. Have you spoken to anyone at ResCap about the Examiner Report?

A. No.

Q. Have you spoken to anyone at ResCap about your deposition today?

Plaintiff's Designation 36:05 - 37:02 (in the event 33:22 – 36:04 is admitted over Plan Proponents' objection)

A. No.

Q. Did you review, either in whole or in part, the expert report submitted by Judge Lyons in this case?

A. No, I did not.

Q. What portions of the Examiner Report did you review?

A. I don't recall exactly what section. But it was, namely, the sections were where I was referenced, namely related to the broker agreement between Ally Bank and GMAC Mortgage.

Q. Did you review the section titled "GMAC Mortgage Contracts With Ally Bank Governing Loan Sales, Brokerage, Servicing and Related Derivative Transactions"?

A. I don't specifically recall that title.

Q. But you read the section that related to the brokering agreements and the swap agreements?

MR. SKIDMORE: Objection.

A. Yes.

Q. What topics did the e-mails that

Plaintiff's Objection
037:03 – 039:06
Irrelevant (FRE 401, 402)

you reviewed relate to?

A. The topics, again, they were internal e-mails, generally related to the structure of the agreement and the income recognition for the bank and for GMAC Mortgage.

Q. When you say, "structure of the agreement," what agreement are you referring to?

A. The broker agreement between Ally Bank and GMAC Mortgage.

Q. Are there any e-mails related to any other topics?

A. I don't believe so.

Q. Did you review any e-mails related to the MSR swap?

A. No.

Q. Did you do anything else, other than meet with your lawyer and review the Examiner Report to prepare for today's deposition?

MR. SKIDMORE: Objection.

A. No, I did not.

Q. Did you review any -- did you go

back to some of your own personal old e-mails and refresh your recollection about the topics that you thought might be covered today?

A. No, I did not.

Q. You said that at ResCap you were responsible for technical accounting assessment. What is technical accounting assessment?

A. Oh, again, it's the review, either of new emerging GAAP and treatment for the company, or assessment of transactions from an accounting standpoint, to ensure that proper accounting is achieved.

Q. What is "assessment of transactions from an accounting standpoint" entail?

A. I would say that it would relate to the review of a certain transaction that they -- the business is either anticipating entering into or did enter into. Review of that from, again, a GAAP and accounting principle standpoint, and assessing the proper accounting treatment for that

transaction.

Q. So you aren't responsible for the legal interpretation of the agreements, right?

A. That's right.

Q. You weren't responsible for determining what one party's rights were or weren't under an agreement, right?

A. Correct.

Q. Who advised you on those issues?

A. If we felt that the legal opinion or legal review was -- wouldn't necessitate a conclusion, then we generally consulted with internal counsel.

Q. Who were the internal counsel you consulted with while at ResCap? I'm still focusing on your time at ResCap.

A. Again, not related to a specific transaction, but, generally, we would discuss with Hugh Benton.

Q. Do you recall any particular instances when you asked Hugh Benton to help you understand what an agreement, what a contract between Ally Bank and GMAC Mortgage

meant so that you could figure out what the appropriate accounting treatment would be?

A. No, nothing specific.

Q. But you recall asking him specific questions?

MR. SKIDMORE: Objection.

A. Again, generally speaking, if we had a question, we would consult with ResCap's internal counsel, which was Hugh Benton.

Q. I am asking you if you ever remember actually having a question that you went to consult with Hugh Benton about?

A. No, I do not specifically remember.

Q. Who reported to you when you were at ResCap?

A. While I was at ResCap, I did not have any direct reports.

Q. Who did you report to at ResCap?

A. I report to Cathy Dondzila.

Q. Who did Cathy report to?

A. At one point, Cathy reported to Jim Young.

J. CORTESE

Q. What was Cathy's position at ResCap when you reported to her?

A. Cathy was the chief accounting officer for ResCap.

Q. Why did you move from ResCap to Ally in August of 2008 -- 2009?

A. 2009. At that time, the bank's chief accounting officer, Kim Walsh, resigned. That position was open. And Cathy moved me down into that position.

Q. Why did Kim Walsh resign?

A. I don't know.

Q. You said Cathy moved you down into that position. Was that a demotion?

A. I didn't perceive it as a demotion.

Q. Did you perceive it as a promotion?

A. I generally perceived it as a lateral transfer.

Q. The Cathy you are referring to is Cathy Dondzila?

A. Correct.

Q. Is Cathy responsible for hiring

J. CORTESE

Ally Bank accounting staff?

MR. SKIDMORE: Objection.

A. Cathy was -- Cathy, in her capacity as chief accounting officer for ResCap, was also the mortgage controller for all of -- for all of GMAC. So given that the bank held substantial mortgage operations, from a -- their own matrix reporting standpoint, she was responsible for those -- for the accounting of those assets.

So Cathy recommended me to the bank. And, at the time, this position directly reported to Lisa Gerner, who was the bank's chief financial officer. And Lisa -- Lisa took Cathy's recommendation and hired me.

Q. Did you have to submit an application?

A. No, I did not.

Q. Did you have an interview with Lisa before you were hired?

A. I don't recall.

Q. What was your relationship with Cathy after you moved to Ally Bank?

J. CORTESE

MR. SKIDMORE: Objection.

A. Again, in Cathy's role as mortgage controller, I had a dotted line relationship to her. So, again, I reported directly to Lisa Gerner, the bank's chief financial officer. Again, as far as mortgage responsibilities, accounting responsibilities were concerned, I had a dotted line relationship to Cathy.

Q. Meaning that you sort of reported to Cathy?

MR. SKIDMORE: Objection to the characterization.

Q. What does "dotted line" mean?

A. Meaning that, as Cathy had oversight of mortgage assets within the bank, I would -- if there was any mortgage related topics related to the bank, I would work with Cathy on them.

Q. As a practical matter, who did you report to on a regular basis?

A. I directly reported to Lisa Gerner.

Q. Did you report to Cathy at all?

J. CORTESE

A. Not in a direct capacity.

Q. Were you and Cathy now peers in the hierarchal org structure?

A. I didn't think so. I think, generally, Cathy had a higher stature than I did.

Q. What was your title when you joined Ally Bank?

A. I joined Ally Bank as the Chief Accounting Officer.

Q. So you had the same title as Cathy at a different entity?

A. Correct.

Q. If Cathy suggested that she thought you were wrong about something, would you follow her direction?

MR. SKIDMORE: Objection.

A. I would assess -- I would assess the situation on my own, and, again, in my capacity, I would eventually make my own conclusions.

Q. I'm still trying to understand what a dotted line relationship between you and Cathy means for mortgage related topics.

J. CORTESE

Does that mean that Cathy was effectively your superior on those issues?

MR. SKIDMORE: Objection to the characterization, and asked and answered. He has already told you what -- as what that meant.

Q. You can answer again. I am slow to pick it up. So I will guess others are, also.

A. She -- I guess the best way I can describe it is that she was charged with -- she was charged by GMAC to be responsible for all of the mortgage assets within -- within the entire GMAC organization. So as the bank held mortgage assets, we would -- I would work with her on the account aspects and accounting treatment for those assets.

Q. What does "work with her" mean?

A. It would be review -- it could be review information with her. It could be review transactions with her. Assess, you know, create and assess policy with her.

Q. What policies were you responsible for creating at Ally Bank?

A. Generally speaking, I was not responsible for creating any policies at Ally Bank. The company had an accounting policy team. It also had an accounting policy committee. Both Cathy and I served on the accounting policy committee, and as a committee, we would assess policy development. Again, any changes to such policies related to new emerging GAAP that had to be considered.

Q. What were you referring to when you said, "create and assess policies with her"?

A. Again, the Ally accounting policies that were developed, we would review and assess them and make sure that they were consistently applied to our accounting operations.

Q. Did you create them?

A. We added editorial and comments to them. But they were developed and created by Ally's accounting policy group.

Q. Were you part of that group?

A. I was not part of that group. I

was on the committee, the accounting policy committee that reviewed and approved them.

Q. Who else other than you and Cathy was on the accounting policy review committee?

A. I don't have a complete list, but generally members consisted of David DeBrunner, who was Ally's corporate controller. And then other functional controllers or other business entities within Ally.

Q. Did the accounting policy team create accounting policies that also governed ResCap?

A. Yes.

Q. Did ResCap create any of its own accounting policies?

MR. SKIDMORE: Objection.

A. No, not to my knowledge.

Q. Other than Cathy, were there any other ResCap employees on the accounting policy review committee?

A. No, I do not recall anyone else.

Q. Do you recall any other Ally

Plaintiff's Objection
048:13 – 20
Lack of personal knowledge (FRE 602)

employees who were on the accounting policy review committee?

MR. SKIDMORE: Objection.

A. Yes, I previously mentioned a couple of them. David DeBrunner for one, and other -- other members of other business units within Ally.

Q. What were the other business units within Ally that were involved in the accounting policy review committee?

MR. SKIDMORE: Objection.

A. Again, I don't have a complete list. But the individual who was responsible for accounting for North American operations was on the committee, as an example. The person who was responsible for commercial finance was on the committee. Just to name a couple.

Q. Approximately how many people were on the committee?

A. I would say approximately ten.

Q. When you were at ResCap, were you a member of the committee?

A. I was not.

J. CORTESE

Q. Did you become a member of the committee immediately upon joining Ally Bank?

A. Yes.

Q. Are you still on the committee today?

A. I am.

MS. MILLER: We have been going about an hour. Do you want to take a quick break?

MR. SKIDMORE: Sure.

THE VIDEOGRAPHER: The time is 10:14 a.m. We are off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 10:29 a.m.; we are on the record.

BY MS. MILLER:

Q. Welcome back. I am going to -- I am handing the Court Reporter a document that's going to be marked as Cortese Exhibit 1, and it is a document Bates stamped for identification in this matter Ally_041818 through '0201224 -- sorry '225.

(Whereupon, Cortese Exhibit 1, ALLY_041818 through '225 was marked

for identification as of this date by the Reporter.)

Q. And it's a document titled Amended and Restated Operating Agreement and it is dated as of November 27, 2006.

Mr. Cortese, have you ever seen this document before?

A. I have not.

Q. Have you ever heard reference to this document?

A. Perhaps general reference. Nothing specific.

Q. And if I could direct your attention to page 5 of the document, and, specifically, to Section 2B. Just the covenant section which starts "Each of GMAC and ResCap as applicable agrees as follows." And then it says in Subsection B, "except as provided in Section 2C, ResCap shall not nor shall it permit any of its subsidiaries to engage in material transactions with or originated through any GMAC affiliate unless such transactions are on terms and conditions that are consistent with those that parties

Plaintiff's Objection
051:14 – 053:16
Lack of personal knowledge (FRE 602); irrelevant (FRE 401, 402); calls for legal conclusion

at arm's length would agree to and for fair value."

Is that consistent with your understanding of one of the terms that had to be -- sorry, one of the conditions of transactions between ResCap and Ally Bank?

MR. SKIDMORE: Object to form.

A. Again, I'll -- I don't understand exactly what this -- what that paragraph means. But, again, as from a bank perspective, the regulations that we are required to follow generally means that the transactions need to be arm's length with the bank's affiliates.

Q. When you were at ResCap, did you understand that ResCap had to engage in arm's length -- that transactions had to be arm's length and market from ResCap's perspective, also?

A. Again, I don't think it was necessarily relevant to the work I was doing. If there were -- if ResCap was doing a transaction with the bank, again, by, you know, by default, you know, we had to

consider the bank's regulations. And it was more from that perspective rather than ResCap's.

Q. Did the bank's regulations require the transactions to be for fair value?

MR. SKIDMORE: Objection.

Q. Sorry, let me restate. Did the bank's regulations require transactions with its affiliates to be for fair value?

MR. SKIDMORE: Objection. Calls for a legal conclusion.

A. The transactions, again, under, you know, under Regulation W, need to be market based.

Q. Did you ever hear anyone talk -- refer to the fact there was also an agreement between ResCap and Ally Bank that required the terms to be market based?

MR. SKIDMORE: Objection.

A. No, not that I am aware.

MS. MILLER: I would like to mark as Cortese Exhibit 2, a document Bates stamped Ally_0201210 through

'1225.

(Whereupon, Cortese Exhibit 2, ALLY_0201210 through '1225 was marked for identification as of this date by the Reporter.)

Q. Which is a document entitled Master Mortgage Loan Purchase and Sale Agreement dated July 1, 2008, Amended and Restated as of July 1, 2008.

Mr. Cortese, is this a document you have seen before?

A. Yes, it is.

Q. How do you refer to this document?

A. We generally refer to it as an MMLPSA.

Q. So I am going to say MMLPSA, and we will understand this is the document we are referring to?

A. We will.

Q. I notice on the top of this document it says "Draft 6-26-08," but I also see that there are signatures on the last page of this document. Do you have any

reason to believe that this is not the final executed copy of the MML -- 2008 Amended and Restated MMLPSA?

A. I really wouldn't know.

Q. You have no reason to believe this is not the executed copy that has all the signatures?

A. Correct.

Q. Can you describe to me generally what the MMLPSA is?

A. Generally, it was my understanding that this is the agreement which governed the purchase of loans from -- by GMAC Mortgage from Ally Bank.

Q. I don't know if I am confused or the transcript is confused. Can you restate that so we are clear?

A. Sure. It is generally my understanding that this agreement covered the purchase of loans by GMAC Mortgage from Ally Bank.

Q. That's what I thought you said. The transcript said "to Ally Bank" and it threw me off. Problem with realtime.

J. CORTESE

Why does GMAC Mortgage purchase loans from Ally Bank?

MR. SKIDMORE: Objection. Calls for speculation.

A. Bank was -- Ally Bank, at the time, was a warehouser of loans. The bank utilized its low cost deposit base to hold the loans prior to sale. ResCap was the seller, the named seller of these loans. So the bank, would, again, hold the loans until, you know, time of eventual sale to a third-party. GMAC Mortgage would then buy the loans from Ally Bank and then sell them to the street.

Q. Who specifically are you referring to, what entities are you referring to when you say "sell them to the street"?

A. To a third-party, whether it be a GSE, Fannie MAC (sic), Freddie May (sic) -- Fannie Mae, ResCap also sold to Ginnie Mae and potentially to other third-party non-government agencies.

Q. Was this a change in the structure of the origination and loan

Plaintiff's Objection 056:2 – 23
Lack of personal knowledge/ speculative (FRE 602); irrelevant (FRE 401, 402)

practices between Ally Bank and GMAC -- was there a change in those practices as a result of the MMLPSA?

MR. SKIDMORE: Objection.

A. I am not -- I wouldn't know. When I entered the bank, this was the governing document for those loan sales. I am not aware of what the previous terms -- any previous drafts would have said.

Q. Do you know whether you were hired in part because of the introduction of the MMLPSA?

MR. SKIDMORE: Objection. When you say "the introduction of the MMLPSA," are you talking about this version of the MMLPSA?

MS. MILLER: I'm talking about the 2008 MMLPSA becoming effective.

MR. SKIDMORE: Right. But the MMLPSA has been in effect since 2001. So I just want to make sure we are clear on what we are talking about when you say "the introduction of the MMLPSA."

J. CORTESE

Q. Do you know whether you were hired at ResCap in part because of the going effect of the July 2008 MMLPSA?

MR. SKIDMORE: Objection.

Go ahead.

A. I never had the understanding that that was the reason I was hired.

Q. Were you responsible for overseeing the accounting related to the MMLPSA?

A. While I was at ResCap?

Q. While you were at ResCap.

A. No, I was not responsible for the accounting.

Q. And who was?

A. It was a combination of the bank's chief accounting officer at the time, Kim Walsh, as well as ResCap's accounting teams, from their perspective.

Q. And when you were at Ally Bank, did you assume responsibility for reviewing the accounting treatment of transactions under the MMLPSA?

A. In my capacity as chief

accounting officer, I was responsible for ensuring the transactions were accurate, all from the bank's perspective under this agreement, and operationally speaking, ResCap accounting teams were responsible for the actual recording of those transactions.

Q. Were you responsible for reviewing ResCap's recording of the actual transactions?

A. I was responsible for the general structure of the transaction, and ultimately ensuring its accuracy on behalf of the bank. I did not review and approve individual transactions that occurred under the agreement.

Q. When you moved to Ally Bank, was there already an accounting process in place dealing with transactions that were occurring under the 2008 MMLPSA?

A. Yes, there was.

Q. Were you briefed on the accounting process when you joined?

A. Not necessarily. It was -- it was knowledge that I obtained over a period

of time while acting as chief accounting officer for Ally Bank.

Q. When you moved to Ally Bank and assumed this responsibility, did you -- did someone provide you with a copy of the MMLPSA and explain its terms to you?

A. Not to my recollection.

Q. And how did you become aware of the accounting treatment when you joined Ally under the MMLPSA -- for transactions under the MMLPSA when you joined Ally?

MR. SKIDMORE: Objection.

A. I would say just through the normal course of my own due diligence to develop knowledge of the accounting transactions that were recorded on the bank's general ledger. It was an area that, obviously, I wanted to gain further knowledge on.

Q. And who did you speak to?

A. If I had any -- if I had any questions or needed to speak to anyone about these agreements, I would most likely speak to Nikki Rock who was an accounting manager

at ResCap responsible for aspects of this -- of the transaction. I would speak to Linda Corrigan who was another accounting manager at ResCap. Again, responsible for components of the transaction, and from a legal perspective, I would speak to the bank's in-house counsel, John Andrews.

Q. Do you recall ever having specific conversations with Nikki Rock about the accounting treatment of transactions under the MMLPSA?

A. Nothing in specific manner. More general in nature.

Q. What was the general subject matter of those discussions?

A. Again, if I had any questions for her, it most likely related to the derecognition treatment of loans at the bank, potentially the pricing of those loans, how the -- how the swaps interacted with the pricing as well.

Q. What is the derecognition treatment of loans at the bank?

A. Removing -- from the accounting

perspective, removing the loans from Ally Bank's balance sheet.

Q. And why were loans removed from Ally Bank's balance sheet?

A. If the loan was sold to GMAC Mortgage, then we would remove it from Ally Bank's balance sheet.

Q. When you say "pricing," what are you referring to?

A. I am referring to the price that GMAC Mortgage would purchase the loans at.

Q. And what do you recall speaking to Nikki Rock about regarding the price at which GMAC Mortgage bought the loans at?

A. I don't have any specific recollection.

Q. Do you recall any issues coming up that you spoke to Nikki about?

A. Again, not specifically.

Q. Do you recall generally the subject matter of those conversations?

MR. SKIDMORE: Objection. Asked and answered.

A. No. Again, more so just how

that -- you know, how the pricing flowed, timing of it, again, how it interrelated with the swaps.

Q. Which swaps are you referring to?

A. Specifically, what we referred to as the held-for-sale swap and the MSR swap.

Q. Is the held-for-sale swap also referred to as the pipeline swap?

A. Yes, I think generally it is referred to as pipeline swap as well.

Q. Can you describe the HFS swap for me?

MR. SKIDMORE: Objection.

A. From an accounting standpoint, I can describe it. Essentially, what that swap did was to transfer any market price movement as well as credit movement on a mortgage loan. Once that loan -- once that commitment has been made to fund the loan by Ally Bank. So, again, any changes in pricing of that loan up through the funding date to also -- also through the sale date of that loan, again, any of those market movement or if the loan had a credit issue, would flow through

the swap to GMAC Mortgage.

Q. You said through the funding date and also through the sale date.

A. Um-hum.

Q. Is that one or the other or both?

A. Through the time that Ally Bank made a commitment to fund the loan through the sale date.

Q. And the sale date is before the funding date, right?

A. The sale date occurs after the funding date.

Q. After, right. Trying to get out of my home buyer perspective to mortgage banker perspective. It is hard.

So when you refer to the sale date, you are referring to the sale of the mortgage loan to third parties in the market like GSEs and others?

A. Specifically, the sale of the mortgage loan from Ally Bank to GMAC Mortgage.

Q. Can you describe the MSR swap for me?

MR. SKIDMORE: Objection.

A. Sure. Again, from an accounting perspective, the MSR swap took any -- took any P&L, any income statement and activity related to the bank's MSR portfolio and transferred that activity through the swap, to GMAC Mortgage, and in return, the bank received a market based LIBOR return.

Q. Thanks. I want to turn back to the MMLPSA now.

A. Okay.

Q. Did you review this document before December of 2011?

A. I read it before December of 2011, sure.

Q. Do you recall when the first time you read the MMLPSA was?

A. I don't specifically recall.

Q. Do you recall whether it was shortly after joining Ally, a year later, two years later?

A. It was probably shortly after I joined Ally Bank.

Q. What's FAS 91?

Plaintiff's Objection
065:25 – 066:22
Impermissible lay opinion (FRE 701, 702)

A. Statement of accounting FAS 91 was the old terminology for -- generally for GAAP guidance related to the accounting treatment for loan origination cost and expenses.

Q. And what was the guidance under FAS 91?

A. Generally or specifically?

Q. Generally and then I will ask you more specifically.

A. Generally, FAS 91 dictated that a lender under a lower cost or market accounting methodology should defer its recognition of certain loan origination fees and loan origination expenses.

Q. And if I were looking at the loans from a cost basis, would that deferral decrease the cost basis of the loan?

A. It would depend on -- it would depend on whether you are deferring net revenue or net expense.

Q. So if I am deferring a net expense, it would lower the cost basis, right?

Plaintiff's Objection 066:23 – 068:18, Calls for legal conclusion; impermissible lay opinion (FRE 701, 702)

MR. SKIDMORE: Objection.

Q. Sorry. If I am -- let me say it the right way this time. If I am deferring a net income, it would reduce my cost basis, right?

MR. SKIDMORE: Objection.

A. That is correct. If you are deferring revenue, you would lower the cost basis of that loan.

Q. Conversely, if I was deferring an expense, it would increase the cost basis of the loan, right?

MR. SKIDMORE: Objection.

A. That is correct.

Q. Looking at Cortese Exhibit 2 and the page numbered 2 in that document. Section 1.9 is the definition of cost basis. And it says, "The cost basis means with respect to a mortgage loan, its net carrying value as defined by accounting principles generally accepted to the United States of America as amended to include without limitation the unpaid principal balance of such mortgage loan plus or minus any premium

or discount paid, net deferral fees or costs, accrued interest and basis adjustments from derivative loan commitments, hedge accounting, or lower of cost or market adjustments."

What does net carrying value mean in this provision?

MR. SKIDMORE: Objection. Objection.

A. The net carrying value is an accounting term which basically represents its UP -- the loan's unpaid principal balance adjusted for those amounts -- those balances that you just read. Any discount, premium, deferred fees or cost and any derivative and hedge adjustments that you may make related to that line.

Q. So in a simple hypothetical where there is a $100 loan that Ally Bank is extending and Ally is receiving $10 in points, what's the cost basis under this definition?

MR. SKIDMORE: Objection. Calls for a legal conclusion.

Plaintiff's Objection 068:19 – 071:15 Calls for legal conclusion; impermissible lay opinion (FRE 701, 702)

Q. What's the net carrying value?

A. So from accounting perspective, I would say that the net carrying value of that loan with a $100 unpaid principal balance and the received $10 of revenue in your simplified example would be $90.

Q. If in addition to paying -- to receiving $10 in revenue the bank also paid $5 in broker fee, what would the net carrying value be of that loan under my simple hypothetical?

A. If it included the $5 of broker fee, that net carrying value would be 95.

Q. Turning to the next page in Cortese Exhibit 2, Section 1.24. Definition of purchase price. What is the purchase price with respect to first lien mortgage loans?

A. Sorry, what was -- could you explain the question?

Q. Under this agreement, what is the purchase price with respect to first lien mortgage loans?

MR. SKIDMORE: Objection.

A. Would you like me to read it?

Q. Sure. If you have a recollection. If this helps you.

MR. SKIDMORE: Objection. Calls for a legal conclusion.

Go ahead.

A. This document states that the "Purchase price means with respect to a first lien mortgage loan the Cost Basis plus reserves associated with such first lien mortgage loans."

Q. And Cost Basis is capitalized, right?

A. It is.

Q. You said that when you joined Ally Bank the MMLPSA was obviously something that you wanted to get more knowledge about.

A. Um-hum.

Q. Why was it obvious that you wanted to get more knowledge about it?

MR. SKIDMORE: Objection.

A. Simply because it was a specific transaction that was recorded on the bank.

Q. When you joined Ally Bank, had

the bank transitioned to fair value accounting?

A. Sorry, did the bank transition?

Q. Had the bank already transitioned when you joined in August of 2008?

A. Yes. The bank had --

Q. Sorry, 2009.

A. 2009, thank you. Yes, the bank elected fair value accounting treatment for any loan that was -- for any held-for-sale loan that was originated beginning August 1st of 2009. Since I entered the bank in, I believe the middle of -- August of 2009, that treatment was already in place.

Q. Did you have any discussions with anybody at Ally Bank when you joined about the impact that the change to fair value -- the election of fair value accounting had on the MMLPSA?

A. Not to my recollection, no.

Q. Were you aware of the fact that there was an impact resulting from the election of fair value accounting?

A. I was aware that the bank elected

fair value accounting, if that's what you mean.

Q. Did you know that in electing fair value accounting, there was a change in the way account -- transactions were being accounted for under the MMLPSA?

MR. SKIDMORE: Objection.

A. No, not specifically.

Q. Did there come a time when you learned that?

A. Yes.

Q. When was that?

A. I would say in late December of 2010.

Q. And how did you become aware of that?

A. I received the E-mail from Jim Young requesting to look into a matter that he was made aware of regarding the gain or loss on sale that the bank recognized.

Q. Do you know why Jim Young was asking you to look into the gain or loss on sale that the bank recognized?

A. My understanding was that

Adam Glassner mentioned a potential issue that he thought was being made from an accounting treatment standpoint and asked me to investigate along with Cathy Dondzila.

Q. If I told you that I thought that was in December of 2011, would that refresh your recollection about the time?

A. It could have been 2011. I could have been wrong with the 2010 date.

Q. What was the potential issue that was identified regarding the bank's gain or loss on the sale?

A. I believe that Adam made a -- had reason to believe that the fee recognition by the bank was inappropriate and that he felt that -- he felt that GMAC Mortgage should be receiving more fee income than it already was.

Q. Do you know whether before the bank elected fair value accounting it recognized anything other than net interest carry on transactions under the MMLPSA?

MR. SKIDMORE: Objection.

A. I was not aware.

J. CORTESE

Q. Do you know sitting here today whether the bank recognized anything other than net interest carry on the transactions under the MMLPSA before it elected fair value accounting?

MR. SKIDMORE: Objection.

A. Again, I don't have any -- I am not specifically aware.

Q. What did you do to investigate the issue that was identified to you by Mr. Young?

A. Generally, a number of -- I would say a number of different research items were conducted. We reviewed -- we reviewed the specific transactions. Again, what I would say, this is -- this is -- this is really specific to the transactions that fell under the bank's broker-to-bank program and not all origination transactions that the bank made as lender.

So, again, you know, we looked at -- we looked at various loan examples for loans that were -- for broker loans that were originated by the bank. We looked at, again,

detailed examples of the -- of the specific loan transactions that were recorded both at -- both at the bank and at GMAC Mortgage. We looked at the language that was within some of the governing legal agreements including the MMLPSA. We also looked at the project documents as we could -- as we could find them related to the broker-to-bank project.

Q. When you say you looked at loan examples at the bank and at GMAC Mortgage, did you look at specific loan examples from the January 1st, 2009, through July 31, 2009, period as well as the period after August 1st, 2009?

A. Yes.

Q. Was there a difference in how the transactions were accounted for in the pre August 1, 2009, period and the post August 1, 2009, period?

A. Yes, there was.

Q. And what was that difference?

A. Specifically, that the bank's origination fees and, you know, net of those

expenses during the, you know, during the period of January 1 of 2009 through July 31st of 2009, were transferred to GMAC Mortgage. Post July 31st of 2009, that ceased.

Q. And were the net origination -- sorry, were the origination fees net of expenses transferred to GMAC Mortgage through a FAS 91 deferral?

A. No, they were not.

Q. How did they get transferred?

A. Operationally, they were transferred by coding in a subsystem that both the bank and ResCap utilized to track loan level transactions, and those net -- that net fee amount was generalized over -- was generalized to ResCap out of the bank and then a net settlement was performed to clear out those -- to sell those amounts from an intercompany standpoint.

Q. What was the net effect from the bank's perspective -- sorry, what was the net effect of the transaction from the bank's perspective pre August 1st, 2009, when origination fees net of expenses were

transferred to GMAC Mortgage?

A. So what was the net dollar impact, is that what you are asking?

Q. Right. I don't need a specific dollar amount. But what categories of revenue, if any, did the bank keep?

A. Well, because of that -- because of that transaction, the bank, again, just for the -- just for the broker loan, loan types, from the period of January 1, 2009, through July 31, 2009, the net income was basically representing the net interest carry.

Q. And what is net interest carry?

A. Net interest carry represents the interest earned on the loan while that loan is residing on the bank's balance sheet. Net of the funding -- the funding expense, the cost of funds for holding that loan.

Q. Okay. And when you said that post August 1st, 2009, the practice ceased, referring to origination fees, net of expenses being transferred to GMAC Mortgage, what is the net effect from the bank's

perspective?

A. Post August 1st of 2009, the bank -- the bank recognized the net interest carry as well as the net origination fees and expenses for originating that -- the loan.

Q. Are net origination fees and expenses deferred under FAS 91?

MR. SKIDMORE: Objection; vague.

A. Under a lower of cost or market accounting methodology, yeah, generally certain origination fees and expenses would be deferred under FAS 91 until the loan is sold.

Q. You said "certain origination fees." Are there -- what origination fees and expenses would not be deferred under FAS 91?

A. Would not be?

Q. Yes.

MR. SKIDMORE: Objection.

A. For example, you have -- the lender will incur, you know, a fair amount of expenses to originate that -- to originate the loan. Not 100% of those expenses are not

deferred under that treatment. There is a -- there is a calculation that you will go through to only defer certain parts of the expense of the operational expenses for originating that loan. So it is not -- it is not an all in 100% of those -- of those operating expenses that would get deferred.

Q. And do you have a sense of -- do you have a relative sense of what percentage of origination fees do not get deferred?

A. I do not.

Q. Do you know whether it is a small fraction of all origination fees?

MR. SKIDMORE: Objection.

A. Again, I think it's a lot more relevant on the expense side. I have never done an analysis to determine what amount would, you know, what that amount would be deferred as in -- in relation to its entire population.

Q. In connection with your investigation that you undertook at Mr. Young's request, did you seek legal guidance regarding the meaning of the MMLPSA

J. CORTESE

or the interpretation of particular provisions in that agreement?

A. Yeah, I generally recall --

MR. SKIDMORE: Hold on a second. Just say yes or no.

A. Yes.

Q. And who did you speak to?

A. John Andrews.

Q. When you read the MMLPSA on your own, did you have an understanding of what it meant?

MR. SKIDMORE: Objection. You are referring to the time before he spoke to counsel?

MS. MILLER: Yes.

MR. SKIDMORE: Okay.

A. I'd say I had a general understanding as it applied to accounting operations.

Q. And what did you understand when you first read the MMLPSA, what did you understand that GMAC Mortgage -- sorry, on what basis did you understand that GMAC Mortgage had to purchase loans from Ally

Bank?

MR. SKIDMORE: Objection.

Q. Let me restate that question.

A. Okay.

Q. Did you have an understanding, independent of any consultations with lawyers, an accounting based understanding of how GMAC Mortgage was supposed to calculate what it paid to Ally to acquire a loan under the MMLPSA?

A. Yes, I had a, I would say a general understanding of what price that GMAC Mortgage would purchase the loans at.

Q. And what was your general understanding?

A. My general understanding was that they would purchase the loan assets outstanding UPB to also include the -- any deferred origination fees and expenses which would have approximated the loan's carrying value.

Q. When you joined Ally Bank, how was the -- what price was GMAC Mortgage paying to acquire the loans?

A. I don't think I understand the question.

Q. Well, how were loans being priced under the MMLPSA for purchases by GMAC Mortgage?

MR. SKIDMORE: Objection.

A. Again, it was my understanding that the bank would receive the unpaid principal balance of that loan. Again, plus or minus any of the deferred amount.

Q. Going back to my simple example of $100. On a $100 mortgage loan, if the bank received $10 in origination fees, how much did GMAC Mortgage have to pay to acquire that loan?

MR. SKIDMORE: Objection.

A. So if the EPB of the loan was 100 and the bank had deferred $10, then GMAC Mortgage would pay 90 for that loan.

Q. Were you involved in meetings relating to revenue recognition and assumptions related to the broker and consumer loans to bank project in August of 2008?

J. CORTESE

A. Not to my recollection.

Q. Were you familiar with -- sorry, if I called the broker and consumer loans to bank project BCL2B, number 2 B, will you understand what I am referring to?

A. Yes, I would.

Q. Were you aware of the BCL2B project in 2008?

A. I was generally aware that there was a project related to that, yes.

Q. Were you aware that the project was intended to address, among other things, liquidity constraints at GMAC Mortgage?

MR. SKIDMORE: Objection.

A. I was not aware of that.

Q. Did you understand, when you joined ResCap, that GMAC Mortgage had liquidity constraints?

MR. SKIDMORE: Objection.

A. Generally speaking, yes, I was aware that -- that there were liquidity constraints at ResCap in general.

Q. And would broker and consumer loans to the bank help with a liquidity

Plaintiff's Objection
083:17 – 84:22
Irrelevant (FRE 401, 402)

problem?

MR. SKIDMORE: Objection.

A. At the time would I know that or now?

Q. Based on your general accounting knowledge, do you know whether brokering and consumer loans through the bank, to the bank instead of having GMAC Mortgage fund them directly, would help with a liquidity constraint problem?

A. Not related to my accounting knowledge, but as a business person, yes, I would think it would assist GMAC Mortgage with its liquidity.

Q. How would it assist GMAC Mortgage with its liquidity?

A. It will assist GMAC Mortgage with its liquidity by transferring certain originations to the bank so that the bank will fund the loan as opposed to GMAC Mortgage having to fund that loan directly.

Q. Do you know whether brokering was subject to the limitations that we discussed earlier including the 250.250 exemption in

J. CORTESE

Federal Reserve Act Section 23A?

MR. SKIDMORE: Objection.

A. Yeah, I'm not specifically aware in my capacity. It is more of a legal determination.

Q. Did you ever have any discussions regarding the BCL2B project and the 250.250 exemption?

A. As the project was underway?

Q. Ever.

A. I would say during my research for the issue that Mr. Glassner brought up, that was probably the first time.

Q. And what did you -- what did you learn about it?

MR. SKIDMORE: Objection. Ask him first who he spoke with.

Q. Who did you speak to?

A. During my research?

Q. Who did you speak to about the BCL2B project and its connection to the 250.250 exemption?

A. So if you are saying specific to how the BCL2B project interrelated with the

250.250 exemption, that was not in consideration of the research work that I performed.

Q. Did you ever have any discussions about the 250.250 exemption in connection with the BCL2B project?

A. Not to my recollection.

Q. Do you recall seeing any reference to the 250.250 exemption in connection with the BCL2B project?

A. Not to my recollection.

Q. So when I asked did you ever have any discussions regarding the BCL2B project and the 250.250 exemption and you responded, "as the project was underway," and I said, "ever" and you said, "I would say during my research for the issue that Mr. Glassner brought up, that was probably the first time," what were you referring to?

A. I was referring just to the BCL2B project. Not with its interconnection with the 250.250 exemption.

Q. Had you ever heard of the BCL2B project before December 2011?

J. CORTESE

A. I generally knew that -- that there was a project that took place for the bank to broker loans directly.

Q. Did you have any discussions regarding the BCL2B project before December of 2011?

A. Not to my recollection.

MS. MILLER: I would like to mark as Cortese Exhibit 3, a document Bates stamped Exam 10770041 through '52 which is an E-mail dated August 11, 2008, actually, two e-mails with that a date and an attachment.

(Whereupon, Cortese Exhibit 3, EXAM 10770041 through '52 was marked for identification as of this date by the Reporter.)

MR. SKIDMORE: I just want to note for the record because I haven't said this before, that I actually, sitting here today, don't know what the protocol is for this, so I want to designate the transcript, at least for now, at the highest level of

confidentiality under the Protective Order, and then, we will go back and revisit it. But just I don't want to -- for now just going to do that and I'll figure out what the right protocol is.

Q. Mr. Cortese, do you see, what is the bottom piece of this chain?

A. Sorry, clarify your question.

Q. At the bottom of the document with the Bates ending in '41, do you see that to be a calendar invite?

MR. SKIDMORE: Do you see what she is referring to?

Q. Where it says "From Kathy Linhoff on behalf of Jill Horner" to a number of people including yourself?

A. It appears to be a calendar invite.

Q. And what's the date on this document?

A. On the calendar invite that was sent by Kathy Linhoff?

Q. Yes.

A. Says "Friday, August 8, 2008."

Q. Do you see that the subject is "Updated broker and consumer loans to bank review signoff of review and expenses recognition, assumptions and requirements"?

A. I do.

Q. And the note says, "Sorry, meeting is rescheduled for Monday, August 11th"?

A. I do see that.

Q. Does this refresh your recollection about whether you had any discussions relating to the BCL2B project and revenue recognition and assumptions in 2008?

A. No, it does not.

Q. Who is Jill Horner?

A. Jill Horner at the time, I believe she was a finance manager at ResCap.

Q. And you were employed by ResCap at this time, right?

A. Yes, I was.

Q. And do you know whether you attended this meeting?

A. I do not recall if I did or not.

J. CORTESE

Q. And Matthew Whitehead then sends an E-mail, that's on the top of the page, that says "Materials for the call at 3:00 p.m." dated Monday, August 11th and attaches a document. Do you recall ever seeing this document before?

A. Not specifically.

Q. You don't doubt that you received it, right?

MR. SKIDMORE: Objection.

A. I don't know specifically if I received it or not.

Q. But you see that you are listed among the recipients, the cc parties on this document, right?

A. I see that I am. I am not specific if this is the exact document that was attached to that E-mail.

Q. Well, I will represent to you this was produced to us as an E-mail with its attachment and that the document behind the slip sheet is in fact the document that was identified as the attachment.

A. Okay.

J. CORTESE

Q. Would you have reviewed this document when you got it?

A. I don't specifically recall.

Q. Is it your general practice to review documents that people E-mail to you?

MR. SKIDMORE: Objection.

A. I don't specifically recall doing -- being tasked with doing much in the way of work on the BCL2B project.

Q. Do you know why you were included in the calendar invite and the distribution of materials?

MR. SKIDMORE: Objection.

A. I do not know exactly why I was included.

Q. Are you surprised to see that this -- that these materials were sent to you?

MR. SKIDMORE: Objection.

A. No, I'm not.

Q. Why is it not surprising to you?

MR. SKIDMORE: Objection.

A. I think during the course of a day, I get a number of e-mails that I am not

specifically -- doesn't specifically relate to me.

Q. Just looking at the calendar invite, can you tell me how many people were invited were actual recipients of the calendar invitation?

MR. SKIDMORE: You are referring to both the to and the cc fields or are you referring to one or the other?

MS. MILLER: I am in the to field. Not people copied on it, but people who the calendar invite was actually directed to.

MR. SKIDMORE: Objection to the characterization.

Go ahead.

A. I count six people were invited.

Q. And you are one of those six, right?

A. I appear to be.

Q. Did you conduct any -- did you have any discussions with Ally employees regarding your investigation of the Glassner -- of the issue identified by

Glassner?

MR. SKIDMORE: Objection. Could you clarify what you mean by Ally?

Q. Sorry, did you have any discussions with employees of Ally Bank regarding your investigation of the Glassner -- of the issues identified by Glassner?

A. I had discussions with my boss at the time, who is Larry LaCombe. I had discussions with Jim Young.

Q. Did you speak to anybody at ResCap about the issues identified by Mr. Glassner?

A. I spoke with Nikki Rock. I spoke with Cathy Dondzila. I had E-mail correspondence with Jim Whitlinger.

Q. Did you speak to anybody at AFI regarding the issues identified by Mr. Glassner?

A. As part of the investigation, I know I met with Anne Cummings who was AFI's head internal auditor, as well as representatives from AFI's global security

department.

Q. Did ResCap have internal auditors?

MR. SKIDMORE: Objection.

A. I'm not specifically aware if they did or not.

Q. Did you speak to any ResCap internal auditors regarding the investigation of the issues identified by Mr. Glassner?

A. I am not specifically aware if ResCap had internal auditors or not.

Q. So the answer, I am assuming, is that you did not speak to anybody -- any ResCap internal auditors about the investigation of the issues identified?

MR. SKIDMORE: Objection.

Q. By Mr. Glassner?

MR. SKIDMORE: Objection.

Mischaracterizes.

Q. Well, you are unsure whether they had them or not?

A. That's correct.

Q. So if they did have internal auditors, did you speak to any of them?

J. CORTESE

MR. SKIDMORE: Hold on. That's an incomplete hypothetical. He can't answer that question. He may have spoken to somebody and not known whether they were an internal auditor or not.

Q. Did you speak to -- did any of the people who you identified as having spoken to from ResCap, do you believe that any of them had audit functions, internal audit functions?

A. No, not to my knowledge.

Q. Did you review materials from 2008 in connection with your investigation of the issues identified by Mr. Glassner?

A. If you are referring to project material, yes, I did review certain pieces of the project related material. I don't know exactly the date that that material was produced.

Q. When you say "project related material," do you mean like a Power Point presentation?

A. There was a Power Point

presentation that I reviewed, yes.

Q. Were there any memos that you reviewed?

A. I don't recall specific memos that I reviewed.

Q. And did you have any -- did you review any e-mails?

A. There were -- there were some e-mails from that time period that I did review.

Q. Did you ask anybody to go back and search for and provide you with e-mails from the people involved in the BCL2B project from 2008?

A. I specifically asked Deb Scott who was an Ally Bank employee, and was on that project team representing Ally Bank, for any material she may have.

Q. And did Deb Scott send you e-mails?

A. Deb Scott forwarded me one E-mail, which was correspondence, I believe, between Matthew Whitehead and Al Celini related to the -- related to the project.

MS. MILLER: I would like to mark as Cortese 4 a document Bates stamped EXAM 003975 through '3987.

(Whereupon, Cortese Exhibit 4, EXAM 003975 through '3987 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, is this the E-mail that you were referring to that Debra Scott forwarded to you from Al Celini and Matthew Whitehead?

A. It is that E-mail, yes.

Q. And Miss Scott wrote to you on March 1st, 2012, and said, "This E-mail helps support my basis of the broker project being economically neutral to the bank."

What discussions did you have about the BCL2B project being economically neutral to the bank?

A. I don't recall having much in the way of detailed discussions related to what that meant.

Q. What's your understanding of what it means for a project to be economically

neutral to the bank?

MR. SKIDMORE: Objection.

A. I am not sure what that means.

Q. From a business perspective, based on your business experience, do you know what it would mean if a transaction were economically neutral to a party?

A. I would generally say that and it would mean that the entity would have a zero net income impact to the transaction.

Q. So you would also understand that based on your accounting experience, right?

JSN Objection 98:12 - 99:05 Irrelevant (FRE 401, 402)

MR. SKIDMORE: Objection.

A. No, I don't think accounting really has concept of being economically neutral.

Q. Does it have a concept of zero net impact -- net income impact?

A. It is not really an accounting concept, no.

Q. How would you -- from an accounting perspective, how would you refer to a transaction that has no impact on an income statement?

J. CORTESE

MR. SKIDMORE: Objection.

A. I don't think I necessarily would. It's not a relevant term for accounting concept.

Q. Looking to the first E-mail in -- so, can you explain, this E-mail is a little bit confusing, but can you explain your understanding of, starting at the bottom, who is writing what?

Plaintiff's Objection 099:06 – 100:09 Lack of personal knowledge (FRE 602)

MR. SKIDMORE: Objection.

A. It appears to me that Matthew Whitehead is writing the E-mail to Al Celini.

Q. And then, do you also understand, based on the E-mail above that, that Al Celini may have interlineated comments on Matt Whitehead's E-mail where he says, "See my comments in red below"?

A. Yes, that appears to be what occurred.

Q. Looking at that bottom E-mail, the first sentence says, "I wanted -- based on our conversation on Friday, I wanted to confirm that only revenue the bank is going

to recognize is the net carry, i.e., interest income slash expense."

What does that mean?

MR. SKIDMORE: Objection.

A. It appears that Matthew Whitehead is trying to make a confirmation that the bank should only recognize net interest carry.

Q. Then it continues, "all of the other income slash fees i.e., origination fee, loan discount fee, income, open paren points, rate lock fee, overage, shortage, subsidies, underwriting fee, other ancillary fees will be payable to the bank from the borrower and not the mortgage company and will be capitalized within the Cost Basis of the loan, and essentially, sold to mortgage as that Cost Basis as the purchase price."

Based on that, what is your understanding of what the purchase price of the loan would be?

MR. SKIDMORE: Objection.

A. I think the purchase price would be as defined in the MMLPSA. And I think

Plaintiff's Designation 100:10 - 22 (in the event 99:06 – 100:09 is admitted over Plan Proponents' objection)

JSN Objection 100:10 - 22 Irrelevant (FRE 401, 402)

JSN Objection 100:24 - 101:10 Irrelevant (FRE 401, 402)

Plaintiff's Designation 100:24 - 101:10 (in the event 99:06 – 100:09 is admitted over Plan Proponents' objection)

that those two sentences are totally conflicting.

Q. So I am asking, can you explain, from an accounting perspective, what the second sentence means?

MR. SKIDMORE: Objection.

A. No, I cannot necessarily explain from an accounting perspective what that second sentence means.

Q. What does it mean to capitalize income and fees within the Cost Basis of a loan?

A. I believe that Whitehead is referring to the deferment of those fees under FAS 91?

Q. You said the Cost Basis, according to this E-mail, would be the principal loan balance net of deferred fees and expenses?

MR. SKIDMORE: Objection. Including asked and answered.

A. It appears that's what Matthew Whitehead is trying to ascertain.

Q. What does it say in all caps

right after that sentence?

A. It says "correct."

Q. Then it says, it continues to say, "All the traditional rev slash EXP reimbursement items that normally be recognized by the originator be borne by GMAC B and capitalized into the loan basis according to GAAP."

What does that mean?

MR. SKIDMORE: Objection.

Q. I will restate it. Under GAAP, what does it mean to capitalize the loan basis? I will restate that.

Under GAAP, what does it mean to capitalize the traditional revenue and expense reimbursement items into the loan basis?

A. I think that's a reference, again, to the deferment as required by FAS 91 of origination fees and expenses into the carrying value of the loan.

Q. And it says "These items will not resolve -- reside on the bank P&L."

What is the P&L?

J. CORTESE

A. I believe that P&L is short for profit and loss statement. Otherwise referred to as the income statement.

Q. So did you understand that sentence to mean that the fees and expenses that are being deferred under FAS 91 will not have an impact on the bank's income statement?

MR. SKIDMORE: Objection.

A. I would say that that is what it says. I would not agree to it from an accounting standpoint.

Q. Who is Matthew Whitehead?

A. I believe Matthew Whitehead was a project manager working for ResCap.

Q. Who is Al Celini?

A. Al Celini, I believe, was the chief operating officer for Ally Bank while -- when I entered the bank.

Q. What was Debra Scott's position at this time?

A. I am not exactly sure what her position was. Although, it is my understanding that she was acting as a

project management role on behalf of the bank for this project.

Q. And who is Elizabeth Matthey?

A. I do not know.

Q. What was Jill Horner's position at this time?

A. Again, I believe Jill Horner was in the finance role working for ResCap at this time.

Q. When you say Debra Scott was in a project management role, did you understand that she was in a project management role specifically with respect to the BCL2B project?

A. That's my subsequent understanding. Again, I was not at the bank at the time. So wasn't -- you know, wasn't sure what her capacity was at that point in time.

Q. And do you know whether Matthew Whitehead was also specifically in a project management role with respect to the BCL2B project?

A. I don't know specifically.

J. CORTESE

Q. And would Debra Scott have been involved in discussions and negotiations surrounding the BCL2B project in her capacity -- in her project management role?

A. Again, not being involved in that project at the time or within the bank, I am not sure exactly what her capacity was.

Q. Did you speak to Debra Scott about her role in the course of your investigation of Mr. Glassner's --

A. No, I did not --

Q. -- allegation?

A. -- speak with her specifically about her role.

Q. Did anybody tell you what her role was?

MR. SKIDMORE: Objection.

A. Not that I am aware.

Q. How did you speak to Debra Scott in the course of your investigation?

A. Because I understood that she was -- that she worked on the project and was also one of the last remaining people at the bank who worked on the project.

J. CORTESE

Q. Where did you get that understanding?

A. I don't specifically recall.

Q. Did someone tell you that?

A. I don't recall.

Q. Going down or, I guess, starting from the bottom five lines -- the second to -- the third-to-last sentence from the bottom, reads "This would effectively make the bank P&L neutral to the way it currently conducts business and would act essentially as a funder of loans and not impacted by any market or interest rate movement."

Do you know what P&L neutral means?

MR. SKIDMORE: Objection.

A. Again, I think generally what he was trying to state was that the bank would not incur any net income or loss related to this transaction.

Q. If Ally Bank -- sorry, if GMAC Mortgage purchased the loan from Ally, not net of Ally's revenue, would Ally recognize income on the purchase?

Plaintiff Objection 106:07 – 110:17 Lack of personal knowledge (FRE 602); impermissible lay opinion (FRE 701, 702)

J. CORTESE

MR. SKIDMORE: Objection.

A. Ally would -- Ally would -- Ally Bank would recognize the deferred origination fees and for cost upon sale to GMAC Mortgage regardless of what that purchase price would be.

Q. So going back to my hypothetical of a $100 mortgage and Ally Bank collects $10 in origination fees from the customer, and then sells that mortgage to GMAC Mortgage for $100, would Ally Bank recognize an income or loss on that transaction?

A. I think your hypothetical was that it would -- it would sell -- the purchase price would be 90, correct? $100 UPB plus net of $10 of --

Q. Well, I just gave you a new hypothetical.

A. New hypothetical, okay.

Q. Where I have a mortgage for $100.

A. Okay.

Q. Principal balance of $100. Ally Bank collects $10 in origination fees from the customer.

A. Okay.

Q. And then GMAC Mortgage buys it from Ally Bank for the UPB not net of origination fees. How much would GMAC Mortgage pay for that mortgage?

MR. SKIDMORE: Objection.

A. So with your hypothetical, the bank would recognize the $10 of origination fees in its income statement and that loan would be sold to GMAC Mortgage at a price of 100.

Q. After August 1st, 2009, did Ally Bank recognize origination fees as income on its income statement?

A. Related to broker loans?

Q. Related to broker loans purchased by GMAC Mortgage.

A. Yes, upon sale of the loan to GMAC Mortgage, the bank did recognize origination fees, net of expenses, on its income statement.

Q. And did GMAC Mortgage purchase -- sorry, was the purchase price paid by GMAC Mortgage net of origination fees?

MR. SKIDMORE: Objection.

Q. Post August 1st, 2009?

A. I believe it would include the net origination fees.

Q. Just clarify what you mean when you say "include the net origination fees." I want to make sure we are on the same page here.

A. So, again, whatever the -- whatever the net carrying value of that loan at the time of sale would have been representing the purchase price.

Q. If Ally Bank received an origination fee on a loan -- on a brokered loan purchased by GMAC Mortgage, would the purchase price be reduced by the origination fee collected by Ally Bank post August 1st, 2009?

MR. SKIDMORE: Objection.

A. Yes, generally, it would be reduced for origination fee.

Q. Would it also be reduced for any premiums received by Ally Bank -- sorry, let me restate that.

J. CORTESE

Would it also be reduced for any points received by Ally Bank?

A. Points collected from the borrower would -- no, post August -- post August the 1st, points were recorded by Ally Bank directly into its income statement. It would not impact the carrying value of the loan.

Q. So the purchase price -- the price paid by GMAC Mortgage for the loan would not be reduced by any points collected by Ally Bank?

MR. SKIDMORE: Object to form.

A. Actual points collected from the borrower, that is correct, it would not reduce the price of the loan.

MR. SKIDMORE: So we have been going quite awhile. When we get to a stopping point here in a minute or two --

MS. MILLER: Yes. Then we can take a lunch break.

MR. SKIDMORE: Yeah.

Q. What if there was a premium on

the loan such that -- can you explain what a premium -- what impact the premium -- a premium would have on the cost or -- on the revenue or expenses for Ally Bank?

A. Do you mind defining "premium"?

Q. A premium paid by the borrower or a premium -- a premium mortgage elected by the borrower.

A. So are you referring to premium pricing?

Q. Right. Premium pricing.

A. So from an accounting standpoint, premium pricing refers to a situation where the -- where the lender is not receiving fees from the borrower but is paying expenses related to the origination of that loan. The premium pricing comes into play related to a component of the market value of that loan and what the lender can sell the loan for in the secondary markets. So when the loan was originated by the bank, the premium pricing was a component of the carrying value of the loan with an offset to loan origination income that was recognized on Ally Bank.

J. CORTESE

Q. Would a borrower pay higher -- an above market interest rate in a premium pricing mortgage?

MR. SKIDMORE: Objection.

A. I wouldn't know.

Q. Is that the general principle?

MR. SKIDMORE: Objection.

A. I think, generally, the borrower is paying a market based interest rate for that loan.

Q. Is it a higher interest rate if you have a premium pricing than if you don't?

MR. SKIDMORE: Objection.

A. Again, I wouldn't know.

MS. MILLER: Now is a good time.

THE VIDEOGRAPHER: The time is 12:13 p.m.; we are off the record.

(Whereupon, a lunch recess was held.)

J. CORTESE

***AFTERNOON SESSION***

THE VIDEOGRAPHER: The time is 12:53 p.m.; we are on the record.

BY MS. MILLER:

Q. Good afternoon, Mr. Glassner.

A. Cortese.

Q. I just gave you a whole new identity.

A. That's okay.

Q. Sorry. Looking at my documents.

A. I hear ya.

MS. MILLER: I would like to mark as Cortese Exhibit 6 --

THE COURT REPORTER: 5.

MS. MILLER: It was a tough lunch break for me.

I would like to mark as Cortese Exhibit 5, a document Bates stamped ALLY_03861743 through '4.

(Whereupon, Cortese Exhibit 5, ALLY_03861743 through '4 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, I am going to direct

your attention to the E-mail at the bottom of the first page, which is an E-mail from you to Jim Young, dated December 15, 2011. Do you see that in this E-mail the third sentence, you said, quote, "We believe that the intent of the broker-to-bank initiative was to not to have any piece of sale execution revenue at the bank"?

A. Yes, I do see that sentence.

Q. When you wrote this on December 15, 2011, did you believe that that was a true statement?

A. I would say that that was a very preliminary statement.

Q. Did you --

A. And more research had to be performed.

Q. Did you believe it was true when you wrote it on December 15th?

MR. SKIDMORE: Objection.

A. I think it was, again, a preliminary statement.

Q. Mr. Young was your boss, right?

A. At that time, yes, he was.

J. CORTESE

Q. You wouldn't have sent Mr. Young an E-mail with a statement that you didn't believe to be true, would you?

A. I would not.

Q. And you say at the end, at the end of that paragraph, "We are working to quantify the amount, however, for 2011 through November, it was 136 million."

Do you see that?

A. I do see that.

Q. Did you ever continue or complete the project of quantifying the amount?

A. No, because I think upon further research, we discovered other items that led us to conclude differently.

Q. Did you do any initial research -- did you get anymore updated numbers than the $136 million number from January 1, '11 through November?

A. I don't recall that, no.

Q. Who was work -- who specifically was working with you on quantifying the amount?

A. It was Cathy Dondzila,

Nikki Rock, and myself that were researching this issue.

Q. And just so we are clear, what amount were you working to quantify here?

A. I don't recall what that 136 million represented at the time.

Q. Going up to the second sentence, in that E-mail, it says, you write, "The consensus is that a piece of GOS is being recorded in the bank as loan discount." What is GOS?

A. GOS refers to gain on sale.

Q. And then you continue, "We believe that the intent of the broker to bank initiative was to not have any piece of the sale execution revenue at the bank." And you continue, "This treatment appears to have begun in the beginning of 2009 when the program started. We are working to quantify the amount, however, for 2011 through November, it was 136 million."

Is the amount that you were referring to the GOS that was being recorded in the bank as loan discount?

J. CORTESE

A. Again, I would have to look back to see exactly what that 136 million represented.

Q. But you wrote this E-mail, right?

MR. SKIDMORE: Objection.

A. I did write the E-mail, yes.

Q. Do you recall whether you were looking to quantify the gain on sale that was being recorded at the bank?

MR. SKIDMORE: Objection. Asked and answered.

A. I don't specifically recall what that $136 million represented.

Q. I am not asking about the 136 million. I am asking you if you recall looking into, trying to quantify the gain on sale that was being recorded in the bank as loan discount?

A. I don't specifically recall.

Q. Do you recall, in connection with your investigation of the issues identified by Mr. Glassner, trying to quantify any revenue by the bank?

A. Could you clarify your question?

J. CORTESE

What revenue are you referring to?

Q. Any revenue retained by the bank in connection with the loan agreement -- sorry, the loan transactions under the MMLPSA.

A. I -- no, I recall that we discovered an error relating to forwarding excessive amounts of revenue to GMAC Mortgage, and we quantified that related to the broker transaction.

Q. So your testimony is that you do not recall doing any work to quantify revenue that the bank retained in connection with the transactions under the MMLPSA?

MR. SKIDMORE: Objection; mischaracterizes his testimony.

A. Again, what I believe I stated was that we quantified the amount of an accounting error that was discovered through this research.

Q. Did you quantify anything else?

A. I don't specifically recall.

Q. Does the $136 million in this E-mail refer to that error?

J. CORTESE

MR. SKIDMORE: Objection.

A. It does not refer to the accounting error that we later discovered.

Q. So it would appear that you quantified something else?

MR. SKIDMORE: Objection; argumentative.

A. Again, I don't specifically recall what the $136 million represented.

Q. But it is something other than the piece that you said you didn't quantify?

A. It's a number.

Q. The E-mail continues, "This issue does impact the amount of broker fee that bank pays mortgage as the intent is for bank to be neutral for originating consumer loans."

What did you mean when you wrote "the intent is for the bank to be neutral"?

A. Again, this was a very preliminary response. Mr. Young sent an E-mail to me at -- the evening of December the 14th. This response was December the 15th. Again, it was a very preliminary

review.

Q. That's non-responsive. I move to strike the answer.

My question is, what did you mean when you wrote "the intent is for bank to be neutral"?

MR. SKIDMORE: Objection.

A. Again, it was a very preliminary comment without looking at the full breadth of information through the research.

Q. Is your testimony -- I am asking what you meant when you wrote the words "the intent is for the bank to be neutral." Not whether it was preliminary or final.

A. I think it was -- I think it was in reference to the broker -- the bank transaction and possibly what senior management wanted to do with it. It had nothing to do with the accounting associated with it.

Q. What did you mean by "bank to be neutral"?

A. I think I meant that the bank's net income should be zero related to this

J. CORTESE

transaction. Which is inaccurate from an accounting standpoint.

Q. But it is what you wrote to Mr. Young as the intent of the parties as you believed it on December 15th, 2011, right?

MR. SKIDMORE: Objection.

A. That is what I wrote.

MS. MILLER: I would like to mark as Cortese Exhibit 6, a document Bates stamped EXAM 12253153 through '154.

(Whereupon, Cortese Exhibit 6, EXAM 12253153 through '154 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, you have been handed a document that's been marked Cortese Exhibit 6, which is an E-mail from Sylvia Ruby to you and a number of other people dated December 16, 2011, which for reference is the day after the E-mail we were just looking at. And it's sent high importance and the subject says "2009 to 2011 HFS Consumer Broker to Bank."

J. CORTESE

Miss Sylvia writes "The attached schedule shows the P&L recognized by the bank at the time of origination funding related to loan discount income, broker fee expense and FAS 91 deferral, January to July '09 based on the transaction recorded in GLS."

Do you understand what that means?

MR. SKIDMORE: Objection.

A. Yes, I have a general -- excuse me, general understanding of what that means.

Q. What is your understanding?

A. That for the period between January 1, 2009, and through year to date, November 2011, Miss Ruby provided a schedule of the origination fees that were recorded into discounted income broker fee expense of FAS 91 on the bank related, solely related to broker of loans.

Q. And P&L, I think we said earlier, is the equivalent to an income statement, right?

A. Correct.

Q. And so this schedule that Miss

Ruby prepared is showing profits and losses or income, gains or losses as a result of the transactions under the MMLPSA; is that right?

A. Not under the MMLPSA. Under the accounting treatment for the bank's origination -- origination fees and expenses.

Q. And what is -- first of all, who prepared -- who asked Miss Ruby to prepare this schedule?

A. I believe I asked her to prepare it.

Q. Why did you ask her to prepare it?

A. I believe at the time I wanted to get an understanding of where these amounts are recorded on the general ledger and the balance of them.

Q. And looking to -- to the schedule, which is the next page of the exhibit, Bates stamp ending '154, what did the schedule that Miss Ruby prepared show about profits and losses recognized by the bank on origination fees related and other fees?

A. Anything specifically, you want me to walkthrough the entire schedule?

Q. Well, if you have a general statement about what it shows, I will take that.

A. Okay. It shows -- it shows the borrower -- the net borrower paid and lender paid fees that were recorded in the loan discount account. It also, in that account, it includes the capital amounts that are required price and then the amounts that were recorded in that account. It also shows that the broker fee expense that the bank paid to GMAC Mortgage recorded in another account, and it shows a FAS 91 deferral amount that was recorded in 2009 prior to the bank's fair value election.

Q. What we are looking at is the net gain or loss from the bank's perspective; is that right?

A. What we were looking at is net revenue that the bank recognized related to origination and origination revenue and some related expenses.

Q. Before the bank made a fair value election, would it have recognized any origination revenue?

MR. SKIDMORE: Objection.

Q. On these transactions?

MR. SKIDMORE: Objection.

A. From the period of January 1st of 2009 through July 31st of 2009, the bank would recognize, upon sale, the bank would recognize these amounts in its income statement.

Q. What are "these amounts"?

A. The net revenue and origination of revenue and expenses that are depicted on the schedule.

Q. So --

A. It would then, subsequently, for those net amounts to GMAC Mortgage.

Q. I am not sure I caught the end of that. So it would -- so it would -- did you mean to say it would then subsequently forward those in net amount to GMAC Mortgage?

Can you just answer the last question again?

J. CORTESE

MR. SKIDMORE: What is the last question?

Q. The last question is, you said that "from the period of January 1st, 2009, to July 31, 2009, the bank would recognize, on sale, the bank would recognize these amounts in its income statement," and I asked "What are these amounts?"

Can you just restate what "these amounts" are?

MR. SKIDMORE: Objection.

Go ahead.

A. These amounts relate to the revenue -- the origination revenue and the broker fee expense as depicted on the schedule.

Q. Okay. So for a loan originated -- sorry, for a loan purchased before, in February of 2009, where would the origination fees be on this schedule? What row and column would they be in?

MR. SKIDMORE: Objection.

A. Upon sale of that loan, subsequent sale of that loan after

origination to GMAC Mortgage, the bank would recognize those fees in account 42510052 loan discount income.

Q. And so what is account 42160001, which is the FAS 91 deferral at origination, what is that number?

MR. SKIDMORE: Objection.

A. That -- that amount represented the deferred amount as of July 31st of 2011, the amount that was deferred under FAS 91. And that amount -- that account 421600001 represents the income statement deferral of that revenue.

Q. So assuming there had been no change to fair value accounting, on a going forward basis, as those loans for which there was a FAS 91 deferral recorded, as those loans were sold, the origination fees would have then been recorded as a credit in account 42510052 offsetting the deferral debit; is that right?

MR. SKIDMORE: Objection.

A. The -- yes, that is correct.

Q. And so from a net income

statement perspective, there would -- you would net to zero once all the loans that had deferred origination fees were sold?

A. No, we would not net to zero. We would recognize that deferred amount into income. We will reverse the deferral and from a net P&L perspective recognize those fees back into income.

Q. Okay. Looking at the loan discount income account for 2010 and 2011, do you see -- sorry, focusing specifically on the loan discount, capital markets, RQDPR for the year to date '11, 2011, do you see that the number is 136 million and change?

A. Yes.

Q. Does that refresh your recollection about what the 136 million in Cortese Exhibit 5 was referring to?

MR. SKIDMORE: Objection.

A. No, it does not. Because I would have to look at my records to assure that that is one in the same number. I am not sure if it is or not.

Q. What is this 136 million

referring to?

A. The $136 million represents the capital markets required price that was recognized into income by the bank from January 1, 2011, through November 30th of 2011.

Q. Did the bank recognize any of the capital market required price as income for loans sold before August 1st, 2009?

A. Yes, it recognized $209,000.

Q. And you know that that $209,000 relates to the period in 2009 before August 1st?

A. That's a good point, I do not know that. That's year to date 2009.

Q. So that 209,000 might be referring just to the period of August 2009 through year end, right?

A. Potentially. The schedule doesn't say.

Q. And can you tell me what amount the bank recognized -- of capital market required price the bank recognized as income in 2010?

J. CORTESE

A. The bank recognized $113,920,108.

Q. Does this document refresh your recollection at all about whether you did an analysis of revenues recognized by the bank under loan transactions with GMAC Mortgage?

MR. SKIDMORE: Objection.

A. Yes. I don't think I ever said that I didn't do an analysis.

Q. And looking at the loan discount net borrower and lender paid row, what is that referring to?

A. That basically refers to fees that were received directly from the borrower, origination fees. Net of any fees that the bank paid to the borrower for closing the loans.

Q. Do you know why there is such a dramatic decrease in the fees received directly from the borrower from 2009 to 2010 and continuing into 2011?

A. That is essentially related to the advent of a premium pricing environment that mortgage companies started to operate in as interest rates decreased. Due to that

time period, people were not paying to reduce their interest rates on their loans any further.

Q. And for the period -- for 2010 and 2011, there was no FAS 91 deferral amounts, right?

A. That is correct.

Q. And the same is true for the period from August of 2009 through year end '09, right?

A. Correct.

Q. Going down to the bottom under Note A, there are a number of accounts, I guess Note A might just be referring to the "FAS 91 deferral at origination programmed in GLS funding was comprised of the following accounts." Please tell me if you know what each of these accounts reflects. What does other pricing adjustment eclipse?

A. I have a general knowledge of what some of this stuff represents. I don't know for certain what they all -- what all these accounts capture.

Q. But this is generally breakdown

by account of the FAS 91 deferral amounts?

A. That is correct.

Q. Did you have any discussions with anybody at Ally or ResCap about the schedule?

A. I don't specifically recall having discussions. I may have. I just don't recall.

Q. Do you recall having discussions with Cathy Dondzila about the amount of income that was recognized by the bank after August 1st, 2009?

A. Again, generally, we discussed it. But, I don't have any specifics on what we discussed or --

Q. Do you recall whether you were surprised to see how much income the bank had accounted for under these transactions?

MR. SKIDMORE: Objection.

A. No, I wasn't. I wasn't surprised. I saw them in my general ledger every month.

Q. Did you know whether Cathy Dondzila was surprised?

MR. SKIDMORE: Objection; calls

for speculation.

A. I wouldn't know if she was surprised or not.

MS. MILLER: I would like to mark as Cortese Exhibit 7, a document Bates stamped ALLY_0402192 through '195.

(Whereupon, Cortese Exhibit 7, ALLY_0402192 through '195 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, you have been handed a document that was marked Cortese Exhibit 7. Do you recognize this document?

A. I do.

Q. Did you write it?

A. Yes, I did.

Q. It's a document titled Broker and Consumer Loans to Bank, Assumption Review, and it is dated February 26, 2012; is that right?

A. Yes.

Q. And what is this document?

A. This was a -- this was a note to

my files that I prepared in trying to piece together what the broker project was trying to accomplish from a fee recognition standpoint.

Q. If you turn to the last page of the exhibit, there is a bullet point there and you write "Documentation exists which supports the project group's intent to record origination fee and expenses on the bank and have mortgage purchase the loan at this cost level."

What did you mean by that?

A. I think that what I was trying to say there was that there is -- there is information within some of the project documents that would suggest that all of the net revenue and expenses related to originating a loan should somehow be transferred to GMAC Mortgage.

MS. MILLER: I would like to mark as Cortese Exhibit 8, a document Bates stamped EXAM 00015453 through '15484.

(Whereupon, Cortese Exhibit 8,

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EXAM 00015453 through '15484 was marked for identification as of this date by the Reporter.)

Q. This appears to be an Outlook calendar invite from Cathy Dondzila to you and a number of other people dated February 28, 2012, attaching a number of documents, and I just want to direct your attention to the third attachment, which is -- starts with the Bates stamp ending '456. And it appears to be a Power Point titled "Broker and Consumer Loans to Bank Project, BCL2B, Legal Entity Revenue Expense and Broker Fee Proposal, November 19, 2008."

Is this the Power Point presentation that you were summarizing and discussing in Exhibit 7 in your memo to files, which we marked as Cortese Exhibit 7?

A. Yes, it is.

Q. And is this also the Power Point presentation that you referred to earlier today when you spoke about having reviewed project materials?

A. It is.

MS. MILLER: I would like to mark as Cortese Exhibit 9, a document Bates stamped EXAM 12253505 through '5308.

(Whereupon, Cortese Exhibit 9, EXAM 12253505 through '5308 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, you have been handed a document marked as Exhibit 8 (sic), which is an E-mail from you to Cathy Dondzila and a number of other people dated February 27th, 2012, and what you write, "Please see attached" -- sorry, Exhibit 9, for the record.

Would you look at the attachment to that E-mail and can you tell me what this document is?

A. This, again, is another document that I prepared for research purposes to try to catalog the relevant -- the language in -- the relevant language related to the broker agreement and the transfer of loans under the MMLPSA. Again, trying to piece together the

role of the relevant language.

Q. Looking at the second page of the document, the first two paragraphs, is that a summary of provisions in any agreement?

A. That is a -- that is a summary of operationally what was -- how the transfers were being conducted from an operational accounting standpoint, both from a prefair value election and a postfair value election time period.

Q. And do you see in the prefair value election period, you indicate that "upon origination, the carrying value of the loan on the bank consists of UPB plus or minus discount slash premium collected from borrower and CMRP, net deferred fees, FAS 91." Then you continue that "Net deferred fees consisted of premium slash discount collected slash paid at closing. The capital markets required price, broker fee expense, and a per unit deferral for internal costs."

Do you believe that's an accurate description of what the carrying value of the loan was prefair value election?

A. Yes, I believe that's an accurate description.

Q. Okay. Postfair value election, you write, "Upon origination, the carrying value of the loan on the bank consists of the UPB plus or minus discounts slash premium selected from borrower and CMRP."

Do you see that?

A. I do see that.

Q. That's not the same as it was under prefair value election, right?

MR. SKIDMORE: Objection.

A. That is correct.

Q. And you believe that that's an accurate description of the carrying value of the loan on the bank postfair value election, right?

A. Yes.

Q. And you conclude the first paragraph under prefair value election saying "Net revenue to the bank consisted of interest carry only."

Do you believe that that was accurate?

J. CORTESE

MR. SKIDMORE: Objection.

A. The -- what I think I wrote in here was that the carrying balances were recognized and then another transaction was -- occurred to transfer them to GMAC Mortgage resulting in a net rev to the bank consisting of only interest carry.

Q. Okay. So under prefair value election, the net revenue to the bank consisted of interest carry only, right?

MR. SKIDMORE: Objection; mischaracterizes the document.

A. Yeah, at the end of all the transactions, that's what the bank recognized.

Q. Under postfair value election, at the end of all the transactions, net revenue to the bank consisted of discount premium, broker fee paid, and interest carry, right?

MR. SKIDMORE: Objection.

A. That's correct.

Q. That's materially different from the net impact -- the net revenue to the bank under prefair value election, right?

J. CORTESE

MR. SKIDMORE: Objection.

A. It is different.

Q. Not insignificantly different, correct?

MR. SKIDMORE: Objection.

A. Define insignificant.

Q. This was a different -- this would result in a difference over a couple of years of a few hundred million dollars, right?

MR. SKIDMORE: Objection.

A. Yeah, if you were to tie it back to the schedule that we previously reviewed, yes.

MS. MILLER: I would like to mark as Cortese Exhibit 10 a document Bates stamp EXAM 1204290 through '913.

(Whereupon, Cortese Exhibit 10, EXAM 1204290 through '913 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, I marked as Exhibit 10, an E-mail chain between you and a number of other people from March 2009. Do

you see that? I guess, February and March of 2009.

Does this refresh your recollection whether you had any discussions related to the 250.250 balance as it related to the BCL2B project?

A. No, I don't know if this relates to the BCL2B project at all. I don't know. I haven't read through the whole thing yet.

Q. Take your time to read through it, but my question is whether this document is looking at the 250.250 range, which is running off as a result of the introduction of the BCL2B project?

A. This document represents a -- an accounting error that was identified by Kim Walsh, while she was the chief accounting officer of Ally Bank, related to the true sale of loans from GMAC Mortgage to Ally Bank under the 250.250 program.

Q. And what is a true sale under the accounting principles?

A. Whether or not, for accounting purposes, the seller can derecognize that

loan off its balance sheet upon sale.

Q. And what was the issue that was flagged here?

A. As I recall, because one of the components under accounting guides is that -- that a seller to derecognize the asset from its balance sheet needs to receive a legal true sale opinion from counsel and because we -- because GMAC Mortgage was not able to obtain that true sale opinion, that it did -- the transaction did not qualify as an actual sale, and therefore, should have been recorded as unsecured -- as a secured borrowing rather than a sale on GMAC Mortgage's books.

Q. What's the difference between hedge accounting and lower cost or market adjustments?

A. Lower cost or market accounting, basically, just represents -- just consists of when you -- that you are carrying your asset as carrying value and you do not write that asset up to its fair value at any time. Hedge accounting represents your treatment

for derivatives and whether or not you can -- whether you can defer the mark-to-market adjustment through your balance sheet or whether or not you take it through your income statement.

Q. Which accounting applied to loans sold to GMAC Mortgage before August 1st, 2009?

A. I am not exactly sure because, again, I was not in the bank at that time. So I really can't answer that.

Q. Do you have an understanding?

A. Again, I am not exactly sure what treatment that chief accounting officer at that time was implying.

Q. In connection with your investigation in 2011, did you look at the difference in how the bank was accounting for the loans before and after it made a fair value election?

A. Between lower cost of market or fair value?

Q. Turning to the second page -- looking at the attachment to the E-mail that

we marked as Cortese Exhibit 10, do you recognize this as a memo that you wrote to files dated January 6, 2009, related to GMAC Mortgage to GMAC Bank transfer SAB 99 review?

A. Yes, I do.

Q. Is the SAB 99 referring to the true sale analysis that you were just talking about?

A. No. An SAB 99 analysis refers to the analysis of an accounting error and whether it is material or not to financial statements.

Q. And what are the considerations in determining whether an accounting error is material or not?

A. I mean, generally, you look through both qualitative and quantitative analysis. So qualitative is really just the facts and circumstances surrounding the accounting error. And you also apply a quantitative analysis as it relates to your financial statements over a period of time and its relative size of those financial statements to the error at any given time.

Q. And what's required if an accounting error is determined to be material?

MR. SKIDMORE: Objection.

A. So, I think it -- it depends. You know, it could mean -- typically, what will happen is that if an accounting error is considered to be material, it will kind of be considered with other adjustments that are -- that may have been discovered during a financial audit and a financial review prior to filing your financial statements. And then the net impact of those adjustments are considered whether or not actual adjustments will need to be made to your financial statements. Or it could -- or it could mean that you have to adjust your financial statements to correct the error before they are -- before, you know, before they are filed. It really depends on.

Q. If the accounting error is discovered after financial statements have already been filed, and the net impact is determined to be material, what happens?

A. Again, it really depends on the facts and circumstances and, you know, the company working with the auditors. But, you know, it can mean that you have to, you know, refile your financial statements for those periods of time.

Q. And restate them?

A. Yes, restate and refile.

Q. So looking at the second page of the memo to files, the very last sentence on that page says, "Conversely upon sale of the" -- under section heading current accounting, it says, "Conversely upon sale of the loans from the bank to mortgage under the MMLPSA, the bank as transferor applies sale accounting and derecognizes the mortgage loan asset and mortgage's transferee records the purchase of the mortgage loans at their Cost Basis."

What are you referring to here?

A. What I am referring to is that when the bank sells loans to GMAC Mortgage, the bank will remove those loans from its balance sheet, and GMAC Mortgage, as a

purchaser of those loans, will put those loans on its balance sheet. Again, basically at the same basis as the bank held those loans at.

Q. I am looking at page 4, the last sentence on that page. It says, "In order to comply with Regulation 23A/B of the Federal Reserve Act, which requires that transactions that the bank enters into with affiliates must be arm's length in nature or better but cannot adversely impact the bank. The purchase price was intentionally set as the bank's Cost Basis as defined in the loan. As such, the bank is reimbursed for any losses incurred and all risk, and conversely, all associated trading gains is transferred back to mortgage."

What trading gains are you referring to?

A. So, again, trading gains would represent when the loan is essentially sold to a third-party. Whether it be a GSE or a third-party buyer, purchaser of these loans. Since bank wasn't the initial seller or bank

wasn't a seller, ultimate seller of these loans, it wouldn't recognize any of those trading gains. That's what I meant by that sentence.

Q. So just so I am clear, are you referring to trading gains under the MSR swap?

MR. SKIDMORE: Objection.

A. No, it wouldn't be under the MSR swap.

Q. What -- how would -- how would there be a recognition of trading gains? Where are the trading gains coming from?

MR. SKIDMORE: Objection.

A. On what entity?

Q. On -- as I read this, the bank has trading gains, but they are being transferred back to mortgage. What I want to know is how are the trading gains arising and in what way or through what vehicle are they being transferred back to mortgage?

MR. SKIDMORE: Objection.

A. So, if there was any -- if there was any pricing change related to that loan,

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it would have -- it would have gone through the help for sell or pipeline swap, as you referred to it, and come off the bank's books through the swap and onto -- and be recognized on GMAC Mortgage.

MR. SKIDMORE: We have been going about an hour. Can we take a break soon?

MS. MILLER: Sure. Now is a good time.

THE VIDEOGRAPHER: The time is 1:50 p.m.; we are off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 2:05 p.m. we are on the record.

BY MS. MILLER:

Q. Mr. Cortese, did there come a time when you completed the investigation that Mr. Young had charged you and Cathy Dondzila with doing?

A. Yes, there was an end time to that research.

Q. And when was that?

A. It was approximately the early

March time period.

Q. Did you prepare a memo summarizing your findings?

A. A memo, yes, a SAB 99 memo was prepared.

Q. Did you prepare that memo?

A. The memo was a collaboration between myself and Cathy Dondzila.

Q. Did you exchange drafts of the memo?

A. Yes. Cathy took more of a role in the initial drafting of the memo and she provided the draft to me where I would make -- add some comments and so it was a collaboration.

Q. Would it surprise you if I told you that Cathy Dondzila testified that she doesn't recall if she provided you with a copy of her memo before it was finalized, and she does not recall you commenting on her memo at all?

MR. SKIDMORE: Objection.

A. I can't really speak to what Cathy thought.

J. CORTESE

Q. But it's your testimony that you provided comments to Cathy on the memo?

A. Yes. To the point where I had to do a separate materiality and SAB 99 analysis related to the bank's financial statements. She would have to.

Q. Did you prepare a copy -- sorry. Did you provide a copy of your separate SAB 99 analysis for the bank to Cathy?

A. I don't recall if I did or not. There was no reason for Cathy to have it in her capacity of the ResCap's chief accounting officer.

Q. Wasn't Miss Dondzila also responsible for all of the mortgage origination activities at the bank generally?

A. I think in that period of time, I won't say so. The two entities were about to deconsolidate, so I think -- you know, I wasn't aware of the exact time period where she wasn't -- where she would not be responsible for the mortgage. But in early 2012, it was going down that path.

Q. You believe there was a time

before the entities were deconsolidated that Cathy stopped being responsible for mortgage related activities at the bank?

A. Like I said, I don't know officially if -- when she stopped that role. But it was kind of around that time period. From a functional standpoint.

Q. Was there a reason for you to have Cathy's memo in your capacity as Ally Bank's chief accounting officer?

MR. SKIDMORE: Objection.

A. Her final memo related to ResCap specifically, no, I don't think it would be. Like I said, we collaborated on the memo as it related to -- we conducted, you know, we shared our research findings together. We agreed that the fact patterns, the background, the conclusions were, you know, were the same for both the bank and for ResCap. And from that, you know, from that capacity, we, you know, we shared that information and then we did separate, you know, SAB 99 analysis based on our respective organizations.

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JSN Objection 153:2 - 10; Irrelevant (FRE 401, 402)

Q. You say "We did separate SAB 99 analysis," did you take Cathy's SAB 99 analysis for ResCap and modify it slightly to apply to Ally Bank?

A. I don't believe so.

Q. Is it your belief that the SAB 99 memo that Cathy prepared with respect to ResCap is substantially similar to the SAB 99 analysis that you prepared for Ally Bank?

MR. SKIDMORE: Objection.

A. Again, I don't know. You mean in format and same numbers, structure? What do you mean by "substantially similar"?

Q. I mean, in words being used. Would it surprise you that there are entire paragraphs that are almost verbatim the same in the two memos?

MR. SKIDMORE: Objection.

A. I think I just previously said that to you, that we -- being in agreement with the background, facts, circumstances, inclusion, we did share those -- we did share those pieces of the memo. The analysis itself, the qualification of whether or not

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there was a material error or not under SAB 99 was separate.

Q. She doesn't remember the collaboration with you based on her sworn testimony. So I am wondering if what happened is she drafted the memo, you took it and edited it, and then called it an Ally Bank memo.

MR. SKIDMORE: Objection. That's not really a question. It is argumentative and it characterizes testimony that we don't have in front of us, and it is not really an exhibit or anything else here. If you want to ask a different question, that's fine, but he will not answer that question.

MS. MILLER: What's the basis on which you're instructing him not to answer?

MR. SKIDMORE: Has realtime stopped?

MS. MILLER: It has.

THE COURT REPORTER: Off the record.

J. CORTESE

THE VIDEOGRAPHER: The time is 2:13 p.m.; we are off the record.

(Whereupon, an off-the-record discussion was held.)

THE VIDEOGRAPHER: The time is 2:18 p.m.; we are on the record.

MR. SKIDMORE: So the answer to your question, it appears you are trying to impeach this witness from deposition testimony from some other witness that we have not even seen and there's not even an exhibit here. It is an unfair question. If you want to ask the question differently, then, he is happy to answer it. But the way the question is asked, it is not even a fair question.

Q. Mr. Cortese, did you receive a draft of -- or a draft or final version of Miss Dondzila's memo sometime in March of 2012 and then edit it -- sorry, then take that memo as the starting point for your memo?

A. Yes. Cathy Dondzila did provide

me a draft of the memo that was being prepared. I provided edits and comments and then she circulated it back to me, which then I utilized that memo to prepare the Ally Bank version.

Q. How many rounds of comments did you have with Cathy on this memo?

A. I don't recall.

Q. Do you recall having telephone conversations about comments that you may have given her?

A. I don't recall.

Q. Did you give her comments in writing?

A. I believe so.

Q. Would you have sent them by E-mail?

A. Most likely.

Q. So there should be a record in your e-mails of a revised draft of this memo reflecting your comments?

MR. SKIDMORE: Objection.

A. I would think so.

Q. Would you have redlined it,

provided your comments in redline or would you have just changed the document?

A. Most likely would have been redlined.

Q. Do you know whether you had a lot of changes to her draft or minor changes?

A. Most likely they are minor changes.

Q. Do you recall if there were any areas of discussion in her memo that you disagreed with?

A. No, I don't recall.

Q. I will hand you a document that was previously marked as Dondzila Exhibit 17. Is this your memo to files dated -- sorry, is this your memo to the Ally Bank 2011 financial statement files dated March 13, 2012, regarding SAB 99 and 108 analysis broker-to-bank error?

A. It appears to be.

Q. And this is the memo that you completed at the end of your investigation of the issues raised concerning the income and revenue being recognized by the bank that

J. CORTESE

were raised by Mr. Glassner; is that right?

A. It appears to be.

Q. Do you have any doubt that it is?

A. No.

Q. And I would like to hand you a document that was previously marked as Dondzila Exhibit 16, which is a document Bates stamped EXAM 12219169 through '80.

Does this look like -- is this the memo that Cathy Dondzila prepared to the ResCap 2011 financial statement files dated March 10, 2012, regarding the SAB 99 and 108 analysis broker-to-bank error?

MR. SKIDMORE: Objection.

A. That's what the memo is titled.

Q. Have you seen this document before?

A. I believe I have seen a draft of it previously. I don't think -- I don't believe I ever saw the final version, her final version.

Q. Do you notice in the middle of the second paragraph in Dondzila Exhibit 17, I guess it's kind of down low for the second

sentence, but the second full sentence, you wrote, "Given his assertion" -- and I'm assuming you did write it, right?

MR. SKIDMORE: Sorry, I am confused.

MS. MILLER: Dondzila Exhibit 17.

MR. SKIDMORE: Oh, okay. Go ahead, sorry.

Q. Says "Given his assertion, management of ResCap, Ally Bank, and Ally Financial, Inc. took his concern seriously including notification to the audit committee of ResCap and Ally, Inc."

Were you involved in providing notice to the audit committee of ResCap?

A. I was not.

Q. I read through Miss Dondzila's memo, which was marked Dondzila 16. I didn't see her reference notification to the audit committee or the fact that ResCap management took this concern seriously. Why didn't you think that was -- why did you include that in your memo?

J. CORTESE

A. I don't recall.

Q. Is it fair to assume that information that's added in your memo was information that you thought was important to add?

MR. SKIDMORE: Objection.

A. I can't really answer that question. From aversion control standpoint, if she decided to change her, you know, memo up prior to me submitting my final comments back, then that was her prerogative. I can't speak to, you know why she included or didn't include verbiage that may have been in the earlier draft.

Q. So is it your understanding that this language would have been in a draft that you would have given to Cathy and that she chose to disregard that?

MR. SKIDMORE: Objection.

A. Again, it most likely was an earlier draft. It was her prerogative to, you know, tailor her memo as she found appropriate.

Q. Did you talk to her about why she

wouldn't -- why that sentence wasn't included in her memo?

A. Since I did not see her final memo, no, I don't believe I spoke to her about that.

Q. And what's your conclusion in this memo?

A. I'd say that our conclusion was that there was an accounting error, which occurred between the period of January 1, 2009, through July 31st of 2009 where the bank was inappropriately transferred approximately $47 million of revenue to its affiliate GMAC Mortgage, and then from an overall accounting conclusion, that in relation to Ally Bank's overall financial statements, that it was, you know, material to our operations.

Q. Do you recall when you first became aware of this purported $47 million in revenue that was inappropriately sent to GMAC Mortgage in the January 1st to July 31, 2009, period?

A. Yes, I generally believe I became

aware of it, I want to say sometime in early to mid-February of 2012.

Q. Up until that point early to mid-February of 2012, what has the focus of your investigation been?

MR. SKIDMORE: Objection.

A. As far as what we were looking at, what we were trying to review? I think our focus was, again, trying to review the project documents, trying to review the agreements, the relevant agreements and how it matched up to the accounting treatment, and, again, trying to ascertain that the accounting, you know, during that time period was performed accurately.

Q. And who first suggested to you that there were revenues given to GMAC Mortgage, improperly given to GMAC Mortgage between January 1st, 2009, and July 31, 2009?

MR. SKIDMORE: Objection.

A. I think we concurrently, for the most part, came to that conclusion. I recall reviewing one last loan level example over a weekend, seeing that that -- seeing that

there was a transaction that appeared to have transferred the net origination revenue from the bank to GMAC Mortgage, and knowing that that appeared to be -- feeling that that was inappropriate. And later that day, Cathy calling me as she knew the same thing on the same example.

Q. So when you said "we," you were referring to yourself and Cathy Dondzila?

MR. SKIDMORE: Objection.

A. That's correct.

Q. Why did you think it was inappropriate for there to be a transfer of the net origination fee from the bank to GMAC Mortgage?

A. Because it was our -- it was our determination there wasn't a mechanism to perform that transfer either under -- under the legal agreements or our interpretation of the legal agreements as well as the, you know, any of the accounting principle under GAAP.

Q. When you say "our," again, you are referring to you and Cathy?

J. CORTESE

A. Correct.

Q. What were the relevant accounting principles under GAAP that you were considering here?

A. Well, you know, again, we would look at specifically FASB 140, which relates to the transfer of -- transfer and sale of loans. FAS 91, probably the two main guidance related to the sale of the loan.

Q. What specifically in FASB 140 or FAS 91 told you that the transfer of net origination from the bank to GMAC Mortgage was inappropriate?

MR. SKIDMORE: Objection.

A. I think that's exactly it. There are no provisions within that guidance to suggest that, you know, net revenue that the bank earned should be transferred to a third-party or affiliate upon a sale.

Q. Is there anything in those guidelines saying that it cannot be transferred to an affiliate upon sale?

MR. SKIDMORE: Objection.

A. I don't think there is anything

specifically saying that it should or should not be. FAS 91 is simply a deferment of income until the asset is sold. Once the asset is sold, you reverse that deferment and you record it in your income statement. You do not transfer it to, you know, through a sales mechanism.

Q. Could parties contract it to transfer it through a sales mechanism?

A. I think that's potential, depending, again, on the legal agreement that may be in place that could possibly do it through a swap mechanism or something similar.

MS. MILLER: Off the record for one minute.

THE VIDEOGRAPHER: The time is 2:35 p.m.; we are off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 2:38 p.m.; we are on the record.

MS. MILLER: I would like to mark as Cortese Exhibit 11, a document Bates stamped EXAM 100988172 through

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'188.

(Whereupon, Cortese Exhibit 11, EXAM 100988172 through '188 was marked for identification as of this date by the Reporter.)

MR. SKIDMORE: Do you have a copy?

MS. MILLER: I do.

BY MS. MILLER:

Q. Mr. Cortese, looking at the bottom E-mail in Exhibit 11, does this refresh your recollection about whether or not you got a final draft of the memo from Cathy Dondzila?

A. Well, it looks like it -- Cathy is asking for final comments from a few individuals, including myself, prior to her giving it to D&T. I don't know if that ascertains that was the final memo or not. I think at that point it would be considered a draft.

Q. She is kind of negative auctioning to you, right?

MR. SKIDMORE: I'm sorry, I

J. CORTESE

don't see an attachment that's her memo, am I missing it?

MS. MILLER: I understand. I am just asking about the E-mail.

MR. SKIDMORE: Right, but the E-mail doesn't have an attachment either. You're talking about the Cathy Dondzila E-mail?

MS. MILLER: The Cathy Dondzila E-mail that says "Unless I get an objection from one of you by 1:00 p.m. Eastern today, I am going to release the memo to D&T at 1:00 p.m. If someone needs extra time, please just let me know. I would like to get this done and out today so that we can bring this to closure."

Q. Do you understand that Cathy Dondzila would have sent you or did send you a draft of her memo sometime either contemporaneous with this E-mail or before this E-mail and said "unless one of you objects, I am going final with this"?

MR. SKIDMORE: Objection.

J. CORTESE

A. It appears she asked for comment on the draft. I can't conclude that was the final memo that she forwarded to D&T or the one that she provided to the audit committee.

Q. Where do you see her asking for comments?

A. Isn't that basically what she's asking, "Unless I guess an objection from one of you by 1:00 p.m. today"? It sounds like provide any final comments related to the memo.

Q. Where I come from we call that negative auctioning someone. Not soliciting comments but saying if you don't give me comments, this is going out unless you say stop.

MR. SKIDMORE: That's not a question.

Q. Is that how you would understand the phrase "unless I get an objection from one of you, I am going to release the memo to D&T"?

A. I can't really comment on what Cathy meant by that.

J. CORTESE

Q. But Mr. DeBrunner responds "I have no objection," right?

A. It appears that he did.

Q. Do you recall whether on March 14th, you had any comments or objection to Cathy Dondzila sending her memo to Deloitte and Touche?

A. I don't recall if I did or I did not. I think she could have easily made comments or changes herself before she provided to D&T and the argument. I won't know that.

Q. And the top E-mail is an E-mail from you to the same group of people indicating that you "processed the comments contained in Cathy's draft as relevant to the bank and provided the assessment to Deloitte last night. See attached."

Is it your understanding that the memo that you wrote or that has your name on it dated March 13th, that's attached to this E-mail, was the final memo that you had already sent to Deloitte and Touche the previous night?

J. CORTESE

MR. SKIDMORE: Objection.

A. Sorry, can you restate your question, please?

Q. Yeah. Is the memo that's attached to this E-mail your final memo that you provided to Deloitte and Touche?

A. I believe it to be.

Q. Does this refresh your recollection that you provided Cathy Dondzila with the final version of your memo?

A. Where does it state that I provided her with the final -- with the final memo?

Q. She is on this E-mail, right, she is a recipient to your E-mail?

A. Got it.

Q. And you just said this is your final memo. So my question is, does this document, Cortese Exhibit 11, refresh your recollection that you provided Miss Dondzila with a copy of your final memo?

A. Yeah, I guess if she was on this E-mail stream and I responded to everybody, to David DeBrunner with it, yes, by wrought,

she received the final copy. I don't think she was the primary recipient of the memo, though.

MS. MILLER: I would like to mark as Cortese Exhibit 12 a document Bates stamped ALLY_0018237 through '244.

(Whereupon, Cortese Exhibit 12, ALLY_0018237 through '244 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, do you recognize this document?

A. Yes, I believe I have seen this before.

Q. Is this a document you referred to earlier as the "pipeline swap"?

A. I believe it is one of the schedules to the pipeline swap, yes.

Q. And turning to the page with the Bates ending '242, sorry, starting first at the page Bates stamped '243, the provision that says "payments." It says "On each payment date" -- it's the second-to-last

page. Last page before the signatures. It says "On each payment date, little i, if the fair market value changed for the most recent valuation period is positive, Party B will pay to Party A an amount equal to such fair market value change. Or, two little i's, if such fair market value change is negative, Party A will pay to Party B an amount equal to such fair market value change."

Is that your understanding of what payments would be owed under the schedule in the pipeline swap?

A. So I think my interpretation of that provision is that, again, during the period of whether you have either a commitment for a loan that would be held for sale loan or if the loan was funded and sitting on the bank's balance sheet, if there was an increase in the value of that loan, then that increase in value would be -- would go through the swap and be sent to GMAC Mortgage.

Conversely, if there was a decrease in the value of that loan, that

decrease in value would also run through the swap and GMAC Mortgage would pay the bank for that loss.

Q. And what period are we talking about here, what period of time?

MR. SKIDMORE: Objection.

Go ahead.

A. Can you clarify that?

Q. Change in market value between when and when.

MR. SKIDMORE: Objection.

Go ahead.

A. The -- the overall swap, the pipeline swap was -- will begin upon the commitment date, again, when the loan -- when Ally Bank would commit to fund the loan to a borrower through the date that the loan was eventually sold to GMAC Mortgage.

Q. Okay. And the date that the loan was sold to GMAC Mortgage, is that the same date as the date that the loan was funded?

A. No, there were two different dates. Typically, bank would fund the loan. It would sit on the bank's balance sheet

roughly 20 to 30 days and then GMAC Mortgage would buy the loan from the bank.

Q. So looking now at the page Bates stamped '242 where it defines the term fair market value change that was just used in the provision regarding payments. Do you see that fair market value change is for funded loans defined as the product of the funded loan amount and the difference between the funding fair market value and the lock fair market value?

A. I see that, yes.

Q. There is no reference here to the sale fair market value, right?

MR. SKIDMORE: Objection.

A. Sorry, I don't know what you mean by that question.

Q. What is fair market value change in your words?

MR. SKIDMORE: Objection.

A. From a general accounting, you know, operational standpoint, if that loan is, say it is originated at par, at 1, and the next day that loan moves to a fair value

of 1 on 1, then that's a positive fair market value change and the bank would take that one and transfer it through the swap to GMAC Mortgage.

Q. What I am trying to understand is, during what period we are calculating the fair market value change?

MR. SKIDMORE: Objection.

A. That period began when the bank entered into a locked agreement with the borrower and ended upon the sale of that loan to GMAC Mortgage.

Q. Okay. But the agreement says that it's the difference between the funding fair market value and the lock fair market value, right?

MR. SKIDMORE: Objection. The agreement speaks for itself.

A. That's what it says.

Q. And funding fair market value is not the same as sale fair market value, right?

MR. SKIDMORE: Objection.

A. I guess I don't know what you

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mean by "sale of fair market value."

Q. Sale date fair market value.

A. Yeah, I don't know what the definition of funding fair market value is.

Q. Let's look down to it. It is below in Romanette viii. Says "Funding fair market value means in respect to the subject transaction the fair market value of a loan on the funding date as determined by the FMV determination agent using customary market valuation techniques."

Does that clarify that funding fair market value is referring to the fair market value on the date of funding?

MR. SKIDMORE: Objection. The document speaks for itself.

A. That's what it says.

MS. MILLER: I would like to mark as Cortese Exhibit 13 a document Bates stamped ALLY_PEO_0877135 through '38.

(Whereupon, Cortese Exhibit 13, ALLY_PEO_0877135 through '38 was marked for identification as of this

Plaintiff's Objection
176:19 – 177:02
Irrelevant (FRE 401, 402)

date by the Reporter.)

Q. Mr. Cortese, I have marked as Exhibit 13, a memo that you wrote dated March -- to files dated March 3rd of 2011, the subject Ally Bank representation of warranty position on affiliate mortgage loan sales.

Do you remember why you wrote this memo?

A. I believe I wrote this memo in response to questions posed by the FAC and Deloitte and Touche, our auditors related to our position on the representation and warrant reserves and applicability to Ally Bank.

Q. And what was your position on rep and warranty reserves as it applied to Ally Bank?

A. Ultimately, that Ally Bank was not required to record rep and warrant reserves.

Q. How did you reach that conclusion?

A. Essentially, the bank, as a -- in

Plaintiff's Objection
177:03 – 178:15
Irrelevant (FRE 401, 402)

its servicer capacity is jointly and severally liable for any representation of warrant losses that the GSEs may put back. However, that joint liability is also shared with GMAC Mortgage as the seller.

Historically, GMAC Mortgage recorded all of the losses associated with representation and warranty claims posed by the GSEs and because of that, I felt that the likelihood that the bank would ever have to pay rep and warrant reserve related to a loan that GMAC Mortgage sold to the agencies was removed and therefore, a reserve was not required.

Q. Looking at the discussion on the page, the third page of the memo, the one ending '137, in the middle of that page, there is a paragraph in which you write, "Although the bank is legally and contractually obligated to the agencies, there is an implicit agreement between the bank and GMACM whereby GMACM assumes the full obligation."

Did you consult with anybody

before you concluded that the bank is legally and contractually obligated to the agencies?

A. Yeah, I mean, I think I primarily consulted with John Andrews or internal counsel.

Q. You wouldn't have included a conclusion about the bank's legal and contractual obligations in a memo to files without having consulted with counsel, right?

A. I would not.

Q. And you note that there is an implicit agreement. Does that mean there was no written agreement to this effect?

MR. SKIDMORE: Objection.

A. I don't know if there was a -- I don't believe there was a written agreement. I am not sure of that. However, to the point where Ally Bank and its history, up until that point, never settled a rep and warrant claim with the GSE there was establishment of that implicit agreement.

Q. Did you look for a written agreement?

A. I don't believe specifically.

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Q. Did you think that the existence of a written agreement would have been important?

MR. SKIDMORE: Objection.

A. It is not really entered into my determination. It is more of a legal determination.

Q. I am just wondering why you would rely on an implicit agreement and not specifically go out and look to see if there is a written agreement governing this particular issue?

MR. SKIDMORE: Objection.

A. Again, it was -- that fact pattern was one component of the analysis. I also, again, spoke to internal counsel who --

MR. SKIDMORE: Don't say what internal counsel said.

THE WITNESS: Okay.

Q. Do you think internal counsel would have told you if there was an explicit -- would you have expected internal counsel to tell if you there was an express agreement that governed this particular issue?

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MR. SKIDMORE: Objection. Calls for attorney/client privilege. I instruct the witness not to answer.

MS. MILLER: I asked him if it was his expectation, whether he would have expected counsel to tell him if there was an express agreement that governed this issue.

MR. SKIDMORE: His expectation is based on his course of dealing with his internal counsel, which is attorney/client communications and he is not going to answer that.

MS. MILLER: He has already -- you have already produced and he has already included the conclusions that he got from counsel on this issue. So, first of all, there is a waiver here as to this particular issue. And second of all, I didn't ask him whether he had any discussions. I didn't ask him if he asked his lawyer to give it to him. I am asking if his lawyer is giving him an opinion that

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says that the bank is legally and contractually obligated to the agencies, if he would have expected them to say but there is an agreement between the bank and GMACM that says that the bank is not on the hook here. That's not asking for any legal advise or solicitation of the advise of counsel and is not privileged.

MR. SKIDMORE: I will note for the record there has been no waiver of privilege. He has not testified at all about any opinions that -- or communications that the attorney's given him. And I am not going to allow him to testify in a way that would potentially be asserted as a waiver of privilege.

Now that you are arguing there is a waiver of privilege, I have to instruct the witness not answer to protect my client's privilege.

MS. MILLER: You are instructing your client not to answer whether it

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would have been -- whether he would have expected somebody to tell him that there is an explicit agreement between GMACM and the bank here that governs the rep and warranty question?

MR. SKIDMORE: Yes, because his expectation would have to be based on prior communications between himself and that counsel. That's the only way he had any basis to have an expectation. So, yes, I am instructing him not to answer because I believe that the answer would disclose attorney/client communications.

MS. MILLER: I think your objection is wholly inappropriate, but it is not an important enough issue to press. It is pretty clear.

Q. Did you provide a copy of this memo to John Andrews before you finalized it?

A. I believe I did.

Q. Mr. Cortese, could you explain the MSR swap to me?

MR. SKIDMORE: Objection.

A. Would you like me to explain how it worked or the accounting treatment of the swap?

Q. How it worked.

MR. SKIDMORE: Objection.

A. So, again, from operational accounting standpoint, whatever -- whatever net revenues were recognized by Ally Bank were transferred through the swap. So all the net service fee income that the bank collected, any gain on sale related to the capitalization of the MSR, any mark-to-market adjustments, either positive or negative to Ally Bank income, all pass through the swap and in return the bank received a LIBOR based rate of return.

Q. When you say "passed through the swap," you mean were transferred from Ally Bank to GMAC Mortgage?

A. Correct.

Q. So the state of play at the end of the swap transaction is that Ally Bank is holding the MSR and getting paid a fixed rate

of -- well, I guess a floating rate of LIBOR plus some basis and all of the upside gain or risk is held by GMAC Mortgage; is that right?

MR. SKIDMORE: Objection.

A. Yeah, I think that's basically accurate.

Q. What loans did the MSR swap relate to?

A. It essentially related to any loans that the bank was -- that had been sold and where the bank is -- owns those mortgage servicing rights. Those were specific, again, to loans that were sold to Fannie Mae and Freddie Mac and the bank was the named servicer.

Q. Did it matter who sold the loans?

MR. SKIDMORE: Objection.

A. Really, during the time period where the -- where GMAC Mortgage was the counterparty to that swap, all of those loans were ultimately sold by GMAC Mortgage.

Q. And did it matter who originated the loans?

MR. SKIDMORE: Objection.

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A. Who the ultimate originator was, no, I don't necessarily think it mattered. At some point -- I am not sure about that question.

Q. Who was responsible for implementing the MSR swap?

MR. SKIDMORE: Objection.

Q. From an accounting perspective.

A. From operational accounting perspective, it was ResCap's capital markets accounting group that was responsible for calculating and doing the accounting for the swap.

Q. Was anyone at Ally responsible, at Ally Bank responsible for accounting for the swap?

A. Not specifically. Again, in my capacity, I was responsible for the oversight of it from Ally Bank perspective, but we weren't recording the debits and credits. That was ResCap's team.

Q. You weren't responsible for overseeing the ResCap team, were you?

A. No.

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Q. Did Ally provide any calculations to ResCap regarding the amounts that were to be -- that were owing under the MSR swap?

MR. SKIDMORE: Objection.

Q. Sorry, about the amounts that were to be transferred under the MSR swap.

MR. SKIDMORE: Objection.

A. When you say "Ally," you mean Ally Bank?

Q. Yes.

A. I think the only part that Ally Bank accounting would provide is the net service fee leg components of the swap.

Q. What is the net service fee leg?

A. The component of the swap that related to the net service fee income that the bank recognized.

Q. How would ResCap get information regarding the size of the MSR asset, of the bank's MSR asset?

A. ResCap's accounting team performed the accounting for the MSR asset itself. So they worked hand in hand with their capital markets team on, again, on the

valuation and the accounting for the MSR asset.

Q. When you are talking about "the MSR asset," are you talking about the MSR asset once it -- the MSR asset on whose books?

A. Ally Bank books.

Q. So ResCap was responsible for MSR asset accounting in Ally's books?

MR. SKIDMORE: Objection.

A. At that period of time, yes, they were.

Q. Who specifically was responsible for that accounting?

A. Ultimately, it was Cathy Dondzila and, you know, day-to-day was Nikki Rock and her team.

Q. What was Nikki Rock's position?

A. She was an accounting director for ResCap.

Q. Is there a specific area that she was responsible for or specific area?

A. I didn't manage her, but generally, she was -- I understand her to be

responsible for the MSRs, hedging and derivatives. I think also the investment securities.

Q. Did anyone at Ally Bank verify to see if -- I guess let me step back.

When the -- which way did money flow under the MSR swap?

MR. SKIDMORE: Objection.

A. It really depends on the settlement time period and what was taking place as far as the underlying cash flows were concerned. There were times where net money, you know, went out of the bank and times where net money came into the bank.

Q. And who, if anyone, within the bank was responsible for verifying whether the amounts of money flowing in or out of the bank was accurate?

MR. SKIDMORE: Objection. Is there a timeframe for these questions? I guess I am confused. These agreements span for many, many years.

MS. MILLER: He only joined the bank in August of -- mid-August of

2009. So let's presume he doesn't have knowledge about what Ally Bank was doing before that. And let's go from there forward.

Q. Let's focus first on the 2009 period. 2009 and 2010 period when you were at Ally Bank.

A. Well, again, the way the process worked was that Nikki Rock's team would provide a supporting schedule that broke down the individual components of the swap. They also, you know, within that worksheet provided the necessary, you know, debits and credits to draw entries that needed to be recorded. My team would review it for reasonableness and then record that -- record that entry on the books and records of Ally Bank.

If that -- you know, if that net amount required a cash outflow to the bank, to GMAC Mortgage, my team would prepare the wire request and initiate the wire transfer, and conversely, if that, you know, that net amount must stay as a payment to the bank, I

think Nikki Rock's team was responsible for preparing the wire request, to transfer funds to the bank.

Q. When the bank was required to make a cash payment to GMACM, was anyone in your team tasked with doing a more detailed review of the schedule other than a review for reasonableness?

A. No, not necessarily, there really wasn't any necessity to do that.

Q. Why wasn't there a necessity to do that?

A. Because I think, you know, I think that, you know, you can trace back the components of the swap back to your, you know, back to your income statement. So, for example, if there was a, you know, if there was a mark-to-market adjustment of, you know a million dollars, I would see that mark-to-market adjustment flowing through my income statement and then I would -- you can also see that being transacted through the swap in the detail of the settlement sheet.

Q. And when you joined Ally Bank in

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mid -- or August of 2009, did you review the actual swap agreement, the MSR swap agreement?

A. Yes. At some point after I joined the bank.

Q. Did you have an understanding of whether the fair market value adjustments were intended to be made on the entirety of the bank's MSR asset as reflected in its balance sheet?

MR. SKIDMORE: Objection.

A. No, I -- I would say that the intention was for the bank to not recognize any net revenue related to the MSR asset or expenses. So if there was a mark-to-market adjustment, again, say a million dollars, that would have been recorded in our income statement and then picked up in the swap.

Q. Do you have an understanding of whether the intention that you just described differed from the actual MSR swap agreement?

MR. SKIDMORE: Objection. Calls for a legal conclusion.

A. Yeah, I don't know if there was a

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difference or not.

Q. Well, you said that you looked at the MSR swap agreement, right?

A. I did, yeah, I have read that.

Q. Did you develop an understanding of the accounting and how it was supposed to work when you were --

A. Operational accounting, yes.

Q. Did you understand from an operational accounting whether the fair market value schedule required payments on increases or decreases in value of the whole MSR asset as reflected on the balance sheet as opposed to changes in the income statement?

MR. SKIDMORE: Objection.

A. No, it was -- you know, it was my understanding that it impacted -- what would flow through the swap was not changes in the balance sheet asset of the MSR but with regard to amounts that were recorded in the income statement of the bank.

MR. SKIDMORE: We have been going about another hour. Take a

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break pretty soon.

MS. MILLER: I don't have much more, but I am happy to take a break.

MR. SKIDMORE: Let's take a quick break.

THE VIDEOGRAPHER: The time is 3:18; we are off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 3:36 p.m.; we are on the record.

BY MS. MILLER:

Q. Mr. Cortese, the Court Reporter is marking as Cortese Exhibit 14, a document Bates stamped ALLY_00411610 through '627.

(Whereupon, Cortese Exhibit 14, ALLY_00411610 through '627 was marked for identification as of this date by the Reporter.)

Q. Do you recognize this document?

A. I am not -- I am not sure this was the exact document that was in effect when I entered the bank. I can't tell.

Q. Okay. When you say "exact document that was in effect," is this the

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Pipeline Swap Agreement?

A. I don't know if it is the exact version that was in effect.

Q. Sorry, correct the record. This is the MSR, not the Pipeline Swap Agreement. So I will correct that.

A. Okay.

Q. Do you have any reason to believe that this was not the MSR Agreement that was in effect when you joined the bank in August of 2009?

MR. SKIDMORE: Objection.

If you know.

A. Yeah, I can't --

MS. MILLER: He knows if he has a reason to believe or not.

A. I can't determine if it was the version that was in effect or not.

Q. Did you review the MSR -- okay. I would like to mark as Cortese Exhibit 15, a document Bates stamped RC00027822 through '828.

(Whereupon, Cortese Exhibit 15, RC00027822 through '828 was marked for

identification as of this date by the Reporter.)

Q. I have marked as Cortese Exhibit 15, the fair -- the fair market value schedule to the MSR swap dated August 31, 2007. Do you see that?

A. I do.

Q. Do you recognize -- is this a document you have seen before?

A. Yes, I believe it is.

Q. And I would also like to mark as Cortese Exhibit 16, a document Bates stamp ALLY_PEO_042123 through '42130.

(Whereupon, Cortese Exhibit 16, ALLY_PEO_042123 through '42130 was marked for identification as of this date by the Reporter.)

Q. So, Mr. Cortese, looking first at the document that we -- was just marked as Exhibit 16 and the attachment to the E-mail, the cover sheet is an E-mail from you dated March 10, 2011, to a number of people with the subject "Fed request."

A. Um-hum.

Q. Attached to it is what appears to be a write-up that you prepared titled Ally Bank Overview Accounting For Mortgage Servicing Rights. Do you see that?

A. Yes, I do.

Q. Did you, in fact, prepare this memo?

A. Yes, I did.

Q. Did you send the memo to files or something else?

A. Sorry, what's your question?

Q. Is this a memo to files?

A. It was the memo to file and I also think it was something -- it was -- part of the intent of writing this memo was to share it with the Federal Reserve examiners.

Q. And why were the Federal Reserve examiners interested in Ally Bank's accounting for mortgage servicing rates?

MR. SKIDMORE: Objection.

A. I don't know. I did not deal with it directly.

Q. Were you -- who asked you to prepare this memo?

A. I believe it was either Lisa Gerner or Jim Young.

Q. Did they explain to you why they were asking you to prepare the memo?

A. I don't recall specifically if we discussed that.

Q. Okay. And do you see under the -- under the title Hedging of MSR Portfolios at the bottom of the first page you state "In order to efficiently hedge the exposure to its retained MSR asset, the bank agreed to enter and is a swap transaction with GMACM as documented by two schedules to the ISDA Master Agreement between the bank and GMACM effective June 2007."

A. Yes, I see that sentence.

Q. Does that refresh your recollection about whether there was an updated, sorry, whether the 2007 MSR Agreement was the swap -- MSR Swap Agreement that was effective when you joined the bank in 2009?

MR. SKIDMORE: Objection.

A. The memo references the schedule

that's dated August 31, 2007, that you provided, Exhibit Cortese dash 15. It does not reference the Master ISDA Agreement that you provided, Cortese dash 14.

Q. It doesn't? Doesn't it reference the ISDA Master Agreement?

MR. SKIDMORE: Objection.

A. I think I stated that, as I wrote it, "as documented by two schedules to the ISDA Master Agreement between the bank and GMACM effective June 2007." I also note that the schedule that you provided me was dated August 31, 2007.

Q. All right. If you go back to Cortese Exhibit 14, can you look at the signature and the dates on that agreement. You see there is a date under Robert Groody signature of 6-12-07?

A. Yes, I see that date. I also note that on the face, on page 1 of the Master Agreement, the date is blank as to a month and a day.

Q. I understand. So this agreement was signed in June of 2007, right?

MR. SKIDMORE: Objection.

A. It appears that way. I don't know if it wasn't. I wasn't there.

Q. You mentioned that the fair market value schedule is dated as of August 31, 2007, not June 2007, right?

A. Correct.

Q. Okay. If you look at page 6 of the fair market value schedule, which is Cortese Exhibit 15 -- before we go there, did you use general ledger interchangeably with balance sheet?

A. No. Your balance sheet is a component of your general ledger.

Q. What are the other components?

A. Your income statement and your statement of retained earnings.

Q. And where in your general ledger would you record an asset?

A. You would record that in the assets section of your general ledger.

Q. Is that on your balance sheet or your income statement?

A. An asset would be recorded on

your balance sheet.

Q. Looking at the definitions on page 6, I guess looking first at the payments section, which is part 6D, it says "On the valuation date, if the FMV change for the most recent valuation date, is an increase in the market value of recorded mortgage servicing assets in the general ledger of Party B, Party B will pay to Party A an amount equal to the fair market value change. Or sub 2, if such fair market value change is a decline in the market value of recorded mortgage servicing assets in the general ledger, Party A will pay to Party B an amount equal to the fair market value change."

A. Um-hum.

Q. Do you agree that this payment section is looking at the mortgage servicing assets in the general -- in the balance sheet section of the general ledger?

MR. SKIDMORE: Objection.

A. So I think our accounting position related to that language relates to the definition of the fair market value

change, which states that in respect of the subject transaction, means that FAS 156 mark-to-market for the valuation period as recorded by Party B against the mortgage servicing right asset. Again, our interpretation of that, FAS 156 relates to the fair value treatment of your -- of the mortgage servicing right asset. And specifically, that if elected, if you elect fair value treatment for your mortgage servicing right asset, you would have to mark that asset to market on a regular basis. So our interpretation of that is that that mark-to-market valuation, again, at the end of a period, represents the amount that you would transfer through to the swap. Not necessarily the complete balance sheet change in your MSR. It would not include a capitalization under MSR. That would increase your MSR asset.

Q. What does it mean -- I guess, what are capitalization -- what is a capitalization under MSR?

A. An MSR asset is created at the

point that the underlying loan is sold and the seller maintains the right to service that loan. So based on that, the estimated discounted servicing cash flow that you expect to receive from servicing that loan becomes your MSR asset and to place that asset on your balance sheet is referred to as a capitalization of your mortgage servicing rights. To make it an asset.

Q. There is no distinction in this agreement between different components of the mortgage servicing right asset that's reflected on the balance sheet, right?

MR. SKIDMORE: Objection. The agreement speaks for itself. It includes all of its many parts.

A. I don't know if there was a distinction imbedded in this agreement or not.

Q. Do you know what the impact would be if the -- if the bank originated an MSR, how would that impact the balance, the bank's balance sheet?

A. If the bank originated an MSR

from selling a loan and keeping the servicing rights?

Q. Right.

A. It would increase the MSR asset. It would be a positive increase to the MSR asset.

Q. What impact would that have on the bank's income statement?

A. It really depends. It depends on, namely, how that loan was originated, what channel that loan came through and whether or not -- whether or not the bank as the originator of that loan already paid for a component of that servicing right.

Q. What is an example of a way that -- what's a channel that a loan can come through to the bank for a loan originated by the bank?

A. So the bank had a couple of different lending channels at that time. You know, the main ones related to whether the bank originated what we refer to as a correspondent loan or if it directly originated the loan through its retail

channel. If the -- if the bank originated -- if the bank purchased the loan from a correspondent, essentially what that means is that the -- that loan was -- is already a closed funded loan. Another mortgage originator already made that loan, to fund that loan and the bank is buying that loan from that -- from that original lender. What the bank will have to do to purchase that loan from the original lender is to pay a premium of the sale price that is directly related to the servicing rights. So the bank is paying the -- paying the original lender a premium on the loan for that lender to give up the rights to service that loan.

Q. And when the bank purchases a correspondent loan from someone else, is it considered to have been originated by the bank?

A. Yes, the bank classifies that as a form of origination production.

Q. Focusing first on loans originated through a retail channel. What impact would that have on the income

statement?

A. So when the bank sold that loan, that retail originated loan, it would -- the capitalization of that associated MSR would represent the, you know, 100% of the estimated future cash flow related to the servicing of that loan. So if that is, you know, say that cash flow is estimated to be $100 over the estimated life of that loan, the bank would record an MSR asset of 100 and recording a gain on sale on its income statement of 100.

Q. And how would that work for a correspondent loan, what impact would there be on the balance sheet and on the income statement?

A. Correspondent loan would be a little different from an income statement recognition standpoint. So if we purchased the servicing from that correspondent and say that, let's say for example, we paid that correspondent $30 for that servicing, the bank would already have on its balance sheet a service release premium, SRP, that we would

call it, of 30 and that SRP is part of the accounting value of the loan while it is sitting in its held-for-sale portfolio.

Once that, you know, once we sold that loan, that $30 SRP would essentially be reclassified to the MSR asset and then if there was any -- any additional servicing, estimated servicing cash flow, that would be related to that loan and then that amount would be recorded, it will be capitalized and offset in an income statement. So, again, if we have that total estimated servicing was 100, we already capitalized 30, so the offset to your income statement would be 70.

MS. MILLER: I would like to mark as Cortese Exhibit 17 a document Bates stamped ALLY_00041799 through '807.

(Whereupon, Cortese Exhibit 17, ALLY_00041799 through '807 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, I have marked as Cortese Exhibit 17, a document dated

April 1st, 2011. Do you recognize what this document is?

A. I do.

Q. What is it?

A. It's the confirmation of the total return swap related to mortgage servicing rights.

Q. And were you involved in the preparation of this document?

A. My involvement with the preparation of this document was related to working with -- working with the capital market team who was responsible for drafting this confirmation, reviewing language, accounting impact and also working with, you know, Nikki Rock as the counterparty responsible for the accounting on ResCap's side.

Q. Was part of what you were responsible for, was part of the information that you were responsible for giving to the capital markets team information about how accounting was actually accounting for the MSR swap?

A. Yeah, we, both Nikki and I, both gave information to capital markets as to how we were accounting for the mortgage servicing rights swap.

Q. Do you recall having discussions with capital markets team about language that should be included in this April 2011 confirmation to accurately reflect what accounting was doing?

A. Yeah, again, generally, I would say yes, we, both Nikki and I, provided comments back to capital markets related to some of the language.

Q. Do you know why this MSR swap confirmation was entered into in April of 2011?

A. I don't know specifically why. I did know that they -- that they wanted to update the format and some of the language to a more recent ISDA contract that was out -- I know that was one component. I would also think they wanted to clarify some of the components from the language standpoint.

Q. What components do you recall

wanting to clarify?

A. Again, just generally how it -- you know, how it worked, you know, what components of the net revenue cash flows got picked up in swap.

Q. Do you recall having discussions about the introduction of the term MSR amount?

MR. SKIDMORE: Objection.

Q. On page 4 of the Agreement? I will restate my question.

Do you recall having discussions about the introduction of the concept of MSR amount in this confirmation?

MR. SKIDMORE: Objection.

A. Not specifically.

Q. Do you recall that this was one of the new concepts added to this confirmation?

MR. SKIDMORE: Objection to the characterization.

A. Again, I didn't think -- my interpretation was that, you know, there was nothing necessarily new that was being

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entered into this agreement.

Q. Well, did the prior agreement have the term MSR amount in it?

MR. SKIDMORE: Objection. The agreement speaks for itself.

A. I don't recall if it did or not.

Q. Do you recall having discussions about whether there should be express -- a provision that expressly addresses the gain or loss on the mortgage servicing asset?

MR. SKIDMORE: Objection.

A. Again, not specifically. Again, we were crafting it so that -- you know, as the previous version was designed to transfer any net revenue related to the MSR asset through the swap.

Q. Do you recall having discussions about taking out the concept of mark-to-market from this agreement?

MR. SKIDMORE: Objection.

A. No, I do not recall.

Q. Do you recall having discussions about the definition of monthly fair market value change in this agreement?

A. Yeah, again, not specifically.

Q. What do you recall generally that you spoke about in that regard?

A. Again, that -- capital markets was charged with trying to provide more clarifying language, you know, to the agreement, and in that regard, from accounting standpoint, we were advising on how that swap has historically operated.

Q. So this was an effort to have the confirmation reflect what accounting was actually doing?

MR. SKIDMORE: Objection.

A. No, not necessarily. We were, again, advising on what -- what our accounting treatments historically have been. I am not suggesting that that drove the provisions of the agreement.

Q. Did anyone send you either piecemeal language or the agreement in general and ask for your views on whether it accurately captured the accounting treatment that was being applied to the MSR swaps?

A. Yeah, I believe they did.

J. CORTESE

Q. Do you have any sense of what impact there would have been had the fair market value change been calculated not on the difference in the value -- sorry, in the gain or loss related to the MSR asset, but instead to the full MSR asset as recorded on the balance sheet?

MR. SKIDMORE: Objection.

A. So suggesting, when you say "general loss," you mean from the mark-to-market?

Q. Right.

A. As compared to just the change in balance?

Q. Right.

A. I mean, if we were -- if we were just talking about the net change in the balance sheet, the asset from period to period, then I think the impact would be that the bank would be transferring value to GMAC Mortgage that it already -- to the degree it already paid for.

Q. Do you have a sense of the magnitude of the value that would have been

J. CORTESE

transferred from 2009 through 2011?

MR. SKIDMORE: Objection.

A. No, I really don't know what that breakdown would be.

Q. Do you have a sense of whether it would be in the hundreds of millions?

A. I really don't know.

Q. Do you know whether it would be in the billions?

A. I don't think it would be in the billions because our MSR asset was never that big.

MS. MILLER: I think I am done, but if we can take a break, and I will just look through my stuff.

MR. SKIDMORE: Sure. Is anyone else asking questions? Yeah, take a break and then we'll come back.

THE VIDEOGRAPHER: The time is 4:10 p.m.; we are off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 4:16 p.m.; we are on the record.

MS. MILLER: I would like to

mark as Cortese Exhibit 18, a document Bates stamped RCJSNII00003347.

(Whereupon, Cortese Exhibit 18, RCJSNII00003347 was marked for identification as of this date by the Reporter.)

Q. Mr. Cortese, do you know what this document is?

A. Yeah, this appears to be a quarterly certification that I was required to provide to ResCap regarding the accounting for any intercompany transactions between Ally Bank and ResCap.

Q. Okay. So this intercompany certification document related only to what I recall Bullet 3 in certification being intercompanies between Ally Bank on the one hand and ResCap on -- Ally on the one hand and ResCap on the other?

MR. SKIDMORE: Objection.

A. Specific to me was between Ally Bank and ResCap.

Q. Okay. And we spoke earlier about the impact that the -- that the fair value

J. CORTESE

election had on certain income received from the bank or recorded by the bank under the MMLPSA Agreement, and my question is, do you know if the bank assumed any new transaction risks after 8-1-2009?

MR. SKIDMORE: Objection.

A. Can you define "new transaction risk"?

Q. Did the bank assume any risks related to the loans that it was purchasing -- that GMAC was purchasing that it didn't previously have?

MR. SKIDMORE: Objection.

Q. That it didn't have between January 1st, 2009, and July 31, 2009?

MR. SKIDMORE: Objection.

A. What I say is that the risk structure between Ally Bank and GMAC Mortgage remained the same. And the bank as the lender, the originator, the entity doing a substantial amount of the origination and closing was due to receive all of the net revenues less expenses related to the origination of that loan. There is no change

Plaintiff's Objection 216:10 – 217:04, Calls for speculation (FRE 602); calls for legal conclusion

related to any future credit risk or interest rate risk related to that loan once it was originated.

Q. Mr. Cortese, we took a number of breaks today. Did you at any time during those breaks have discussion with your counsel about the substance of your testimony here?

A. No, we did not.

Q. Did you discuss any documents that we spoke about today?

A. No, we did not.

MS. MILLER: That's all I have.

MR. SKIDMORE: Okay. I have a few questions.

EXAMINATION BY

MR. SKIDMORE:

Q. Can you pullout Exhibit 5 from your stack.

A. Okay.

Q. Exhibit 5 is an E-mail that you wrote to Jim Young on December 15th; is that right?

A. It is.

Q. You discussed Exhibit 5 with counsel for the JSNs earlier today in your deposition; is that right?

A. Yes, I did.

Q. In that discussion you referenced, on at least one occasion, that the substance of the E-mail that's Exhibit 5 is a preliminary statement; is that right?

A. That's correct.

Q. What did you mean by "a preliminary statement"?

A. What I meant by this being preliminary is that, again, this was a very quick response to a very complicated question. Very complicated transaction. So to the point where Jim Young, you know, again e-mailed me on December 14th, in the evening of December 14th, I responded to him in the afternoon of December 15th, to that effect I was trying to provide him acknowledgement that we were looking into it. That we came to some, you know, preliminary assessments and that more work needed to be done.

Q. So for how long had you been

looking at this issue at the time you sent this E-mail to Jim Young on December 15th?

A. Approximately, maybe six hours. Five, six hours.

Q. And when did you write or finish your ultimate memo giving your conclusions on this issue?

A. On March the 13th of 2011.

Q. Okay. So about three months later?

A. Correct.

Q. Did you do a substantial amount of work in those three months to reach your conclusion?

A. Yes, we did.

Q. The statements in Exhibit 5 regarding the -- where the sale execution revenue should go, are those statements correct?

A. No. Ultimately they proved to be incorrect.

Q. What was your ultimate conclusion on this issue regarding the revenue under the Broker Agreement?

A. Our final conclusion was that there was an accounting error that was made, that, for a transaction that took place between January the 1st of 2009 and July 31st of 2009 whereby the bank was inappropriately transferring its net origination revenue to GMAC Mortgage.

Q. Is that conclusion reflected in the final memo of March 2012?

A. Yes, it is.

Q. Let's look now at Exhibit 7.

A. Okay.

Q. Let's refer to page -- the Bates page ending '195, it is the last page of Exhibit 7. Counsel earlier referred your attention to the first sentence on the page that ends '195 of Exhibit 7.

Do you see that first sentence?

A. Yes.

Q. Counsel asked if you had ever seen documentation that may have suggested that the conclusion in this sentence, do you remember that?

A. Yes.

MS. MILLER: Objection.

Q. Counsel asked if you had ever seen documents that suggested that documentation exists which supports the project groups intent to record origination fee and expenses on the bank and have mortgage purchase the loan at this cost level.

MS. MILLER: Objection.

Q. Do you recall that line of questioning?

MS. MILLER: Objection.

A. Yes, I do.

Q. And those documents that you were referencing in that answer, were those documents conclusive in your view?

A. No, they were not clear in my view.

Q. Why not?

A. The project documents, as well as some of the internal e-mails that we reviewed, that was discussing, you know, fee recognition and allocation, were very unclear and in a lot of instances contradicted --

contradicted where that revenue should go. So, for example, one project -- the project dec suggested that the bank in its function as the lender for the loan would recognize all the origination fees, points, capital markets require price and so on, net of the broker fee. And then later in that document, it would say that those net fees would be borne by GMAC Mortgage.

So again, there were contradictory statements we found difficult to ascertain exactly what management and the project team intent was related to those -- related to that fee recognition.

Q. Let's look at Exhibit 8. Specifically on Exhibit 8, the Bates ending '456.

A. Okay.

Q. In the document Exhibit 8 that begins EXAM 15456, is this the presentation you were just the referring to in your answer?

A. Yes, it is.

Q. Okay. Can you point to me the

inconsistencies that you were just referring to?

MS. MILLER: Objection.

A. Yes.

Q. Okay. What page number should I be looking at?

A. If you look at EXAM page ending in '59.

Q. So the record is clear, you have directed us to a page that's EXAM 15459 entitled Summary, page 4 of the dec; is that right?

A. That is correct. Item number 3 says "GMACM will recognize broker fee. Third-party passthrough, secondary market sale, i.e., trade gain OMSR, in parenthesis."

It goes on to say that, in item number 4, "GMAC bank will recognize fee income, net carry, incur broker fee, and underwriting expenses." So, again, by -- that establishes on one level where the bank is supposed to recognize that the fee income, as well as the broker fee that it paid.

Q. Are there other inconsistencies

in the document?

A. There are.

Q. Okay. What other page should we look at?

A. If you look at the page, EXAM page ending in '60.

Q. So for the record, you directed us to EXAM '15460, which is entitled Base Assumptions and is slide 5 of the presentation; is that right?

A. That is right.

Q. Describe what you see or what the text means to you on page '15460 of Exhibit 8.

A. So in the middle of the page, there is a bullet point that says "GMAC B acting as the lender will remain P&L neutral from the broker transaction with the exception of the net interest carry." It then goes on to say, in the next point, that "FAS 91 will be booked on GMAC B at loan level to include deferrable fees and expenses. Will include the broker fee expense."

So, again, those are two very contracting -- contrasting statements as again, FAS -- the intention of FAS 91 is to defer net origination revenue and then upon sale to recognize that revenue, not to transfer it upon the sale.

Q. Let's look back at Exhibit 7 for one minute. Counsel had directed us previously to the last page of Exhibit 7, but I want to look at the first page of Exhibit 7, and specifically, I guess, right after the first three bullets on the first page of Exhibit 7, there is a note paragraph.

Do you see that?

A. I do.

Q. The second sentence reads, the second sentence of ALLY_'402192, Exhibit 7, reads "Therefore, it was intended for the bank to not just recognize net carry, but also fee income net of broker expense."

Did I read that correctly?

A. Yes, you did.

Q. What does that sentence that you wrote mean?

A. That was, again, in reviewing that -- the project dec, noting the components of what was written in the project dec suggesting that the bank should recognize the net origination fee revenue which are noted above in those three bullet points.

Q. Can you pull out Exhibit 9 for me.

Exhibit 9 is an E-mail with a document attached. I want to direct your attention to EXAM 12253507. Counsel asked you some questions about the first two paragraphs of this page that begin "prefair value election and postfair value election." Do you recall being asked about those provisions?

A. I do.

Q. The description here of prefair value election and post-value election, is that a description of what the bank was doing when you looked into this issue?

MS. MILLER: Objection.

A. Yes.

Q. Let me ask that again. What

are -- how would you characterize the descriptions of prefair value election and postfair value election on EXAM '12253507 of Exhibit 9?

A. So, again, by -- for the research that Cathy Dondzila and I did conducted, this was a summary of what the, you know, what the carry value components of the held-for-sale loans were and what ultimate revenue that the bank recognized in a prefair value election and postfair value election time period.

Q. Is this intended to be a description of what any contractual agreement called for?

MS. MILLER: Objection.

A. No, it is not. It's supposed to reflect exactly what was -- what -- exactly what the accounting was for those items during those time periods.

Q. Okay. So it was intended to reflect what accounting was done at that time period?

MS. MILLER: Objection.

A. Correct.

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MR. SKIDMORE: No further questions.

MS. MILLER: I have some more.

EXAMINATION BY

MS. MILLER:

Q. Mr. Cortese, looking at Exhibit 8, in particular the Power Point presentation that you were just asked some questions about, is this a document that you reviewed with counsel in preparation for today's deposition?

MR. SKIDMORE: Objection. Calls for privilege. Instruct not to answer.

MS. MILLER: I am allowed to ask whether he looked at a specific document. There is no privilege that covers it. The only arguable privilege is asking for your collection and selection of materials in their entirety as work product. Asking if he saw a particular document is not covered by privilege.

MR. SKIDMORE: The objection

stands.

MS. MILLER: You are wrong.

MR. SKIDMORE: Okay.

MS. MILLER: You are going to assert baseless privilege and stand on it?

MR. SKIDMORE: It's not baseless. I disagree. I appreciate that you have your opinion on what the law is. And I have my view on what the law is, and I disagree with you. So --

MS. MILLER: You are wrong and your objection makes clear that the answer to that is yes.

Q. Looking at the document page number EXAM '00015459. You indicated that Bullet 3 and Bullet 4 are contradictory. Can you explain that to me?

MR. SKIDMORE: Objection.

Go ahead.

A. What I was saying was that they are contradictory to other statements made in the dec, in this Power Point dec.

Q. So can you tell me specifically what document -- what other statement in this dec you believe Point 3 is contradictory to?

A. So Point 3 says "GMACM will recognize broker fee, third-party passthrough, secondary market trade gain, no MSR." It does not suggest that GMAC Mortgage would recognize any other origination fees that the bank would have collected or recognized. On page 15460, I'm sorry, hold on. Strike that.

On page '15461, as titled -- that says "GMAC Mortgage broker will recognize," it says in Subtopic B it states, "Refunded loans, fee income from the borrower for loan origination and processing services performed by third-party vendor, i.e., passthrough fees." In A it says "Lender-paid broker fee," sales, operations. So, again, I think it is inconsistent between what GMAC Mortgage and GMAC Bank were supposed to recognize.

Q. I am still trying to follow you. I am asking you for what provisions elsewhere in this dec contradict number 3 on the

summary page '15459?

MR. SKIDMORE: Objection. Asked and answered.

Q. Mr. Cortese, you weren't personally involved in the BCL2B project when it was happening, right?

A. That's right, I was not directly involved in that project.

Q. And you weren't involved in preparing or reviewing this Power Point presentation in 2008, were you?

A. That's correct.

Q. You don't recall having any discussions with anybody at the bank regarding the purpose and intention of the BCL2B project in 2008; is that right?

A. Not in 2008, that's correct.

(Continued on next page to include jurat.)

J. CORTESE

MS. MILLER: I have no further questions.

MR. SKIDMORE: Thank you very much.

THE VIDEOGRAPHER: This concludes today's deposition. The time is 4:39 p.m.; we are off the record.

(Whereupon, at 4:39 p.m., the Examination of this Witness was concluded.)

_____

JOE CORTESE

Subscribed and sworn to before me this _____ day of _____, 2013.

_____

NOTARY PUBLIC

E X H I B I T S


| EXHIBIT NUMBER | EXHIBIT DESCRIPTION | PAGE |
|---|---|---|
| Exhibit 1 | ALLY_041818 through '225 | 50 |
| Exhibit 2 | ALLY_0201210 through '1225 | 54 |
| Exhibit 3 | EXAM 10770041 through '52 | 87 |
| Exhibit 4 | EXAM 003975 through '3987 | 97 |
| Exhibit 5 | ALLY_03861743 through '4 | 113 |
| Exhibit 6 | EXAM 12253153 through '154 | 121 |
| Exhibit 7 | ALLY_0402192 through '195 | 133 |
| Exhibit 8 | EXAM 00015453 through '15484 | 135 |
| Exhibit 9 | EXAM 12253505 through '5308 | 136 |

| | | |
|---|---|---|
| Exhibit 10 | EXAM 1204290 through '913 | 140 |
| Exhibit 11 | EXAM 100988172 through '188 | 166 |
| Exhibit 12 | ALLY_0018237 through '244 | 171 |
| Exhibit 13 | ALLY_PEO_0877135 through '38 | 176 |
| Exhibit 14 | ALLY_00411610 through '627 | 194 |
| Exhibit 15 | RC00027822 through '828 | 195 |
| Exhibit 16 | ALLY_PEO_042123 through '42130 | 196 |
| Exhibit 17 | ALLY_00041799 through '807 | 207 |
| Exhibit 18 | RCJSNII00003347 | 215 |

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INFORMATION AND/OR DOCUMENTS REQUESTED

| INFORMATION AND/OR DOCUMENTS | PAGE |
|---|---|
| NONE | |

C E R T I F I C A T E

STATE OF NEW YORK )
: SS.:)
COUNTY OF NASSAU )

I, REBECCA SCHAUMLOFFEL, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of October, 2013.

_____

REBECCA SCHAUMLOFFEL

WITNESS ERRATA SHEET

Witness Name: Joe Cortese

Case Name: In Re: Residential Capital

Date Taken: October 30, 2013

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Witness Signature: _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
In re:
RESIDENTIAL CAPITAL, LLC., et al., Case No. 12-12020 (MG)

Debtors.
----------x

VIDEOTAPED
DEPOSITION OF LEWIS KRUGER
New York, New York
Wednesday, October 30, 2013

Yellow Highlighting = JSN Designations
Pink Highlighting = Plaintiff's Counter-Designations
Orange Highlighting = Joint Designations

Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
JOB NO. 67414

October 30, 2013
10:00 a.m.

Videotaped deposition of LEWIS KRUGER, held at the offices of Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York, pursuant to Notice, before Francis X. Frederick, a Certified Shorthand Reporter, Registered Merit Reporter and Notary Public of the States of New York and New Jersey.

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BY: TIMOTHY MARTIN, ESQ. (via telephone)

ALSO PRESENT:
ROBERT RINKEWICH, Videographer

PROCEEDINGS

THE VIDEOGRAPHER: This is the start of tape labeled number one of the videotaped deposition of Lewis Kruger in the matter of In Re. Residential Capital, et al. in the United State Bankruptcy Court for the Southern District of New York. This deposition is being held at 1290 Avenue of the Americas, New York, New York, on October 30th, 2013 at approximately 10:06 a.m.

My name is Robert Rinkewich from TSG Reporting, Incorporated and I am the legal video specialist. The court reporter its Francis Frederick in association with TSG Reporting.

Would counsel state their appearances for the record.

MR. COHEN: This is David Cohen, Milbank, Tweed, Hadley & McCloy, on behalf of the Ad Hoc Group of JSN Noteholders and UMB Bank as Notes Trustee with my colleague, Kate Janofsky.

MR. KERR: Charles Kerr of Morrison & Foerster on behalf of the

PROCEEDINGS

Debtors and the witness.

MR. LAWRENCE: Alex Lawrence of Morrison & Foerster on behalf of the Debtors and the witness.

MR. SILVERSCHOTZ: Mark Silverschotz, Reed Smith, for Wells Fargo as collateral agent.

MR. JURGENS: Jason Jurgens from Cadwalader, Wickersham & Taft, LLP, on behalf of MBIA.

MR. OPOLSKY: Jeremy Opolsky, Cleary, Gottlieb, Steen & Hamilton, for Wilmington Trust.

MR. KOTWICK: Mark Kotwick, Seward & Kissell, on behalf of US Bank as Trustee.

MR. LIPPS: Jeff Lipps, Carpenter, Lipps & Leland on behalf of the Debtors.

MS. GOLDSTEIN: Rachel Goldstein on behalf of Kirkland & Ellis on behalf of Ally Financial.

MR. ZIEGLER: David Ziegler, Morrison & Foerster, on behalf of the Debtors and the witness.

L. KRUGER

MR. MANNAL: Doug Mannal, Kramer Levin, on behalf of the Committee.

THE VIDEOGRAPHER: Do we have anybody on the phone?

MR. KERR: Yeah. The people on the phone, if you could just introduce yourself for the court reporter.

MR. WYNNE: Rick Wynne from Jones Day on behalf of FGIC.

MR. MARTIN: Tim Martin from Kelley Drye on behalf of the UMB Bank.

* * *

L E W I S K R U G E R, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. COHEN:

Q. Good morning, Mr. Kruger.

A. Good morning.

Q. I understand you've been deposed before.

A. I have been.

Q. How many times?

A. In this case twice.

Q. How many in your lifetime?

A. Probably half a dozen.

Q. All right. We'll go over the ground rules very quickly, which I'm sure will be very familiar to you. You understand that you're under oath?

A. Yes.

Q. That your testimony here is just as though you were giving it in court under penalty of perjury?

A. Yes.

Q. To keep a clean record here I'd like to make sure that we speak one at a time so I'd ask if you'd let me finish my question before you begin your answer and I'll do my best to extend you the same courtesy and let you finish your answer before I begin my next question.

A. Thank you.

Q. If any of my questions are unclear to you or you don't understand my question, let me know, I'll do my best to clear up any ambiguity. All right?

L. KRUGER

A. Yes.

Q. Okay. All of your answers need to be oral. A nod is not going to be recorded on the written transcript, okay?

A. Yes.

Q. If you need to consult with your attorney at any time let me know and we can take that up.

A. Okay.

Q. If you'd like to take a break at any time, let me know and I'll do my best to accommodate you, all right?

A. Thank you very much.

Q. What did you do to prepare for this deposition?

MR. KERR: Not to interrupt, but we just had two other folks show up so if we could get them on the record.

MR. COHEN: That's okay. This is an appropriate time to have people enter their appearances.

MR. RAINER: Randall Rainer, Wollmuth, Maher & Deutsch, for Syncora Guarantee. This is my colleague,

L. KRUGER

Fletcher Strong.

MR. KERR: Sorry. Sorry.

MR. COHEN: No problem.

BY MR. COHEN:

Q. So, Mr. Kruger, what did you do to prepare for to deposition?

A. Met with my counsel. Reviewed documents.

Q. When did you meet with your counsel?

A. Over the last few days.

Q. How many days?

A. Probably two or three days. Parts of those days.

Q. So how many hours in total would you say that you met with your counsel to prepare for this deposition?

A. Ten, 12 hours.

Q. Could you give me an estimate of the volume of documents you looked at in preparation for the deposition.

A. I'm not sure how I can do that. Hundreds of pages of documents.

Q. But was it 15 documents, a hundred

documents?

A. Oh, number of documents? I don't really recall as I sit here today but my guess is probably a half dozen or so.

Q. Do you recall what those documents were?

A. I do recall some of them. I do recall looking at the reorganization plan. Disclosure statement. Primarily those two.

Q. Any others come to mind?

A. I looked at the White & Case Complaint. The objection to confirmation I guess is the right words.

That's really all that comes to mind.

Q. When you say the objection to confirmation would that be the JSN's plan objection that was filed about a week ago?

A. Yes. That's what I had in mind.

Q. When you say you met with your counsel are you talking about the lawyers at Morrison & Foerster?

A. That's correct.

Q. Anyone else?

A. No.

Q. Did you meet with any of the Debtors' financial advisors?

A. I met with them over the course of this entire proceeding from time to time and so I don't know that I met with them specifically to prepare for this but I certainly met with them and talked with them regularly.

Q. Okay. Let me ask a more specific question. In preparing for your testimony today, did you schedule sessions to meet with the Debtors' financial advisors?

A. No, I did not.

Q. Did you meet with anybody at the company, any of the officers or management team?

A. I've had discussions with management team over the course of the months that I've been involved and had some discussion with them during the course of the last week. It's hard to really envision conversations that I had that don't have as their goal either confirmation of the Chapter

11 proceeding, which I assume is part and parcel of this deposition. So it's hard for me to distinguish between specific general depositions preparation and more generally the confirmation for the proceeding.

Q. Fair enough.

Did you with respect to the management team at ResCap schedule any meetings for the purpose of preparing for you deposition?

A. Specifically, no.

Q. All right.

Who is your current employer?

A. ResCap.

Q. And what is your title?

A. Chief Restructuring Officer.

Q. When did you become the Chief Restructuring Officer of ResCap?

A. I don't remember the exact date, but sometime in February of this year. And when I say that they are my employer, I'm also the Chief Restructuring Officer for all of the Debtors in these proceedings. My appointment was confirmed by the bankruptcy court I

believe on March 5th of 2013.

Q. How did you come to become the chief restructuring officer of all of the Debtors?

A. I was approached by people I knew at Morrison & Foerster. They had asked if I would be interested in taking on this role. I said I might be. I was then interviewed by the board of directors of the company and they concluded that they'd like to have me serve as chief structuring officer and I agree to do so.

Q. At the time you we met Morrison & Foerster and they approached you about becoming the chief restructuring officer, what did they describe to you as the scope of services that you would be expected to provide?

A. That I would be the chief restructuring officer of the company, participate in the mediation process that was ongoing, and assist them in trying the find a resolution of these contentious Chapter 11 proceedings.

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Q. Did they give any more detail on that?

A. I'm not sure what kind of detail you mean.

Q. What specific tasks other than participating in the mediation and trying to find a way to resolve these contentious proceedings?

A. Well, I have an engagement that sets forth all of my -- things that I'm expected to be doing and are doing and have done. So other than referring to that, I'm not sure that I could give you an offhand list. That would be the most appropriate place to look for the engagement.

Q. As you sit here right now is there any part of the engagement letter that you feel you did not do?

A. No.

Q. All right.

MR. COHEN: Let's mark as the first exhibit the Notice of Debtors' Motion Pursuant to Section 105(a) and 363(b) of the Bankruptcy Code for an

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Order Authorizing the Debtors to Appoint Lewis Kruger as Chief Restructuring Officer.

(Kruger Exhibit 1, Notice of Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for an Order Authorizing the Debtors to Appoint Lewis Kruger as Chief Restructuring Officer, marked for identification as of this date.)

BY MR. COHEN:

Q. Mr. Kruger, the reporter has handed you a document marked Kruger Exhibit 1. Would you take a moment to look at this document.

(Document review.)

A. Yes.

Q. Have you seen this document before?

A. Yes, I have.

Q. When was the first time you saw this document?

A. During the latter part of February of this year. Some of it I would guess during

the latter part of February of 2013.

Q. All right. Would you agree with me that this was the motion to formalize your appointment as the CRO of the Debtors?

A. Yes, I would.

MR. KERR: Objection. Go ahead you can answer.

A. Yes.

Q. Did you review this document before it was filed?

A. Yes.

Q. Was there anything in this document that you disagreed with that remained in the document when it was filed with the court?

A. Not that I recall sitting here today.

Q. Okay. Would you turn to page 2 of the document. And I'd like to focus you on paragraph 3 under the Preliminary Statement. Let me know when you're there.

MR. KERR: Page 2 of the exhibit or page 2 of the Motion?

MR. COHEN: Page 2 at the bottom.

At the top you could do page 6 of 9.

MR. KERR: Okay.

Q. It's paragraph 3.

A. Actually, just to correct the record, it's page 6 of 19.

Q. Sorry. I stand corrected.

Are you with me at paragraph 3?

A. Yes, I am.

Q. If you look towards the bottom of that paragraph, the fourth line up, the Motion states that, "As such, the CRO will lead the Debtors in plan mediation and assist in the formation of a Chapter 11 plan."

Do you see that statement?

A. Dyes.

Q. Do you understand that that was part of the scope of your responsibilities as CRO?

A. Yes.

Q. And did you do that?

A. Yes.

Q. The second task identified here is that you would assist in the resolution of the inter-estate claims.

Do you see that?

A. Yes.

Q. Did you understand that to be a scope of your responsibility as CRO?

A. Yes.

Q. Did you do that?

A. Yes.

Q. The third item was you were to work with creditors to resolve interdebtor and intercreditor disputes including the allocation of assets among the debtors.

Do you see that?

A. Yes.

Q. Did you do that?

A. Yes.

Q. All right.

Let's flip further back here. We'll use the numbering at the top. It's page 13 of 19. It's the same Exhibit 1. I'd like to direct your attention to Section C, Scope of Services.

A. Yes.

Q. The Motion states that the Debtors anticipate that the CRO will assist the

remaining members of the Debtors' management team with the following responsibilities. And among other things, it is participant in negotiations with AFI.

Did you do that?

A. Yes.

Q. The next bullet says you will provide advice regarding the allocation of any AFI settlement.

Did you do that?

A. Yes, I did.

Q. What advice did you provide regarding the allocation of any AFI settlements?

MR. KERR: And, Mr. Kruger, again, to the extent you're giving advice -- well, I just want you to be cautious to not disclose privileged communications. I think you can answer the question that Mr. Cohen has offered, but I just want you to be careful not to disclose privileged communications. And I want you to be cognizant of, and I know you are, that there is a confidentiality

order in place regarding the mediation.

So I want you to also not disclose anything that occurred during the mediation.

But subject to that you're free to respond to Mr. Cohen's questions.

A. When you asked about providing advice, to whom specifically are you asking?

Q. I'm asking for advice that you provided to the Debtors' management team regarding the allocation of the AFI settlement consistent with the Scope of Services in Kruger Exhibit 1.

A. I provided that to the management team.

Q. And what advice did you provide to the management team regarding the allocation of the AFI settlement?

A. After the conclusion of the plan support agreement and the supplemental term sheet, I reviewed with the management the allocation of the Debtors' assets, the Ally contribution.

Q. And what specific advice did you

provide to the Debtors' management regarding the allocation of the Debtors' assets and the Ally contribution?

A. I did that in the context of the mediation process. I'm not sure how to respond to that.

Q. One of your responsibilities was to advise the Debtors on allocating the Ally settlement, correct?

A. Yes.

Q. And you did so?

A. Yes.

Q. And it's your view that you can't discuss that because of a mediation confidentiality?

A. The allocation took place, as I understand it for myself, in the context of the mediation.

Q. What do you mean when you say as you understand it for yourself?

A. In the midst of mediation we discussed the allocation of the proceeds from the Debtor's estates, the proceeds from the Ally contribution if that's what you're

referring to. That was done as part of the mediation.

Q. Well, as you went into the mediation you must have had a view, separate and apart from the mediation, as to where the value from an Ally contribution would be driven, correct?

MR. KERR: Objection to form.

A. No. I did not.

Q. So when you went into the mediation you had no sense of potential claims against Ally?

A. I knew that there were prospective claims against Ally, yes.

Q. And did you have an understanding as to what those claims were?

A. Yes, I did.

Q. How did you have an understanding as too what those claims were?

A. Through discussions with my counsel, with Creditors Committee's counsel, with my financial advisors, Creditors Committee's financial advisors, and by conversation with virtually all of the members

of Creditors Committee with respect to how they proceed the claims that the estate might have against Ally.

Q. Okay. And when you had those conversations with those constituents, again separate and apart from your own counsel, so negotiations with Creditors Committee and their financial advisors, did they tell you which Debtors they believed held claims again Ally?

MR. KERR: Again, to the extent those conversations occurred during the mediation, Mr. Kruger, I think the confidentiality provision of the mediation apply. If there's discussions that you recall occurred outside the mediation, you're free to tell Mr. --

Q. And I believe my question is when you went into a mediation room, you must have had some understanding as to what the claims would be. So it is not in the mediation.

MR. KERR: Well, no. Mr. Cohen, we can go back and read your question. My direction to the witness is if you had

discussions -- your question -- and I'll go back and read it -- I think your question was "When you had those conversations with those constituents, again separate and apart from your own counsel, so negotiations with Creditors Committee and their financial advisors, did they tell you which Debtors they believed held claims against Ally?"

And my direction to the witness is if you had conversations outside the mediation context on that topic you can tell Mr. Cohen. If you had conversations within the mediation, however, that's subject to the confidentiality order.

MR. COHEN: Okay. So let's go back up to an earlier question and reset the stage.

BY MR. COHEN:

Q. The first question that I asked you is when you went into the mediation you had no sense of potential claims against Ally. And you said I knew there were prospective claims against Ally, yes. And the basis for

those claims were the conversations that we talked about, amongst others, with your counsel.

So my questions are limited to before you went into the mediation, what was your understanding of the prospective claims against Ally?

A. I need to correct that because it seemed to me when I was engaged in February, the mediation process was under way and all of the conversations I had with various members of the committee, various -- what are now called consenting claimants, counsel, financial advisors, all of that took place in the context of mediation.

Q. What work outside of the mediation context did you personally do to assess positions you were hearing within the mediation?

MR. KERR: Objection.

A. I don't think any. I think everything that I heard was in the context of the mediation.

Q. And so you listened to what you

heard in the mediation and outside of mediation you didn't do anything to independently verify the positions that were being taken?

A. When you say outside mediation I'm not quite sure what you mean.

Q. Well, if you go into the mediation and someone says X is the fact, do you go back to your office and determine whether, in fact, X is a fact or not?

A. It seemed to me that if I went back to my office and determined whether X was a fact under those circumstances that would be a part of mediation as I understand it.

Q. Okay. And you're going to follow an instruction not to testify as to that?

A. Correct.

Q. Did you work with creditors to resolve interdebtor and intercreditor disputes?

A. I certainly did.

Q. All right. And how were you able to resolve interdebtor and intercreditor disputes? What specifically did you do?

A. We had lots of presentations, lots of conversation. We had lots of documents. Participated in negotiating with the various interested parties.

Q. With respect to the interdebtor review specifically, what did you do to resolve those interdebtor disputes?

A. I looked at the relationships among the various Debtors. Considered those. Considered the relationship with the parent company, AFI.

Q. And when you looked at those relationships what were you looking for?

A. To better -- to understand the operations of the company and its relationships.

Q. What did you come to understand?

A. The operation of the company and its relationships.

Q. Okay. And what conclusion did you reach as a result of you looking at the relationships to understand their operations?

A. That I knew a lot more about the company and its operations when I was done

looking than I did when I arrived in February.

Q. And with respect to resolving interdebtor disputes now that you knew more than did you before, what conclusions did you draw?

A. I'm not sure I understand the question. You don't draw conclusions. You just -- in terms of resolving issues among the parties. I don't think they're conclusions. I think there are just results that I understood better of the relationships.

Q. One of your specific responsibilities, you've already agreed with me, was to work with the creditors to resolve intercreditor disputes.

A. Yes.

Q. What result did you achieve?

A. I achieved a result of the global settlement.

Q. And with respect to interdebtor disputes, how was that resolved?

A. That was encompassed within the global settlement agreement.

Q. And how was that resolved within

the context of the global settlement?

MR. KERR: Objection. Go ahead.

A. Through negotiation.

Q. And what was the result?

A. The global settlement and the plan of reorganization that's now on file.

Q. And how did that treat interdebtor disputes?

A. It treats the relationship between -- I'm not sure I understand the question but I'm assuming -- I shouldn't assume. It treats the relationship between ResCap and AFI.

Q. What do you mean when you say it treats the relationship between ResCap and AFI?

A. It settles the relationship between those parties.

Q. Is AFI a debtor?

A. No, it's not.

Q. I'm asking you about the interdebtor disputes.

A. Could you be more specific as to what you're asking precisely now?

Q. Well, when you understood that you were being appointed as the CRO and one of the things that you were required to do was work with creditors to resolve interdebtor disputes, what did you understand that to mean?

A. I understood that to mean was that creditors had claims against various of the Debtors. I needed to understand and analyze those claims, understand the relationship of those claims to the various Debtors.

Q. Okay. Are you familiar with the Ad Hoc Committee of JSN Noteholders?

A. Yes, I am.

Q. You're familiar with the term JSN noteholders more generally?

A. Yes.

Q. What is your understanding of the claims that the JSN noteholders have against the various Debtors?

A. Sitting here today I don't remember all their claims but I believe that they have securities with respect to perhaps some portion of the Debtors.

Q. What is your understanding of the security interest that the JSN noteholders have against some portion of the Debtors?

A. Sitting here today I'd have to look at the actual documents so I don't really recall how to answer that question.

Q. You don't know generally?

A. Generally I think they -- as I said, they had some claims against some of the Debtors.

Q. Okay. Do you know whether the JSN noteholders had claims against the intercompany claims by and amongst the various Debtors?

MR. KERR: Objection.

THE WITNESS: May I answer?

MR. KERR: You can answer.

A. I was aware that they asserted that claim.

Q. Did you do anything to confirm or deny that assertion?

A. Yes, I did.

Q. What did you do?

A. I reviewed those claims, the

account intercompany claims with my counsel, with the financial advisors, with other counsel and financial advisors involved in the proceeding. I settled those claims as part of the global settlement. And it was always my understanding that there was a serious question as to whether or not JSNs had claims on the intercompany claims, had liens on the intercompany claims. Because I believe those may be general intangibles and as I understood it, JSNs did not have liens on general intangibles.

Q. Let me make sure I understand what you're saying. You understood that the JSNs were asserting claims -- liens on the intercompany claims, correct?

A. Yes.

Q. So you investigated those claims. Did you come to a definitive determination that the JSNs did not have a lien on the intercompany claims?

A. That was my conclusion was I did not think they had liens on the intercompany claims.

Q. What is the basis of that conclusion?

A. Well, I think the -- well, I'll give you a fulsome answer.

The intercompany claims -- I think that's what they really are. I'm not sure that they are actually collectible and had value. But the intercompany claims are, as I understand the discussions with counsel and others, and forming my own opinion with respect to them, are general intangibles. My understanding is, and I think the court has confirmed, that the JSNs do not have liens on general intangibles.

I don't know how else to respond to that.

Q. Did you have any understanding in your capacity as CRO whether the JSNs asserted that they have a lien on claims against Ally?

A. Yes. They asserted that as well.

Q. Okay. Did you do any investigation as to the validity of that claim?

MR. KERR: Objection. What claim?

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The claim that they had liens?

MR. COHEN: The liens against Ally.

A. Liens again the proceeds of the Ally settlement? Is that the question you're asking me?

Q. Well, let's start with you understand that ResCap asserted that it had claims against Ally, correct?

A. Yes.

Q. And do you understand that the JSN group asserted that they had liens against those claims against Ally?

A. I've heard that assertion.

Q. Okay. What have you done to confirm or deny that assertion?

A. I reviewed that assertion with my counsel, with counsel for the other creditors in the group, looked at the relationship between the parties, looked at possible claims that might be asserted by the estate causes of action against Ally or AFI.

I came to the conclusion, based on those conversations and my own understanding,

that they did not have claims against proceeds of the Ally conclusion.

Q. How did you come to that conclusion?

A. I think I just described that.

Q. Well, what information led you to that conclusion?

A. Conversations with counsel looking at underlying security agreements. Looking at the flow of claims. And coming to my own conclusion that they were not Ally liens against the AFI proceeds.

Q. When you say looking at the flow of funds, what do you mean?

A. Well, the AFI contribution came into the Debtors' estates. And I believe the JSNs asserted a claim to those proceeds. I don't think it's a value claim.

Q. Why don't you believe it's a valid claim?

A. Because I don't think their lien attached to those proceeds.

Q. Why don't you think their lien attached to those proceeds?

A. My understanding of the lien documents and the transaction as I described was that there were no proceeds that their liens attached to in the lower funds from Ally into the rest of the assets.

Q. What specifically led you to that conclusion?

A. Conversations with counsel. My own conclusions. Review of documents.

Q. Okay. So let's talk about your own conclusions and review of documents. What were your own conclusions -- what in your own conclusions led you to the belief that the JSN liens did not apply to the Ally contribution?

A. It's just a conclusory statement on my part that they don't apply to those liens.

Q. Okay. Other than your conclusory statement based on your own analysis separate and apart from your counsel you have no other basis --

A. No, I don't think I --

Q. Let me finish my question, please.

MR. KERR: Lou, let him answer

finish his question and then you can answer it.

Q. Based on -- you said other than your own conclusory statement, based on your own view of it, you had nothing else?

MR. KERR: Objection.

A. I don't think that was the question that you asked me.

Q. Okay. Let's go back to the question I asked you.

My question was: "What were your own conclusions -- what in your own conclusions led you to believe that the JSN liens did not apply to the Ally contribution?

"ANSWER: It was just a conclusory statement on my part that they don't apply."

So other than your conclusory statement, what is the basis of your belief that the JSN liens don't apply to the Ally contribution?

MR. KERR: Objection. Asked and answered.

A. Conversations with my counsel,

with counsel for the parties. That's what led me to form my conclusion.

Q. Did you do any of your own work to come to that conclusion?

A. I thought that was my own work when I had those conversations with them.

Q. Okay. With respect to the Ally contribution, do you have an understanding as to whether that's in satisfaction of claims that ResCap may have against Ally?

A. That's not my understanding.

Q. What is your understanding is the basis of the Ally contribution?

A. I mean, I don't know what was in Ally's mind so it's hard for me to say what they were thinking, but my view, if you were to ask me that question, was I believe Ally wanted to arrange to have a clean slate going forward. So they wanted to make a contribution sufficient but not a penny more than necessary to bring what I would call peace in the valley with respect to these claims. And the ResCap estates and the ResCap creditors that was interested in this.

Q. Was part of obtaining peace in the valley getting ResCap to release its potential claims against Ally?

MR. KERR: Objection.

A. There are general releases provided for in the plan of reorganization.

Q. And those general releases would apply to the various claims that you considered that ResCap would have against Ally, right?

A. Yes.

Q. So it's not your testimony that there is no relationship between the Ally contribution and its desire to have peace in the valley and the release of the potential claims that ResCap has against Ally; is that right?

Plaintiff's Objection 42:13-43:2: Objection to form; misleading; confusing

MR. KERR: Objection to form.

A. I'm not sure what Ally's view, as I said, was, what they thought they were doing.

I think from ResCap's perspective, we were trying to have settlement of all the claims including those claims that we might

have against Ally.

Q. Okay. And so one of the currencies that you were able to negotiate with Ally was these potential claims that could be asserted against Ally, right?

A. That's not how the negotiations really went.

Q. So there was no discussion of the claims.

A. I had previously seen reviews of claims that might exist provided by the defense for Creditors Committee, by various of the other creditors, my Morrison & Foerster. I saw Ally's responses to those.

So I was informed as to what people thought claims might be and what claims -- and what Ally's view of those claims were.

Q. What did the Creditors Committee explain to you about potential claims against Ally?

MR. KERR: Again, if that -- you can answer Mr. Cohen's question as long as you don't disclose any discussions

that occurred during the mediation process.

A. That was all provided to me during the context of the mediation.

Q. Okay. Did you have any discussions with respect to potential claims against Ally that might sound in breach of contract?

MR. KERR: Objection. Same direction.

A. Those are all -- everything that I discussed or learned about with respect to Ally, claims against Ally, and Ally's defenses to those claims, all took place as part of the mediation process.

Q. All right. Let's talk about your motivation as CRO. You testified that you can't know what's in Ally's mind so you don't know why they put $2.1 billion on the table, right?

MR. KERR: Objection.

A. I don't know what their motivation was other than, as I said, I assume they wanted releases.

Q. And your motivation was to make that contribution as high as possible, right?

A. Correct.

Q. And so you were prepared to release as many claims as you could to get that pie as big as it could be, right?

A. No. I don't think that's how it worked. And this gets, you know -- I'm always uncomfortable because these are all close to mediation kind of questions.

I believe that Ally was interested in making the contribution for the general release, not just from the ResCap-related parties, but from third parties as well. They wanted a clean slate.

Q. How did you determine the sufficiency of the contribution relative to the value of the releases?

MR. KERR: Objection.

A. It was just a negotiation. I wanted more. They wouldn't pay more. The question was what they were prepared to pay be sufficient to get the vast majority of the creditors, including the JSN, a recovery that

worked for all parties. That seemed to be a number that did.

Q. So would you turn to again on Kruger Exhibit 1, the engagement letter, which is at the back of that document.

MR. KERR: Do you know what page it is? Page -- oh, it's the very last attachment.

MR. COHEN: Yeah, exactly. It's Exhibit 4 to the Motion.

A. Um-hum.

Q. I'd like to direct your attention to -- you can look at as much or as little of this as you want. This is your engagement letter that was approved by and incorporated into the court's order.

MR. KERR: Objection. This -- I think that this engagement letter was amended and that one was approved by the court order.

MR. COHEN: In connection with the March hearing?

MR. KERR: Um-hum.

MR. COHEN: Okay. I think for our

purposes that won't be relevant. But we'll see.

BY MR. COHEN:

Q. Did there come a time where you sought to have the scope of the services that are listed under paragraph 1(a), Duties, up to (b) changed?

A. No.

Q. So you never sought to be discharged of any of those responsibilities?

A. No.

Q. Okay.

MR. COHEN: Let's mark this as Kruger 2.

(Kruger Exhibit 2, Notice of Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for an Order Approving Amendment to Engagement Letter with Debtors' Chief Restructuring Officer, Lewis Kruger as Chief Restructuring Officer, marked for identification as of this date.)

BY MR. COHEN:

L. KRUGER

Q. Mr. Kruger, the reporter has handed you a document that has been marked Kruger Exhibit 2.

A. Yes.

Q. It's entitled Notice of Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code For an Order Approving an Amendment to the Engagement Letter With Debtors Chief Restructuring Officer, Lewis Kruger.

A. Yes.

Q. Have you seen this document before?

A. Yes, I have.

Q. What was the purpose of this document?

A. It was to arrange a possibility of my receiving a "success fee" subject to question and challenge at the conclusion of the proceedings based on an application for allowance at the time.

Q. And this motion was approved?

A. This was approved by the court I believe.

Q. Is this something that you reviewed before it was submitted to the court?

A. Yes, I had.

Q. And were there any changes that you suggested that were not accepted by the Debtors before it was filed?

A. Not that I recall sitting here.

Q. Do you recall seeing a red line of your engagement letter at the back of this motion? And it is actually the last two pages.

A. Sitting here today, I don't recall seeing it.

Q. Okay. So I'd like to focus your attention on the last page of the red line and Romanette vii.

A. Yes.

Q. You can see that the scope of your services there changes from the original engagement letter.

MR. KERR: Objection.

Q. Do you see that?

MR. KERR: Assumes facts not in evidence.

Answer if you want.

A. The words have changed, yes.

Q. Okay. Why was that change made?

A. Sitting here today, I don't know why.

Q. Okay. You know this document was filed with the court about a month ago?

A. Um-hum, yes.

Q. Did you negotiate these changes with anyone?

A. Did I negotiate them, no.

Q. Did anyone discuss them with you before they were presented to the court?

A. I think I read them at the time. But I don't recall a conversation about them.

Q. So you don't recall asking anybody a question as to why the scope of your services was being changed?

A. No.

Q. Okay. If you'd look at Romanette number ix, your engagement letter used to provide that the CRO shall provide advice regarding the allocation of any AFI settlement proceeds amongst the Debtors' creditors.

Do you see that?

A. Yes.

Q. Why was that stricken from your engagement letter?

MR. KERR: Objection. Objection -- if you know the answer you can answer.

A. I don't know.

Q. Did anybody discuss that they were taking that away from your scope of services with you?

MR. KERR: Objection.

A. No.

Q. When you read this did you ask anybody why that was no longer a part of your scope of services?

MR. KERR: Objection.

A. No. But I could answer the question if you want to know why it changed.

Q. Certainly.

A. Because the allocation was now present in the reorganization plan.

Q. So you believed your work on that was done.

A. I think the reorganization plan

stands for itself. Speaks for itself.

Q. Is there any possibility that that allocation may change?

A. Life is uncertain. It's always possible.

Q. And as we sit here today, that's no longer within the scope of your services, right?

A. I assume that the extent of my services were -- need to be doing something differently. If the situation arises that would not apply.

Q. Okay. Why were they modified to take it away?

MR. KERR: Objection. Assumes facts not in evidence.

Q. So it would be your expectation that if the issue of allocation came up again you would remain capable and competent of doing that, right?

A. Yes.

Q. And you could have done it in ways different than came out of the mediation, correct?

Plaintiff's Objection 52:18-53:4: Lack of personal knowledge/ speculative (FRE 602)

A. I guess I could have but why would I? That's what I thought was a great success and I would not want to change it.

Q. Okay. And have you read Judge Lyons' expert report in this case?

A. No.

Q. Has anyone discussed it with you?

A. I heard about it.

Q. What have you heard about it?

A. Judge Lyons apparently tries to build a bottom-up view of the Ally contribution by allocating sums of money or some amounts to claims or value to claims in order to utilize and get up to the 2.1 billion.

Q. All right. Is there a reason you have not read that report?

MR. KERR: Objection.

A. No. I just have a lot of stuff to read and I read as much as I can.

Q. Were you interested in his methodology?

A. Not particularly.

Q. Why not?

A. Because with all due respect I don't think that's how we negotiated the Ally contribution.

Q. Is that one of the ways the contribution would have been negotiated?

MR. KERR: Objection.

A. I'm not sure it could have been negotiated that way because I don't think as a practical matter, with all due deference to Judge Lyons, that one can value the individual claims in a meaningful way. I think the only way to negotiate this is to seek an overall settlement with Ally and then see if that settlement amount was sufficient to create sufficient combination of funds together with the estate's values to satisfy the needs of the creditors.

Q. Well, if that's your view, why did you agree in your original engagement letter that among the services you were going to provide was advice regarding the allocation of proceeds?

A. The allocation of proceeds -- just to be clear, when I say allocation of

Plaintiff's Objection 54:5-18: Lack of personal knowledge/ speculative (FRE 602)

proceeds, I'm thinking about the allocation of the $2.1 million -- $2.1 billion from Ally. I'm not thinking of building up from the bottom up a pyramid of various claims and trying to assign values to those claims in order to get to the 2.1. That never happened.

Q. From the Debtors' side how do they determine where that value would flow?

A. We determined it in several ways. First, we looked at the total sum which was coming from Ally, which was the 2.1. I recognized that Ally was not going to be more than that for us.

We then looked at the values available and respective distributions from the various Debtors' estates.

We then looked at the claims from the various Debtors' estates.

We then looked at the expectations of the consenting claimants as to what they might receive ultimately from the proceedings.

And then we allocated the proceeds together with the Debtors' estates to try to meet those requirements.

Q. Was there any effort made to determine which of those estates may have presented -- may have possessed claims that were being released in the Ally settlement?

A. All of the Debtors' were released under the --

Q. I understand that. But you also understand that there were a wide of variety of claims that could have been asserted against Ally, correct?

A. There were some from the estate causes of action as distinguished from the causes of action perhaps individual creditors might have.

Q. Correct. I'm talking about individual estate causes of action, that there were a variety of estate causes of action that could have been asserted; is that right?

A. There were some, yes.

Q. Right. You read Judge Gonzalez's examiner's report?

A. I read it once.

Q. It was a long read I'm sure.

A. It was a very long read.

Q. But he identified very specific claims that he thought may or may not be asserted or may or may not be successful, correct?

MR. KERR: Objection.

A. Correct.

Q. And he identified specific debtors who may have causes of action based on certain contracts between certain debtors, correct?

MR. KERR: Objection.

A. He did do that. I don't necessarily agree with him, but he did do that.

Q. What specifically -- where specifically do you not agree with him?

A. Well, the tax allocation one is a good example of that. My view of that -- and I was aware of it before we entered into the plan support agreement and the supplemental term sheet. My view of that was that there was an executed tax allocation agreement between ResCap and AFI. And that this argument was that somehow or other that ought to be set aside and that an unexecuted

Plaintiff's Objection 57:2-14: Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

agreement should now become the agreement. I thought that was probably a non-starter, quite frankly. And that coupled with the fact that from the JSN's perspective I assume that setting aside the executed agreement, the second one, if you will, with an avoidance action, the JSNs did not have liens on the avoidance action.

So, as I say, with all due respect to Judge Gonzalez, I disagree with his conclusion.

Q. Did you attempt to put any value on the fact that you had the former Chief Bankruptcy Judge with the Southern District of New York having a view that there may be some merit to that claim?

A. No.

Q. Okay. So you valued that claim at zero?

A. No, I didn't say I valued it at zero. I just thought it was a non-starter. I took into consider -- when I participated in seeking the global settlement, I had a lot of information provided me by lots of different

Plaintiff's Objection 58:13 - 17 Irrelevant (FRE 401, 402)

parties, and lots of different reasons. Their strengths and weaknesses of their own positions, et cetera.

And I also was aware the tax allocation was another thing that I thought about and was part of my thinking. But I didn't look at it and say, Oh, I ought to ascribe $25 worth of value to that. That just wasn't how it happened.

Q. Okay. Were there other specific claims that Judge Gonzalez identified that specific Debtors may hold that you thought he got it right?

A. Well, you know, 2,000 pages, I'm sure there's some in there that if I went back and read again I would find that he got some right.

Q. Okay.

A. The ones that come to -- not that came up that he got right. I got another one that I think he got wrong.

Q. Okay. Let's hear which other ones one did he get wrong?

A. I think he got wrong the

bank-to-broker claim. There was an issue of revenue recognition in the AFI and ResCap family of companies. And I think it was just done wrong for accounting purposes. And when they realized they had done it wrong, they reversed it.

So I was aware of that. And I thought people -- you know, people make errors. When they catch their errors they reverse their errors. I didn't believe that they rise to the kind of claim that Judge Gonzalez thought it might.

Q. What analysis did you do to come to that conclusion?

A. I read Judge Gonzalez's report. But, as I said, I had already been aware of this issue, so to speak, previous to the plan support agreement and the supplemental term sheet. And I thought about it, I took it into consideration as I did everything else, and came to the conclusion that it was not -- in my mind I thought that it was not an important issue because I believed that the -- as I said, it was an error, the error was found,

corrected, and I thought that was the end of it.

Q. So other than taking it into consideration and thinking about it, did you do anything else to --

A. Well, I --

Q. Let me finish.

-- to determine if Judge Gonzalez got it right or wrong?

MR. KERR: Lou, Lou, let him finish his question. Then you can answer.

A. Okay.

I have some comments about that. The first, of course, is that the -- Judge Gonzalez's report came out after the plan support agreement and the supplemental term sheet. That's first.

Second, in all of these discussions I discussed all of these items including the bank-to-broker claim, the tax allocations agreement, with my counsel, with other counsel for the parties in the case, financial advisors and the like. That's when

I formed my opinion and formed my judgment.

Q. Okay. So in terms of timing, you made the deal on the global settlement and then you got the Gonzalez report, right?

A. Correct.

Q. Okay. But did you take the time to read the Gonzalez report?

A. Yes, I did.

Q. And when you read the Gonzalez report was there anything that made you rethink whether you should have done things differently in structuring the global settlement for the plan support agreement?

A. Not at all.

Q. Why not?

A. Because I thought that the global settlement was an extraordinary achievement. I thought that when I arrived originally the creditors were at each other's throats, there were intercreditor issues, interdebtor issues, fights with Ally. All of that was going on. And I was able, together with Judge Peck's invaluable assistance, the Creditor Committee's assistance, various counsel's

assistance, create a situation where there was a global settlement that resolved all of the issues among the parties provided for an allocation that they were all, I'm sure not happy with since no one is getting paid in full, but at least comfortable enough with their own recoveries and the recoveries of others, that they were all willing to participate in the global settlement.

And in the process of that we also thought about the JSNs. And even though I personally believe that their secured position was probably some number like 1.7 or $1.8 billion, they nonetheless agreed to pay the JSNs in full on the effective date their allowed claim plus pre-petition interest.

So I thought they were also being well treated during this process.

Q. What was the basis for your view that the JSN position was 1.7 or $1.8 billion?

A. Lots of conversation with counsel, financial advisors, both my own and Morrison & Foerster. Centerview. Also the Creditors Committee and their counsel, their advisors.

And then some of the advisors for individual creditors as well.

Q. To what extent in coming up with that conclusion did you undertake to understand the value of the intercompany claims?

A. I looked at the intercompany claims and asked that I be made familiar with them and FTI -- excuse me -- and the company's financial people, I'm not quite sure who, but the company's financial people, looked at intercompany balances.

And, as I understood more and more about them over the passage of time, I realized that the intercompany balances were present for accounting reasons and did not in my mind represent collectible, enforceable debt, that there was a history -- enormous history of debt forgiveness, some $16 billion of debt having been forgiven in the period 2007 to 2012; that these intercompany balances, most of them did not have interest rates associated with them, interest paid by them, maturity dates, some little bits of

documentation for some of them, but most of them not.

So I thought that when I settled those intercompany claims at zero for the purposes of the global settlement that was the reasonable and responsible thing to do.

Q. And you did that on a wholesale basis, correct?

A. Yes.

Q. You did not look at particular intercompany transactions where, for example, there was loan documentation. That didn't matter to you?

MR. KERR: Objection.

A. I did look at those. But the reality of it is for myself that I thought that if we went down the road of trying to go back and look at a specific intercompany balance to see what its history was, where it came from, I would then find myself in the position of having to reverse -- or at least creditors would ask to have reversed the $16 billion in forgiveness, put all of that back into the pot. And I don't think it's

possible to isolate one intercompany claim and say, Oh, we're going to focus on this one.

I assume once you start down that the road, you then need to do the work to focus on all of them. That work seemed to me -- I don't want to call it a fool's errand, but it would take years and enormous effort to do. And I thought that doing that would also interfere with the completion of the global settlement and the confirmation of the plan.

Q. In what way would it interfere with the completion of the global settlement and the confirmation of the plan?

A. Well, the global settlement in my mind -- I describe it two different ways. I describe it as a mosaic where if you take out one piece of it the mosaic no longer fits.

Or, alternatively, I think of it as a Roman arch full of stones. And if you pull out one stone the arch collapses.

I don't think you can start down the road of dealing with one issue without jeopardizing the entire settlement. So I would assume that if I was now to look at a

specific intercompany claim and try to find out what its value is, I assume I should be looking at all the intercompany claims. That's a couple years' process at the very least. Expensive. And I'm not sure could ever really be resolved because you need to go back and try to find people who are involved in the decisions as to what they -- what they recorded, why they recorded it, and what was done.

It seemed to me that all of that would defeat the prospect of having a global settlement now and the Ally contribution and everything would fall apart.

Q. Do you know whether prior to your appointment as CRO the lawyers at Morrison & Foerster and FTI actually did a lot of work on determining the validity of the intercompany claims?

Plaintiff's Objection 67:16-68:8: Lack of personal knowledge (FRE 602)

MR. KERR: Objection.

A. I don't know.

I should correct myself. I actually do know that.

Q. Okay.

A. They did an investigation, yes.

Q. They did a substantial investigation of that.

A. Right.

MR. KERR: Objection.

A. They did an investigation. How substantial, I don't know.

MR. COHEN: Let's mark this as number 3.

(Kruger Exhibit 3, e-mail dated Monday, 9/17/2012 with attachment bearing production numbers UCC12846 through UCC12852, marked for identification as of this date.)

BY MR. COHEN:

Q. Mr. Kruger, did they brief you on that investigation?

A. Well, when I arrived on the scene, one of the things wanted to know about was the intercompany claims and I started to get into the lead, so to speak, and to really understand the issues that were -- confronted the parties. And so I asked Morrison & Foerster and FTI to review for me and to --

and I asked FTI specifically to review the intercompany claims and inform me as to what they found in their investigation.

So I heard about this. But it was part of bigger effort, if you will, on my own part understanding the claims.

Q. All right. And what did FTI tell you about their investigation into the intercompany claims?

MR. KERR: And you can answer that question but be careful again that you do not disclose any confidential -- privileged communications you had with counsel.

A. They reviewed with some of the management of the Debtor, I don't know who specifically but people in the finance area of the Debtor's intercompany claims to determine that the source of those claims, understanding of how those claims were recorded, the process of forgiving those claims, as I said, which was the major part of what took place, those claims are forgiven on a regular basis, in billion dollar amounts regularly, and they

Plaintiff's Objection 69:8-71:4: Inadmissible hearsay (FRE 802)

looked at all of that and reported to me.

Q. What did they report to you on the process of forgiving those claims?

A. As part of overall picture of the claims what they reported to me was that the claims are often forgiven in order to meet net worth requirements of individual debtors, individual debtor companies during the course of their business operations. And that the claims were very difficult to find a history for and very difficult to think about reapplying the previously forgiven claims.

Q. Did they tell you that was true with respect to all of the intercompany claims or just some of them?

A. I don't think we ever -- I don't think I myself ever looked at the individual specific claims in the sense that I looked at all 20,000 or 30,000 or however tens of thousands there are of those claims. I can say that I was given more detailed information with respect to some of the claims.

Q. Okay. And with respect to some of the companies did they tell you that the

intercompany claims had the indicia of debt and not equity?

A. No.

Q. They never told you that with respect to one intercompany claim.

A. My own view of those claims, as I said, is that I don't believe any of them are debt. I believe that they're all claims -- I think of debt as being represented in some fashion by maturity dates, interest rates, documentation. And when you look at the individual claims, as I said, you'd need to go back and put back into the hopper all of the forgiveness over the last several years and then that would lead -- maybe more of an answer than you wanted -- but would lead to falling apart of the global settlement and would lead to litigate everybody with everybody about everything. Not just about any one specific claim. I don't think you can look at a claim in isolation. I think you need to look at all of them.

Q. And you practiced law prior to becoming CRO for 40-plus years?

A. Yes.

Q. In your practice you've represented debtors?

A. Yes.

Q. You've represented debtors with centralized cash management systems?

A. Yes.

Q. And you've represented debtors with intercompany claims?

A. I think they must have had intercompany claims. But sitting here today I don't recall what they were.

Q. Okay. So you can't recall any case that you've ever worked on where there were intercompany claims?

A. I didn't say that. I think that the cases that I worked on there probably were cash management systems and intercompany relationships.

Q. Okay. In your experience, your 40-plus years experience that led you to be selected and appointed as CRO, what is your view as to where courts typically come down on centralized cash management systems as debt

versus equity?

MR. KERR: Objection.

A. Don't know.

Q. You don't know?

Did anybody give you any information that reflected Morrison & Foerster's view on that?

MR. KERR: Objection. Again, you can answer that question yes or no but I don't want you to be revealing any privileged communication.

A. Well, I had conversation with counsel about that, as I said.

Q. Okay. So I'd like you to take a look at this entire document and let me explain to you the way I understand it to work.

On the last page is a chart of the top ten intercompany claims. At Bates number UCC 12848 there is an analysis that's titled MoFo Draft, Privileged and Confidential For Settlement Discussions Purposes Only, that give their analysis of these intercompany claims.

L. KRUGER

I'd like you to review this document, please.

(Document review.)

A. Well, I've read it through briefly, yes.

Q. Okay. So do you understand -- the way I think the document works, on the last page it lists out the intercompany and then the numbers tie to the analysis?

MR. KERR: Objection.

A. I see what -- yes, I think I do.

Q. Okay. So let's look at, for example, on the last page, item number 2, where ResCap is the time borrowing entity, Residential Funding Company is the lending entity. And then you have the amounts which are, you know, 1.8 billion.

Do you see those?

And then you go to Bates number UCC 12848.

A. Um-hum.

Q. Which is the MoFo draft. And you see under Debt MoFo's comments on that particular $1.8 billion intercompany claim.

L. KRUGER

A. Right.

Q. And MoFo notes that cash is continuingly being swept upstream for centralized treasury management.

In your experience that's a common practice, right?

MR. KERR: Objection.

A. I think it is.

Q. Okay. And, MoFo notes, that as RFC generates cash that cash gets swept upstream to ResCap. Also fairly typical in a centralized cash management system, correct?

A. I assume if -- I don't know the answer to that really.

Q. Okay.

A. I'm not an accountant.

Q. Okay. And then MoFo notes that the cases note that the intercompany claims arising from the operation of the cash management system are enforceable as debt.

In your 40-years plus experience as a restructuring lawyer, do you agree with that statement?

A. I'm not sure whether or not

they're right in saying that -- I did not think of this as debt so it's hard for me to really respond to that. I didn't think these were enforceable debts.

Q. Okay. And you'll see the next sentence MoFo notes that claims were identified as receivables and payables on interco books. Sufficient formality for an intercompany loan.

Do you see that?

A. Yes, I do.

Q. Do you share that conclusion?

A. No, I don't.

Q. Why?

A. Because it seems to me that formality is not really the issue.

As I look at it, and I looked at it, remember, from a point of view of a settlement of these proceedings, my sense of these claims were that they were on the books and records as intercompany balances, put there because Ally's and AFI's accounting system require them to do so, that they were treated differently by the various

subsidiaries of the companies, that they all uniformly go at it the same way. And the fact that they were intercompany balances to my mind did not necessarily mean that these were collectible and enforceable obligations of the entities, particularly with the kind of history that is present here where there has been massive forgiveness of debt.

It's just hard for me to think this is really debt in some real sense of the word. I think it's basically an accounting issue more than it is an enforceable collectible sum of money.

Q. Okay. With respect to item number 2, which is this $1.8 billion intercompany claim, what did you do to determine whether there was any instrument evidencing the indebtedeness?

MR. KERR: What did he do personally?

MR. COHEN: In his capacity as CRO, yeah.

MR. KERR: Okay.

A. I discussed these claims with my

counsel, with my financial advisors, with FTI. Beyond that, nothing.

Q. Okay. Now, let me set the context for this. You understand that my clients assert that they have a lien on this $1.8 billion intercompany claim and you have determined that it gets wiped out because it's not really debt, right?

MR. KERR: Objection.

A. Oh, I determined that in the context of the global settlement that it was reasonable for me to treat the intercompany claims as -- with no significance because to treat them otherwise would mean that I have to go through the process of trying to understand and deal with each of the intercompany debts, reverse the debt forgiveness over the last several years, leading to the fact that there would not be a global settlement, there would not be an Ally contribution, and I would undue everything that I had worked so hard to accomplish.

Q. But if my clients have a lien on that intercompany claim, how do you have the

power to extinguish that collateral?

A. Well, first of all, I don't believe that your clients -- and I don't accept the premise. I don't believe your clients have a lien on the intercompany claim, because I believe that those are general intangibles and your clients don't have liens on general intangibles.

Q. Okay. If they do -- and you understand that's a disputed issue. The Debtors have one view on it and the JSNs have a different view on it.

A. I understand that that may be true.

Q. Okay. But you don't propose extinguishing that collateral, the intercompany --

MR. KERR: Objection. Go ahead.

A. For the purposes of the global settlement, yes.

Q. Okay. If my clients actually have a security interest and a lien on that intercompany, how can you extinguish it for purposes of the global settlement?

MR. KERR: Objection.

A. I think it's no different than dealing with any other group of creditor claims. I've gotten your clients -- as I understand what I've done, I'm paying them in full for their pre-petition -- allowed claim and their pre-petition interest. I'm not sure they have any more entitlement than that. If they want to show that they're oversecured somehow, they're free to do so. If the judge concludes that they are they'll get paid post-petition interest.

Q. And this would be one of the ways to establish, this lien, that they could the establish that they were oversecured, correct?

A. It might be.

Q. Correct. In determining that you were going to just eliminate all of the intercompany claims, you understand that there are legal tests that you go through when you recharacterize debt as equity? Do you understand that based on your 40 years of practice?

A. Yes.

Q. Exactly. And so there are certain things that courts look at and you have to satisfy those tests before you can do that, correct?

A. Right. But I'm not assuming that this is debt so I start perhaps from a different premise.

Q. Well --

A. These do -- in my mind, these are intercompany balances on the books and records of the company. I don't believe that they, in the main, are debt. And I think that it was reasonable, appropriate and responsible for me to treat them for global settlement purposes as being a bad debt.

Q. Who in your accounting department of your company did you talk to when you determined that this wasn't debt?

A. Lots of people at FTI and Morrison & Foerster.

Q. I'm talking about the employees at the company. Not the paid consultants. The people who actually work at the company and booked these entries. Who did you talk to

when you came to that conclusion?

A. I spoke to many people at the company. I'm not sure who specifically as I sit here today, but I guess I spoke to Barbara Westman, Tammy Hamzehpour, Jill Horner.

Q. Ms. Dondzilla?

A. I don't know that I ever spoke with her.

Q. Did you review their deposition testimony? Those three women have been deposed.

A. No, I did not.

Q. Would it surprise you to know that they testified under oath that they thought it was debt?

MR. KERR: Objection. Misstates the evidence. That's just -- come on, David.

A. Whatever they called it, I believe, as I said, that this is not debt. For my purposes and for the purposes of the global settlement this was not debt as I understood it.

Q. Why do you qualify it by saying

Plaintiff's Objection 82:14-16: Objection to form; misleading; confusing; unduly prejudicial

for purposes of the global settlement? I mean it's either debt or equity.

MR. KERR: Objection.

A. I think of it as intercompany balances, most of which did not have -- I repeat -- I'll say it again. Most of these obligations or intercompany balances, I guess is the right word, intercompany balances, lack maturity dates, interest rates, interest, documentation, and they're tens of thousands of them.

To try to isolate one or two of them and say, Aha, gottcha because this one looks like it may have some of those characteristics is to me, when I think about it, an invitation and an obligation to look at all of them to see whether or not they all stand the test of time. All -- God knows how many of them -- 20,000, some number like that I'm told of intercompany balances on the books of the various companies. I assume that doing that would destroy the prospect of a global settlement because nobody would stand still long enough to allow that to happen. And

there would be no -- as I said, there would be no Ally contribution, no global settlement. And I think that the global settlement is in the best interest of all the creditors, all of the estates, and quite frankly the JSNs.

Q. Did it ever occur to you to apply a materiality threshold to the intercompany claims?

A. No.

Q. Why not?

A. Some are bigger than others. Some of the forgivenesses are bigger than others. I didn't apply materiality in either direction. I just looked at them and thought to myself after discussion that these were not really debt. I didn't think that they were effectively collectible.

Q. How much time did you spend on that analysis?

A. Many, many hours.

Q. Can you give me an estimate?

A. No.

Q. Can you give me a ballpark?

A. No.

Q. So you don't know whether it was 20 or a hundred?

A. No. I'm not -- there's no way that I can give you that kind of an estimate. I engaged full time in the endeavor of dealing with these companies and dealing with the reorganization plan, dealing with the creditors and various constituencies, and primarily in recent months dealing with the JSNs. I've spent a lot of time on the issue of intercompany payments. Whether that was 20 hours or 200 hours, I don't know. But it's a lot of hours.

Q. Well, if it was your view -- did I understand your testimony that you spent a lot of time on the intercompany claims in connection with the JSNs?

A. Sure.

Q. If it's your view that the JSNs don't have a lien on the intercompany claims why were you worried about them at all in connection with the intercompany claims?

MR. KERR: Objection.

A. Because the JSNs assert claims and

liens and I wanted to understand the nature of their claims and go back to why I thought they were not appropriate in the first instance, which is that I don't believe they have liens on the intercompany claims.

Q. But there are two separate issues there. One is whether they have a lien and the second is whether there is value on the intercompany claims. If you believe the answer to the first question is no, the JSNs don't have a lien, then why do you care about the second question?

MR. KERR: Objection.

A. I'm not sure that I do.

Q. Then why have you spent significant amount of time on it?

MR. KERR: Objection.

A. Because I'm sitting here today being deposed about it. I'm also going to be a witness at confirmation so I want to understand every aspect of everything that's going to take place in the confirmation hearing and at this deposition to be able to answer questions like yours.

L. KRUGER

Q. Do you understand that the financial advisors and the legal advisors for purposes of their analysis of intercompany claims have focused on the largest of the intercompany claims?

MR. KERR: Objection.

A. I assume they did that because I'm looking at the document that you handed me.

Q. Okay. Why didn't you follow that path as well?

A. I read these. I looked at and was aware of the largest of the intercompany claims. But it didn't change my view which for the purposes of the global settlement, as I've said, if I was going to isolate one or two of these and say, Ah, these look -- on some great continuum from zero to a hundred, these look like they're 5s instead of zeros, I thought I would have to go back and look at -- because creditors would all insist upon it, they would all say, Well, what about me under those circumstances, why can't I have blah, blah, blah, I assume I would be going back and looking at all of the claims to understand the

origin of the claims, the impact of the forgiveness of the indebtedeness on those claims and go back and look at all of them.

That would defeat, as I said, my purpose which, as I said, my purpose was finding a global settlement that was acceptable, if not embraced, but acceptable, to the vast majority of the creditors. And I take a lot of comfort from the fact that some 6,800 claims filed with the exception of the JSNs, and perhaps my friends at Syncora, there really are no major objections to this claim. It's been approved and endorsed by huge numbers of consenting claimants. I must have done something right.

Q. So putting aside the issue of the validity or not of the JSNs' assertion of a lien on the intercompany claims, assume some other creditor had a lien on the intercompany claims, an uncontested lien, is it your view that the greater good of the global settlement justifies the treatment proposed in the plan of key elimination of the intercompany claims?

MR. KERR: Objection.

L. KRUGER

A. I'm not sure I understand your question.

Is the question could they enforce a lien if they had a lien? Or value the lien if they had a lien? I would assume that that would be the argument the JSNs make to the court.

Q. And I understand your view that the JSNs don't have a lien and therefore this treatment is appropriate.

MR. KERR: Objection. Misstates his testimony.

Q. Is that your view?

A. No. My view is whether they have a lien or not, global settlement and the resolution providing no value and no consideration of the intercompany claims is appropriate both to the fact that it enables us to go forward and have the global settlement and also because the global settlement enables us to pay the JSNs in full their allowed claim plus pre-petition interest.

Q. And if the JSNs have a lien that

would entitle them to the payment of post-petition interest, would they get that under your plan?

A. God bless them. Yes, they would.

MR. COHEN: Want to take a break?

MR. KERR: Sure. Sure, sure, sure.

THE VIDEOGRAPHER: The time is 11:26 a.m. This is the end of tape number one. We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:41 a.m. This is the start of tape number two. We are on the record.

BY MR. COHEN:

Q. Mr. Kruger, I'm going to hand you a document that has previously been marked as Westman Exhibit 1. Would you take a moment to look at this document.

(Document review.)

MR. COHEN: For the record, it's titled the Ad Hoc Group of Junior Secured Noteholders Notice of Rule 30(B)(6) Deposition.

L. KRUGER

(Document review continuing.)

A. I've read it through briefly.

Q. Have you seen Westman Exhibit 1 before?

A. No.

Q. Do you understand that you've been designated to testify as a 30(b)(6) witness on certain topics in this deposition today?

A. Yes.

Q. When did you find out you were going to be giving 30(b)(6) testimony in this deposition?

A. In the past couple of weeks.

Q. Other than the preparation that we talked about this morning earlier about getting ready for the deposition, did you do anything in particular to testify as to the topics as to which you've been designated?

A. I looked at those topics and made sure that I could respond to most questions with respect to them.

Q. Okay. So let's go through and make sure we're in agreement on the topics.

If you turn to page 8 of this

document where the deposition topics begin, I'll just run these through, can you testify truthfully and completely to item 2, Romanette (vii), the decision to waive, settle, cancel or discharge the intercompany claims?

A. No.

Q. In your view who is the best person at the company who would be able to testify as to the decision to waive, settle, cancel or discharge the intercompany claims?

A. Well, I have waived the intercompany claims for global settlement purposes so I'm not sure what other approvals, policies, procedures -- I'm not sure what all of those words mean.

MR. KERR: I think there's some confusion with the witness. Lou, if I may, what he's focused on is not the entire part of 2, but just the very last Romanette (vii).

MR. COHEN: That's correct.

THE WITNESS: Oh, I'm sorry.

MR. KERR: That's all right. So that's a mistake.

L. KRUGER

A. On me. I'm sorry.

Q. All right. So --

A. I'm that person.

Q. Okay. We'll clean up the record.

Can you testify truthfully and completely as to the company's decision to waive, settle, cancel or discharge the intercompany claims?

A. For purposes of the global settlement, yes.

Q. Would you look at item 5. Can you testify truthfully and completely as to all matters relating to analysis concerning and decision to enter into the RMBS trust claim settlement?

A. Yes.

Q. Item number 6, can you testify truthfully and completely to all matters relating to the analysis concerning and decision to enter into the MBIA settlement?

A. Yes.

Q. Item number 7, can you testify truthfully and completely as to all matters relating to analysis concerning and decision

to enter into the FGIC settlement?

A. Yes.

Q. Item number 8 on the next page.

Can you testify truthfully and completely to all matters relating to the consideration of whether the RMBS trust claim settlement, MBIA settlement, and or FGIC settlement, should be subordinated pursuant to Section 510(b) of the Bankruptcy Code?

A. Yes.

Q. Can you testify truthfully and completely as to all matters relating to the analysis concerning and the decision to enter into the settlement of the allowed claims of the private security claimants?

A. Yes.

Q. Item number 10, can you testify truthfully and completely as to all matters relating to the Debtors' determination to agree to the third party releases in connection with the plan?

A. Yes.

Q. Item number 11, can you testify truthfully and completely as to all matters

relating to the analysis concerning and the decision to agree to the Ally contribution?

A. Yes.

Q. And item number 12, can you testify truthfully and completely as to all matters relating to the allocation of the Ally contribution on a claim-by-claim basis and the allocation of the Ally contribution set forth on page 41 of the revised disclosure statement?

A. Yes. So long as the little (i) the circle, the allocation of the Ally contribution on a claim-by-claim basis is not meant to say that I somehow looked at each individual claim against Ally, gave it a value, and then that's how I got to the 2.1 billion. Because that's not the right answer. I did not do that. I could certainly testify about it, but the way this is written I don't think is correct.

Q. And what is incorrect about paragraph 12, Romanette (i)?

A. I don't think the Ally contribution is being allocated on a

claim-by-claim basis.

Q. Okay. So the corporate view is that wasn't done and you're the best witness to explain that that wasn't done.

A. That's correct.

Q. And can you explain the reason that wasn't done?

MR. KERR: Objection. Asked and answered.

A. Because we did not -- in the negotiation with Ally that produced the $2.1 billion contribution from them, it was not done on a bottoms-up basis trying to ascribe a value to each of the prospective claims the parties or the debtor might have against Ally.

Q. Is that work that could have been done?

MR. KERR: Objection.

A. I have no idea whether that actually could have been done. I don't know whether it's possible to allocate value. I think you asked me this before. I don't think it's possible to necessarily allocate value in

Plaintiff's Objection 96:18-97:5 Lack of personal knowledge/ speculative (FRE 602)

a meaningful way to each of the prospective claims that might be asserted against Ally by the various constituencies including the debtor.

Q. And what is the basis of that belief?

A. The basis of my belief comes out of my desire to see the global settlement accomplished because I believe that to do anything other than that would involve a course of conduct that would not lead to a sensible conclusion. I don't believe, as I said, that you can value individual items individually and that -- everybody would have their own view as to which of the items, what are the values. I don't think that's sellable.

Q. Who did you consult with in reaching that conclusion?

MR. KERR: Objection.

A. It's my own conclusion but I consulted with many, many people. All the various counsel for the parties, all the financial advisors. And then I came to my own

conclusion that that was the right way to go was to negotiate a top-down number with Ally and then see if the number was big enough to make it work for all the creditor constituencies and for the estates.

Q. Did you ask anybody if a bottoms-up approach could be done?

A. It was part of every conversation was are we doing this the right way and there was no doubt in my mind that the only way to do this was as I described which was a top-down view of the world.

Q. My question was different. Did you ask anybody if a bottoms-up view could be done?

A. I don't think I specifically asked anybody whether they could do that because I just in my own mind gave no credence to that possibility.

Q. Would you look at paragraph 20 on page 11. All matters related to partial consolidation as set forth in the plan including but not limited to any investigation conducted by the Debtors to ascertain whether,

Romanette (i), creditors relied on the Debtors collectively or in any combination of subsets as a single entity; Romanette (ii), the Debtors' affairs were hopelessly entangled; and Romanette (iii), the prejudice to creditors of the proposed consolidation would outweigh its benefits.

Can you testify truthfully and completely as to those subjects?

A. Yes, I can.

Q. In your 40 years experience as a bankruptcy practitioner, have you been involved in dealing with substantive consolidation issues?

A. Yes.

MR. KERR: Objection.

A. Sorry. Yes, I have.

Q. Then item 21, All matters related to the treatment of the junior secured noteholders claims under the plan. Can you testify truthfully and completely as to that?

A. Yes.

Hopefully I've been doing so.

MR. COHEN: Mark this as 4.

L. KRUGER

(Kruger Exhibit 4, Notice of Filing of Revised Disclosure Statement for Debtors' Revised Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, marked for identification as of this date.)

A. I have it.

Q. I will not ask you to read Kruger Exhibit 4 which is the Notice of Filing of Revised Disclosure Statement For the Debtors' Revised Plan For Organization Pursuant to Chapter 11 of the Bankruptcy Code from cover to cover. But you can look at it -- at any section you want to. I'll direct you to specific pages.

Are you familiar with this document?

A. Yes, I am.

Q. All right. For ease of reference we're going to use the page numbers at the top of the pages rather than the page numbers at the bottom.

A. Okay.

Q. And so what I'd like you to do is

to turn to page 28 of 196 at the top and the sections that we're worry going to be talking about is Article II, the Global Settlement and Implementation of the Plan.

A. Page 28?

Q. 28 of 196.

A. Article II?

Q. Yeah.

A. Okay.

Q. And if you would take a look at the two paragraphs at the bottom of that page that carries over to the next page I would appreciate it.

A. Um-hum.

(Document review.)

A. Okay. I've read that.

Q. All right. Who, to your knowledge, was involved in negotiating the first Ally settlement, the $750 million contribution?

A. I have no idea.

Q. Do you know how that number was arrived at?

A. No.

L. KRUGER

Q. Do you know whether the Debtors' attempted to value their claims against Ally before agreeing to a $750 million number?

A. I have no idea.

Q. Do you know whether the Debtors' retained any potential experts to help them determine whether a $750 million contribution from Ally was appropriate?

A. I do know that the Debtors' conducted an investigation of their claims against Ally, but who actually conducted the investigation, whether they were retained experts, I don't know sitting here today.

Q. Okay. What did you do when you became CRO to bring yourself up to speed as to the move away from 750 million to the mediation?

MR. KERR: Objection.

A. Well, I met with -- in the very first few weeks of my engagement with Judge Peck to understand his view of the mediation, with obviously Morrison & Foerster, Centerview, FTI, the Creditors Committee, its counsel, its financial advisors, to understand

where we are and understand each of the creditors' various views of their own claims and their views with respect to other creditors' claims. And that's what I did.

Q. What is your understanding as to the reason the $750 million contribution was ultimately rejected?

A. I think there was a conclusion by the creditors and the Debtor that that was an insufficient sum when added to the proceeds from the distribution of the Debtors' estates to satisfy the creditors' minimum needs by way of a resolution of the various competing issues in the case that would make them want to enter into a global settlement.

Q. Has there been any attempt by the estate to compute the total value of its claims against Ally?

A. Not that I am aware of.

Q. Why not?

A. As I said before, I don't know that there's any really way to do that. Everybody will have their own view of what the value of each individual claim might be and

I'm not sure there's any purpose to be served by it. We have an opportunity to have a global settlement that I think is in everybody's best interest and I think the settlement that we've achieved is that settlement. And it's appropriate for us to do it as we did it but just from a top-down basis.

Q. Why isn't the Debtors' view of the value of the claims an important thing to know in determining the reasonableness of the settlement?

MR. KERR: Objection.

A. I'm not sure how you value the claims that the debtor might have against Ally. What it does say to me is that if we were going to pursue those claims individually we would go back to the litigation state in which the creditors would be suing Ally using the estate causes of action. Individual creditors would be suing Ally on their own particular causes of action. The creditors would all be suing each other. We would have years of chaos and enormous cost to this

estate. None of that made sense to me so that's why the Debtors have not looked at that. We looked at what do we need to get from Ally by way of a contribution that together with the distributable assets from the Debtors' estate enabled us to compromise all the various competing creditor claims in a way that the creditors are, as I've said, not necessarily happy about but prepared to live with. That's what we did.

Q. And in your 40 years experience practicing law have you ever done a litigation analysis?

A. Of what a claim is worth?

Q. Yes.

A. I've not done it but I've had presentations to me of claim analysis.

Q. And is that something in your 40 years of practice you've typically relied on in going into the settlement negotiations?

A. It would depend on the circumstances, but ordinarily speaking, most of the time lawyers come to me when they give me that kind of stuff and say here's the

range. Well, you know, it's interesting that that's their view of the range. I didn't think this needed a view of the range. What this needed was a global settlement. We achieved that. I mean, that was the goal and we've done that.

Q. Why didn't you think this needed a view of the range?

A. Because I don't think it would be possible to evaluate in a meaningful way the various claims of the various competing parties, both Debtors' claims and claims of others outside the Debtor. How would -- you know, there's no way for me to do that. It would take years. I mean, in a perfect world if you wanted perfection, every creditor to pursue their claims, the debtor would object to those claims. Ally would object to those claims to the extent they were being sued. And in four or five years we know precisely what everybody's allowed claim might be and whatever recovery there might be from AFI at that point. But they were probably an insolvent estate. And, I recall, for example,

the JSN suggesting in one of their pleadings an objection to an extension of exclusivity that the Debtors' estate would become administratively insolvent I think they suggested sometime in the spring of next year.

Well, there's no way if we had a litigation scenario that this is going to get done in the spring of next year. This would go on for years. That alternative was an unacceptable alternative so for me there wasn't any point in worrying about whether I was building up from the bottom up. I needed to get a settlement sufficient to work to achieve a global settlement.

Q. Did anyone give you an estimate of how long it would take to do a range of value of the claims the Debtors' --

A. I'm not --

MR. KERR: And just again I don't want you to reveal any communications with counsel, but --

MR. COHEN: And I also want to finish my sentence.

MR. KERR: Oh, I apologize. I

thought you were done.

MR. COHEN: My question.

Both you of let me finish my question.

Q. Did anybody give you a range -- or a date estimate as to how long it would take to do a range of value of the Debtors' claims against Ally?

A. No.

Q. Did anybody tell you how much that would cost?

A. No.

Q. Did you ever ask anybody?

A. No.

Q. Why not?

A. Because I didn't think it was meaningful, quite frankly. As I said, I thought the way to do this was to find the combination of value from Ally and from the various distributable amounts of the Debtors' estates to create a pot of sufficient funds to produce the global settlement.

Q. Let's go to page 49 of Kruger Exhibit 4 which is the chart -- 49 at the top.

L. KRUGER

I'm sorry.

A. Oh. I'm sorry.

Q. Which is the allocation chart.

A. Almost. Ready.

Q. There you are.

How was this allocation of money to the Debtors' determined?

A. Well, at the conclusion of -- and I guess -- I get concerned about the mediation part of this.

MR. KERR: Yeah. Again, if you can answer that question without revealing what happened in the mediation you're free to do so. But to the extent you would -- we're subject to the mediation confidentiality.

MR. COHEN: I understand.

MR. KERR: And so to the extent you can answer that question in general terms without disclosing what happened in the mediation feel free to do so. But we need to be very cognizant of that, Lou.

MR. COHEN: And for my purposes I'm not trying to breach the mediation

confidentiality.

MR. KERR: I know that. I realize that. We're just trying to navigate around this.

A. Starting with the total number, that represents a combination of available distributable funds out of the estate, ex-cost of administering the estate. Plus the Ally contribution.

Q. I think you're on the wrong page. I'm on 49.

A. Oh, I'm sorry. This is just the Ally contribution.

Q. Exactly.

A. I'm looking at the next page. Sorry.

Q. Would you like my question again?

A. No.

Q. Okay.

A. This analysis, and the distribution, came about obviously in the mediation process, but it came about because we looked at first the available distribution of the Debtors' funds and each of the various

silos that we were creating for the purposes of the reorganization plan and the disclosure statement, ResCap, GMACM and RFC, and what funds were available at each of those entities in the Debtors' estates, what the creditor claims were at each of those Debtors' estates, what the consenting creditors were hoping to achieve by way of recoveries for themselves out of the combination of the assets in the Debtors' estates and the Ally contribution.

And so to put all of that into the hopper and came up with an allocation that we believe appropriately represented the recoveries that creditors were seeking to obtain and for me making sure that it was in my mind reasonable, fair and equitable and appropriate for the various creditors who were not a part of the negotiations and at the same time obviously thinking about paying in full the JSNs their pre-petition claim and their pre-petition interest.

Q. Would it be fair to say that this allocation was a negotiated allocation?

A. It was part of -- it was -- I

think that's the wrong word. I don't think it was a negotiated allocation. I think the negotiations were seeking the compromises among the various creditors with respect to their competing interests and claims and this was a waterfall, if you will, created to satisfy, as I said, not only the requirements of the individual parties, but also to take cognizance of the availability of funds at the various Debtors' estates, the creditor claims at the various Debtors' estates and the like.

So I don't think it's necessarily a negotiation.

Q. So let me try and phrase that another way.

You determined as part of the global settlement what each of the consenting creditors needed to sign onto the global settlement and then came up with this allocation to make that work?

MR. KERR: Objection. Misstates his testimony.

A. That's not what I said. I said that we looked at both what was available

under the Debtors' estates. We looked at what was available -- what the claims were at each of the various Debtors' estates. We looked at the competing claims of the creditors who had negotiated with the Debtor and among themselves with the benefit of Judge Peck's intervention, and came up with a conclusion that this would be an appropriate allocation of funds in order to both reflect the claims that were present in the various Debtors' estates in these three silos, the assets that were available there, and the distribution of the Ally proceeds that would encompass the results that creditors wanted to see achieved and in my mind was also fair and appropriate and reasonable for those parties who were not part of the mediation and the negotiations.

Q. To be clear, when you said the claims that were variable on the Debtors' silos you're talking about the proofs of claims filed by creditors against the Debtors and not claims that the Debtors held against Ally.

A. That's correct.

Q. And this chart on page 49 of Kruger Exhibit 4 does not reflect an analysis to allocate the 2.1 billion based upon which legal entity may hold certain causes of action against Ally, correct?

A. Well, that's too simplistic in my mind to say because, for example, we allocated proceeds to the ResCap Debtors and we did that in part in recognition that some of the creditors had asserted claims against ResCap and against Ally, and aiding and abetting claims, alter-ego claims and the like, and it might not be inappropriate for them to have some benefit in recovery from the Ally contribution at the ResCap level.

Q. How were those determinations made?

A. Which determinations?

Q. The determinations you just talked about; that you recognized that some creditors had asserted claims against ResCap and Ally for the aiding and abetting claims?

A. I looked at those claims. I discussed those claims. I had many, many

conversations about those claims. I participated in the negotiation of the resolution of those claims. And that's how I did it.

Q. Okay.

(Kruger Exhibit 5, Report of Arthur J. Gonzalez, As Examiner, marked for identification as of this date.)

BY MR. COHEN:

Q. So the next exhibit is Kruger Exhibit 5, which are excerpts from the examiner's report. If you would like to see the whole examiner's report I'm sure we could have someone deliver it.

A. We can go and get it on my desk.

MR. KERR: And let me just state for the record, if you want to ask questions about this, we object to this. The court has said this is going to be hearsay. It's not coming in. But I just want to state my objection to the use of this but you can ask questions if you want.

MR. COHEN: Well, I don't think I

L. KRUGER

can move things into evidence in a deposition anyway so --

MR. KERR: I'm not asking -- I realize that. I just making sure my objection is on the record.

BY MR. COHEN:

Q. Would you look at, in Kruger Exhibit 5 -- we can use the page numbers at the top, which is 29 of 47, or at the bottom I-29. And this goes on to I-33 at the bottom.

A. Yep.

Q. When the Debtors received the examiner's report did they ever try and conduct a similar analysis?

A. No, we did not.

Q. Why not?

A. There's no need to. We had achieved a global settlement. What's the point of examining it if everybody is prepared to accept the result? And it's been accepted now by the overwhelming number of creditors. What's the point of trying to do that?

Q. Was the allocation chart we just looked at in Kruger Exhibit 4 prepared before

or after the examiner's report?

A. I think -- I don't recall. I assume we -- I don't -- I just don't recall sitting here whether it was before or after.

Q. Was it --

A. I take that back. It was before.

Q. Okay. And after receiving the examiner's report and having the opportunity to re-examine -- let me rephrase that.

There's a lot of "examines" in that question.

Having received the examiner's report and having the opportunity to review his findings and his analysis, did you consider going back and changing the allocation table in Kruger Exhibit 4?

A. No, I did not.

Q. Why not?

A. Because with all due deference, as I said, to Judge Gonzalez before, I had different views of what the claims were and I also had a view that the global settlement having been achieved was by itself an accomplishment that we should not hinder and

that it was appropriate to go forward just on the allocations that were made and the distribution of funds that we just talked about under the disclosure statement. And it was not necessary to consider any of the things that Judge Gonzalez had raised.

Q. With respect to the potential impact on the issue of whether the JSNs are oversecured, did you consider the examiner's report in any way as impacting that issue?

A. No, I did not.

Q. Why not?

A. Well, for two reasons. One is, as I said, in the process of the negotiation with the various competing interests and trying to resolve all of those claims and compromising those claims, we, the Debtor, never lost site, and I don't think others did, of the presence of the JSNs and we provided for them, payment in full of their allowed claim plus pre-petition interest, I thought, quite frankly, that was a real benefit to the JSNs; and that if they were able to demonstrate that they were oversecured to the satisfaction of

the court, they would get paid whatever their post-petition interest might be. But that Judge Gonzalez's report, all hearsay, is not useful in discussing our thinking about that. It may be helpful in giving JSN some roadmap or whatever they think they have claims to but beyond that...

Q. Wouldn't it also give you some roadmap into thinking as to how things may come out?

MR. KERR: Objection.

A. The roadmap that I had was to complete the global settlement and to get a plan confirmed during lives and bean. I don't mean to be flip about it, but the idea that we were now going to go and look at the various possible claims Ally and sue them on their individual claims and spend the next five years in that litigation, pointless.

Q. And, again, it is your view that it was also pointless to try and value -- once you had the Gonzalez report to be try and value those litigation claims.

A. Correct. Because if the creditors

were accepting of what had come forward then that seemed to me to be the best evidence that we had an appropriate amount of resolution.

Q. We talked at the beginning of the deposition about the scope of your engagement and I think you recall that one of your responsibilities was to allocate the Ally contribution. Is it your view that you discharged that duty by the allocation chart in Kruger Exhibit 4?

A. Yes, I believe so. I assume I should say that it reflects the allocation that I approved. It wasn't the first time the allocation was present.

Q. Oh, understood. Understood. But Kruger Exhibit 4 was an exercise of that duty.

A. Yes.

Q. And when you got the Gonzalez report after Kruger Exhibit 4, the allocation chart that we were talking about, you didn't feel the need, given the scope of your assignment, to revisit that decision.

A. That's correct.

Q. And that was because you had the

global settlement, right?

A. Yes. And, as I said, I also respectfully disagree with some of Judge Gonzalez's conclusions.

Q. Did you raise any of those with Judge Gonzalez?

A. No.

Q. Why not?

A. It seemed to me there was no need to do so since I was busy procuring the global settlement and getting that organization plan confirmed.

Q. Did you have any discussions with the Creditors Committee after the Gonzalez report came out about whether you would need to revisit the allocation in Exhibit 4?

MR. KERR: And, again, Lou, you can answer that question as long as it was not part of any mediation process.

A. We all talked about the Gonzalez report but I don't think anybody saw a need to revisit the allocations.

Q. Had the mediation concluded when the Gonzalez report came out?

L. KRUGER

A. The Gonzalez report, if my recollection is correct, came out July 3rd. I don't remember the date. I think the mediation, pursuant to court order, was still in place perhaps through July and part of August. Maybe all of August.

Q. Okay.

MR. COHEN: We're going to go back into intercompany claims. Do you want to have lunch first?

MR. KERR: Sure. Why don't we stop and have lunch if you're going to change topics.

MR. COHEN: Exactly.

MR. KERR: Let's go off the record.

THE VIDEOGRAPHER: The time is 12:15 p.m. We're off the record.

(Luncheon recess taken at 12:15 p.m.)

L. KRUGER

A F T E R N O O N S E S S I O N

(Time noted: 12:58 p.m.)

THE VIDEOGRAPHER: The time is 12:58 p.m. We're on the record.

* * *

L E W I S K R U G E R, resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. COHEN:

Q. Mr. Kruger, I'd like to hand you what has been previously marked as Westman Exhibit 13.

A. Oh, okay.

Q. Could you take a moment to review that document. It's entitled Amended Schedule of Assets and Liabilities For GMAC Residential Holding Company, LLC.

(Document review.)

A. Wait just one more minute.

Q. Certainly.

(Document review continuing.)

A. Okay.

Q. Earlier, before the lunch break, you were testifying generally about your view

that the intercompany claims do not represent debt. Do you recall that?

A. Yes.

Q. Is it your view that they represent equity contributions?

A. I think what they rep -- in my own mind I think what they represent are just intercompany balances where sometimes the intercompany balance was forgotten and treated as capital contribution, but I'm not sure that they always necessarily represent equity.

Q. Okay. If they don't -- did I cut you off? I'm sorry.

A. No.

Q. If they don't represent a capital contribution and they don't represent equity and they don't represent debt, what else could they represent?

A. I think just accounting information.

Q. So it's your view that they're just journal entries?

A. I think they're just journal entries but I could -- I'm not an accountant

so I could be wrong about that. Maybe they do represent capital contributions.

Q. And they could also represent debt or equity possibly?

MR. KERR: Objection.

A. I don't think so. As I said, I don't think these rise to the level of debt.

Q. Okay. And over the lunch break have you had time to think about whether there are any other factors that would support the conclusion on your behalf?

A. Nope.

Q. Okay. In your experience as a bankruptcy practitioner have you had an opportunity to prepare and review schedules of assets and liability for Debtors?

A. Yes, I have.

Q. Have you seen this particular schedule of assets and liabilities for GMAC Residential Holding Company before?

A. No.

Q. Okay. I'd like to turn your attention to -- we're using the page numbering at the top of the page of Westman Exhibit 13

which is page 4 of 13.

What is -- again, more generally, what is the purpose of filing a schedule of assets and liability with the court?

A. To alert creditors as to -- and the court what assets the company believes it may have and what liabilities it may have.

Q. Okay. And the intent is not to mislead anybody, is it?

A. Certainly not.

Q. So you want this schedule to be as accurate as possible, correct?

A. Certainly the best information the debtor may have at the time.

Q. Okay. And in your tenure as CRO of ResCap, have you found any evidence that in people preparing bankruptcy filings had an intent to mislead anybody?

A. Certainly not.

Q. Okay. Are you at page 4 of 13 with me?

A. Yes, I am.

Q. Do you see the listing of Creditors Holding Unsecured Claims in the

title line?

A. Yes.

Q. And do you see the creditors' names listed in the left column?

A. I do.

Q. And do you see the column titled Intercompany Payable? Or the column titled Date Claim Was Incurred and Consideration For Claim?

Do you see that?

A. Yes, I do.

Q. And do you see under each of those the description is Intercompany Payable?

A. Yes, I do.

Q. In your experience, what does intercompany payable mean?

A. Well, in this case it's not clear to me what it means because it's not clear to whom it is payable. The date is not present. I'm not sure what it means other than, as I said, I think it means an intercompany balance.

Q. Okay. In general, does the term intercompany payable have any meaning to you?

L. KRUGER

MR. KERR: Objection.

A. I can't distinguish its meaning outside of the actual case that we're dealing with and in the case that we're dealing with I said I think it represents an intercompany balance.

Q. And you don't know whether this intercompany balance is meant to be a capital contribution, do you?

A. No, I do not.

Q. And you don't know whether it's meant to be a valid and enforceable debt, do you?

A. Not these individual ones but, as I said, I didn't believe that they were enforceable intercompany debts and I reviewed the material that I reviewed and/or had conversation about.

Q. That's right. But you also testified that you didn't review all of the intercompany obligations, correct?

A. That's correct.

Q. So in the ones that you reviewed, you didn't find any to be valid debt, but you

didn't review them all, right?

A. Well, I think the way to put that is that there are thousands of intercompany balances. I certainly did not review thousands of intercompany balances. But my financial advisors who did review a lot of the intercompany balances, and after presentations to me, I came to the conclusion that they were not necessarily enforceable debts in the ordinary course.

Q. Okay. So when this chart was filed listing Creditors Holding Unsecured Claims to let people know who the creditor's name was and the basis of the claim, whoever prepared the chart wrote intercompany payable in your view they were just wrong?

MR. KERR: Objection.

A. As I said, I'm not sure what these were. As I looked at them from the perspective of the settlement of the intercompany claims, I thought about them as being, as I said, no more than intercompany balances. I'm sure the form is correctly filled out. But I think that these are

intercompany balances and that they were certainly appropriate for me to not take into consideration in the global settlement.

Q. Would you look at the page prior to that. Page 3 of 13. And do you understand the purpose of the schedule was to state the name, mailing address, including zip code and the last four digits of any account number of all entities holding unsecured claims without priority against the debtor or the property of the debtor as the date of the filing of this petition?

A. Yes, I do.

Q. And so you understand that on the next page that information is intended to fulfill that requirement?

A. Yes.

Q. Do you have any reason to believe that the company was not attempting to be accurate and honest in completing this schedule?

A. None whatever.

Q. But you have a different view as you sit here today as to what that means.

L. KRUGER

MR. KERR: Objection.

A. I have a view that for purposes of the global settlement, I look at it from that perspective, intercompany claims were not anything more than intercompany balances reflected on the general journal of the company and that for my purposes seeking to compromise all of the claims of the estate of the various creditors, and based on my view that the intercompany balances were general intangibles in which the JSNs did not have a security interest, my view was was that it was appropriate for me to treat them as being not worthy of consideration for global settlement purposes.

Q. Okay. Now, if I were to show you a series of other schedules of assets and liabilities that had the same treatment would your view be the same? We could walk through them but they're generally same.

A. I would have the same position I assume without having seen them.

Q. Okay. Have you come to the view that the intercompany claims have no value?

L. KRUGER

A. No. I don't think I've ever said that.

Q. Do you have a view as to whether there is value there?

A. I have no idea whether there is any value there or not.

Q. Have you done anything to test at any level whether there is value there?

MR. KERR: Objection to form.

THE WITNESS: I'm sorry?

MR. KERR: You can answer. I just objected.

A. Do you want to restate the question? I'm sorry.

Q. Sure. Have you done -- I'll give you a different question.

Have you done any analysis at all, without determining what the value was, as to whether there is value there?

A. As I said, I've had many, many meetings with my financial advisors, with my counsel, with other counsel, with other people with respect to the intercompany balances, and it was -- it's been my conclusion that they

are not something that I needed to take into consideration in terms of the global settlement. I did not think that they had enforceable collectible value.

Q. But you have not attempted to analyze any orders of magnitude as to what value may be there.

A. I have not.

Q. And just to be clear, you have not concluded that there is no value there?

A. That's correct.

Q. Is it your view that the intercompany claims are worthless and meritless?

A. My view that for purposes of the global settlement I could treat them in that fashion. I assume the view ultimately of the judge would be the view that matters.

Q. I understand that for purposes of the settlement you would like to treat them in that manner. My question is have you come to the conclusion that the intercompany claims are worthless and valueless?

A. Well, I recognize that they are of

little -- in my own mind, of little or no value because of the prospect of forgiveness of indebtedeness by -- both by AFI and a history of forgiveness of these balances over the course of time, I'm not sure that they have any value.

Q. But you're not sure that they don't.

A. Correct.

Q. When you were discharging your duties as CRO within the scope of your engagement, did you allocate any of the Ally contribution to the waiver of the intercompany claims?

A. No, I did not.

Q. Why not?

A. Well, to restate my prior view of the intercompany claims, I perceived them to be of -- not consequential. I thought that they were not effective, not collectible in the main, that they would have to be examined individually and there are thousands and thousands of them to determine if they had any meaning behind them. To do that would have

defeated the purpose of the global settlement. I simply was not going to do that. It just made no sense to me.

Q. How would that defeat the purpose of the global settlement?

A. Because the global settlement represents a compromise among many, many participants as to their individual claims and represents a compromise of the claims against Ally held by both individuals as well as by the estates. And anything that delayed the process I thought would also give rise to the need to -- in the case of the intercompany balances, to review each of the intercompany balances, determine its origination, determine what the offsets were to it, reallocate the $16 billion of forgiveness. That would delay and defeat the process.

And it would certainly not encourage an Ally contribution or anybody else to go forward with their compromises.

So for my purposes in looking at the global settlement, I thought it was reasonable and responsible to treat them as

not participants.

Q. When was that decision made as a way of disregarding the intercompany claims?

MR. KERR: Objection.

A. I don't know if there's any specific date that I made that decision, but there's a decision that arose out of the various conversations I had over time since I've been involved in this case up to the time the client support agreement and support agreement.

Q. So it was a decision that was made over time.

A. Yes.

Q. I used the phrase RMBS settlement. What does that mean to you?

A. The settlement for the RMBS claims in this estate is assume is what we're referring to.

Q. Okay. And you talked about that you were going to testify and have been designated by the company as the 30(b)(6) on that topic?

A. Yes.

L. KRUGER

Q. Can you explain the RMBS suits generally. What are they about?

A. Reps and breaches of warranty, primarily. Maybe other causes of action, as well, but primarily that as I understood.

Q. Reps and breaches of warranties with respect to what?

A. With the mortgages that were being insured by the various -- I'm sorry. By the RMBS creditors. Pardon me. RMBS creditors are people who purchased their -- institutional investors who purchased their securities from securitization trust. They would have claims for breaches of reps and warranties which encourage them to bring causes of action against both ResCap and Ally.

Q. And in what form were those claims settled?

A. They were settled as part of the global settlement.

Q. So they were part of the mediation.

A. They were part of the mediation effort.

L. KRUGER

Q. On behalf of ResCap who negotiated that settlement?

A. Combination of myself, my counsel, my advisors, the Judge Peck as mediator, the Creditors Committee, their advisors and all of the competing parties. And including the RMBS representatives.

Q. Did the Debtors retain a third party to -- an expert, to assess the value of the claims that the RMBS claimants were making against the Debtors?

MR. KERR: Objection. Just so we're clear, you're talking about prior to reaching the global settlement?

MR. COHEN: Yeah.

MR. KERR: Okay.

MR. COHEN: Well, let me be clearer on what I'm being clear on.

Q. I'm not asking how you came to a number in the mediation. I'm asking whether you retained an expert just to value the claims.

MR. KERR: But I just want it clear that you're talking about prior to

L. KRUGER

reaching the global settlement.

MR. COHEN: Correct.

A. Sitting here today, I'm not sure but I know we retained Mr. Lipps who is assisting us in that litigation and in the valuation of the RMBS claims.

Q. Why did you retain someone to assist you in evaluating the RMBS claims?

MR. KERR: Objection.

A. Because I think this was in place before I arrived, quite frankly. And I assume that it was important to continue on with that document.

Maybe you should reask your question.

Q. Sure. Why did ResCap retain someone to assist it in evaluating the RMBS claims?

A. I assume that -- I don't assume. I don't know the answer to that.

Q. Did you ask anybody?

A. No.

Q. Did you think it was important for ResCap to have an understanding of the

magnitude of those potential claims against it?

A. I thought it was important for me to have an understanding of the potential claims that might be asserted by the RMBS creditors.

Q. Why would that be important for you to know?

A. Because if I was going to achieve a global settlement and seek to compromise everybody's claims I needed to understand the nature of their claim, its strengths and its weaknesses.

Q. But on the flip side of that, you never retained anybody to advise you as to the value of your claims against Ally. Why not?

MR. KERR: Objection. Misstates his -- objection.

A. I don't need anybody to help me evaluate the claims against Ally because I don't know that that's really relevant. I think what is relevant is trying to get a maximum contribution from Ally such that it's sufficient together with the assets of the

estates to provide enough funds to achieve a global settlement and the compromise among the various competing interests.

Q. How do you determine what is a fair contribution without any analysis of the value of the potential claims?

MR. KERR: Objection.

A. In my mind, for settlement purposes I'm looking at the global settlement and the compromises that were necessary among all of the competing parties. If there was a combination of funds that were sufficient to achieve that result, in my mind that was an acceptable result and a responsible result.

And so when Ally's contribution got to the $2.1 billion and creditors were able to coalesce around it and say this is sufficient funds together with the funds available from the Debtors' estate to meet our hopes and expectations and desires in the main, I thought that was a sufficient level of contribution. So there was no need for me to try to evaluate the individual claims. I never did.

L. KRUGER

Q. Do you know what the FGIC settlement involves?

A. Yes.

Q. Could you describe that.

A. We settled -- I'll try to do this from memory. FGIC filed I think a billion 850 million dollar claims against ResCap, RFC, GMACM. In addition to which they were asserting claims, aiding and abetting claims, against ResCap and Ally. We settled those claims for a claim of $596 million. FGIC was going to pay 253 million is my rec -- 273 million is my recollection. 253 million to trusts and release for the trusts' claims against them. And at the same time was going to be receiving $596 million by way of claims in each of the estates. It looked to me like an appropriate settlement at the time.

Q. How was -- through what process was that settlement achieved?

A. Negotiations with FGIC.

Q. Was that part of the global settlement?

A. It was part of the global

settlement.

Q. Okay. Why did the amount of the allowed claim differ depending on confirmation of the plan?

A. Because if the plan was to be confirmed, then we wanted to provide a mechanism for FGIC to receive the funds that we thought were the -- so to speak, the compromised amount reached in the negotiations.

Q. So it was just a byproduct of negotiation?

A. A combination of a byproduct of negotiation and a recognition of what was required as part of the overall global settlement to have FGIC participate at a level that was acceptable both to myself as a CRO as well as to the other creditors.

Q. Did the Debtors conduct any analysis as to its potential exposure to FGIC?

A. Yes.

Q. Why?

A. We conducted an -- we -- over the course of the months that I've been involved

before the final resolution of the plan support agreement, I had many, many conversations with my own counsel, with other counsel, with advisors, financial advisors, and looked at each of the individual creditors' claims so that I would better understand what we thought the debtor, I and myself, their strengths and weaknesses were of those individual claims, not to put necessarily dollar values on them, but to understand where they might stand in the panoply of what was possible.

I also heard from each the various competing creditors as to what they thought the strengths and weaknesses were of their own claims. More emphasis on the strengths, not the weaknesses. And they were quick to point out to me the weaknesses of other people's claims.

That was all part the negotiation process. That was all part of the mediation.

Q. Are you familiar with the MBIA settlement?

A. Yes, I am.

L. KRUGER

Q. What is the MBIA settlement?

A. It's a settlement with allowed claims at the three silos that we've created for plan purposes, ResCap -- ResCap, GMACM and RFC.

Q. What are the MBIA claims?

A. Their claims are insurance claims where they insured some of the securitization trusts. My recollection is that their claims -- something in the neighborhood of 2 plus billion dollars.

Q. In what form were those claims resolved?

A. They asserted proofs of -- they say they filed proofs of claims against the various debtors. They were resolved through negotiation.

Q. And was the negotiation part of the mediation?

A. Yes, it was.

Q. Okay. Was the subordination of the allowed claims in the RMBS, FGIC and MBIA settlement ever discussed by the Debtors?

A. Yes.

L. KRUGER

Q. Was subordination of the allowed claims raised during the negotiations? Was that a negotiated point?

A. Well, I guess I can violate --

MR. KERR: Why don't you just answer that yes or no.

A. Yes.

Q. Why are the Debtors seeking to subordinate the FHFA claims but not the others?

MR. KERR: Objection.

A. I'm sorry. Do you want to give me that one again?

Q. Sure. Why are the Debtors seeking to subordinate the FHFA claims but not the others?

A. Because we believe that in the negotiation with the FHFA that was an appropriate thing to be doing.

Q. Why did you think that was an appropriate thing to be doing?

A. I might add parenthetically that claim has been settled and they are now supporting the plan.

But at the time it seemed to us to be a way to try to deal with them and help in the negotiations.

Q. Could you describe the private securities claimants' settlement?

A. Yes. They are receiving, in the form of units in the liquidation trust, ostensibly $235 million which will represent what they, 21 creditors in that category, are going to allocate among themselves in satisfaction of their claims.

Q. And in what forum were those claims --

A. Also as part of the mediation process.

Q. Did the Debtors make any attempt to value its potential exposure to the private securities claimants?

A. Well, as I said, we didn't look at in terms of necessarily dollar amounts although we knew what people were claiming. We looked at it in terms of trying to determine the strengths and weaknesses of their claims so we could understand better how

to compromise those claims and how to participate in a compromise process. Which was the mediation process.

Q. So with respect to all of the analysis with these various claims we've been discussing, you did a merits analysis on those claims, right?

A. We certainly looked at the merits of those claims and the weaknesses of those claims.

Q. Who were the people who were participating in the mediation?

A. Oh, God. That is a challenge because at the mediation sessions there were often more than a hundred people present.

Q. Okay. How about entities instead of people?

A. The members of the Creditors Committee certainly. Some of the consenting claimants were also present during those mediation sessions. Counsel for the various parties. Financial advisors for the various parties. My own counsel. My own financial advisors. And Judge Peck.

L. KRUGER

Q. When you say consenting claimants, can you identify who those are?

A. Like the New Jersey Carpenters, for example, who are not members of the Creditors Committee but who were present from time to time during the mediation sessions.

Q. Okay. Any others come to mind?

A. Not sitting here today, no.

Q. Was Paulsen part of the mediation?

A. I don't recall now whether they participated. I think they did participate but I would not swear to that.

Q. And do you recall what their holdings in unsecured bonds were as part of the mediation?

A. No, I don't.

Q. Let's go to topic 20 which is partial consolidation.

A. Um-hum.

Q. In your 40 years of practice you've dealt with the issue of substantive consolidation before I assume.

A. Yes.

Q. And you're familiar with the

Second Circuit test for substantive consolidation?

A. I don't know if I'm familiar with it but I have some general sense of what's required for substantive consolidation.

Q. And what is your general sense of what's required for substantive consolidation?

A. Well, you need to be able to demonstrate that the creditors were confused about whom they were dealing with, that there are not books and records, that the companies were sort of closely intermingled. Things of that sort.

Q. So if I were to say creditor reliance on a single entity and hopeless entanglement?

A. That's certainly some of the standard things that one would look at.

Q. Okay. Are there other factors that you would look at?

A. Sitting here, I don't know. I'd have to go back and read the Second Circuit decision.

Q. Okay. In your 40 years of

experience, and your experience more specifically with substantive consolidation, is it your view that that's an extraordinary remedy?

A. It's a remedy. It's not very frequently found. I'm not sure what extraordinary means. But it's not frequent.

Q. Do you have a view as to why it's not frequent?

A. Difficult to prove. Expensive to prove. Sometimes not in the interest of creditors to do that.

Q. When you say difficult to prove, what do you mean?

A. Well, it's another form of litigation used to demonstrate all the things you just mentioned as for why there should be substantive consolidation. I assume that there would be creditors whose views differ from that and then you're off to the races in litigation.

Q. So you'd share my view, though, that substantive consolidation is not the norm, it's a remedy that you have to prove

entitlement to, right?

MR. KERR: Objection.

A. Well, I would certainly suggest that substantive consolidation is not the norm. I would agree with that.

Q. All right. And there are legal tests that you're required to meet in order for the court to impose substantive consolidation, correct?

A. Yes.

Q. And the same is true with respect to partial substantive consolidation; isn't that also true?

MR. KERR: Objection.

A. It depends on what the purpose is. Partial substantive consolidation of the client that we're talking about in the ResCap setting is not substantive consolidation for all purposes. And I think your prior conversation and your prior questions really related to substantive consolidation for all purposes.

The substantive consolidation in the ResCap Chapter 11 proceeding, where you

create the three silos, was really for efficiency and distribution and it wasn't to suggest that all of the entities, assets and liabilities are now being co-mingled into one entity. That's not what this is about.

Q. To your knowledge, has ResCap or any of its advisors undertaken an investigation as to whether creditors were confused as to which ResCap entity they were dealing with?

A. I've certainly had those -- I had conversations certainly with my counsel, with the financial advisors, and with others about the substantive consolidation. But I have personally spoken with the various creditors who are on the Creditors Committee and others outside the Creditors Committee. No one has ever suggested to me that they were confused about who they were dealing with. So I didn't see real basis for substantive consolidation.

Q. Okay. How about with the hopeless entanglement, that the books and records just couldn't be unscrambled did you seek --

A. I don't.

L. KRUGER

Q. Let me finish.

A. Sorry.

Q. On hopeless entanglement, the books and records couldn't be unscrambled, did you see any evidence that that was the case in ResCap?

A. No, I did not.

MR. COHEN: Let me take about five minutes. I think we may be done.

MR. KERR: Okay. Sure, sure, sure.

THE VIDEOGRAPHER: The time is 1:28 p.m. We're going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 1:36 p.m. We're on the record.

BY MR. COHEN:

Q. Mr. Kruger, did the Debtors consider auctioning the intercompany claims?

A. Auctioning the intercompany claims?

Q. Yeah.

A. No. We did not.

Q. Why not?

A. It would seem to me that's another part of the process that would delay the confirmation and would delay the global settlement being implemented.

Q. But wouldn't it have given you a good indication to see if the market put a value on those claims?

A. I'm not sure to what purpose. I think that you're still entitled -- the JSNs are entitled to make an argument that they think that there's value there. So I'm not sure how the auction would have made any difference.

And, as I said, for my purposes, for the global settlement purposes, I think it was reasonable and responsible and appropriate to treat these as intercompany balances as I think of them as being without value or of little value.

Q. So once that decision was made in the context of the global settlement negotiations, other alternative treatments of the intercompany claims were off the table; is that fair?

A. Well, we certainly -- I certainly didn't think about auctioning them off at that time and I do not think that would have been a sensible thing to do.

Q. Why not?

A. Because I think, as I said, that, you know, we then get into the process -- I assume in order to auction them off I have to be able to demonstrate that they have something that is worth auctioning off. And then I get back to where I started from, which is that I'm then in the process of trying to understand and analyze each of the intercompany claims to find out whether or not they have value and if there's something there.

None of that made sense to me in the context of the global settlement. So for global settlement purposes, I thought it was appropriate to just treat them as zero because I had a consenting group of creditors that was quite large with a contribution that was sensible. And I was at the same time paying -- you know, I come back to it. I

always thought that the JSNs were being well treated when they got paid their allowed claims plus pre-petition interest. So I didn't think that there was any reason to think about an auction of the intercompany claims.

MR. COHEN: All right. Thank you. I have no further questions.

MR. KERR: Anyone else?

(No response.)

(Continue on next page to include jurat.)

L. KRUGER

MR. KERR: I think we're done. Thank you.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: The time is 1:39. We're off the record.

(Time Noted: 1:39 p.m.)

_____

LEWIS KRUGER

Subscribed and sworn to before me
this ___ day of _____, 2013.

_____

C E R T I F I C A T E

STATE OF NEW YORK )
: ss.
COUNTY OF NEW YORK )

I, FRANCIS X. FREDERICK, a Notary Public within and for the State of New York, do hereby certify:

That LEWIS KRUGER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of October, 2013.

_____

FRANCIS X. FREDERICK

---------- I N D E X ----------


| WITNESS | EXAMINATION BY | PAGE |
|---|---|---|
| LEWIS KRUGER | MR. COHEN | 9 |


---------- INFORMATION REQUESTS ----------

DIRECTIONS: NONE

RULINGS: NONE

TO BE FURNISHED: NONE

REQUESTS: NONE

MOTIONS: NONE

---------- EXHIBITS ----------

KRUGER FOR ID.

Exhibit 1
Notice of Debtors' Motion
Pursuant to Sections 105(a) and
363(b) of the Bankruptcy Code
for an Order Authorizing the
Debtors to Appoint Lewis Kruger
as Chief Restructuring Officer..... 18

Exhibit 2
Notice of Debtors' Motion Pursuant
to Sections 105(a) and 363(b) of
the Bankruptcy Code for an Order
Approving Amendment to Engagement
Letter with Debtors' Chief
Restructuring Officer, Lewis Kruger
as Chief Restructuring Officer..... 47

Exhibit 3
e-mail dated Monday, 9/17/2012
with attachment bearing production
numbers UCC12846 through UCC12852..... 68

---------- EXHIBITS ----------

KRUGER FOR ID.

Exhibit 4
Notice of Filing of Revised
Disclosure Statement for Debtors'
Revised Plan of Reorganization
Pursuant to Chapter 11 of the
Bankruptcy Code..... 100
Exhibit 5
Report of Arthur J. Gonzalez,
As Examiner..... 115

NAME OF CASE: In Re Residential Capital LLC
DATE OF DEPOSITION: OCTOBER 30, 2013
NAME OF WITNESS: LEWIS KRUGER
Reason codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____
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LEWIS KRUGER

**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.,***
**Case No. 12-12020(MG)**

Deponent: Lewis Kruger
Deposition Date: October 30, 2013

| Citation | Testimony |
|---|---|
| 16:12 | I agreed to |
| 16:14 | you ~~we~~ met |
| 20:16 | ~~Dy~~Yes. |
| 38:12 | they were not ~~Ally~~ really liens |
| 38:19 | ~~value~~ valid claim |
| 39:5 | liens attached to in the ~~lower~~ flow of funds from Ally |
| 41:25 | ~~was~~ were |
| 45:23 | The question was would what they were prepared |
| 48:15 | ~~Cathy~~ Kathy Patrick? |
| 49:20 | services there are changes from the original |
| 51:3 | ~~border~~ broader plan issues. |
| 54:6 | contribution could have been negotiated? |
| 58:7 | ~~with~~ was |
| 69:19 | the Debtor's ~~intercompany claims~~ to determine |
| 77:3 | did not uniformly |
| 81:16 | as being ~~bad~~ not a debt |
| 95:25 | allocated ~~on a~~ in |
| 97:18 | ~~sellable~~ sensible |
| 112:18 | settlement ~~what~~ that each |
| 118:18 | ~~site~~ sight |

| Citation | Testimony |
|---|---|
| 119:15 | lives ~~and~~ in being |
| 119:18 | possible claims against Ally |
| 130:23 | None whatsoever |
| 134:4 | both by AFI and ResCap and a |
| 153:3 | efficiency ~~and~~ in distribution |

Date: 11/15/13

Signed: Lewis Kruger
Lewis Kruger

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| In re: | Chapter 11 |
| RESIDENTIAL CAPITAL, LLC, et al., | Case No. 12-12020(MG) |
| Debtors. | Jointly Administered |
| RESIDENTIAL CAPITAL, LLC, et al., | |
| Plaintiffs, | |
| vs. | 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, | |
| vs. | 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 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. | |
| Reported by: JENNIFER MILLER | Job No. 67548 |

VIDEOTAPED DEPOSITION
OF
JAMES ARETAKIS

New York, New York
November 6, 2013

Yellow Highlighting = JSN Designations
Pink Highlighting = Plaintiff's designation or counter-designation
Orange Highlighting = Joint Designations

**The Debtors and Committee object to the JSNs' use of the deposition of Mr. Aretakis on the ground that this deposition may not be used under Bankruptcy Rule 7032.**

**The Debtors' counter-designations reflected herein are to be admitted, if at all, only upon admission of the JSNs' corresponding affirmative designation.**

JAMES ARETAKIS

November 6, 2013

2:13 p.m.

Videotape deposition of JAMES ARETAKIS, held at Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, New York, before Jennifer Miller, a Registered Professional Reporter and Notary Public of the Commonwealth of Pennsylvania.

JAMES ARETAKIS

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JAMES ARETAKIS

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ALSO PRESENT: Dale Swindell, Legal Video Specialist

JAMES ARETAKIS

- - -

P R O C E E D I N G S

- - -

THE VIDEOGRAPHER: This is the start of media labeled number one. This is the tape deposition of Mr. James Aretakis in the matter of In re: Residential Capital, LLC.

This deposition is being held at 601 Lexington Avenue, New York, New York on November 6th 2013 at approximately 2:13 p.m.

My name is Dale Swindell from TSG Reporting, Incorporated. I'm the certified legal video specialist. The Court Reporter is Jennifer Miller in association with TSG Reporting. Counsel will be noted on the court reporter's record.

Would the Court Reporter please swear in the witness.

- - -

JAMES ARETAKIS, after having been first duly sworn, was examined and testified as follows:

- - -

E X A M I N A T I O N

JAMES ARETAKIS

- - -

BY MR. PERRY:

Q. Good afternoon, Mr. Aretakis.

A. Good afternoon.

Q. My name is Dan Perry. I represent Ad Hoc Group of Junior Secured Noteholders in the ResCap bankruptcy.

Have you ever been deposed before, sir?

A. No.

Q. Just some -- I understand you're an attorney; is that correct?

A. That's correct.

Q. Just some ground rules on depositions.

You understand you're under oath and sworn to tell the truth the same as if you were appearing in a court of law, correct?

A. Correct.

Q. The Court Reporter is taking down everything I say to you and you say to me. She's able to do that only if we don't talk over each other at the same time so I'd ask for you to wait until I'd done with my question and I will extend you the same courtesy.

JAMES ARETAKIS

THE VIDEOGRAPHER: The time is 2:15. We are going off the record.

- - -

(Whereupon, a short recess was taken.)

- - -

THE VIDEOGRAPHER: The time is 2:17 p.m. We're back on the record.

BY MR. PERRY:

Q. Before we broke, I was explaining we ought to try not to talk over each other. I'm going to wait for you to finish your answer. Please wait for me to finish my questions.

If you have any questions or my questions are unclear to you, please let me know. My sense is given the topic that we're here today to talk about there may be some of that. So please don't hesitate, if I'm asking a question a way that's unclear to you, to ask me to clarify it, and I'll do my best to do it.

You're entitled to consult with your attorney of course throughout the deposition. Particularly, to the extent that one of my questions you think may call for you to disclose privileged

information, you can take your time and confer with Mr. McKane about that.

You're otherwise entitled to take as many breaks as you feel the need to take. This is not an endurance contest. The only thing I'd ask is that you just finish a pending question before you do that.

Do you have any questions before we start?

A. No, I'm ready.

Q. Can you give me your educational history.

A. BA in Accounting from Michigan State. JD from Michigan. I'm a licensed attorney in the State of Michigan.

Q. What year did you receive your accounting degree?

A. '78.

Q. And your law degree?

A. '82.

Q. And can you give me a brief overview of your employment history starting post law school.

A. A couple of years with Coopers & Lybrand, public accounting firm in Detroit, now PWC. After that, 22 years with General Motors tax staff and

with the GMAC, now Ally, tax department beginning in 2006.

Q. Are you still employed by Ally today?

A. Yes.

Q. What's your position at Ally?

A. General tax counsel.

Q. And is your role an attorney's role with Ally?

A. Yes.

Q. And what was your position prior to assuming the position of general tax counselor at Ally?

A. For three years prior to this summer, I was chief tax officer, and prior to that, I also had the general tax counsel position.

Q. So when did you first become general tax counsel?

A. In 2006.

Q. And then did that -- it was a little unclear from your testimony. Did that position change to become chief tax officer or did you just assume the chief tax officer duties?

A. I assumed the chief tax officer duties for three years.

Q. Okay. And when were you the chief tax officer?

A. From mid-2010 to the middle of this year.

Q. And does anybody within Ally now hold the title chief tax officer?

A. Yes.

Q. And who's that?

A. Jay Frucci, F-R-U-C-C-I.

Q. And who does Mr. Frucci report to?

A. The controller, David DeBrunner.

Q. And who do you report to?

A. I report to Mr. Frucci.

Q. And prior to Mr. Frucci assuming the role of chief tax officer, who did you report to?

A. David DeBrunner.

Q. Other than a law license, do you hold any other professional licenses?

A. I was a CPA, but I am inactive. I don't maintain the continuing professional education requirement, so I don't hold myself out as a CPA any longer.

Q. And when did you become inactive as a CPA?

A. Many years ago.

- - -

JAMES ARETAKIS

(Whereupon, Exhibit 1 was marked for identification.)

- - -

BY MR. PERRY:

Q. Mr. Aretakis, the Court Reporter has just handed you Aretakis Deposition Exhibit 1. It's a Notice of Subpoena from the Ad Hoc Group of Junior Secured Noteholders to Ally Financial, Inc.

My understanding, sir, is that you've been designated to give testimony on behalf of Ally Financial, Inc. with respect to deposition topics six and 14, which are set forth on page 78 of the notice.

Is that consistent with your understanding?

MR. MCKANE: Subject to our objections and responses.

THE WITNESS: I'm sorry, items number?

MR. MCKANE: Six and 14.

BY MR. PERRY:

Q. Six and 14.

A. Yes, that's my understanding.

Q. And did you do anything to prepare to give testimony on behalf of Ally Financial with respect

to items six and 14?

A. Yes.

Q. What did you do?

A. I reviewed documents, financial statements, generally brushed up on my recollection, discussed the matter with other members of the tax staff in the office, and I discussed it with counsel.

Q. And what documents and financial statements did you review in preparation for your testimony?

A. I reviewed the 10-K for the period ending December 31, 2012, and I reviewed some memoranda that were prepared describing the book and tax treatment of the proposed settlement amount.

I also asked and received an explanatory schedule to give me a little more detail on the numbers that appeared on the 10-K.

Q. So, just so I have it straight, you recall reviewing the 2012 10-K, correct?

A. Correct.

Q. Memoranda prepared describing the book and tax treatment of the settlement in the Res Cap bankruptcy, correct?

Plaintiffs' objection to JSNs' counter-designation of 12:10-14:21: Beyond the scope of affirmative designation; irrelevant (FRE 401, 402)

A. Correct.

Q. Was that more than one memo?

A. Two memos.

Q. Two memos. And you asked that a schedule be prepared as well, correct?

A. Correct.

Q. Any other documents that you recall reviewing in connection with getting prepared for your testimony?

MR. MCKANE: Testimony on these two topics?

BY MR. PERRY:

Q. On these topics.

A. There may have been some attachments maybe or other schedules, some emails.

Q. When you say "attachments," are these attachments to the memoranda or to something else?

A. To the memoranda.

Q. And what emails do you recall reviewing?

A. I can't recall anything specific, but I may have looked at some -- some correspondence between me and other members of the tax staff.

Q. Now, you also indicated that you had discussions with some members of the tax staff --

A. Uh-hum.
Q. -- in connection with your testimony?
A. That's correct.
Q. Who did you -- who did you talk to on the tax staff?
A. Most significantly, Kip Cotter, C-O-T-T-E-R. Kip is an executive director in the tax staff, and he is primarily responsible for tax accounting matters.
Q. And did Mr. Cotter have any responsibility for tax accounting matters with respect to the Res Cap bankruptcy and settlement?
A. Yes.
Q. Does Mr. Cotter report to you?
A. No, he reports to Mr. Frucci.
Q. Anybody else that you can recall having meaningful dialogue with on the tax staff?
A. Some general dialogue with Mr. Frucci and some -- some dialogue with Mr. Sean Rohlig, R-O-H-L-I-G, who prepared that schedule.
Q. You indicated that you had -- you met with counsel?
A. Yes.
Q. Without going into the substance of that

meeting, who -- who was the counsel that you met with?

A. Mr. McKane.

Q. Anybody else there at the meeting?

A. Yeah, Ms. Dennis and Ms. Allen.

Q. About how long did you meet with counsel?

A. A couple of hours.

Q. And when did you meet?

A. Today.

Q. Other than the meeting today, did you have any other meetings with counsel?

A. Yeah, we had some phone calls.

Q. And other than the three people that you identified earlier, was anybody else on those calls?

A. No.

- - -

(Whereupon, Exhibit 2 was marked for identification.)

Plaintiff's Objection 015:18 – 19 Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802)

- - -

BY MR. PERRY:

Q. Before you is Aretakis Exhibit No. 2.

- - -

(Whereupon, a short recess was taken.)

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- - -

THE VIDEOGRAPHER: The time is 2:34. We are back on the record.

BY MR. PERRY:

Q. Can you identify Aretakis Deposition Exhibit 2?

A. Yes, this is the schedule prepared by Mr. Rohlig.

Q. And can you describe generally what the schedule reflects?

A. The schedule reflects a deferred tax assets and deferred tax liabilities as they appear on the Ally consolidated 10-K for the year end 2012, and provide some additional details regarding those amounts.

Q. There's -- for the deferred tax assets, there's a column that is entitled ResCap. Can you explain what that column signifies?

A. Yes. Those are the hypothetical ResCap deferred tax assets that would exist if ResCap were a separate standalone taxpayer, which it is not.

Q. And the numbers that are reflected in the ResCap column, are those tax effected numbers?

A. Yes.

Plaintiff's Objection 016:06 – 017:15 Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802)

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Q. And what is the -- what number is used to make -- strike that.

What percentage are you applying to come up with the tax effected numbers?

A. Thirty-five percent.

Q. So the -- as I understand it, as of December 31st 2012, the number reflected for ResCap ordinary tax loss carry forward is 520 million; is that correct?

A. That's correct.

Q. And the tax effected number four ResCap capital tax loss carried forward is 571 million, correct?

A. That's correct.

Q. There's several other numbers that are listed in the ResCap column. I'd like to go through them with you.

The next one is mark to market on consumer finance receivables and loans, and the tax effected number is 55 million. Do you know what that line item mark to market on consumer finance receivables and loans reflects?

A. I know that for tax purposes some loans are mark to market, and for purposes some loans are

mark to market and they're not always the same, and this would be the difference between the two tax effected.

Q. Okay. And why is the difference between the two a tax -- a deferred tax asset?

A. Because our tax basis in an asset would be higher than a book basis.

Q. I see. Okay. And there's a $268 million number, I believe it's provision for loan losses?

A. That's correct.

Q. What does that provision for loan losses line item reflect?

A. For book accounting purposes, an expense -- a liability -- a contrast that could be recorded for the expected losses on those loans.

Q. Okay.

A. That is not a good tax deduction, so it creates a deferred tax asset.

Q. I see. And so, at the point in time when the loan losses became actual losses as opposed to just expected losses, would they be reclassified on this sheet to -- to be in some other line item?

A. The deferred would come down for provision for loan losses, and it would be reflected

elsewhere, maybe not on the schedule.

If it resulted in an actual decrease in the tax liability, then it wouldn't be on your deferred.

Q. Right.

A. So it depends upon when it reduces and whether or not we're still in an overall net operating loss carry forward position.

It would likely, while we are in it in a well carried forward position, it would be reclassified to the other line item.

Q. I see. So it could be used as an NOL at the point in time when the loss become -- when the loss becomes an actual as opposed to expected, correct?

A. That's correct.

Q. There's a $126 million line item under mortgage servicing rights. What is that?

A. This was an adjustment -- reflects an adjustment that was made when Ally was a partnership for tax purposes.

And under 743B, tax counsel will understand, there was certain adjustments made to the basis of our assets. When a new partner comes

in and we adjust the basis because of this partnership-type transaction, and our basis and our mortgage servicing rights, it exceeds the basis for book purpose.

Q. Why is that a deferred tax asset?

A. Because it's a difference in basis that's reflected between book and tax -- gets reflected in that way.

Q. And there's also a category for other that it's $183 million. Do you have a sense of what makes up that other category at least with respect to ResCap?

A. In general, I believe there's other basis difference between book and tax with respect to assets.

Q. There's the gross deferred tax assets in the ResCap column are total that 1.724; do you see that?

A. Yes.

Q. And below that there's a valuation allowance of 649 million. Can you explain what the valuation allowance is?

A. We have valuation allowance as of the end of the year with respect to certain DTA's, the

Plaintiff's Objection 20:17 – 22:13 Irrelevant (FRE 401, 402)

utilization of which is not certain. In particular, capital losses are VA'd because they have a short carry forward period and can only be used against capital gains.

Q. When you say VA, do you mean --

A. Valuation allowance.

Q. And do you have an understanding of why the valuation allowance would exceed the amount of the capital tax loss carried forward?

A. Yes.

Q. Why is that?

A. In addition to the capital loss carry forward, we had valuation allowance against certain NOL carry forwards that were subject to what they call the SRLY limitations, separate year -- separate return limitation year. It's a tax acronym.

But it's -- these are losses that can't be used -- utilization which is very limited, so they were subject to valuation allowance.

And there were also some assets where we had a basis difference, and they were capital assets, so that basis difference would likewise be subject to valuation allowance like the other capital losses.

Q. And is it -- does the allowance for capital tax loss carry forwards, is it a dollar-for-dollar allowance or is it some percentage of the capital tax loss carried forward that's VA'd?

A. Dollar for dollar.

Q. And do you know whether any -- whether Ally expects to use any of the ResCap capital tax loss carried forwards in 2013?

MR. MCKANE: Objection to form.

You can answer.

THE WITNESS: I expect that we will use a substantial amount.

Plaintiff's Objection 22:7-13: Lack of personal knowledge (FRE 602), inadmissible hearsay (FRE 802)

BY MR. PERRY:

Q. Can you give an estimate in terms of the amount?

A. I really don't know the amount, but I know we've had certain transactions in 2013 and expect others in '14 that will generate capital gains.

Q. And do you -- are you able to estimate as you sit here today how much of the 500 -- and I'm just looking for an estimate, not a precise number -- how much of the $571 million capital tax loss carry forward will be used in 2013 or '14?

A. Over the two years together, probably all

Plaintiff's Objection 22:20–23:05 Lack of personal knowledge (FRE 602), inadmissible hearsay (FRE 802)

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of it.

- - -

(Whereupon, Exhibit 3 was marked for identification.)

- - -

Plaintiff's Objection 23:4-5: Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

BY MR. PERRY:

Q. Before you, Mr. Aretakis, is Aretakis Deposition Exhibit 3. It's an excerpt of the report of Arthur Gonzales as the examiner in the ResCap bankruptcy.

I'm particularly interested in the table, which is reflected in footnote 1812, which is on page V344 of the exhibit. Just directing your attention to the ResCap, the third -- the text under amount of ResCap tax benefits available for AFI's use, there's a line item for ResCap NOL's generated between November 2009 and December 2012, and the number is 1.444.

First of all, do you know where that number came from?

A. No, I do not.

Q. Do you know whether that's a tax effected number or non-tax effected as you sit here?

A. I would think it is not tax effected.

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Q. And there's a line item ResCap capital losses generated between November 2009 and December of 2012 for 1.629 billion.

A. Uh-hum.

Q. Do you know where the 1.629 billion number came from?

A. I do not know.

Q. And is it your belief that the 1.629 number is similarly not tax effected?

A. Correct.

\- - -

(Whereupon, Exhibit 4 was marked for identification.)

\- - -

Plaintiff's Objection 024:13–14 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)

BY MR. PERRY:

Q. So you'll see in the text of Aretakis Exhibit 3, the text of footnote 1812, there's a citation for the 1.444 billion and 1.629 billion numbers that we've been looking at, and it reflects or cites to a schedule prepared -- purportedly prepared by AFI.

It has a Bates number there which is a number that litigators use to identify documents produced in litigation. And I'm going to show you

Plaintiff's Objection 024:17 – 025:04 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

as Aretakis Exhibit 4, the document cited to in footnote 1812.

A. Uh-hum.

Q. Do you know what this schedule is?

A. I don't recognize the schedule.

Q. Is the form of the document something that's familiar to you?

A. I could make sense of it, but I don't routinely use a document that looks like this.

Q. And I take it by looking at the document, you don't know who prepared the document or where within AFI it was prepared, correct?

JSN Objection 25:11-21 Irrelevant (FRE 401, 402)

A. That's correct. I can only guess.

Q. Okay. And are you able -- just focusing on the network net operating loss figures set forth in the first page of Aretakis Deposition Exhibit 4, are you able to tie those figures back to footnote 1812?

A. It's not jumping off the page at me, Counselor.

Q. Well, if you -- so, if you take under net operating loss, if you take the line item 11/2/09 to 12/31/09 and then 2010 and '11 and you add them up and then add to that the projected number for 2012,

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I believe you get to 1.444.

Is that -- I mean, I know I'm asking you to do math based on somebody else's schedule, and I would concede it's unfair. I'm just trying to make sure that --

JSN Objection 26:3-8 Irrelevant (FRE 401, 402)

MR. MCKANE: I appreciate you saving me the objection.

BY MR. PERRY:

Q. The examiners that -- the calculation that the examiner did makes sense to you in reviewing this schedule?

MR. MCKANE: Let me just ask are you asking him to look at the first net operating loss calculation including -- including income or the second net operating loss calculation?

There's two on the page.

MR. PERRY: The second.

THE WITNESS: Thank you. Okay.

MR. MCKANE: And just to be clear, are you asking him to sum the numbers that start 823 million and 559 million?

MR. PERRY: Well, no.

BY MR. PERRY:

Q. You know, you're not here to do math,

obviously. I just want to make sure, you know, to the extent one wanted to use this schedule to determine at least as of the time the schedule was prepared what the ResCap net operating losses were between November of 2009 and December of 2012, would one simply add the four line items that I identified earlier?

MR. MCKANE: Objection to form. Foundation. Calls for speculation.

Go ahead.

THE WITNESS: It would seem reasonable, but I can't -- I can't state so.

BY MR. PERRY:

Q. Okay. But you at least in preparation for your deposition, directed and supervised members of the tax staff to actually prepare the net operating losses for ResCap up through and including December 31st 2012, correct?

A. I'm sorry, I didn't understand the question.

Q. Okay. If -- going back to Aretakis Deposition Exhibit 2.

A. Okay.

Q. What line items would I use if I wanted to

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come up with a total for ResCap NOL's generated up through -- as of December 31st 2012?

MR. MCKANE: Objection to form.

THE WITNESS: That would be very difficult to do.

This is book accounting, Exhibit 2?

BY MR. PERRY:

Q. Uh-hum.

A. And I believe what you're describing in Exhibit 4 are taxable income numbers.

Q. Uh-hum.

A. The book accounting only describes the deferred item, and the taxable income number comes off a tax return.

Q. I see. So how would the deferred -- strike that.

If I wanted to compare the deferred item set forth on Aretakis Schedule 2 and the taxable income numbers set forth in footnote 1812, what are the differences in those two that -- the items that make up the two figures on those two schedules?

MR. MCKANE: Objection to form. Foundation. Vague. Overbroad.

JSN Objection 28:16-29:7 Irrelevant (FRE 401, 402)

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Go ahead.

THE WITNESS: Okay. Again, it appears footnote 1812 are tax return numbers and Exhibit 2 are book accounting numbers. I'm not sure how to compare them to make any sense of that comparison.

BY MR. PERRY:

Q. Okay. So it wouldn't be as simple as simply grossing up the tax effected numbers to a number and then translating them into the -- the numbers that appear in footnote 1812; is that your testimony?

A. That would not be a one-to-one comparison, no.

Q. If -- would there be items included in the deferred tax assets -- well, strike that.

What items in the deferred tax assets would not be listed on the -- on the tax -- the tax returns?

A. Certainly, any difference between book income and tax income there is a permanent difference.

Q. Uh-hum.

A. Otherwise, it's in there.

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Q. Okay. And are you aware of any permanent differences between book income and tax income for ResCap?

MR. MCKANE: Objection to form.

THE WITNESS: For example, something that creates a permanent difference is perhaps a -- as an example, a book expense that is deductible for tax purposes.

Attorneys fees paid in the bankruptcy case are not deductible for tax purposes. That's a permanent difference.

BY MR. PERRY:

Q. Are you able to estimate the size of any permanent differences between book income and tax income for ResCap?

A. I know that the consolidated number appears in our 10-K.

Q. And where would I look in the 10-K for the consolidated number?

A. In note 23, income taxes.

- - -

(Whereupon, Exhibit 5 was marked for identification.)

- - -

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BY MR. PERRY:

Q. Before you is Aretakis Deposition Exhibit 5. It's an excerpt of Ally's 2012 10-K, and we fortunately for us excerpted note number three.

Are you able to identify based on your review of note 23 the difference between -- the permanent difference between tax and book accounting that we've just been discussing?

A. Page 171, line item near the bottom, nondeductible expenses, would capture those bankruptcy attorneys fees that I just described.

Q. Okay. If you go back to the analysis in footnote 1812, do you -- generally speaking, do you have an understanding of what the table is trying to portray in footnote 1812?

A. I have a general understanding.

Q. Can you describe that understanding?

A. The heading is amount of ResCap tax benefits available for AFI's use. And it appears to list certain tax attributes arising in ResCap operations that belong to AFI, and it appears to estimate a total amount, and appears to apply a federal income tax rate for a -- an amount of tax effected benefit.

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Q. Is there anything about this chart that appears to you to be incorrect based on your review?

MR. MCKANE: Objection to form. Foundation.

THE WITNESS: The line that says less estimated amount of cancellation of debt income, I wouldn't find the number incorrect so much as the description. Upon further review, we don't think there would be something called cancellation of debt income for tax purposes.

JSN Objection 32:2-11 Irrelevant (FRE 401, 402)

BY MR. PERRY:

Q. And what would you -- what would you call it?

A. I'd call it gain or loss on an exchange.

Q. And for purposes of calculating available tax attributes for Ally, whether one calls it gain or loss on an exchange or cancellation of debt income, would that number be reflected in this calculation in the manner that it is in footnote 1812?

MR. MCKANE: Objection to form. Vague.

THE WITNESS: I don't know.

Plaintiff's Objection 032:25 – 033:18 Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802)

BY MR. PERRY:

Q. And when -- at what point in time did Ally

determine that the concept of cancellation of debt income was not the right term to use in connection with thinking about Ally's losses in connection with the ResCap bankruptcy?

MR. MCKANE: Objection to form. Misstates prior testimony.

Go ahead.

THE WITNESS: This summer.

BY MR. PERRY:

Q. About when?

A. I'll call it September.

Q. September of 2013?

A. Yes.

Q. What led Ally to consider whether the concept of cancellation of debt income or something else was the appropriate concept to use?

A. The progression of this case.

Q. And what about the progression of the case caused Ally to consider the appropriate title to use?

MR. MCKANE: Actually, on that, I'm going to have to instruct you, if you can answer the question without divulging attorney-client privilege, do so.

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THE WITNESS: Okay.

MR. MCKANE: But to the extent you can't answer the question without divulging attorney-client privilege, you can't answer the question.

THE WITNESS: Tough one. Let me say that there is my -- I developed the understanding that this case may -- how do I describe it -- wrap up or become a taxable event -- trigger a taxable event in 2013.

BY MR. PERRY:

Q. Uh-hum.

A. And we had not really performed the requisite analysis for tax purposes, and so we undertook that analysis and reached a different conclusion as to the character of that item.

Q. Okay. And how would the character of the item, that change in the character of the item -- strike that.

Would the change in the character of the item result in a change in tax treatment for Ally?

MR. MCKANE: Objection to form. Vague.

THE WITNESS: Let me say that the

character of the gain or loss that might be triggered upon resolution of this case could be something other than cancellation of debt income, which is ordinary income, instead the exchange treatment that -- characterization might produce some capital gain or loss.

BY MR. PERRY:

Q. And have you calculated the amount or has the tax department calculated the impact of that change in characterization upon Ally?

A. No, it really can't be calculated at this time.

Q. At what point could one calculate it?

A. At the point we have a taxable event.

Q. And is it -- is the question whether at the point you have a taxable event there's sufficient capital gains to offset the capital losses?

A. No. I was thinking in terms of knowing the -- all the components of the gain or loss that would be knowable only at the time of that taxable event.

Q. Okay. So let me just step back and make sure I've got all of this.

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If -- in a world where this loss was characterized as cancellation of debt income, that would be -- that's treated as ordinary loss?

A. Ordinary income.

Q. Ordinary income. Okay. Whereas a gain or loss on exchange, at least a portion of the gain, could be characterized as a capital gain, correct?

MR. MCKANE: Could you read that back.

- - -

(Whereupon, a portion of the transcript was read for the record.)

- - -

MR. MCKANE: Object to form. Vague.

THE WITNESS: Not quite. There could be actually capital loss as well even if there were over on net gain in total.

BY MR. PERRY:

Q. I see. But from a tax perspective, if the total was a capital gain, you know, something approximating 3.9 billion --

A. Okay.

Q. Okay?

-- how would the tax -- your ability to use -- strike that.

-- how would the impact of that gain be any different from the use of an ordinary income gain if you just had pure cancellation of debt income?

A. If the exchange produced solely ordinary gain, the difference between that and cancellation of debt income is certain special treatment for CODI that's permitted under the Internal Revenue Code, so it has a different character in that sense.

Q. Uh-hum. And just from a 10,000-foot perspective, does characterizing this particular item as gain or loss on an exchange improve Ally's tax position or hurt Ally's tax position?

MR. MCKANE: Objection to form. Vague. Calls for speculation.

THE WITNESS: I don't know if there's an overall benefit or detriment to this position.

BY MR. PERRY:

Q. Now, other than the characterization of the $3.9 billion item in footnote 1812, is there anything else about the schedule that appears to you to be inaccurate?

A. I can't verify any of the numbers used on this schedule, so I can't say if they're accurate or

inaccurate.

Q. My question was does anything appear to be inaccurate, understanding that you're not here to verify the schedule?

A. I'm sorry, I really can't say if it's accurate or inaccurate.

Q. But my question is --

A. Does it look wrong?

Q. Yeah, does it look wrong?

MR. MCKANE: Objection to form. It's asked and answered.

THE WITNESS: I'm not familiar with these numbers.

BY MR. PERRY:

Q. And who from Alley would be familiar with these numbers?

A. I don't know where these numbers came from.

Q. And similarly, you don't know who prepared the chart, which I believe we marked as Aretakis Exhibit 4, correct?

A. I only speculate.

- - -

(Whereupon, Exhibit 6 was

Plaintiff's Objection 038:25 – 039:20 Irrelevant (FRE 401, 402) , inadmissible hearsay (FRE 802)

JAMES ARETAKIS

marked for identification.)

- - -

BY MR. PERRY:

Q. Before you is Aretakis Exhibit 6. Can you identify this document?

A. It's a document prepared in June of this year by Sean Rohlig, and it describes both the book and tax treatment of the proposed bankruptcy settlement.

Q. And if you flip to page six of the document, right before the blue separator sheet --

A. Uh-hum.

Q. -- there's a tax sign off --

A. Yes.

Q. -- and it reflects that you approved the memo on June 28th 2013. My question is did you, in fact, approve Mr. Rohlig's memo in or around June of 2013?

A. Yes.

Q. And what was the purpose of the memo?

A. For book accounting purposes in the second quarter. We were informed that there -- the $2.1 billion proposed settlement would be reflected in the second quarter financial statements, and this

document describes how we would treat it for tax purposes in Q2's financial statements.

Q. When does Q2 close for Ally?

A. June 30th.

Q. So Ally is on a calendar --

A. That's correct.

Q. If you flip to page five, there's some discussion of the tax accounting --

A. Uh-hum.

Q. -- for the settlements. Can you describe how -- and there's a notation there 1.35 billon. Do you have any understanding of where the 1.35 billon number derives from?

A. Is that the difference between the 2.1 as proposed and the 750 already accrued?

Q. Yeah. Let me -- if you look -- if you'd like to look, the factual background on the first page --

A. Uh-hum.

Q. -- running over to the second reflects the factual background for the memorandum.

A. Unless my math is wrong, that is, in fact, the difference between the two.

Q. And as I understand it, the -- so there

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was a 1.35 billion payment that was booked in Q2 2013; is that right?

MR. MCKANE: Objection to form.

THE WITNESS: No, I don't believe there was any payment made in Q2.

BY MR. PERRY:

Q. Why would the deferred tax assets be recorded in Q2 2013 in the absence of an actual payment?

A. For book accounting purposes, they accrued -- the cash payment, they accrued liability. And it's a deferred item because it's not a current tax deduction.

Q. And at the point that the one point -- if and when the 1.35 billon is paid, does the 510 million become a tax deduction, a current tax deduction, assuming you can use it?

MR. MCKANE: Objection to form.

THE WITNESS: At the time the 1.35 -- I'm sorry --

BY MR. PERRY:

Q. Billion is paid.

A. -- is paid.

Q. Is there -- strike that.

Plaintiff's Objection 041:08 – 17 Irrelevant (FRE 401, 402), incomplete (FRE 106) , inadmissible hearsay (FRE 802)

At the time the 1.35 billon is paid, is there a -- does that then create a roughly $510 million tax attribute that Ally can use?

A. It depends. If at the time the payment is made, ResCap remains wholly owned LLC subsidiary of Ally, net payment is a nonevent.

Q. What do you mean by that?

A. Well, ResCap is a disregarded entity for tax purposes, so it is not treated as separate from Ally, and payments from Ally to ResCap are payment from one pocket to another; doesn't create a taxable deduction.

Q. Is that your understanding of how the tax accounting will work if the particular settlement between Ally and the debtors in the ResCap case is approved?

MR. MCKANE: Objection to form.

THE WITNESS: Help me out with that one?

BY MR. PERRY:

Q. Okay. Assume the plan of reorganization is confirmed, there's a payment of $2.1 billion from Ally to ResCap.

A. Uh-hum.

Q. The Aretakis Deposition Exhibit 6 at least

Plaintiff's Objection
042:21 – 043:18 Irrelevant (FRE 401, 402), inadmissible hearsay (FRE 802)

contemplates that there would be a corresponding tax attribute created by that payment. Will that, in fact, be a usable tax attribute based on what you know of the settlement proposed in the bankruptcy case?

MR. MCKANE: Object to form. Vague.

THE WITNESS: Let me say the payment by itself if it occurs while ResCap is owned by Ally, as I said, is not an event. Taxable event won't occur until something creates a taxable event such as the cancellation of Ally's interest in ResCap.

BY MR. PERRY:

Q. And the -- it's contemplated currently that there will be a cancellation of Ally's interest in ResCap, correct?

A. Correct.

Q. So is it correct that for every dollar of settlement consideration paid there will be a tax attribute of roughly 35 percent created in favor of Ally?

MR. MCKANE: Objection to form.

THE WITNESS: Not exactly. The exchange treatment I referred to earlier will be the tax

event, and that will be an exchange of all the assets we call ResCap assets in exchange for release of all liabilities we're calling ResCap liabilities.

For tax purposes, those are all Ally assets and they're all Ally liabilities. That deemed exchange will create a taxable gain or loss. The cash contributed is one -- but one component of that calculation.

BY MR. PERRY:

Q. And what is that calculation right now, what is the expected taxable gain or loss as a result of this case, the conclusion of this case?

MR. MCKANE: Objection. Asked and answered.

BY MR. PERRY:

Q. You can answer.

A. Okay. I'm sorry, you threw me off. Can you read that back?

- - -

(Whereupon, a portion of the transcript was read for the record.)

- - -

THE WITNESS: It's somewhat impossible to

say. The -- we -- we have a good understanding of the assets that we would be giving up and their tax basis.

The liabilities relieved, which are the deemed proceeds of that exchange, are unknown at this time because we don't know what liabilities the bankruptcy court will acknowledge claims against ResCap, and we don't know the extent to which those liabilities are fixed and determinable for tax purposes.

BY MR. PERRY:

Q. Have you estimated -- has Ally estimated the amount of liabilities it anticipates will be relieved as part of the bankruptcy case?

A. No.

Q. What is the tax basis of the assets that are being given?

A. I couldn't tell you the number. I know it exceeds the book basis.

Q. And is there any analysis, a spreadsheet or a memo, that analyzes the bottom line anticipated tax effect of the conclusion of the ResCap bankruptcy?

A. Not that I'm aware of.

JAMES ARETAKIS

Q. And do you know why no such memo has been prepared?

A. Because we don't know what the liabilities will be. We don't know what will be fixed and determinable on that termination date.

Q. Can you go back to Aretakis 3. I think it's the footnote 1812 document.

A. Uh-hum.

Q. Do you see in this document there's a tax liability figure of 10.1 billion; do you see that? Is that the figure that you're testifying is unknowable at this point in time from Ally's perspective?

A. Yes.

Q. You don't believe there are any internal Ally documents that estimate the amount of that tax liability figure, correct?

A. Not to my knowledge.

Plaintiff's Objection 046:10–15 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

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(Whereupon, Exhibit 7 was marked for identification.)

\- - -

Plaintiff's Objection 046:24 – 048:12 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

BY MR. PERRY:

Q. Before you is Aretakis Deposition Exhibit

7.

This is similar to the other spreadsheet we looked at. This is the spreadsheet that's cited in the examiner's report as being the source of the $10.1 billion number that we just went through. Is this a -- are you -- can you identify the spreadsheet?

A. It appears to be a tax basis balance sheet.

Q. And do you know whether Ally maintains a tax basis balance sheet for the ResCap business?

A. To my knowledge, we don't regularly produce them on a normal cadence. We produce them as needed. It's a bit of work as you can see.

Q. Sure. Do you know whether a tax balance -- basis balance sheet has been prepared since December 31st 2012?

A. I don't know that one has been prepared since then.

Q. Did you participate in the preparation of the tax basis balance sheet before you as Aretakis Deposition Exhibit 7?

A. No.

Q. Do you know who prepared Aretakis

Deposition Exhibit 7?

A. I could speculate.

Q. There's nothing about the form of the document where you say that's Sean's document or something like that?

A. No.

Q. And at least this tax basis balance sheet reflects total liabilities of roughly $10.1 billion, right?

A. Right, as of 12/31/12.

Q. What are the items that would change between 12/31/12 and today on the tax basis balance sheet at least with respect to total liabilities?

MR. MCKANE: Objection to form. Overbroad.

THE WITNESS: Let me explain to you what I expect to happen and why.

As of the last balance sheet I looked at for ResCap, which was June 30th, it showed an insolvency that was less than $2.1 billion. So I concluded that if Ally, in fact, paid $2.1 billion and ResCap became solvent, that's somewhat contrary to what we expect to happen in the course of this case.

We expect to have many more liabilities asserted, and not everyone will be satisfied in full. Those liabilities to be asserted are not reflected on this tax basis balance sheet.

I believe, I understand that they're still not reflected in the general ledger. And so when those facts become clearer, then I will that one component of the gain loss that I don't know today. That's liabilities relieved.

BY MR. PERRY:

Q. But at least in terms of -- well, let's step away from liabilities relieved for a second.

A. Yeah.

Q. In terms of total liabilities, the $10.1 billion number, would you expect those to have changed materially between December 31st 2012 and now?

A. Well, of course, anything that was paid off would not be on the balance sheet.

Q. So they would be asset sales, right?

A. Sure.

Q. And then in terms of -- is the unknowable number -- let's go back to 1812.

A. Uh-hum.

Q. Do you see there's a line item less creditor's expected recovery?

A. Yes.

Q. Is that the unknowable number from Ally's perspective that will prevent you from doing with any certainty the calculation that's reflected here in 1812?

MR. MCKANE: Objection to form. Foundation.

THE WITNESS: It's not the creditor's expected recovery that will drive this calculation; it's the total amount of the fixed and determinable claim.

BY MR. PERRY:

Q. Okay.

A. This expect to recovery to me indicates what they expect to -- expect to recover in terms of proceeds from the bankruptcies. It's a slightly different concept.

Q. I see. So the number -- the tax liability number, so liabilities for tax book purposes, will change once total claims are determined in the bankruptcy; is that your testimony?

MR. MCKANE: Objection to form.

JAMES ARETAKIS

Foundation. Misstates testimony.

THE WITNESS: Yeah, you confused me with the question. Help me again?

BY MR. PERRY:

Q. Okay. There's -- Ally maintains and computes the total liabilities, ResCap's total liabilities for tax purposes. Okay?

A. Okay.

Q. And as I understood your testimony, at the conclusion of the bankruptcy that number will need to change based on what?

MR. MCKANE: Objection to form.

THE WITNESS: That number will change based on liabilities that the court deems to be valid claims against ResCap, but only to the extent that they are fixed and determinable. That's a tax term of art.

BY MR. PERRY:

Q. So let's just go back to Aretakis 7. Just by way of example, there's a line item in here for accrued employee liability. It's about halfway down.

A. Yup.

Q. There's a $140 million number.

JAMES ARETAKIS

Is it your testimony that hypothetically, as part of the bankruptcy process, the court allows employee claims of 150 million, this number would be updated to 150 million at that time because it was fixed and determinable and you would change the book value; is that the substance of your testimony?

MR. MCKANE: Objection to form.

THE WITNESS: That's possible. But even though in that line item, Counselor, there's a timing difference. So the book number is different from the tax number already. But if the court said the final number shall be 150 million, then, yes, that would be a new liability.

MR. PERRY: If you want to go off the record to switch the tape.

THE VIDEOGRAPHER: The time is 3:40. We are going off the record.

- - -

(Whereupon, a short recess was taken.)

- - -

THE VIDEOGRAPHER: The time is 4:14.

JAMES ARETAKIS

We're back on the record.

BY MR. PERRY:

Q. So do you know as you sit here today what Ally's net investment for tax purposes is in ResCap?

A. I don't know that number as I sit here today.

Q. Is that a number that's knowable?

A. Sure.

Q. And who would know that number?

A. I'm sure the controller and others on his staff.

Q. At the end of the day, once liabilities are known and there's a taxable event in the bankruptcy, is it possible that Ally will receive a tax benefit in excess of $2.1 billion?

MR. MCKANE: Objection to form. Vague. Overbroad. Calls for speculation.

THE WITNESS: Is it possible, yes, it's possible.

Plaintiff's Objection 053:13–20 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), impermissible lay opinion

BY MR. PERRY:

Q. And as you understand it, there's been nothing done within Ally as far as you know to estimate the tax benefit once the case has been wrapped up and liabilities are known, that exercise

has not occurred as far as you know?

A. That exchange calculation as far as I know has not been done.

Q. Now, I want to go back and focus on assets and liability.

- - -

(Whereupon, Exhibit 8 was marked for identification.)

- - -

Plaintiff's Objection 54:12–55:18 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion

BY MR. PERRY:

Q. Before you is Aretakis Deposition Exhibit 8.

It's an email from Mr. Frucci to a variety of people. I note for the record that you don't appear to be included in the email. Could you just take a moment to review it.

A. Uh-hum. Okay.

Q. A couple of questions. Well, do you understand the basis for Mr. Frucci's conclusion that over the life of ResCap from the date of filing through the date of the liquidating trust ResCap would generate a taxable loss of 4.17 billion?

A. I understand the concept that he's discussing.

Q. Okay. And what's your understanding of that concept?

A. He is expressing the, if I understand this correctly, the total or net effect of -- taxable effect coming from ResCap post the filing date.

Q. Does it in adjusting post the filing date, do you understand Mr. Frucci's analysis to do anything other than factor in a $2.1 billion contribution?

MR. MCKANE: Objection to form. Foundation. Calls for speculation.

THE WITNESS: Mr. Frucci's last sentence says ResCap will generate a taxable loss of 4.17 billion, which represents a tax basis insolvency since the date of filing, plus the 2.1 billion. So he is expressing a total taxable loss attributable to this liquidation.

BY MR. PERRY:

Q. If you go to the second -- well, it's the schedule attached to the email.

Do you know Mr. Frucci uses a tax basis at 5/14 of 12.7 billion; do you see that?

A. Yes.

Q. Do you know where he comes up with that

number?

A. 5/14, do we know what year this is, 5/14/11 -- I mean, excuse me, '12?

Q. If you look at the next page --

A. It seems to indicate 5/14/12, right, with a filing date?

Q. Yeah, which is the filing date.

A. Yes. Okay. So I see 4.17 billion number on here, yup.

Now your question?

Q. If you go back and look at the tax basis balance sheet that we were reviewing as of 12/31/2012.

A. Uh-hum, right.

Q. You'll see the total assets are down to 11.3 billion.

A. Uh-hum.

Q. Do you have any understanding of what could cause that level of -- that decrease in total assets between May of 2012 and the conclusion of 2012?

A. If you sold assets, certainly your balance sheet would shrink.

Q. Okay.

A. You would have to take then the proceeds and reduce liabilities.

Q. Okay. Well, that was my next question.

You see assets go down from 12/7 to 1/13, so roughly a billion and a half. But if you compare the liability movement.

A. Uh-hum.

Q. You go from 10/6 to 10/3, so only 300 million.

Do you have any explanation for the difference --

A. I do not off the top of my head.

Q. Okay. Who would know?

A. Controller staff at ResCap and whoever perhaps prepared this tax basis balance sheet.

Q. Now, does Mr. Frucci's analysis take into account in generating the taxable loss, does his analysis take into account any historical NOL's or capital losses that would have been generated?

MR. MCKANE: Objection. Form. Foundation. Calls for speculation.

THE WITNESS: Only if there's tax basis and ResCap assets included in those attributes.

JAMES ARETAKIS

BY MR. PERRY:

Q. And do you --

A. And I would -- okay.

Q. Do you have any reason to believe that his tax basis assets would include those attributes?

A. No, I don't think they do.

- - -

(Whereupon, Exhibit 9 was marked for identification.)

- - -

Plaintiff's Objection
58:13–59:06 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)

BY MR. PERRY:

Q. Before you is Aretakis Deposition Exhibit 9.

And it's an 8-K that was filed --

MR. MCKANE: July 31st.

BY MR. PERRY:

Q. -- July 31st. Is dated July 31st 2013.

I'm specifically interested in the text that starts on the second page and carries over to the third page. I'm directing your attention to -- take a moment to review it. I'm going to start asking questions about note four, but take your time and look.

A. Okay.

JAMES ARETAKIS

Q. There note four reflects a $1.6 billion charge resulting from Ally's comprehensive settlement agreement, the ResCap Chapter 11 bankruptcy case; do you see that?

A. Uh-hum.

Q. What is the $1.6 billion, where does that come from?

A. I could guess for you.

Q. Well, it's -- there was a $2.1 billion payment, right?

A. Right.

MR. MCKANE: An agreement to pay 2.1 billion.

BY MR. PERRY:

Q. An agreement to pay $2.1 billion.

A. Uh-hum.

Q. As I understand it, some of that was paid by insurance?

A. Well, let's take a look first. This is -- the 1.6 billion charge would have been based on -- I believe the increment of that 2.1 over the 750 that was already accrued, plus other items that were discussed in Mr. Rohlig's memo.

So it's probably the sum of 1.35 and

Plaintiff's Objection
59:18–60:02
Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602)

some other items. Feels right to me.

Q. Do you know what the other items are based on your review of Mr. Rohlig's memo?

A. Well, Mr. Rohlig's memo talks about some insurance recoveries and mentions some increases to litigation reserve. I don't know if that gets you to 1.6.

Q. Okay. Why would the insurance recoveries be included in the charge?

A. I don't know the origin of this 1.6 number here. I'm speculating, so I can't tell you if it's in there or not.

MR. MCKANE: I'd ask you not to speculate.

THE WITNESS: Okay.

BY MR. PERRY:

Q. Okay. But in any event, there was a 1.6 billion charge taken in the second quarter of 2013 in connection with the settlement, correct?

A. Appears to be from this document.

Q. And as between the $1.35 billion incremental payment and the $1.6 billon number, you don't know and are unable to deduce what makes up the difference between 135 and 1.6, right?

A. As I sit here, I don't know the answer to

Plaintiff's Objection 060:17 – 063:12 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion

that question.

Q. And had Ally previously taken a charge for the $750 million settlement?

A. Uh-hum.

Q. You got to answer yes or no.

A. Oh, I'm sorry.

Had they, yes, they did.

Q. Okay. And you see the text here says this was offset by approximately 600 million in tax benefits related to the settlement charge and the sales of Ally's international businesses; do you see that?

A. Yes.

Q. Is the $510 million tax benefit identified in Mr. Rohlig's memo part of the $600 million in offset identified in the 8-K that's before you now?

A. It would appear to be.

Q. And the way Mr. Rohlig got to the $510 million benefit is he simply took the $1.35 billion contemplated payment and multiplied it by the .3782 tax rate at the -- that was operable at the time, correct?

A. Correct.

Q. Okay. Just out of curiosity, why does he

use 37.82 rather than 35 percent?

A. Thirty-five was federal only. The balance would be state and local.

Q. Okay. And do you know whether a similar tax asset was recorded with respect to the $750 million payment?

A. Yes.

Q. Why don't we go back to Mr. Rohlig's memorandum. If you go to page three, there's a section heading that reads tax basis and ResCap net assets about halfway down.

A. Yeah.

Q. It says on the filing date Ally's tax basis in ResCap's assets exceeded ResCap's liabilities that were recognized for tax purposes by 2.07 billion?

A. Right.

Q. And that's consistent with Mr. Frucci's analysis that we were looking at earlier, correct?

A. Yes.

Q. And just for the record, Mr. Frucci's analysis is Aretakis Deposition Exhibit --

A. Eight.

Q. Okay. And it says since the filing date

this net tax basis has been reduced for both deductible and nondeductible expenses incurred at ResCap, but the net amount is estimated to remain significantly positive at this time.

Do you believe that to be a correct statement?

MR. MCKANE: Objection to form.

THE WITNESS: That amount is expected to remain significantly positive, at this time, yes, the time of the writing of this memorandum, that's correct.

BY MR. PERRY:

Q. Okay. Fair enough. If you go down to the next paragraph, the second sentence.

A. Uh-hum.

Q. Ally expects to receive no cash proceeds, but expects to be released from all ResCap liabilities upon the transfer to liquidating trust. If ResCap is tax insolvent upon the transfer date, Ally will record a net loss on the transfer equal to its net tax basis; do you see that?

A. Yes.

Q. Do you believe that to be an accurate statement?

A. That is an accurate statement.

Q. It says if on the other hand -- well, strike that.

If ResCap insolvent tax insolvent on the transfer date, the excess of fix liabilities over asset tax basis will generate a net taxable income.

Do you believe that to be accurate?

A. I believe that to be accurate.

Q. And then it says the net tax loss or net taxable income could be a combination of gain or loss on the disposition of assets and cancellation of debt income.

Do you believe that to be accurate?

A. I think subsequent review as concluded that -- that last clause and cancellation of debt income will be -- will not be the case. So that -- that statement is not entirely accurate.

Q. So the view now after subsequently review is that the net tax loss or net taxable income would be a gain or a loss on the disposition of assets; is that right?

A. That is correct.

Q. And focusing your attention on the next

paragraph.

A. Uh-hum.

Q. I take it the reference -- based on your subsequent review, the references to C-O-D-I are incorrect there?

A. That is a correct statement.

Q. But everything else in that paragraph is correct?

MR. MCKANE: Objection to form. Overly broad.

THE WITNESS: An increase to tax basis, I think that statement misses one other possibility.

BY MR. PERRY:

Q. What's the other possibility?

A. The increase of tax basis from the cash settlement amount will either increase a tax loss or decrease a tax gain.

Q. Let's go back to the footnote 1812 on the table contained therein.

Other than the -- do you understand this table to estimate the amount of tax benefit received by Ally in connection with the ResCap bankruptcy to be $1.77 billion?

JAMES ARETAKIS

MR. MCKANE: Objection to form. Foundation. Calls for speculation.

THE WITNESS: That's what it purports to show.

BY MR. PERRY:

Q. And of course, it assumes a contribution of 750 million, correct?

A. I see that number on here.

Q. And you would agree with me that if one adjusted the analysis to include the incremental 1.35 billion that Ally ultimately agreed to pay, the tax benefit goes up, correct?

MR. MCKANE: Objection to form. Calls for speculation.

THE WITNESS: Not quite. Can we -- throughout this discussion, we've talked about ResCap assets and ResCap tax benefits, and I think it might be appropriate here to talk -- to mention once again that all these assets and such are Ally's tax assets.

But in this case, there seems to be a combination of ResCap losses that are generated at ResCap and a settlement amount that's paid by Ally, and I suppose I wouldn't consider

JSN Objection 66:10-67:13 Irrelevant (FRE 401, 402)

those to be combinable items.

BY MR. PERRY:

Q. Okay.

A. So I -- I guess I would disagree with your statement.

Q. Okay. Well, so you could do -- would it satisfy your objection if you backed out the 750 from this analysis and analyzed the tax benefit not including the settlement payment?

A. I can't say even by pulling that out that I'm affirming this calculation.

Q. I don't want you to affirm it.

A. Yeah.

Q. I'm trying to get a sense of the potential tax benefit from Ally's perspective as a result of its investment in ResCap, the losses created therefrom --

A. Uh-hum.

Q. -- as part of the bankruptcy process --

A. Uh-hum.

Q. -- and also the tax benefits created as part of the settlement payment that was part of the bankruptcy process at least according to the --

A. All of those items go into a tax gain or

loss calculation.

Q. Okay.

A. I'm with you there.

Q. And your -- as I understood your objection to, you know, either my line of questioning or the table is you would analyze the tax benefits attributed to the gain or loss on the ResCap investment separately from the tax benefits created by the settlement payment, right?

MR. MCKANE: I'm going to object. Misstates his prior testimony.

MR. PERRY: I'm just trying to get a sense of what you're saying.

MR. MCKANE: Go ahead and try to do it again.

THE WITNESS: Would I analyze them separately? No, not really. I would treat them -- all of this as ResCap assets -- excuse me, misstated that -- Ally assets and Ally liabilities.

I thought you were trying to identify certain -- what we were calling ResCap assets and ResCap liabilities.

JAMES ARETAKIS

JSN Objection 69:3-17 Irrelevant (FRE 401, 402)

BY MR. PERRY:

Q. I understand the position you're articulating is in effect these were never ResCap's tax attributes. That's Ally's position, right?

A. That is true.

Q. Okay. And if one -- and the examiner's analysis, you would agree with me at least identifies and contemplates the tax attributes as belonging to ResCap in some way, shape or form, right?

MR. MCKANE: I'm going to object to that. That misstates the examiner's report.

BY MR. PERRY:

Q. Answer the question.

A. I don't know what the examiner concluded with respect to who owns these attributes.

Q. Okay. So -- but in terms of the tax benefits that run to Ally as a result of the conclusion of the ResCap bankruptcy process, there's in your view two types of tax benefits, there's the benefits that derive out of the $2.1 billion settlement payment, right?

MR. MCKANE: I'm going to object. Misstates his prior testimony.

JAMES ARETAKIS

Plaintiff's Objection
70:03–71:20 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion

BY MR. PERRY:

Q. Is it fair to say you consider it all as part of -- in the same way that the examiner built in the $750 million contribution to his analysis of the tax benefit, is that in your view an appropriate thing -- way to think about the ultimate tax benefit to Ally as a result of these cases?

A. Ally's ultimate taxable income or loss in this case will reflect that $2.1 billion contributed, yes, clearly.

Q. So this is an objection that my client filed to the original disclosure statement in the case. And if you look at the second to last page, you'll see that there's an analysis that simply rolls forward the examiner's chart in 1812 and adds to it the $1.35 billion supplemental settlement payment; do you see that?

A. Uh-hum.

- - -

(Whereupon, Exhibit 10 was marked for identification.)

- - -

MR. PERRY: That's Aretakis 10 for the record.

JAMES ARETAKIS

BY MR. PERRY:

Q. Now, at some point in time, you, Ally, will be able to do precisely the same analysis that's set forth in Aretakis 10, correct?

A. Uh-hum, that's correct.

Q. And on Aretakis 10, what are the items on here that are unknown at this point in time that make it impossible for you to -- to determine with precision the final tax benefit to AFI as a result of the ResCap bankruptcy?

A. Well, first let me point out that we wouldn't do precisely this calculation because it includes cancellation of debt income that doesn't reflect the exchange I've been describing.

Q. Right.

A. But one of the items on here that is used in the calculation is the very first line, ResCap tax liabilities. That's an item I will not know until that liquidation date.

Q. Okay. Anything else on here you will not know until some point later in the case or after the case is done?

A. Well, I see that creditor's expected recovery line I -- I would say we wouldn't know it,

but I think under my exchange calculation, we wouldn't care.

Also, tax basis and ResCap assets will of course change, and I note that the NOL and capital loss numbers as of 12/31/12, things change.

Q. Have those numbers been updated in 2013?

A. Yeah, we -- they would be updated on a quarterly basis.

Q. And do you have any idea as you sit here today --

A. I'm sorry, I do not.

Q. -- what those numbers are?

MR. MCKANE: Can you wait until he finishes his question before you answer.

THE WITNESS: Okay.

BY MR. PERRY:

Q. Do you believe Ally would have September 30 numbers at this point in time for the NOL's generated and capital losses generated?

A. I expect we have estimates. We don't compute with such precision.

Q. Would you expect those numbers to have changed materially during the course of 2013?

A. I'm not familiar with ResCap's operating

results in 2013.

Q. And then on the -- you testified earlier you wouldn't care about the creditor's expected recovery. Is that because of the change in thinking about cancellation of debt income or is there some other reason that in performing this type of calculation you wouldn't care about the creditor's expected recovery?

A. I don't care because CODI -- that's relevant for the CODI calculation.

Q. And how would you perform the calculation under the updated concept, which is refresh my recollection, it's not CODI, it's called -- what are you calling it now?

A. Gain or loss on the exchange. I would -- just to repeat your question, you want to know how I calculate that gain or loss again?

Q. Yeah.

A. It's the exchange of assets --

THE VIDEOGRAPHER: The time is 4:58. We are going off the record.

- - -

(Whereupon, a short recess was taken.)

JAMES ARETAKIS

- - -

THE VIDEOGRAPHER: The time is 5:11 p.m. We are back on the record.

BY MR. PERRY:

Q. So, when we broke, Mr. Aretakis, we were talking about the conclusions that you and your colleagues had drawn about there not being cancellation of debt income in this case.

Is -- and as I understand it, you would simply treat for tax purposes, you would simply calculate a net gain or loss on the ResCap assets, correct?

A. In ResCap liabilities.

Q. Okay. And is that because you believe that the ResCap debt being satisfied is nonrecourse debt for tax purposes?

A. That is correct.

Q. Okay. So, if nonrecourse debt is satisfied by transferring the assets that secure that debt to the creditors, there would then be a net gain or loss equal to the difference between the amount of liabilities and the basis of the assets, right?

A. The amount of the liabilities are

Plaintiff's Objection 74:06–77:08 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), impermissible lay opinion

recognized for tax purposes fixed and determinable and the tax basis of the assets.

Q. Okay. So back to Aretakis 10 and the chart. I just want to try and do that particular calculation without the cancellation of debt income concept.

So am I correct that the tax basis, assuming the analysis in this chart would be the 11.3 number, plus the 2.1?

A. Yeah, if we're using just for explanation of the nature of the calculation tax basis and net plus the 2.1.

Q. Okay. And then the liabilities would be the 10.1 liability number, correct?

A. As they exist on the liquidation date.

Q. And so ultimately, bottom line when you run that through the analysis, you come up with the same numbers that you would if you use the cancellation of debt income concept, right?

MR. MCKANE: Objection to form. Foundation. Speculation.

THE WITNESS: Come up with the same numbers?

BY MR. PERRY:

Q. Well, let me just --

A. Help me out?

Q. Let me help, okay, as best I can.

Do you -- using concepts of cancellation of debt income, you have losses of 5.9 billon offset by cancellation of debt income of 2.5 billion, right?

A. Okay.

Q. And that equates to using rough numbers 3.4 billion; do you see that?

MR. MCKANE: If you're asking if 5.2 minus 3.2 equals --

MR. PERRY: We'll calculate it.

BY MR. PERRY:

Q. Okay. So 5.904 minus 2571 equals 3.33 billion.

A. Okay.

Q. Okay?

A. Uh-hum.

Q. Now, you'd agree with me that instead of doing that calculation to determine the tax benefit to AFI, I would simply excise the line, the 5.904 line and the 2571 line, and instead perform the

following calculation 11387 plus 2100, less the basis of 10154, correct?

A. That appears to be correct.

Q. Okay. And just for the record, that calculation gives you an output of 333, same output, correct?

A. That seems reasonable, yes.

MR. PERRY: Okay. I don't have anything else.

MR. MCKANE: I do.

Anyone else have questions?

- - -

E X A M I N A T I O N

- - -

BY MR. MCKANE:

Q. Sir, let's go back to Sean Rohlig's memo, which is Aretakis 6. And I want to direct your attention to the third page.

A. Okay.

Q. Do you recall counsel for the JSN asked you a series of questions about portions of this page?

A. Yes.

Q. All right. Let me direct you to a portion

of the page that he didn't ask you questions about.

Do you see the heading tax basis and ResCap net assets?

A. Yes.

Q. In that first full paragraph --

A. Yes.

Q. -- I want to direct you to the last sentence of that paragraph.

Do you see where it says it is not known whether Ally will continue to be in a net tax base position, open parens, tax solvent, close parens, upon the transfer of assets liquidating trust or ResCap's fixed liabilities would exceed the tax basis in assets on the date, open parens, tax insolvent, closed parens?

A. Yes.

Q. Was that statement true at that point in time when the memo was authored June 19, 2013?

A. Yes.

Q. Is it true still today?

A. Yes.

Q. Why is it true?

A. Because I don't know what liabilities will become fixed and determinable for tax purposes on

that liquidate date.

Q. And therefore, sir, let me direct your attention back to Aretakis 10, which is the objection to the Ad Hoc Group of JSN --

A. Uh-hum.

Q. -- to the disclosure statement.

Let's go back to the second to last page for a second.

A. Yes.

Q. Do you see the line item that they were using ResCap tax liabilities?

A. Yes.

Q. The amount that was used 10.154 billion, do you see that amount?

A. Yes.

Q. Is that the amount that you don't know yet?

A. That's correct.

Q. And how will you know that amount, how will that amount of ResCap tax liabilities be determined?

A. On that date, we will have to examine what liabilities the bankruptcy court allows as claims against ResCap. Some of those liabilities will be

fixed for tax purposes, and I can only -- I expect that some will not be.

We'll have to go through all those claims, see what's firm, what is not, and that's how we will determine that number.

Q. And on what date will you be doing that calculation?

A. It would be effective as of the date that Ally's interest in ResCap is canceled.

Q. And, sir, the line below that, the creditor's expected recovery, do you see that, sir?

A. Yes, I do.

Q. Is that a factor in your analysis at all?

A. No, it is not. That's irrelevant to my calculation.

MR. MCKANE: That's all I have. Thank you.

THE VIDEOGRAPHER: The time is 5:20. We are off the record.

- - -

(Whereupon, the deposition was concluded at 5:20 p.m.)

- - -

JAMES ARETAKIS

CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the deposition of JAMES ARETAKIS taken on November 6, 2013 and that this is a true and correct transcript of same.

Date: 11/6/2013

_____

Jennifer Miller, RPR and

Notary Public

JAMES ARETAKIS

I N D E X


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- - -

E X H I B I T S


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JAMES ARETAKIS


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JAMES ARETAKIS

ERRATA SHEET

PAGE LINE CHANGES OR CORRECTION AND REASON

JAMES ARETAKIS

I have inspected and read my deposition as captioned above and have listed all changes and corrections above, along with my reasons therefore.

DATE:_____

SIGNATURE OF DEPONENT: _____

I have read the foregoing transcript of my deposition and it is true, correct and complete, to the best of my knowledge, recollection and belief, except for the corrections noted hereon and/or list of corrections, if any, attached on a separate sheet herewith.

_____

JAMES ARETAKIS

Subscribed and sworn to before me this ____ day of _____, 2013.

_____

Notary Public

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------X
IN RE:
RESIDENTIAL CAPITAL, LLC, et al.

Civil Action No. 12-12020 (MG)
----------X

***HIGHLY CONFIDENTIAL***

VIDEO DEPOSITION OF MARK RENZI

New York, New York

November 6, 2013

R E V I S E D

Reported by:
Rebecca Schaumloffel, RPR, CLR
Job No: 67415

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Counter-Designation
Orange Highlighting = Joint Designation

November 6, 2013
10:04 a.m.

Video deposition of Mark Renzi, held at the offices of MORRISON & FOERSTER, 1290 Avenue of the Americas, New York, New York before Rebecca Schaumloffel, a Registered Professional Reporter, Certified Livenote Reporter and Notary Public of the State of New York.

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ALSO PRESENT:

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Jeffey Lewis, Houligan Lokey
Brian Maloney, Esq. (telephonically)
Filip Szymik, FTI

* * *

M. RENZI

THE VIDEOGRAPHER: This is the start of tape label one for the video deposition of Mark Renzi in the matter of In Re Residential Capital, LLC, on November 6, 2013, at approximately 10:03 a.m.

My name is Manuel Garcia from TSG Reporting. I am the legal video specialist. The Court Reporter is Rebecca Schaumloffel in association with TSG Reporting. Counsels are noted on the record.

Will the Court Reporter please swear in the witness.

M A R K R E N Z I, called as a witness, having been duly sworn, testified as follows:

EXAMINATION BY

MS. MILLER:

Q. Good morning, Mr. Renzi.

A. Good morning.

Q. My name is Atara Miller.

We are very close.

A. That's all right. I brushed my

teeth.

Q. So did I. My name is Atara Miller. I am an attorney with the Milbank, Tweed, Hadley & McCoy. We represent the junior -- the ad hoc group of junior secured note holders in this action.

I understand that you have been deposed a number of times in this action already; is that right?

A. That's correct.

Q. So I am assuming that you know the ground rules. I am going to go over them quickly. Mainly, I will ask questions. You answer the questions. If you can wait for me to finish asking my question before you start, and I will do the same, it will be easier for the Court Reporter to report anything that's being said.

A. Understood.

Q. Also, if you can give verbal answers, that's helpful. And there may be times during the course of the day that your counsel may object to some questions or anyone else at the table might object to

certain questions that I ask. I am going to ask that you answer the question unless you are expressly instructed not to provide an answer.

A. Okay.

Q. Finally, if at any time today you want to take a break, let me know. Just let me know and we will be -- I will be happy to take a break. I am going to ask if there is a question that I have already asked that's pending, that you answer that question before we break.

A. Understood.

Q. Okay. Mr. Renzi, when was FTI first engaged by ResCap in connection with its restructuring?

A. So we have been involved with the company for, I would say, approximately five years. But in terms of the more recent matter, I believe it was August of, gosh, it seems like awhile, but 2011.

Q. And going back to the pre August -- going back to the period before August 2011, going back to the period

August 2011, what kinds of engagements was FTI involved in for ResCap?

A. I am not sure. I mean, I can speculate. I think it was liquidity management and other issues that arose. And questions. Excuse me, and other projects that the company had us working on.

Q. And do you know if FTI -- do you know if FTI was acting as a consultant to ResCap?

A. I believe so. But I was not a member of that team.

Q. And do you know if FTI previously did any work for Ally?

A. I don't know.

Q. And when you say "liquidity management," would that have included analysis of compliance with --

A. I don't know.

Q. -- network requirements?

You were not personally involved in any engagements before August of 2011 for ResCap?

A. More specifically, before

M. RENZI

November of 2011.

Q. How did you get involved in the engagement in 2011?

A. Well, I got involved in the engagement in -- the end of 2011 specifically to work with ResCap to understand business, understand some of the issues that were present. I specialize in financial services firms and have worked with Bill Nolan and others in the firm for over a decade.

Q. And do you understand -- what was the scope of FTI's engagement in August of 2011?

A. I believe it was restructuring advice.

Q. And were there particular aspects of ResCap's business that you were engaged to understand or tasked with understanding?

MR. KERR: Just so I am clear, you are talking about Mr. Renzi, when you say "you" or are you talking about FTI?

MS. MILLER: Mr. Renzi specifically.

M. RENZI

Q. Beginning in November of 2011, were there specific aspects of ResCap's business that you were tasked with understanding?

A. I was tasked with understanding the assets of the business, the types of recoveries the business could get under assets. As things evolved, I was tasked with developing a waterfall model. Those would be examples of things I was tasked with.

Q. And was understanding the assets of the business something that you had done for other companies and other engagements?

A. Yes.

Q. Would that be true, also, for the types of recoveries that the company could get on these various assets?

A. Could you be more specific?

Q. What were you referring to when you said you were tasked with understanding the types of recoveries that ResCap could get on certain assets of the business?

A. In order to develop a waterfall model, you have to understand the assets of

the business. Since I specialize in financial services firms, I wanted to make sure I understood the assets that this business, in particular, had along with their operations to make sure that I had a full grasp of the business.

Q. When did you create a waterfall model?

A. I would have said sometime in early 2012.

Q. And in your initial waterfall model, were intercompany balances treated as assets?

A. I can't -- there has been so many iterations, but there were definitely -- we considered intercompany balances in the model and had that functionality from the very beginning.

Q. Were you specifically tasked with understanding the nature of the intercompany balances?

A. I would say not initially.

Q. Did there come a time when you became tasked with understanding the

intercompany balances?

A. Well, in order to model them, you had to understand the general nature of the balances. So as we considered alternative scenarios or scenarios, yes, I think as that evolved, we considered them more and more.

Q. What do you mean by "general nature"?

A. Whether or not the balances are between what debtors and at that point in time, the company hadn't filed, so it was different legal entities. So that would be an example.

Q. Did you rely on people within the company to provide you information about the intercompany balances?

A. Yes.

Q. Who specifically did you rely on?

A. Cathy Dondzila, Barb Westman. Those are the two examples.

Q. Were there any other people?

A. Or people at their direction.

Q. Was there anyone else at FTI, other than people reporting to you,

Plaintiff's Objections
12:24-13:20
Irrelevant (FRE 401, 402); incomplete

responsible for understanding the nature of the intercompany balances?

A. I would think that as we were preparing the SOFA and SOALs, that Mike Talarico, who works -- who indirectly worked for me and was leading that part of the process, had to know what they were to schedule them.

Q. What was your involvement in the SOALs process?

A. I had very limited involvement.

Q. Did you review them before they were filed?

A. Not in detail, but, yes.

Q. Did you review how intercompany balances were reflected?

MR. KERR: Objection.

Q. You can answer.

A. Yes.

Q. Did you provide any comments to -- sorry, let me step back. Strike that.

Was Mike Talarico responsible for preparing the SOFAs and the SOALs?

A. And others at his direction.

M. RENZI

Q. Did you provide any comments to Mr. Talarico regarding the treatment of the intercompany balances in the SOALs?

A. No. Not that I recall.

Q. If you believed they were inaccurately or improperly reflected, would you have told Mr. Talarico before they were filed?

MR. KERR: Objection.

A. The basis for the way Mr. Talarico was reflecting them was consistent with the way we wanted to present the SOFA and SOAL. I don't remember commenting on it specifically. I may have said here are some schedules that we have relating to them but that's what I recall.

Q. What do you remember about the way that you wanted to present the SOFAs and the SOALs?

A. I didn't have an opinion as to the way to present them.

Q. Did you have an understanding of how FTI was presenting them?

MR. KERR: Objection.

M. RENZI

A. I mean generally, yes, but I wasn't focused on that. I was focused on other things other than that.

Q. What were you focused on during that time -- during this time?

A. Well, we were in ongoing negotiations with a variety of plans regarding a variety of plan support agreements including with the JSNs and the RMBS trusts. So I was focused on that, I believe, in that timeframe, between January and May.

Q. Were you responsible for valuing potential claims that could be asserted by various creditors against ResCap?

A. I assisted in that. But there were a number of people working on that.

Q. Who else was working on that?

A. Counsel, MoFo. I think Carpenter Lipps was also involved. Those are the ones I recall.

Q. Who is Carpenter Lipps?

A. It is, I think specialty counsel. Counsel that's been involved with the company

for a long period of time, and understands rep and warrant type litigation.

Q. Are they specialty counsel specifically with respect to the RMBS litigation?

A. I don't remember specifically.

Q. And --

A. They have been involved -- I know Jeffrey Lipps has been involved for a long time.

It all seems like a long time now.

Q. Were you ever asked to value potential claims that ResCap might have against third parties?

A. Not in the context of my reports, no.

Q. What do you mean by "not in the context of my reports"?

A. I wasn't asked to value third-party claims in the context of my reports.

Q. Were you asked to value claims that ResCap might have against other parties

in another context?

A. I don't think so.

Q. Have you ever valued potential claims that ResCap might have against other third parties?

A. Can you be more specific?

Q. No. Have you --

A. I don't think I can answer the question.

Q. Have you ever analyzed the value that a claim that ResCap could assert against a third-party would have?

MR. KERR: Objection.

A. I think that's the same question. Can you be more specific?

Q. Did you --

A. I don't understand what you are getting at.

Q. Did you ever analyze claims that ResCap entities might have against Ally?

MR. KERR: Objection.

A. I don't think so. I think that's what the examiner did.

Q. Could you have done it if you

were asked?

MR. KERR: Objection.

A. I am sure that we could have assembled a team that did the work that the examiner's advisors have done, so yes, I think we could have. But as we all know, it was a pretty exhaustive and long process.

Q. And you weren't asked to do that work?

A. There was some litigation work that we were asked to do in the beginning, but it wasn't to assess what a settlement with Ally would be.

Q. What litigation work were you asked to do?

A. There was a team at FTI that was asked to look at comparables for ResCap. Also, whether or not the company, in theory, could be insolvent. Those are the things that I can remember over a period of time historically.

Q. Were you looking at comparables for ResCap to do a solvency analysis?

MR. KERR: Objection. You are

talking about you, are you talking about Mr. Renzi?

MS. MILLER: Sorry.

Q. Did FTI look at comparables for ResCap to do an analysis of insolvency?

MR. KERR: Objection.

A. So this was in the very -- this was in the very beginning. I would say that we were asked to do a number of things for counsel to understand the comparables and understand whether or not the company could be insolvent from a historical basis.

Q. What do you mean by "comparables"?

A. So comparable companies, what their -- what the trading multiples and comparable companies could be, what public information was available for them. So it is what I recall.

Q. What was the conclusion of that analysis?

MR. KERR: Objection.

A. I don't think there was a final conclusion.

M. RENZI

Q. Did FTI conclude that ResCap was -- had been insolvent at any historical time?

MR. KERR: Objection.

A. I believe FTI didn't have a final conclusion. But there could be a possibility of it.

Q. Did FTI conduct the analysis on a consolidated basis or by each debtor entity?

A. I would have said -- I don't remember specifically. But I think it would have been a consolidated basis.

Q. Do you know if FTI ever came to a conclusion on whether any particular ResCap subsidiary was insolvent at any time prepetition?

MR. KERR: Objection.

A. I don't think FTI came to a conclusion on the solvency of subsidiaries of ResCap.

Q. Did there come a time when the scope of FTI's engagement changed from the initial engagement in August of 2011?

A. I believe our scope, I would say,

M. RENZI

expanded as this litigation became more fulsome.

Q. When you say "this litigation," are you referring specifically to the JSN adversary proceeding or something else?

A. I am referring to the JSN adversary proceeding.

Q. Did FTI's scope of engagement also expand as other litigations became more active?

MR. KERR: Objection. What other litigations?

MS. MILLER: RMBS litigations, security litigation, Monoline litigation. There is no shortage of litigations in this bankruptcy.

A. The one that I specifically recall is for the JSN litigation. As we have been asked -- I have been asked to provide depositions, expert reports, and those I don't think were initially contemplated. As we were all hoping for a prearranged bankruptcy.

Q. Other than asking to -- other

than providing deposition testimony and expert reports, did your personal task list grow as a result of the JSN litigation?

A. Yes.

Q. And what else were you asked to do or required -- what else were you required to do?

MR. KERR: Objection.

A. Well, it expanded from being part of the mediation and then the ongoing negotiations during the pendency of the bankruptcy to when there was an adversary proceeding, it expanded because there are additional analyses that need to be run and some of those analyses have been presented in -- by expert reports.

Q. Are there any additional analyses that you ran that are not presented in your reports?

A. Well, I have been involved with the company for approximately two years. So we have run thousands. I would -- hundreds, sorry. I would say hundreds of analyses.

Q. How did you decide which ones to

M. RENZI

include in your expert report?

A. The ones that -- sorry, which expert report?

Q. Your, I guess, the second expert report.

MR. KERR: Just so we are clear, Atara, I know there was an expert report that was part of the Phase 1 process.

MS. MILLER: Right.

MR. KERR: So if we can focus in on which ones we are talking about.

Q. So I am going to -- when I say "expert report," unless I specifically refer to Phase 1 expert report, I am going to be referring to Phase 2 expert report. Let me step back.

Do you understand the difference between Phase 1 and Phase 2?

A. Yes.

Q. Okay. I guess as best as any of us can.

A. Right. But for clarification, there were two in Phase 2.

M. RENZI

Q. So I will get to that.

A. So if you're more specific.

Q. When I say "expert report," I will be referring to your opening expert report. And when I say "rebuttal report," I am going to be referring to your rebuttal report, which is the second expert report that you filed in Phase 2.

A. Okay.

Q. Does that help?

MR. KERR: Just so the record is really clear. The opening report is the October 18, 2013, report that was filed in connection with Phase 2, and I believe the rebuttal report is November 1st, 2013, rebuttal report filed in connection with Phase 2. Just so we can tie it by date.

Q. Now I forgot the question.

How did you decide which analyses to include in your rebuttal report?

A. The rebuttal report, the analyses that were presented were analyses I thought were reasonable and got to the heart of the

matter of intercompany balances.

Q. How did you determine that they were reasonable?

A. I worked with counsel.

Q. And what direction did you get from counsel?

A. When working with counsel, we talked about the merits of the variety of scenarios that were run and presented in the expert report and the validity of the intercompany balances and a variety of legal aspects to the intercompany balances that should be considered.

Q. When you said that you "talked about the merits of the variety of scenarios that were run," were you referring to -- what scenarios were you referring to?

A. The four scenarios -- sorry, I guess there are five scenarios presented. Six, sorry. So for Scenarios 1A through 1B, more specific.

Q. Were there other scenarios that you run that you determined -- sorry. Let me take that back.

M. RENZI

After you received Mr. Fazio's expert report on October 18th, did you review it?

A. I did.

Q. And did you run any scenarios, other than the ones included in your rebuttal report, after looking at Mr. Fazio's report?

A. Yes.

Q. And what scenarios did you run?

A. They don't have names. We just tried to replicate Mr. Fazio's analysis in his scenarios and then ran some additional scenarios that I thought were reasonable.

Q. Did you run any scenarios that reflected a value for the Ally -- for settlement with Ally?

A. Yes.

Q. Did you present any of those in your rebuttal report?

A. No.

MS. MILLER: I would like to mark as Renzi Exhibit 1, the expert report of Mark Renzi dated October 18, 2012.

M. RENZI

(Whereupon, Renzi Exhibit 1, Expert Report of Mark Renzi Dated October 18, 2012 was marked for identification as of this date by the Reporter.)

Q. Mr. Renzi, looking at the document that's been marked Renzi Exhibit 1, do you recognize this document?

A. I do.

Q. And is this the expert report that you submitted in Phase 2?

A. Yes.

MR. KERR: This is the first expert report.

Q. I was about to say this is the expert report that we are referring to as "the expert report," not the rebuttal report, right?

A. It says "Expert report of Mark A. Renzi, October 18, 2013."

Q. Okay. And do you recognize your signature at the end of this document?

A. I do. Yeah.

Q. Mr. Renzi, you conclude in your

summary of opinions that, on page 3 of the expert report, that "The hypothetical liquidation analysis that was attached to the disclosure statement demonstrates that each holder of a claim," reading from about six lines up from the bottom, that "each holder of a claim or interest of each impaired class of claims or interest will likely receive or retain under the plan a recovery that is not less than the amount that such holder would receive or retain if the debtors were liquidated under Chapter 7."

A. I see that.

Q. And is that your opinion today?

A. Yes.

MR. KERR: Objection. Just you didn't read the whole thing. So if you want to ask if that's his opinion, that's fine. But didn't read the whole summary.

Q. You also indicate in the second bullet titled "Limited partial consolidation of the debtors estates that no creditors are harmed by the limited partial consolidation

of the debtors estate for distribution purposes."

Do you see that?

A. I do.

Q. And does that continue to be your opinion today?

A. Yes.

Q. And can you explain what the "limited partial consolidation" that you are referring to is?

A. The limited partial consolidation consolidates the legal entities into three legal entities, ResCap, GMACM, GMAC Mortgage, and RFC, Residential Finance -- you can just call it RFC.

Q. Mr. Renzi, looking at page 7 of your expert report and, in particular, focusing on footnote 4, you say that "the liquidation analysis and the assumptions upon which it relies are inherently subject to significant economic, competitive and operational uncertainties beyond the control of the debtors. For example, the liquidation analysis may not include all liabilities that

could arise as a result of additional litigation, potential tax assessment and other unanticipated litigation -- liabilities. Further the actual amount of claims against the debtor's estate could vary significantly."

Do you see that?

A. I do.

Q. Would the same hold true regarding the value of the assets that you have included in the particular potential claims that ResCap might have against third parties that they can vary significantly from the value reflected in your liquidation analysis?

A. In regards to the liquidation analysis, yes.

Q. Turning to page 8 of your expert report. You say that "The liquidation analysis assumes that it would likely take a Chapter 7 trustee significant amount of time to investigate, reconcile, negotiate and/or begin to litigate many claims as well as" -- sorry. Then you say, further in paragraph

18, "The final resolution of the claims will demand the resolution of such complex issues as the extent and validity of the junior secured note holders liens and claims, the nature and extent of the claims filed by the RMBS trustees, whether the RMBS trustees claims should be subordinated" and on and on. Focusing --

A. Would you like me to -- do I have read the rest?

Q. Did you write the rest?

A. I did.

Q. You can read it to refresh your recollection. I am going to ask you about certain specific items that you identify in this paragraph. What are the complex issues regarding intercompany balances that you are referring to?

A. Could you point to me specifically where you are referring to? Oh, I see it.

Q. Seven lines up from the bottom in paragraph 18.

A. I would just say that we are here

because of these complex issues. Meaning whether or not there is liens on these intercompany balances. Whether or not bankruptcy standstill provisions in some of the documents are applicable. Whether or not there have been fraudulent conveyances. Those would be examples.

Q. And has FTI concluded whether or not the JSNs have a lien on intercompany balances?

A. I think it's a legal issue that I would refer to MoFo.

Q. Has MoFo instructed you one way or another on that issue?

A. We have discussed it. But I don't think that they have instructed me.

Q. The next item says "Fraudulent conveyance claims arising out of approximately 16 billion in prepetition debt forgiveness."

Have you done anything to analyze the merits of any fraudulent conveyance claims?

MR. KERR: Just so we are clear,

M. RENZI

the legal merits?

MS. MILLER: The legal merits of the fraudulent conveyance claims are based largely on analyses that are most frequently done by consultants like FTI.

MR. KERR: Okay. I am just making sure we are clear on what the question is, that's all.

MS. MILLER: Yes.

A. We have looked into fraudulent conveyance claims, but I would say from a legal standpoint, we are not -- FTI wouldn't be opining from a legal standpoint.

Q. So I think we already discussed solvency, which is one element. Has FTI done any analysis of what value the forgiving party may -- sorry, what value the forgiving party may have received in exchange for the debt forgiveness?

A. My understanding is there is very little value exchanged when debt forgiveness occurred. But that's my recollection.

Q. What's that recollection

based on?

A. Discussions with the company, reading my colleague's expert report. Those would be examples.

Q. And what colleague are you referring to or what expert report are you referring to when you say your "colleague's expert report"?

A. Miss Gina Gutzeit.

Q. Did you consider any indirect benefits that the forgiving party may have received?

A. Well, the fact that -- my understanding is that if there was debt forgiveness, it was done for a few reasons. Among them, covenant compliance, certain solvency issues for covenant compliance. Those would be examples.

Q. And did you have an understanding of what would happen if one of the operating subsidiaries was not able to comply with its financial covenants?

MR. KERR: Objection.

A. I think it would have tripped

certain covenants that would have -- for debt facilities. That's my understanding.

Q. What would the result of tripping certain covenants have been?

MR. KERR: Objection.

A. I don't know the specific results, but I presume it would have been more difficult for the company or one of the debtor's legal entities to have financing.

Q. Do you have an understanding of whether tripping certain -- tripping covenants in certain debt facilities would cause a process default in other facilities?

A. I would think that that's typical. These were net worth -- my understanding is these were net worth covenants.

Q. And did you have an understanding of what would happen if any of the ResCap operating subsidiaries was unable to satisfy its network regulatory requirements?

MR. KERR: Objection.

A. I would say it is just not my area of expertise.

M. RENZI

Q. Did you analyze it in connection with determining what value the forgiving party may have received in connection with the forgiveness?

MR. KERR: Objection.

A. Could you be more specific? Could you give me an example of what you mean?

Q. If, for example -- if, for example, RFC were unable to meet its HUD requirements if ResCap didn't forgive certain debt, what impact would that have had on ResCap?

MR. KERR: Objection.

A. I think I have answered the question. My understanding is if certain legal entities didn't meet their net worth requirements, and if there wasn't, let's say, debt forgiveness, of which we have already established there is 16 billion, over 16 billion of debt forgiveness, that there would be issues with certain financing facilities.

Q. And you didn't look whether there

might be issues about certain subsidiaries being able to continue in their ordinary course of operations if they didn't comply with the regulatory requirements?

A. I suspect there would have been problems if they hadn't -- if they didn't meet certain covenants in order to have financing. I mean, this is a capital intensive business. They need financing. They were moving -- I mean, you have servicing advances that occur at certain times of the year. Or month. For example. And they need the financing to make servicing advances as one of the largest servicers in the country. So they definitely needed financing. Or -- and as evidenced by the many different facilities that they did have.

Q. Have you -- outside of your work for ResCap, have you personally ever been involved in the assessment and valuation of a fraudulent conveyance action?

A. I have been working with FTI for over a decade. So I am sure there have been other instances where I have. I just can't

recall them right now.

Q. Did you consider, when you looked at the debt forgiveness, whether any fraudulent conveyance claims would be barred by the statute of limitations?

A. No.

Q. Do you have an understanding that there is a statute of limitations applicable to fraudulent conveyance transactions?

A. Yes.

Q. What is your understanding based on your experience of how far back you can breach in a fraudulent conveyance action?

MR. KERR: Objection.

A. We were focused when looking at this, we are looking back a year.

Q. When you say "looking back a year," you mean looking back a year from the petition date?

A. Yes.

Q. What was the petition date?

A. I believe it was May 14, 2012; 13th, 14th.

Q. Sometime in mid May, 2012?

M. RENZI

A. I think the 13th was a Sunday. But something like that. So I keep thinking it was the 14th, a Monday.

Q. So you would not have considered -- sorry, strike that.

So you weren't looking at debt forgivenesses that occurred, let's say, in 2008, as potential fraudulent conveyances, right?

MR. KERR: Objection.

Objection. Misstates prior testimony.

A. We considered all debt forgiveness, also.

Q. Why did you consider all debt forgiveness when -- why did you consider all debt forgiveness?

A. Well, you can consider all debt forgiveness because in my understanding, is that there wasn't necessarily an arm's length transaction when these debt forgivenesses occurred. And you can potentially look back further.

Q. How much further did you think you could look back?

M. RENZI

A. Well, we looked back until 2008.

Q. Any specific time in 2008 or January 1st?

A. I think the date that I recall is January 1st, which reflects the $16 billion in prepetition debt forgiveness that's reflected in this expert report.

Q. Did anyone suggest -- did anyone ever tell you that a claim for fraudulent conveyance -- that a fraudulent conveyance claim could be brought with respect to a transfer that occurred more than four years before the petition date?

A. We had considered -- we had considered a number of things in discussions with counsel. And whether or not that was the legal theory that could be one of them, but there were others.

Q. What do you mean by other legal theories?

A. Well, taking into consideration that there was debt forgiveness and my understanding wasn't arm's length, that we needed to look back and that's what

M. RENZI

Gina Gutzeit did in her report. Considering the debt forgiveness over the, I guess, through -- 2008 and forward.

Q. Are you looking at the debt forgiveness for a reason -- sorry, strike that.

Did you think that debt forgiveness could be unwound for a reason -- on a basis other than fraudulent conveyance?

MR. KERR: Objection.

A. I would defer to counsel.

Q. When you speak about the $16 billion in debt forgiveness in your expert report, in paragraph 18, do you indicate any basis other than fraudulent conveyance claims that would result in an unwinding of those transactions?

A. No.

Q. Looking at paragraph -- continuing in paragraph 18, the next point that you make is the potential substantive consolidation of the debtors. Did you do an analysis of whether substantive consolidation would be appropriate here?

M. RENZI

MR. KERR: Objection.

A. I am not sure I follow. What kind of analysis, a legal analysis or a financial analysis?

Q. A financial analysis.

A. At one point in time, we had looked at what a subcon would result in. But not in the context that you are asking.

Q. When did you do that analysis?

A. I would have said towards the beginning of the case.

Q. And what would the results of subcon have been?

A. It depends.

Q. What does it depend on?

A. The assumptions you are making.

Q. What assumptions would drive the outcome of a scenario that subconned all the ResCap entities?

A. We are going on for a long time about that. For example, a subcon would not benefit intercompany balances. I believe, and it's been a very long time, that then the JSNs wouldn't be able to assert multiple

deficiencies claims of different legal entities. Those are P2 examples. There wouldn't be value from equity pledges if there was a subcon.

Q. Are those results the same in the partial subcon that you discuss in your expert report?

A. No.

Q. Why not?

A. As I have highlighted in my expert report, the partial subcon is done for administrative purposes only.

Q. What does that mean?

A. That means that distributing funds that entities are entitled to or parties are entitled to are done through three main entities for simplicity in the administrative purposes.

Q. So what happens under the limited partial consolidation if the JSNs are determined to have a lien on intercompany balances?

A. I don't think that there is any effect because that will be taken into

consideration. If their intercompany balances are deemed valid and the JSNs indeed do have a lien on them and indeed there is value attributed to them, then I think the plan contemplates allowing that.

Q. Are their liens negatively impacted by partial -- limited partial substantive consolidation?

A. No.

Q. How not?

MR. KERR: Objection.

A. I mean, it is very simple concept to me. This is just an administrative, a function of administrative simplicity. If there are, you know, with the value of the equity pledges, for example, is, you know, from what I understand, is recognized. If there is value attributed to, with the caveats I said before, for intercompany balances, if there is value and the JSNs have liens on certain intercompany balances, then that will be allowed. Especially in the context of postpetition interest and that's provided for in the plan of reorganization.

M. RENZI

Q. So looking at footnote 5 on page 10 of your expert report, you state that "Because the recovery analysis and liquidation analysis show that there are estimated to be more assets than claims of the debtor Executive Trustee Services LLC ETS, holders of general unsecured claims at ETS will be entitled to receive the same recovery under the plan that they would be entitled to receive under a hypothetical Chapter 7 liquidation scenario. ETS is a direct subsidiary of GMACM and therefore, falls within the GMACM debtor group as defined within the plan."

Are general unsecured creditors of ETS negatively impacted by the limited substantive consolidation?

MR. KERR: Objection. That's not --

THE WITNESS: Should I answer?

MR. KERR: If you want to answer that.

MS. MILLER: I can restate it.

Q. Can you tell me what you are

saying in footnote 5 about the general unsecured creditors of ETS?

A. ETS is a chapter -- under a Chapter 11 or Chapter 7 ETS, it is the same recovery. Unsecured creditors.

Q. Is that because they are treated -- they are specifically carved out?

A. Yes, they are specifically addressed in the plan.

Q. And without that specific treatment under the plan, would the ETS general unsecured creditors have been negatively affected by the limited substantive consolidation?

MR. KERR: Objection.

A. Again, the limited substantive consolidation is administrative ease. I think that it still stands that they would be, on either case, a Chapter 11, Chapter 7, receive 100% recovery for general unsecured creditors at ETS.

Q. You state "There are more assets than claims of ETS." Is the holder of an equity of a lien on the equity of ETS

negatively impacted by the limited substantive consolidation?

MR. KERR: Objection. You keep referring to this limited substantive consolidation. It is limited partial consolidation.

MS. MILLER: Okay. Sorry. There are too many made-up terms about partial subcon. Subcon like I can call it, also, if you would like. Limited partial consolidation.

MR. KERR: Let's call it what it is.

MS. MILLER: I will stick with your terminology.

MR. KERR: Great.

Q. Sorry. I am happy to --

A. Would you mind repeating it?

Q. I am happy to restate my question or to reask it.

You state in footnote 5 that "There are more assets than claims at ETS." Is the holder of an equity lien on the -- sorry.

M. RENZI

Is the holder of a lien on the equity of ETS negatively impacted by the limited partial consolidation?

A. No.

Q. How not?

A. The limited partial consolidation is for administrative purposes. It recognizes that there is value there for the equity pledge, then there is value.

Q. So I just want to understand how this is working. So under limited partial consolidation, if the JSNs have a lien on the equity of ETS, that a lien continues in spite of the limited partial consolidation?

A. Yes. That's my understanding. I don't understand -- I don't understand your -- I think your questions honestly.

Q. Maybe it is that I am unclear by what you mean, that this is being done for administrative purposes only.

A. Yes, that's correct.

Q. So can you explain what you mean by this is being done for administrative purposes only?

M. RENZI

A. I mean, it might benefit us for me to read 33 and 34. Paragraph 33 and 34.

Q. Sure.

A. "The plan provides for partial consolidation of the debtors into three debtor groups as described in the disclosure statement for the limited purposes of describing their treatment under the plan, confirmation of the plan and making distributions under the plan. It is my opinion that no creditors are harmed by the proposed grouping of the debtors. The vast majority of the assets of the debtor's estates reside at ResCap, GMACM and RFC with the debtor's subsidiaries within each debtor group having little to no assets available for distribution to creditors.

"In addition the majority of the claims asserted against the debtors are asserted against ResCap, GMACM, and RFC with, in limit circumstances, de minimus claims asserted against the other debtor's subsidiaries within the debtor group. Therefore, in light of the location of the

claims and assets, the limited partial consolidation proposed in the plan confers the benefits and convenience and expedience without compromising creditor recoveries at any debtors."

Q. Use smaller words next time.

A. Paragraph 34, "Further, holders of the junior secured notes, in my opinion, are not harmed by the limited partial consolidation, intercompany balances are being compromised and waived as part of the global settlement and not as a result of the limited partial consolidation. It is my understanding from the debtor's counsel that if the Court determines the holders of the JSNs are entitled to postpetition interest, they will receive payment on an account of that interest under the plan regardless of whether or not the debtor groups are consolidated. Therefore, it is my opinion that the holders of the JSNs are not harmed by the limited partial consolidation that is contemplated by the plan."

Q. Okay. Why did you think it was

important to note that intercompany balances are being compromised and waived as part of the global settlement and not as a result of the limited partial consolidation?

A. Because that's part of the global settlement.

Q. I understand it is part of the global settlement. There are a lot of things that are part of the global settlement that are not described in paragraph 33 and 34. Why did you include that fact in paragraph 34?

A. I could have included others.

Q. But you didn't. Why didn't you?

A. I recognize that intercompany balances are the subject of Phase 2 litigation. I am writing these expert reports in the context of Phase 2 litigation. I recognize that intercompany balances are an issue. And in my opinion, and from discussions with counsel, if the intercompany balances are indeed valid and the JSNs indeed do have a lien and the balances are appropriate, as stated on the books and

records, that under those circumstances, they will receive the benefit of that.

Q. Okay. What I am trying to understand is, other than from the, you know, distribution of assets perspective, what happens to the intercompany balances under limited partial consolidation if the JSNs are determined to have liens on intercompany balances?

MR. KERR: Objection.

A. I think simply put, if they -- it is deemed, after this Phase 2 -- Phase 1 and Phase 2 litigation are completed, that the JSNs are entitled postpetition interest for whatever variety of reasons are determined they are valid, that they will receive postpetition interest.

Q. So your conclusion that the JSNs are not harmed by limited partial consolidation is because you are saying the JSNs will get paid postpetition inverts if they demonstrated that they have a lien, so it doesn't matter if we -- if the limited partial consolidation then wipes out that

value?

MR. KERR: Objection.

A. I wouldn't say it the way you said it. I would say it the way I said it.

Q. Say it again so I understand.

A. Well, I think there are a number of components that need to be addressed. Number one, if the liens are deemed valid, that's the first thing.

Number two, if there is indeed value attributable to the intercompany balances, that's the second thing. If those two are found to be true and you keep everything else equal, everything else equal in the global settlement and there is value for them, then the JSNs will be entitled to that value as it relates to postpetition interest. Again, the limited partial consolidation of the debtors is for administrative purposes.

Q. So the JSNs are -- have carve-out treatment sort of like the ETS general unsecured creditors?

MR. KERR: Objection.

M. RENZI

A. I wouldn't say it the way you say it. I would just say that they are -- if they are entitled postpetition interest, it will be provided for.

Q. That's why they are not negatively impacted by limited partial consolidation, which would eliminate intercompany value -- the value of intercompany balances between one of the main three entities and any subsidiary entity?

MR. KERR: Objection.

A. If that was a question, that was a long question.

Q. You're not suggesting that intercompany balances are not negatively impacted by limited partial consolidation, right?

A. I don't think intercompany balances are negatively impacted by limited partial consolidation of the debtors.

Q. If the intercompany balances were deemed to have value, would they be negatively impacted by the limited partial consolidation?

M. RENZI

MR. KERR: Objection. Asked and answered.

A. No.

Q. Why did you make a point of saying that the intercompany balances are being compromised in ways as part of the global settlement and specifically not as a result of the limited partial consolidation?

MR. KERR: Objection. Asked and answered.

You can answer again.

A. I think the point of mentioning intercompany balances in this analysis and this expert report is because that there is so much attention focused on them.

Q. But for the intercompany balances being compromised and waived as a part of the global settlement, would they be negatively impacted by limited partial consolidation?

MR. KERR: Objection.

A. I don't think intercompany balances are negatively impacted by limited partial consolidation.

Q. Even if they are determined to

have value?

A. No. They are not negatively impacted. There is -- it says here in paragraph 34, it is my understanding from the debtor's counsel that if the court determines the JSN notes are entitled to postpetition interest, they will receive payment on account of that interest under the plan. Whether or not any of the legal theories that the JSNs have asserted are valid. That your firm has asserted is valid. If they are valid and the Court rules that way, then there are provisions to deal with it.

Q. Okay. Are you saying that there could be a difference between the JSNs being negatively impacted and what happens to intercompany balances as a result of the limited partial consolidation?

A. Do you want to elaborate?

Q. Well, every time I ask you if intercompany balances are being essentially wiped out as a result, certain intercompany balances are being wiped out as a result of limited partial consolidation, your response

back to me is, the JSNs will get postpetition interest if they prove that there is value there. I am asking you a simple question separate from JSN recoveries whether intercompany balances, if not compromised and waived as part of the global settlement, would be negatively impacted as a result of limited partial consolidation?

MR. KERR: Objection.

A. I think the heart of the matter is, is whether or not the JSNs are entitled postpetition interest. If they are entitled postpetition interest, the JSNs have asserted a number of different legal theories that I think are beyond the scope of your questioning. But nonetheless, if they do have a lien on intercompany balances and there is a value attributed to the intercompany balances such that they would get postpetition interest, everything else equal, then they would be entitled to postpetition interest if the Court does deem that they have enough collateral for a secured recovery greater than par. Greater

than the 2223.

Q. So you won't answer my question about whether intercompany balances would be negatively impacted as a result of limited partial consolidation if they were not being compromised and waived as part of the global settlement?

MR. KERR: Objection. He has answered your question. Your question is a hypothetical. He has tried to answer your question. Let's move on.

MS. MILLER: I am not going to move on. I want an answer.

MR. KERR: Objection.

MS. MILLER: I want an answer to the question of -- I have asked the question.

MR. KERR: He has answered your question.

MS. MILLER: In a non-responsive way. I haven't moved to strike his answer as non-responsive. But I would like clarity on the fact that you were not giving me a direct -- that you

M. RENZI

will not give me a direct answer to my direct question.

MR. KERR: Objection. He has given you a direct answer to your direct question. If you want to ask it to him again, he can give you the answer again. It's been asked and answered several times now.

Your question is a hypothetical. And he has tried to answer your question. If you want to ask him again, be it, but do not characterize the witness as not being responsive on this record. Don't do that.

MS. MILLER: The record speaks for itself, so I can characterize as I like.

BY MS. MILLER:

Q. If it's determined that the intercompany balances were not appropriately compromised and waived as part of the global settlement, are the intercompany balances negatively impacted as a result of the limited partial consolidation?

M. RENZI

A. No.

Q. Okay. Looking at page 9 of your expert report, you state that the liquidation analysis doesn't attempt to estimate estate recoveries arising from affirmative damages claims against third parties.

A. I am sorry; is that a question?

Q. No, that's not a question. That's a statement. Why did you -- sorry, why did you not attempt to estimate estate recoveries from affirmative damages claims against third parties?

A. This is for the purposes of the liquidation analysis. The global settlement -- as opposed to the global settlement. The global settlement, there is proceeds coming in to the estates of approximately $2.1 billion for -- that is due to broad third-party releases. I would think that if there is -- if it happens to be not a global settlement, then Ally has been on record, Michael Carpenter is on record saying "I am doing this for global peace." If it is not global peace and there is not broad

third-party releases, then there won't be a settlement and we will fight tooth and nail. So I believe that it's very difficult to estimate recoveries from Ally based on those two main issues.

Q. But you're not suggesting that the claims have no value?

A. No, I am not suggesting the claims have no value.

Q. Have you done anything to determine what -- to estimate what the value would be?

MR. KERR: Objection.

A. You mean other than what's presented in the global settlement and what's presented by the examiner?

Q. Right.

A. No.

Q. Have you reviewed the examiner report?

A. I have. Let me be more clear. It is a very long document. I would have said it is over a thousand pages because I remember seeing it stacked, but I have read

the summary.

Q. Have you read any portions of the discussion in greater detail than in the summary?

A. In -- limited. Limited.

Q. Do you have an understanding that the examiner concluded that $3.1 billion of claims were more -- were either likely or more likely than not to succeed against Ally?

MR. KAUFMAN: Objection to form.

THE WITNESS: Do I answer?

MR. KERR: Yes, if you have an understanding.

Q. Yes.

A. I have an understanding about it.

Q. And do you also understand that the examiner concluded that there was a total of approximately $5.5 billion of potential claims against Ally?

A. I would have to look at it again. But if you say so, based on the form of your question, I suspect that that's the number.

Q. After reviewing the summary of the examiner -- summary contained in the

examiner report, did you consider attributing a value to the claim, certain claims against Ally even in the absence of a global settlement and broad third-party releases?

A. No. I relied on the testimony from Michael Carpenter and I relied on understanding the fact that the settlement was based on broad third-party releases of which a liquidation would not be broad third-party releases.

Q. Mr. Renzi, have you been involved in other bankruptcy matters that involved substantial litigation?

A. Not as substantial as this one.

Q. Have you ever been involved in cases where there have been multiple plaintiffs and multiple defendants and various -- multiple claims asserted?

A. I have been doing this for quite sometime, so I am sure that I have.

Q. And you understand that sometimes there is a global settlement and sometimes there are piecemeal settlements, right?

A. I do.

M. RENZI

Q. And sometimes the piecemeal settlements can collectively result in a value higher or lower than a global settlement, right?

MR. KERR: Objection.

A. We are in a hypothetical world right now, right?

Q. A hypothetical world based on your experience in litigations.

A. I suspect it is possible.

Q. And you understand -- and, Mr. Carpenter -- sorry. Strike that.

You understand that if ResCap went out and litigated against Ally, there would be some value attributed to that claim that it could assert against Ally in a litigation, right?

MR. KERR: Objection.

MR. MARINUZZI: Objection.

A. I think ResCap couldn't litigate against Ally but the extent, the time period, you know, whether or not they could be effective over an extended period of time, is speculative to me. I know there are a number

of different issues involved in litigation and this estate without a 2 -- infusion of $2.1 billion could theoretically be administrative insolvent before it could be done with litigation. So, yes, I understand that ResCap could fight extensively in a liquidation scenario, could fight extensively to the -- limited to the amount of money that the estate would have.

Q. Do you also understand that there are lawyers who work on contingency fees?

A. Yes, I understand that.

Q. And the likely outcome of Ally -- sorry, of ResCap litigating -- fighting extensively is probably not zero value attributed to any claim, right?

MR. KERR: Objection.

A. I think that there are so many different components that go into that calculus that it is hard to say. There could be value. Undeniably, there could be value. Whether or not it is unlocked and the net value is positive, that's entirely possible. But you're talking about a very complex case

where you have the entity that's willing under global settlement to provide funds, has gone on record saying we are providing it for global peace, broad third-party releases, and if we don't have those, then we are not going to -- we are going to fight. So I have no reason to doubt a very senior, Mr. Carpenter on his word.

Q. Did you ever ask Mr. Carpenter whether he would -- what amount he would pay if he didn't get a broad third-party release?

MR. KERR: Has Mr. Renzi ever asked Mr. Carpenter that?

MS. MILLER: Yes, has Mr. Renzi ever asked Mr. Carpenter.

A. Other than reading and reviewing some of his comments, no, I have not directly spoken to Mr. Carpenter.

Q. So did you ever hear Mr. Carpenter -- did Mr. Carpenter ever directly tell you that he would not settle if he didn't have a global settlement or broad third-party releases?

A. I believe that's on record.

M. RENZI

Q. What do you mean by "on record"?

A. I believe he said it publicly. I know that with MoFo and others from Kirkland and Ellis that he said it. So I wasn't directly in the room when he said it. But I have been working with MoFo for two years. I implicitly trust them. If they say that that's what's been said outside of what's been said publicly, I implicitly believe them. I have absolutely no reason to doubt the truthfulness, and I've worked with them for, you know, two years extensively.

Q. Have you ever seen anything written from Mr. Carpenter stating that he would not settle for any amount without a global settlement and broad third-party releases?

A. I don't recall directly seeing it. No, I don't recall. But I have been involved in this case for two years. Worked with the committee. I have worked with, you know, the company and it's been said by multiple parties.

Q. Did Ally also insist on

settlement and compromise of the intercompany balances of zero?

MR. KERR: Objection. One thing I want to make clear about, and I don't know to whether your question was talking about during the mediation process.

I just want to make sure that if you can answer her question, but it is outside the mediation process, assuming you were involved in the medication process and that issue. If you can do it outside of the mediation process, do it. To the extent something came up in the mediation, it is subject to confidentiality order. So subject to that, you can answer her question.

A. Do you mind repeating it?

Q. Sure. Did Ally insist on settlement and compromise of the intercompany balances at zero as part of the global settlement?

A. I don't know. I don't know if

Ally insisted.

Q. Do you know whether there were other parties that insisted on that?

MR. KERR: Same direction. To the extent you know, you can answer her question, but only from information obtained during the process of the mediation is confidential. If you can answer her question based on communications or understandings you received outside the mediation, you can answer her question.

A. I think it was all done in mediation.

Q. On page 9 of paragraph 20, you identify a number of reasons why the liquidation analysis doesn't include potential recovery for affirmative damage claims against third-parties including Ally. Do you include the probability of successful judgments, the cost and time required to liquidate the affirmative and any offsetting claims the third-parties and/or Ally may have

against the debtors. Are those all true, also, with respect to the RMBS claims?

A. Do you mean to suggest that -- I am not sure I understand what you are suggesting.

Q. Well, let me restate it. Is the outcome of the RMBS claims absent a global settlement highly speculative and dependent on numerous uncertain variables including the probability of successful judgment and the cost and time required to litigate the affirmative claims?

A. I don't think I can opine on the legal merits of the RMBS claim merits. If that's what you are asking. I mean, under liquidation analysis, under a scenario without a global settlement, I think that there would be extensive litigation over claims. And that's definitely written in the liquidation analysis. There is -- there are securities claims. There are the RMBS claims. I think the RMBS claims initially asserted $44 billion in claims. So to the extent that, let's say, the estates hopefully

don't go into liquidation, but if they do, there will be extensive fighting about claims, I am almost certain of that.

Q. Did you include a claim value for the RMBS claims in your liquidation analysis?

A. I believe we provided two.

Q. What were those based on?

A. So it would be helpful to look at the liquidation analysis to answer that or a couple of supplemental documents that I provided. So I will try to do it from memory. So in the high scenario, I believe --

Q. If you need to reference -- sorry. Keep going. If you need to reference something, I think it is attached to your expert report, actually.

MR. KERR: Which is --

Q. Which is Exhibit 1.

A. Well, there is a -- we produced a document that would be helpful to point out more explicitly by constituent. Jeffrey may -- may know. There is -- but I can try to do it from here.

M. RENZI

Q. Okay. Sorry to interrupt you. Just wanted to help.

A. Thank you. So I think under the -- let me just flip back to liquidation analysis.

Q. When you find your spot, just identify what you are looking at for the record before you start to answer.

A. Let me do it from memory instead of flipping around. So in the high liquidation analysis, my recollection is the RMBS trusts have the similar claim that they would have under the global settlement. Under the low, I believe, there are additional claims asserted against ResCap at a discount, and I don't remember the discount, that are for the purposes of aiding and abetting other Veil Peterson theories, and I remember an additional amount that's greater than the global settlement being asserted against the apparent entity.

As -- just to be even more specific, the RMBS trusts under the global settlement have approximately $7 billion

asserted against RFC and then roughly $300 million asserted against GMACM.

Q. Did you include a claim value for the Monoline claims in your liquidation analysis?

A. I did. I believe it is sort of a symmetrical adjustment. It is at the high liquidation analysis reflects the claims under a global settlement. And then the low, I believe there is also some additional claims. But I need to look at some additional documents to confirm that.

Q. Is the same true for the securities claims?

A. No, it is not true.

Q. So did you include a claim value for the securities claims in your liquidation analysis?

A. Well, so the question you asked -- the first question I should have said, can you ask me, be more specific. So I will just -- I will elaborate.

The recovery analysis doesn't have claims for securities. There is the

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securities trust. For the record, I will try to find.

MR. KERR: Just trying to help, make sure we are talking about the liquidation analysis versus the recovery analysis. I think he question went to the liquidation analysis.

MS. MILLER: Right.

A. I want to -- there is a distinction. So, for example, on the recovery analysis, and I will get to the liquidation analysis, which is Exhibit A, it is page 32 of 159, I think, in the approved disclosure statement. I mean, it shows that there are recoveries for the security claims through a trust, that's Row 22. The trust that's established is on Row 4; Row 22 shows the amount of the securities claim against the recovery.

So what you will notice is that on Row 15, the amount of the claim is there is no claim because all of the recoveries are done through a trust. So in a liquidation

analysis, as opposed to the recovery analysis, there are different claims that are asserted for the securities because there is no longer a trust for them. So -- under the high scenario, I believe that the securities claims are subordinated. Under the low scenario, the security claims -- securities claims, excuse me, are asserted and my recollection serves me it is almost $12 million across three entities.

MS. MILLER: I think we need to change the tape and now is probably a good time for a break.

MR. KERR: Okay.

THE VIDEOGRAPHER: The time is 11:29; we are going off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 11:53; we are back on the record.

BY MS. MILLER:

Q. So, Mr. Renzi, I know we mentioned it briefly, sort of in passing on the record, but there are two annexes to your expert report, Annex A and Annex B. Is that

true?

MR. KERR: I think that's right.

Q. Are these the recovery analysis and liquidation analysis that were included as part of the disclosure statement?

A. The approved disclosure statement. There are two.

Q. And are these documents that you prepared?

A. Yes.

Q. And looking first at the recovery analysis, in paragraph 8, you discuss the FHA VA mortgage assets. What are FHA VA mortgage assets?

A. They are loans and servicing advances.

Q. And how does ResCap monetize them in the ordinary course?

A. There are a variety of different ways. They monetize -- you mean loans or servicing advances? We can do both.

Q. Sure.

A. The loans, they will try to pool them and put them into Ginny pools that,

where they are modified, sell them into Ginny pools, and those loans are usually loans that they can get to reperform. That's one way. They can bulk sell them. That's another way. Those would be two examples.

Q. And does ResCap bulk sell them in the ordinary course?

A. I think if the price is reasonable, yes. And acceptable to the unsecured creditors, and I would suspect to the JSNs.

Q. Sorry. Let me go back because maybe I wasn't clear. Outside of the bankruptcy context, how does ResCap -- how did ResCap monetize FHA VA assets?

MR. KERR: Objection.

A. Recoveries through delivery of modified loans under Ginny securitizations, that's one example.

Q. And did ResCap administer FHA VA loans?

A. I am sorry, I don't understand your question.

Q. What did ResCap -- what did

M. RENZI

ResCap have to do in order to monetize the FHA VA assets?

MR. KERR: Again, this is prebankruptcy, outside of bankruptcy?

MS. MILLER: Prebankruptcy, outside of bankruptcy.

A. I mean, they would -- collect principle and interest. And/or they can sell them. Or resecuritize them.

Q. And you talk about the timing claim recoveries being driven by individual loan status independent on foreclosure status, present of the document deficiencies and geographies?

A. Yes.

Q. What do you mean by loan status?

A. Whether or not a loan is in default or not. Or if it's 30 days past due, 60 days past due, 90 days past due, greater than 90 days past due. That's one example. If they are in foreclosure.

Q. If the loan is not in default, then the borrower continues to make payments and those payments get collected?

M. RENZI

A. Is that a question?

Q. That's a question. Is that how it works?

MR. KERR: Again, are you talking outside of bankruptcy?

MS. MILLER: Outside of bankruptcy.

MR. KERR: So not in the recovery analysis, just generally outside of bankruptcy?

MS. MILLER: Generally outside of bankruptcy. I am trying to understand the nature of the asset and then the treatment in the recovery analysis and in the liquidation analysis.

A. So yes, the recovery of the principle and interest, those would be examples.

Q. And how does ResCap monetize FHA VA loans that are not sold back to Ginny after a modification?

A. How does ResCap -- could you say that one more time?

M. RENZI

Q. Yes. How does ResCap monetize FHA VA loans that are not sold back to Ginny after a modification?

A. There are a variety of different ways. If a loan is past due, then they have to go through a foreclosure timeline, and as indicated here, you could go through judicial states and that could take a very long period of time. They sometimes call those, you know, ARs or AR receivables. Even though they are loans, the company has different ways of sort of describing them in their own vernacular.

Q. And you mentioned that some judicial foreclosure states have an average foreclosure timeline of four years?

A. I do.

Q. Are there some judicial foreclosure states that have a shorter foreclosure timeline?

A. Yes.

Q. Do you know what the average foreclosure timeline is in the states in which ResCap held FHA VA loans?

M. RENZI

A. I think your question is more relevant towards the ones that remain on their books, because right now a lot of them are longer foreclosure timelines because they are more difficult to monetize. So it depends on when you are asking the question.

Q. What do you mean by longer?

A. So if a loan has gone past due, you certainly have to consider how you are going to recover on that loan. And you have to -- there are other things you can do. You have to apply for insurance and, in general, as a lot of companies do, they will take low hanging fruit. And the low hanging fruit is ones that are easier to collect upon, and in states that have, you know, shorter foreclosure timelines. So states like -- I may have the states mixed up a little bit, but some of the east coast states like New Jersey and New York have longer timelines.

So it depends on when you are asking the question. If it's an operating business, historically, you know, I would say

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it would have an average shorter timeline. But we are left with assets that nobody wants so implicitly, the timeline is likely increased from their -- the historical average because we are left with the ones that are more difficult to monetize.

Q. So the four-year average foreclosure timeline in certain states that you identified in the recovery analysis is the longer of the -- possible judicial foreclosure?

MR. KERR: Objection.

A. I would have to go back and look at -- but just logically, it's definitely -- logically, it is likely longer now than it was when they were just functioning as a regular business. Again, these assets nobody wants. In the bids, they weren't purchased, it's very difficult to sell them. So that's why they sell them at prices that are acceptable to all constituents.

Q. And you estimate that if you hold these for -- how long do you assume these assets get held for in the recovery analysis?

M. RENZI

A. I think 85% of assets are monetized within the first three years and the rest go for the following four years.

Q. Do you know whether ResCap itself has any administrative responsibilities with regard to its FHA VA assets?

A. In order to collect on insurance, it has to follow very strict procedures to collect on insurance, so, yeah, they have got to service them correctly. Or the third-parties that are servicing them need to service them correctly, and they are monitored by ResCap.

Q. Do you know -- do you know what percentage of ResCap's FHA VA portfolio is serviced by third-parties?

A. I don't remember. I know that -- I think that -- I don't remember the percentage.

Q. More than 50?

A. I think so.

Q. Do you think it is more than 75%?

A. I don't remember.

Q. But you know it is more than

M. RENZI

half?

MR. KERR: Objection. Asked and answered.

A. I think so.

MR. KERR: I would like to mark as Renzi Exhibit 2. I would like to mark as Renzi Exhibit 2, a document Bates stamped RCUCCJSN 11241765 through '99.

(Whereupon, Renzi Exhibit 2, RCUCCJSN 11241765 through '99 was marked for identification as of this date by the Reporter.)

MR. KERR: And at the same time, I would like to mark as Renzi Exhibit 3, a document you Bates stamped RCUCCJSN 30047089.

(Whereupon, Renzi Exhibit 3, RCUCCJSN 30047089 was marked for identification as of this date by the Reporter.)

Q. Mr. Renzi, I have given you -- I have marked as Renzi Exhibit 2, a document, the first page of which says "withheld as

privileged" but behind that, the first page, is what appears to be a working draft of the liquidation analysis; is that correct?

A. It's titled that.

Q. Do you recognize this document?

A. It's similar to the one that's been filed.

Q. Okay. And if you look, there is a loose slip sheet behind that second document which says "liquidation analysis" which is titled "Recovery Analysis."

Do you see that?

A. I see it.

Q. It says "Working draft subject to change," right?

And I have marked as Renzi Exhibit 4 -- sorry, as Renzi Exhibit 3, what appears to be a calendar invite attaching a couple of documents, the first of which appears to be a draft of the recovery analysis and the second of which appears to be a draft of the liquidation analysis. And so I don't think I included the date. The date of the calendar invite is Monday,

July 1st. Is that your understanding of what Renzi Exhibit 3 is?

A. It just says -- it says "Let me know if 1:30 works for you regarding the liquidation analysis."

Q. Does it look like a calendar invite?

MR. KERR: Objection.

Q. Do you know whether this was a calendar invitation?

A. It just says -- I mean, it just says the where, when, until, organizer. So I suspect it is.

Q. That's my suspicion, too. I want to focus on Exhibit 3, and we will reference Exhibit 2, if you need it. And if you can turn, in the liquidation analysis, which is --

A. I have 3 in front of me.

Q. Exhibit 3.

A. Okay.

Q. Liquidation analysis which is the --

MR. KERR: You have the right

exhibit. Make sure in the front.

There should be an exhibit tab in the front.

Q. Exhibit 3, you have got it. Liquidation analysis, which is in this exhibit, it is the last attachment. It says, on the bottom, "Printed on 6/30/2013," if that helps us with dates. If you look at page 5, the discussion of affirmative claims against AFI, it says in bold, need to -- it says in all caps, "Need to discuss additional disclosures and scenarios reaffirmative claims against AFI."

Do you know who added that comment?

A. No.

Q. Do you know why that was added?

A. Because we needed to discuss additional disclosure and scenarios regarding affirmative claims against AFI.

Q. Did you believe that the liquidation analysis needed a greater discussion than what you had included in the draft?

M. RENZI

MR. KERR: Objection.

A. Well, i would have to compare what's said in page 5 relative to the approved disclosure statement, and I would say what was in the approved disclosure statement is what we needed to add relative to this draft.

Q. You don't know who suggested that additional information needed to be added?

MR. KERR: Objection.

A. I think I -- no, I don't remember.

Q. Do you remember that there was a draft that didn't include any additional information, that included only the information before the capped language?

A. I mean, I am sure there are many drafts of the liquidation analysis.

Q. Well, if you look at Renzi Exhibit 2, page 5 of the first attachment.

A. The first section?

Q. It is confusingly for everybody. It is reversed in this exhibit, where the liquidation analysis is first and then the

recovery analysis. So it is the first exhibit -- it is the first attachment to Exhibit 2, the second attachment in Exhibit 3. Looking towards the bottom of page 5 in the discussion of affirmative claims against AFI.

A. I am there.

Q. Okay. So do you see that the text is the same in both -- without the comment "Need to discuss additional disclosures and scenarios reaffirmative claims against AFI"?

A. I see there is nothing in all caps. I can read them both. But it seems like they are the same.

Q. So there is a draft prior to the one that I marked as Exhibit 2, but did not have that comment in it, right?

MR. KERR: Objection.

A. I am confused as to drafts. Is there a third draft that you are referring to? I have three docs. The approved Draft 1 and Draft 2 and Draft 3. Is there another one that you are referring to?

M. RENZI

Q. Just these two for now.

A. Got it.

Q. Exhibit 2 has the same textual discussion of affirmative claims against AFI but does not have the all caps comment that says "Need to discuss additional disclosures and scenarios reaffirmative claims against AFI" that is included in Exhibit 3, right?

A. I see that, yes.

Q. Do you recall having any discussions about what "additional disclosures and scenarios about affirmative claims against AFI" to include in the liquidation analysis?

A. Yes, I do.

Q. What was the nature of those discussions?

A. I think that we decided that what was published on page 5 of the affirmative claims against Ally, which is the final one in Exhibit 1, is what we wanted to go with.

Q. What discussions did you have back and forth before you decided what to go with?

M. RENZI

A. We decided that it was more appropriate to say Ally instead of AFI, and we decided, for example, to reference the examiner's report.

Q. Who suggested referencing the examiner's report?

A. I don't remember specifically.

Q. Did you have any discussions of including an analysis of -- sorry, did you have any discussions about including additional disclosures other than a reference to the examiner's report?

A. I suspect we did. But I don't remember specifically what other issues we addressed other than that.

Q. Do you remember generally -- sorry, do you remember whether -- did you have any discussions about whether to include a scenario that reflected -- in the liquidation analysis, that reflected a claim value for the claims against AFI?

A. I wouldn't say it the way you said it.

Q. How would you say it?

M. RENZI

A. I would say that we talked about additional scenarios about a recovery from AFI. But there are so many different components to understanding that, and we didn't know how to value it.

Q. Did anyone ask you to try to value it?

A. No.

MS. MILLER: I would like to mark as Renzi Exhibit 4 a document Bates stamped RCUCCJSN 11874351 through '4364.

(Whereupon, Renzi Exhibit 4, RCUCCJSN 11874351 through '4364 was marked for identification as of this date by the Reporter.)

Q. Mr. Renzi, I have marked as Exhibit 4, an E-mail from William Nolan to William Tyson and others copying you and to Tanya Meerovich dated July 1st, 2013, forwarding an E-mail from Allan Holtz at AlixPartners to you, among other people.

Do you recall receiving comments on the liquidation analysis from

AlixPartners?

A. I received many e-mails from them, but now looking at this is E-mail, yes, I see it.

Q. Looking at page 5.

A. Is there a numbered page 5?

Q. Sorry, there is a numbered page 5 in the attachment. Which, sorry -- so the record is clear. This E-mail attaches -- attaches a document titled AP markup dot PDF, which appears to be a draft of the liquidation analysis with handwritten comments.

Do you know whose comments these are?

A. I suspect they are Allan Holtz' comments.

Q. Did you review Mr. Holtz' comments on the liquidation analysis?

A. I think so.

Q. Do you see on page 5 of the comments, he writes next to the paragraph regarding affirmative claims against AFI, "does the examiner report change this?"

M. RENZI

Did you have a discussion with Mr. Holtz or anyone at AlixPartners about the impact that the examiner report had on the inclusion of affirmative claims against AFI in the liquidation analysis?

MR. KERR: Objection.

MR. KAUFMAN: Objection.

A. I don't specifically remember that conversation, but I do remember, now that I look at it, I remember seeing this, and I remember that one of the additions was to put the reference to the examiner's report. Maybe this is one of the things that was the genesis of putting that comment in the final document. That's speculation.

MR. KERR: We seem to have both lost our connectivity.

THE COURT REPORTER: Off the record, please.

THE VIDEOGRAPHER: The time is 12:19; we are going off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 12:22. We are back on the record.

M. RENZI

BY MS. MILLER:

Q. Sir, we don't have the Realtime stream, and I forget where we are. Can you just read back the last question and answer?

A. We were on page 5. Five of one of the fives.

(Record read.)

MR. KERR: I just saw the witness was making notations on the Exhibits. Mark, don't make notations on the exhibits. These are the exhibits that will be used at trial.

THE WITNESS: Okay.

MR. KERR: Maybe you can just specify what you did write on each of these exhibits, just so we are clear on the record?

THE WITNESS: I have four page 5s in front of me. So instead of flipping back to figure out what Exhibit I have, I have written the Exhibit number on each page 5. So Exhibit 3, on page 5 says "3." Exhibit 2 on page 5 says "2." On the

M. RENZI

approved Exhibit 1, which is the approved liquidation analysis, I put "Approved," and on the draft I put "Draft from Alan."

MR. KERR: I appreciate your effort to try to keep all this straight in front of you. However, let me ask going forward that we, and I am sure Atara, let's not mark up the Exhibits. If you need us to get you a pad, a little yellow sticky to stick on there, we can do that for you.

THE WITNESS: Okay. Sorry.

MR. KERR: That's okay.

MS. MILLER: Made you feel like you are back in second grade.

MR. KERR: No recess for you.

Q. Did you include any additional scenarios in the liquidation analysis that reflected a value for the affirmative claims against Ally?

A. I don't believe so.

Q. Looking down to the next paragraph, page 5 of Exhibit 4, it states,

"Wind-down expenses of $125 million have been allocated to the revolver/JSN collateral as carve-out expenses."

If you -- do you know what the actual number of wind-down expenses that you allocated to the revolver and JSN collateral was in the final liquidation analysis?

A. Yes.

Q. What was that value?

A. It says 180 million.

Q. Is it allocated to the same set of collateral?

A. Page 6 of the final liquidation analysis or the approved liquidation analysis, it says or reads, paragraph 30, "The liquidation analysis assumes wind-down expenses of $180 million are allocated to the JSN collateral for the period after April 30, 2013, and as such, those costs have been removed from the JSN secured recoveries."

Q. And that's different from the language in the draft on page 5 of Exhibit 4, which says that "$125 million have been allocated to the Revolver/JSN collateral;" is

that right?

A. Yes.

Q. What's the basis for the $125 million number included in the draft?

A. Which draft?

Q. Sorry, Exhibit 4?

A. The basis was, I believe it was an estimate at that point in time, and as we refined the analysis with the company, the number increased from $125 million to $180 million.

Q. What was the estimate based on?

A. I think it was the best information we had at that point in time, whenever the first draft came out. There are a number of different analyses ongoing at that point in time, and it was labeled "Refined."

Q. Do you know, looking still at page 5 of Exhibit 4, it says in square brackets, "per the [six] cash collateral stipulation - discuss with MoFo."

Why was this a discussion point?

A. We were working with MoFo on the

cash collateral stipulation, and we wanted to make sure that we understood specifically the provisions that are in that cash collateral stipulation, and the amount of expenses that could be charged against the revolver/JSN collateral.

Q. Did you understand that the six cash collateral stipulation allowed these expenses to be charged against the JSN collateral?

A. I think there have been seven cash collateral stipulations. So differentiating between the sixth and the seventh and the fifth and sixth, I am not sure I can do that, but I think it is just chronology.

Q. So it is your understanding that the cash collateral stipulation would allow these expenses to be charged against the JSN collateral?

A. My understanding is that there is a range that could be charged, and that the one that we analyzed and discussed with the company in MoFo was adjusted from what

appears in Exhibit 4 to the final liquidation analysis. And then has, subsequently, been adjusted by a Phase I expert report.

Q. And what's the current number from your Phase I expert report?

A. I think it's $169.8.

Q. Is that almost $170 million number the number that you use in your rebuttal report in Phase II?

A. Yes.

Q. What caused the decline from $180 million to $170 million?

A. This -- the $180 million number was accrued, and it was based on estimates provided by various constituents, including the JSN advisors. And as those estimates became reality over time, we appeared to have accrued $10 million too much. So I felt it was appropriate to properly adjust the number down to a more refined number.

Q. Do you know how much -- how much had actually been accrued by -- sorry, how much had actually been accrued by the date of your rebuttal report?

M. RENZI

A. As of 4/30?

Q. Not as of 4/30. As of October of -- as of October 13th.

A. Well, we are referring to 4/30 balances. I think that's what you mean by your question.

Q. Sorry, I think I misused the word. I think I said "accrued" instead of "actually charged." Do you know how much has actually been charged?

A. $27 million.

Q. So there is a clean record, $27 million is the amount that's actually been charged from April 30, 2013, through mid-October, 2013, correct?

A. Yes. I think the timeline is narrower than you stated, but it is still accurately stated.

Q. I want to put all my page 5's in order.

A. Can I put them away?

Q. You can do the same, yes.

A. Thank you. Do I give those back to you?

M. RENZI

Q. You keep them in a pile. We might need them again.

Mr. Renzi, I am going to hand you a document that's previously been marked as Westman Exhibit 1 in this litigation. This is a 30 -- this is the ad hoc group of junior secured note holders, noted Rule 30(b)(6) deposition. And if you look at pages 10 and 11 and, in particular, the topics number 18 and 19.

Do you understand that you have been designated by ResCap as the corporate representative 30(b)(6) witness on all matters relating to the hypothetical liquidation analysis set forth in Exhibit 8 of the revised disclosure statement?

A. I see it written here. If you are saying that I am, I am.

MR. KERR: Just so we are clear, we have designated Mr. Renzi as the 30(b)(6) witness on behalf of ResCap for items 18 and 19.

Q. My question is, did you understand that you were the corporate

representative for topics 18 and 19, being all matters related to the hypothetical liquidation analysis and recovery analysis, before I asked you a question and showed you this document?

A. Yes.

Q. You did. And what --

A. The exhibit part threw me off. I just didn't remember.

Q. And what, in particular, did you do to prepare for your 30(b)(6) testimony?

A. For today?

Q. For today, yes.

A. I discussed with counsel what to anticipate for the deposition today. Predominantly did it just yesterday.

Q. And did you review prior drafts of the hypothetical liquidation analysis?

A. No.

Q. Did you review prior drafts of the recovery analysis?

A. No.

Q. Did you keep any notes of meetings or telephone calls in the ordinary

course?

A. Not in respect to -- not in respect to my expert reports or this deposition, no.

Q. Well, in the ordinary course, if you are doing work and analysis, do you write notes either in hand, by hand or electronically about discussions that you had or meetings that you have had?

A. Time detail.

Q. Do you report, in any way, the substance of discussions that you had?

A. I sometimes do, yes.

Q. And did you go back to see if you had any notes relating to the liquidation analysis or the recovery analysis?

A. No.

Q. Did you do anything other than talk to counsel, specifically related to the hypothetical liquidation analysis or the recovery analysis to prepare for your deposition today?

A. Yes.

Q. What did you do?

M. RENZI

A. I reviewed the recovery analysis, the liquidation analysis, the first one and the second one. The first one, I think, was filed in the beginning of July, if I remember, I think it was July 4th. And I remember reviewing the expert reports that I have written, the three of them. I reviewed Mr. Fazio's reports. Those are the things that I remember doing.

MS. MILLER: I would like to mark as Renzi Exhibit 5, the Expert Report of Mark Renzi Intercompany Balances dated 11/1/2013.

(Whereupon, Renzi Exhibit 5, Expert Report of Mark Renzi Intercompany Balances dated 11/1/2013 was marked for identification as of this date by the Reporter.)

A. Do you want me to -- do I still need this one open?

Q. Yeah, you do.

A. Okay.

Q. Mr. Renzi, is this the rebuttal report that you submitted in Phase II?

A. Yes.

Q. I am going to skip your qualifications and look at -- start at page 8 of your rebuttal report. In the third bullet, the last sentence, you say, "The waterfall model and the model relied upon by the JSN, the Fazio model, are largely in agreement with one another."

Do you see that?

A. Yes, I do.

Q. And is that still a true statement?

A. I think there are differences, but they are not very large.

Q. And what specific differences have you identified?

A. Well, I haven't requested their models, but I do know that some of the equity pledges are slightly different. Let me restate.

Our final conclusions, we didn't request the model. Initially we had, but we don't need it. We think that there are slight differences in the way equity pledges

M. RENZI

are calculated, and we think that there could be differences in the way intercompany balances could be asserted. I don't have the details of their presentations, Mr. Fazio's presentation, but I can make good estimated, or good educated guesses as to where they come out. But that's where I think the majority of the differences are.

Q. Did you have an estimate for the variance between the two models, the degree of variance between the two models?

MR. KERR: Objection.

A. I would say --

THE WITNESS: Can I answer?

MR. KERR: Yes.

Q. You can answer.

A. I would say it is generally within two to three percent.

Q. Looking at page 9 -- let me step back for one second.

I know we were talking about a lot of models, and the recovery analysis, and the hypothetical liquidation analysis, and I just want to make sure that we keep

everything straight. Is this report talking about the recovery analysis?

A. No.

Q. Is this report directed to the hypothetical liquidation analysis?

A. No.

Q. What is this report doing?

A. I mean, it's addressing intercompany balances.

Q. Okay. And is it addressing the treatment of intercompany balances, or the impact of intercompany balances on recoveries under the recovery analysis or under a hypothetical liquidation analysis?

MR. KERR: Objection.

A. Well, it's a compound question. The answer, generally, to both is no.

Q. Okay. So is it addressing the impact of intercompany balances on JSN recoveries?

A. Yes, it's addressing, under certain scenarios, what the recoveries, secured recovery would be for the JSNs under a variety of scenarios.

M. RENZI

Q. So looking on page 8, the last main bullet under "Base Case," it says, "That waterfall model assumptions are consistent with the plan's recovery analysis, but the base case assumes no recovery on account of an AFI contribution."

A. Correct.

Q. Is that right?

Why did you take out "the recovery on account of an AFI contribution" from the base case?

A. We thought it was -- would be clearer to show the recoveries on intercompany balances, if allowed, with incremental changes regarding the scenarios that we have presented here. So we thought it would be clearer.

Q. And did you run the model -- sorry, did you run your three scenarios on the base case that included the AFI contributions?

A. Did we run --

Q. Scenario 1 and Scenario -- sorry, Scenario 1 and Scenario 2?

M. RENZI

A. Not for the expert report.

Q. After you received Mr. Fazio's expert report, did you review that? Did you run that model?

MR. KERR: Objection.

A. I would have to look at his expert report. There are a few of them. And there are many scenarios. So the answer is, we checked to see if we were close under one or two scenarios, but I didn't try to replicate all of his scenarios. Again, I didn't have full information for his analysis, but I have nothing -- what I have stated here in my expert report is still consistent with my belief.

Q. What impact would including a recovery on account of AFI -- of an AFI settlement be on the intercompany balances that you have identified?

MR. KERR: Objection.

Q. Sorry, let me restate that.

A. It is broad.

Q. Would the inclusion of an AFI contribution increase the recovery on

intercompany balances?

A. It depends.

Q. What does it depend on?

A. If all the intercompany balances were valid.

Q. If all the intercompany balances are valid, would the AFI contribution increase the recovery on the intercompany balances?

A. It depends.

Q. It depends on what?

A. It depends on which intercompanies are valid.

Q. Like I said, if all the intercompany balances are valid, would the AFI contribution increase the recovery on the intercompany balances?

A. Sorry, if all were valid it would increase -- if all intercompany balances are valid, it would increase the value of the intercompany balances.

Q. And do you know by how much?

A. Under what scenario?

Q. Under Scenario 2.

M. RENZI

MR. KERR: You are talking about Scenario 2 of Mr. Renzi's rebuttal report?

Q. Under Scenario 2 of your rebuttal report, in which you assume that all intercompanies are valid at face value, if you added in the AFI -- an AFI contribution value, what impact would that have on the intercompany balance recovery?

A. Under Scenario 2, I think Mr. Fazio has run this analysis, the JSNs would be -- if there is an AFI contribution, the JSNs would likely be oversecured.

Q. And do you know how much of -- how much of a payment by Ally would be needed to render the JSNs oversecured in Scenario 2?

A. I haven't run it incrementally in the way you are asking it. So you are asking if I -- if I have taken it like Mr. Fazio has done, he's gone from 250 to, I don't remember, 350 to 450, 550, et cetera, et cetera, up to and beyond, I think beyond $3 billion. I haven't done it the way he has done it.

M. RENZI

So you are asking for a tipping of when we become oversecured, and I know it happens, I just don't remember at what level.

Q. Do you have a general sense of what level?

A. What assumptions do you want me to postulate upon? Like all --

Q. I want you --

A. Sorry, I would rather have you ask me the question instead of me guessing.

Q. I want you to assume everything that you assume in Scenario 2, with an AFI contribution that runs through the waterfall, that is not subject to a direct lien of the JSNs.

A. So the answer to your question is, I haven't done the analysis in the way Mr. Fazio did it. It is, like, thousands of lines of a model. I am good, but I can't do that sitting here. I would suspect it is slightly less than $2.1 billion, but it depends on where you put the money.

Q. Do you know if it is less than a billion?

M. RENZI

A. I don't think that there are -- the JSNs are oversecured in -- I don't think that they are oversecured. In less than a billion. But that's -- if you would like me to run the analysis. I am sure you would like me to, but --

Q. I am not your lawyer, but you would probably be advised not to offer things like that.

Looking at page 9, the fourth sub-bullet under the second bullet of assumptions. That's the -- is that the $169.8 million administrative expense number that we were discussing earlier?

A. That was the one that we were referring to, the charge against the collateral, yes.

Q. So that's the number that, in this disclosure statement, is reflected at $180 million that has since been revised?

A. Yes.

Q. Looking at page 11, in the second to last bullet on that page, the last sentence says, "The remainder is related to

the estimate of accrued and unpaid professional fees as of 7/11/13, plus $25 million."

What's the basis for the plus 25 million?

A. That was a carve-out amount.

Q. What was that carve-out amount intended to cover?

A. To reflect the additional expenses that could be charged against the JSN collateral. So it would be the 169 less the 27 -- 169.8 less the 27 million, and you have a remainder of approximately 143 million of which 25 was carve-out.

Q. You are saying carve-out, not carved out, right?

A. Carve-out.

Q. Just making sure.

A. This analysis reflects what we discussed. It is the -- you can see the adjustments on page 11 that you are referring to, of the two components, the $27 million, which is on row -- under the Fazio model, under row 6, and then, subsequently, when I

got it back, on row 8, $143 million. And you can see that, after that adjustment, we are in agreement.

Q. And what expenses are included in the carve-out amount?

A. Professional fees, things of that sort.

Q. What expenses are included in the 143 amount?

A. I believe it is the same. I don't have the specific document in front of me, but it lists them all out. But unpaid professional fees is a major portion of it.

Q. Who provided estimates of what the going forward professional fees would be?

A. I actually believe that each of the professional firms, financial advisors, and attorneys have provided estimates of what they think their future expenses are. So when a budget was pulled together, we consulted with as many -- with as many firms as would provide information. And we did that in conjunction with the company.

Q. And did those estimates gross up

to $170 million?

A. Initially, we had them estimated at -- that would be applied against the JSN collateral at $180 million, and it's been revised down to $170 million, approximately.

Q. Was your initial estimate based on the specific estimates that each of the firms and FAs and other representatives of the parties that you discussed gave you?

A. I think it's only a portion. What's reflected, what's applied against the JSN collateral is just a portion of -- it's a portion of that. So the total is certainly higher.

Q. Looking at page 12 --

A. This is page 12.

Q. It is, that's not my page 12.

A. Sorry.

MR. KERR: It is a numbered page 12.

A. I apologize, the corners are -- got it.

Q. Yours is stapled on the other side.

M. RENZI

A. Yes.

Q. I think we are all on page 12 of Exhibit 5, which is the Renzi rebuttal report, which is titled "Overview of Scenarios Global Assumptions." And on the left-hand column, it says "AFI Contribution."

And you state that, "Sensitivity scenarios outlined in this report assume no AFI contribution." And then you state, "I have also been instructed by counsel not to include any value for purported liens by the JSNs on alleged causes of action by the estates against Ally or its affiliates."

Do you know why you were instructed to assume no liens?

A. Because it wasn't -- when I discussed it with counsel, we didn't feel that it was a reasonable assumption.

Q. And what impact would the JSNs having a lien have on the recovery analysis, if it also included some value for the AFI contribution?

A. What assumptions do you want me to make? I can't answer -- that's, like, too

M. RENZI

broad of a question.

Q. I want you to assume Scenario 2, where you take all the intercompanies at face value, but assume that there is an AFI contribution and that the junior secured note holders have a lien on that, or at least on some portion of that contribution.

A. And your question is?

Q. What impact does that have on the JSN recovery?

A. It improves their recovery.

Q. Do you know how much of -- what value they, the JSNs, need to have a lien on to render them oversecured?

A. I mean, I just want to back up.

We are in this hypothetical world where we assume, like center is powerless, everything else equal, Scenario 2, where nothing else changes. Meaning claims don't change, that from other constituents, and that there is a settlement, and the JSN intercompany balances are -- the JSNs have a lien on the intercompany balances, and the intercompany balances are valid.

M. RENZI

So all of those things, I want to make sure I caveat it, because Scenario 2, I don't necessarily think would be -- if we turn on value for Scenario 2, I think other things will change. I don't think -- I just want to make sure that -- I don't know that Scenario 2 would exist if you turn on an AFI contribution.

Q. I understand. We are going to talk about that.

A. Okay.

Q. What I want to know now is, if there is, assume Scenario 2 where intercompanies are on at face value as recorded in the books and records of the debtors, and you assume that there is a payment by Ally, it may be more, it may be less than the -- what is being termed the Ally -- the AFI contribution, there is a payment by Ally and settlement of claims, including some of which the JSNs have a lien on.

Do you know what value of -- what value the lien -- the JSN lien on Ally

contribution has to be to render them oversecured?

A. I can't answer your question. You didn't tell me where to put the money.

Q. Okay.

A. There is -- there are a number of assumptions you need to make, that you need to tell me where. It's insufficient information to tell you the answer.

Q. If the JSNs have a lien on certain portions of the recovery, where does that money flow in the waterfall analysis?

MR. KERR: Objection.

A. I don't know. I have assumed that the JSNs don't have a direct lien on the Ally contribution. So you are just saying, if they have a direct lien on the contribution?

Q. What if you are wrong in your assumption? What's the impact on your analysis if you are wrong in this assumption?

A. It depends where the money goes.

Q. So I am asking you, for that portion of the claim related to -- of the

settlement payment related to claims that the JSNs are deemed to have a lien -- are determined to have a lien on, where does that money go?

MR. KERR: Objection.

A. You are asking me if they have a lien on it, what legal entity Ally will pay into? Under --

THE WITNESS: Chad --

MR. KERR: You can answer the question. Go ahead and answer the question.

A. I don't think -- there is a global settlement. The global settlement is prescribed in a certain allocation. That's different than what you are suggesting. You are suggesting that there is a direct lien on the global -- the amount of contribution of the $2.1 billion, and you are asking me -- well, I am not sure I understand your question. I am not going to try to recharacterize your question.

Q. We will move on, and hopefully we will get into more detail that will help you

M. RENZI

answer the question.

Turning to page 13 in your rebuttal report?

MR. KERR: Atara, lunch is outside. Whenever you want to take an a break. We can keep going as long as you want.

THE WITNESS: I am good.

MS. MILLER: Let's keep going a little bit.

MR. KERR: That's fine.

Q. You let me know when you are hungry.

A. Sure.

MS. MILLER: Has someone verified that lunch is outside?

MR. KERR: I have. I know you don't trust me. I apologize for that.

THE WITNESS: Well done.

Q. Page 13, of the rebuttal report, Scenario 1, can you explain what Scenario 1(a) assumes?

A. So Scenario 1 on page 13 says, "There are additional intercompany balances

that are identified for forgiveness."

I think in this example, there is, for the balances that we were analyzing, there is $2.6 billion identified for forgiveness.

Q. What do you mean by "identified for forgiveness"?

A. The company -- but for the bankruptcy filing, the company was going to forgive an additional amount of intercompany balances. And the ones that are relevant for this analysis, it is approximately $2.6 billion.

Q. Does your recovery analysis assume that the bankruptcy did not happen?

MR. KERR: Objection.

A. No.

Q. In Scenario 2(b), you say that you "reinstate certain balances on account of the avoidance of fraudulent conveyances."

How did you decide which balances would be avoided because of fraudulent conveyance actions?

A. So we went back and looked at --

it is the Scenario 1(b), and we looked at -- there are two main --

Q. Are you looking at a different page in your report?

A. I'm looking at page 17. So we identified two balances, the ResCap to RFC balance of $1.9 billion, and then the GMAC mortgage to PATTI, or passive action transaction balance. They were identified for fraudulent conveyances.

Q. Were there other intercompany balances between entities that had intercompanies that were avoided -- sorry, that were forgiven? Let me restate that so that's clear.

Did you identify other intercompany balances between entities that had outstanding intercompany balances scheduled on the SOALs, that were forgiven, in addition to the two identified on this page of your report?

MR. KERR: Objection.

A. There were two balances that we identified that were relevant for this

analysis for fraudulent conveyance that reduced the balances. Those were the ones on row 2 and one on row 4, which are the GMAC PATTI and the ResCap RFC balances.

Q. How did you determine that they were relevant for this analysis for fraudulent conveyance?

A. I think I stated in the first -- the first bullet, and I am happy to read that.

"Certainly the intercompany balances reflected on the debtors' books and records as of the petition date could be reduced if actions were brought against" -- "brought to avoid certain instances of the historical forgiveness of intercompany balances. That is because creditors of the debtor entity that forgave a balance would likely argue the debtor entity did not reasonable equivalent value for the extinguishment of the receivable."

And so, that's how.

Q. Did you identify any balances that could be subject to fraudulent

conveyance action that increased the intercompany balances?

A. There are, that could increase them, but we didn't think that -- in discussions with counsel and in discussions in terms of who would be bringing those causes of action, we didn't think that, from a legal standpoint, that somebody would be arguing to increase a balance.

Q. Don't you think the JSNs would, if they had a lien on those balances?

A. They could.

Q. But you didn't include that in your analysis?

A. I did not.

Q. Did you run an analysis that avoided, as fraudulent conveyances, all debt forgiveness from 2008 forward?

A. Not from my expert report.

Q. Do you know what the effect of that would be?

A. It's very difficult to do that just looking at this page.

Q. Do you know whether it would have

less than a $2 billion impact on the net intercompany balances as of May 14, 2012?

A. Would it -- I'm sorry?

Q. Do you know whether it would have less than a $2 billion impact on the net intercompany balances as of May 14, 2012?

A. Are you asking me if the number is lower than the 199 on page 17, third column of numbers?

Q. Yes.

A. Yes, I think it offsets that number.

Q. Do you know by how much?

A. I don't remember.

Q. A billion?

A. I think it is more than a billion.

Q. Looking at Scenario 1(c), what are you doing in Scenario 1(c)?

A. We are adjusting three balances for subordination. That's the RFC, the home comings balance, the GMAC mortgage to PATTI balance, and the RFC, the RAHI to RFC balance.

M. RENZI

Q. On what basis are you subordinating the claims?

A. I think the basis is that there are, to the extent that these balances are asserted to be valid by the JSNs, that these -- there are documents provided that show bankruptcy standstill provisions, and what those provisions, you can subordinate them.

Q. But it's the debtors' position that these balances didn't accrue pursuant to these agreements, right?

A. It's -- I can speak relative to my analysis here. My analysis here says that if indeed, under the assumption that the JSNs are asserting that these balances are valid, and that they have a lien on them, then using the same logic that they are asserting it, then if those documents that they are asserting to be valid are applied, then you would have to apply bankruptcy standstill provisions that subordinate these intercompany balances.

Q. You did a detailed analysis of the intercompany balances separate and apart

from your rebuttal report, right?

A. I don't know what you mean by "detailed analysis."

Q. You engaged in an analysis over the course of months regarding the intercompany balances, separate and apart from your rebuttal report, right?

A. I have reviewed the documents that I have said I have reviewed in my expert report.

Q. You haven't reviewed any documents other than those identified in your expert report related to intercompany balances?

MR. KERR: Objection.

A. Yes, I have reviewed other documents.

Q. Because you did an analysis of intercompany balances separate and apart from your expert report, right?

A. You just said, "an extensive analysis." So that's --

Q. I said, "you engaged in an analysis over the course of months regarding

the intercompany balances separate and apart from your rebuttal reports, right."

A. I have reviewed the impacts, and analyzed what the impacts could be for intercompany balances if the JSNs have a lien on them, and they are indeed valid.

Q. Did you do an analysis of whether the intercompany balances are valid or not?

MR. KERR: Objection.

A. No. That's a legal analysis. I didn't do a legal analysis if they are valid or not.

Q. Do you understand that the intercompany balances can be valid even if they are not governed -- even if they don't arise pursuant to the agreements you have identified?

A. I understand, generally, the nature of intercompany balances that are presented here. I mean, for example, these balances could have arisen out of cash management. These balances -- most of them didn't have documentation. I realize that these balances, generally, weren't being --

weren't accruing or paying interests. I realize that these balances, there was debt forgiveness throughout a period of time from 2008 forward.

So, yes, I think -- yeah. I recognize the impacts that -- on these balances, and whether or not they are valid or not, I think is more of a legal determination.

Q. Do you understand that the intercompanies can be valid and not governed by the agreements that you have identified and have standstill, bankruptcy standstill provisions?

MR. KERR: Objection.

A. I am not sure I follow the nuance.

Q. Well, the debtors take the position, according to your rebuttal report, "The debtors do not believe that the intercompany balances on the books and records, as of the petition date, accrued pursuant to these agreements;" is that correct?

M. RENZI

A. That's correct.

Q. Assume the debtors are right, that the intercompany balances didn't accrue pursuant to these agreements.

A. Okay.

Q. And assume that the intercompany balances are still determined to be valid and not re-characterized.

A. Okay.

Q. You understand that that's a possibility, right?

A. I do understand it is a possibility.

Q. Okay. And so if the balances are valid and did not accrue in accordance with these agreements, then Scenario 1(c) becomes irrelevant, right?

MR. KERR: Objection.

A. I am not sure -- I am not sure if it becomes irrelevant or not. It becomes a combination of whether or not there is value and whether or not the law says that that's possible. And I am not here to opine on the legal issue of whether or not this -- whether

M. RENZI

or not each one of these documents are -- could be invalidated, and whether or not that they exist with or without a document. And I think a lot of them don't exist, or they are on the books and records without a document. That doesn't mean that there is a valid lien. It doesn't mean that there is -- that it's just a function of accounting.

So there is a lot of different issues you are asking me to address, and I can probably try to do it in isolation.

MR. KAUFMAN: By the way, no one asked our reporter whether she wanted to take a break for lunch. And we should have.

THE COURT REPORTER: I am fine.

MS. MILLER: We will take a break soon.

Q. Is there any basis to subordinate certain of the intercompany balances, other than the documents that you have identified in your report?

MR. KERR: Objection.

A. I think there could be, but I

would need to discuss with counsel what other legal theories that could be -- could apply. We have done, for Scenario 1, we have done four scenarios.

Q. And Scenario 1(c) is predicated on the bankruptcy standstill provisions in the agreements you have identified, right?

A. Yes.

MS. MILLER: Now is good time for a break.

THE VIDEOGRAPHER: The time is 1:17. We are going off the record.

(Whereupon, a lunch recess was held.)

M. RENZI

***AFTERNOON SESSION***

THE VIDEOGRAPHER: The time is 2:07; we are back on the record.

BY MS. MILLER:

Q. Good afternoon, Mr. Renzi, welcome back. I am going to hand you what has been previously marked as Westman Exhibit 39.

A. Do you have a magnifying glass?

Q. I am only going to ask you to read one line, so hopefully we can squint through it. Which is a document Bates stamped RCUCCJSN 00030215 through '215. Apparently a native file. Titled Residential Capital LLC Debt Forgiveness excludes Ally on less than 20 million, January 1, 2008, through May 13, 2012. Will you look at the first line.

A. Okay.

Q. I will tell you what I think it says. We will see if we agree. It says date, "3-31-2008, description Residential Capital LLC, Residential Funding Co, LLC," and then it says, "$2 billion intra ResCap

debt, reason to meet debt covenants."

Is that the debt forgiveness transaction -- sorry, is that the debt forgiveness transaction that you refer to on page 17 of your rebuttal report?

A. I think the numbers -- this is just one, a few entries, I think. If I can just flip. Yeah, it is one of them, yes.

Q. What are the other ones?

A. I think if you go back to page 25, there is another -- it is really difficult to read because of the font sizes, I don't know what number that is, but it is a very small number for font size. But there is another one of 151 million, at least in aggregate for 2009 for that relationship.

Q. So the -- the avoidance of fraudulent conveyances number identified for Residential Capital LLC and Residential Funding Co LLC on page 17 of your slide is comprised in large part by the debt forgiveness that is dated 3-31-2008 on the schedule that was marked Westman Exhibit 39; is that right?

M. RENZI

A. Yes, so 17 reflects the reversal of debt forgiveness up to 1.9 -- or avoidance of fraudulent conveyances of 1.955, yes, on my page 6 and generally, corresponds with the first line that we were just discussing on Westman Exhibit 39.

Q. You are going to love me. I would like to mark as Renzi Exhibit 6 --

A. I don't have to take this anywhere, do I?

Q. You don't. The Court Reporter does.

-- as Renzi Exhibit 6, the corrected disclosure statement with exhibits. That was filed on August 23, 2013.

(Whereupon, Renzi Exhibit 6, Corrected Disclosure Statement with Exhibits filed on August 23, 2013 was marked for identification as of this date by the Reporter.)

Q. Mr. Renzi, there is a page in Exhibit 6 that has a flag, a yellow flag on the top of it, which is exhibit -- or should be Exhibit 6 to the Disclosure Statement.

M. RENZI

A. I am there.

MR. KERR: Give me a second to get there.

THE WITNESS: I think it says page 19 of 159.

MR. KERR: Page what?

THE WITNESS: It says page 19 of 159.

MS. MILLER: Because it is too big to comply with the Court's PDF sizes. It is about two-thirds of the way through.

Q. Mr. Renzi, do you recognize Exhibit 6 to the disclosure statement?

A. I do.

Q. And is this a document that you were involved in preparing?

A. I believe so.

Q. Okay. And I want to focus, first, on the page numbered 22 of 159 on the top. And then, in particular, on intercompany number 6, which is identified as RFC, as the accounts receivable entity and RFC Assets Holding 2 LLC ("RAHI") as the

accounts payable entity. Do you see that?

A. I do.

Q. In the comments do you see that it says, "There is no documentation reflecting this intercompany relationship"?

A. I see the comment there, yes.

Q. On page 18 of your rebuttal report?

A. Right.

Q. You see that RAHI intercompany advance agreement is listed as one of the agreements that has a bankruptcy standstill provision.

A. I see what you are referring to. On, excuse me, 18?

Q. On page 18. Yes.

Why does it say that there is no documentation reflecting this intercompany relationship in Exhibit 6 to the disclosure statement if you have you identified an agreement on page -- as reflected on page 18 of your rebuttal report?

A. So I think the distinction to be made here is, there isn't something specific

addressing page 22 of 159, Item 6 between RFC and RAHI. But 1C is done as part of a rebuttal to Mr. Fazio's report. And there are a variety of assumptions that are being made in 1C that are different than what is being reflected in the disclosure statement. So the distinction is that the JSNs assert that the intercompany balances are indeed valid and they think that they are valid because a note exists. The same premise would go that if the note exists somewhere up the chain between RFC and RAHI, that that, I guess, in theory, that note would govern and then, there would be -- a bankruptcy standstill would be applicable. So this is in rebuttal to Mr. Fazio's assertion that if these balances were indeed true, that the note can cover it.

Q. But it's the debtor's position that none of the intercompany balances identified and discussed on page 18 of your rebuttal report arose, accrued under the agreements you discuss, right?

A. I think that my position is that

M. RENZI

if the JSNs assert that this intercompany balance is indeed valid, and it is valid by use of the fact that an intercompany agreement existed and I think it is called the RAHI Intercompany Advance Agreement, that if that was applicable, that -- if that agreement makes this balance valid, then in turn, then that would apply against that balance. Meaning the agreement, the bankruptcy standstill within the agreement would apply.

Q. Is it your position that there is a valid agreement between -- that governs the intercompany balance that -- between Passive Asset Transactions LLC and GMAC Mortgage LLC?

MR. KERR: Objection. You are talking about Mr. Renzi's position?

MS. MILLER: Well, I asked him before about the debtor's position as he responded to me about what his position is. So I would like to know now what his position since it is his rebuttal report.

A. The PATTI Intercompany Advance

Agreement?

Q. Right.

A. I think the same applies. Are you referring to page, excuse me, 18 or referring to somewhere else in the Disclosure Statement?

Q. I was asking you about whether it was your position that there is a valid agreement -- whether the intercompany balance between PATTI and GMACM accrued pursuant to a -- an agreement?

A. Well, I will just refer to page 21 of 159, balance number 4.

Q. Sorry. I am asking you, based on your rebuttal report, not based on the Disclosure Statement exhibit. I want to know if in the rebuttal report, you are taking the position that the balances that accrued, that the intercompany balance between Passive Asset Transactions LLC and GMAC Mortgage accrued under a valid agreement or not?

A. I can't answer whether the agreement is valid. I can answer that if the JSNs assert that the agreement is valid, then

they must take into consideration the bankruptcy standstill provision.

Q. Is it the debtor's position that the intercompany balance did not accrue pursuant to an agreement?

MR. KERR: Objection.

A. I would --

Q. I am going to refer you to the middle of the first bullet on page 18 of your rebuttal report where you say that the debtors do not believe that "The intercompany balances on the debtor's books and records as of the petition date accrued pursuant to these agreements"?

A. Yes, that's correct. I still believe that.

Q. Okay. And if you look at --

A. Sorry for --

Q. Being a little confusing? It is okay. Okay.

If you look at Exhibit 6 to the Disclosure Statement, which we marked as Renzi Exhibit 6, and you look at the discussion in transaction number 4 on page 21

of 159, you see there is a discussion of certain documentation that exists regarding a PATTI relationship with a different ResCap entity?

A. It says PATTI and GMAC Mortgage.

Q. Right. Do you see in the comments --

A. Yes, excuse me.

Q. -- that there is discussion of documentation that exists?

A. Yes, I do see that. Says "documentation exists reflecting a lending relationship from PATTI to ResCap."

Q. And there is no corresponding discussion in the RFC RAHI comments that we just looked at on page 22 of Exhibit 6 as Exhibit 6?

A. It says "As we discussed before, there is no documentation reflecting this intercompany relationship."

Q. So why, if you explained earlier that you said that there is no documentation because the documentation you identified didn't relate directly to this intercompany

relationship, why did you treat it differently for RAHI, which is intercompany balance 6 and for PATTI, which is intercompany balance 4?

MR. KERR: Objection.

A. I think the premise here is a rebuttal to Mr. Fazio. Mr. Fazio believes that these balances are more valid than not due to these agreements then the same would hold true -- I think the point is that the agreement moves up the stream above RFC. And thus, if this -- if this is true, that they hold these agreements are valid, then the same would hold for the bankruptcy standstill provisions.

Q. I am asking -- I am asking you now, looking at -- why Exhibit 6 to Exhibit 6 has a discussion of the documentation that exists relating to PATTI's intercompany relationships with a different ResCap entity, but in the RAHI intercompany, it simply says "there is no documentation reflecting this intercompany relationship"?

MR. KERR: I am just going to

put an objection here. Mr. Renzi can answer. But he is not here as a 30(b)6 witness on -- with respect to Exhibit 6 to the Disclosure Statement. He has explained to you what his expert reports are. If he has some personal knowledge to answer your question, he can answer it. But he is not here as 30(b)6 on this Disclosure Statement. On this aspect of it, okay.

MS. MILLER: Understood. I think I established that he is personally familiar with Exhibit 6.

A. Yes, we helped pull it together. But Exhibit 6. But I, you know, by no means am an expert in or a fact witness for each one of these balances.

Q. Did you have any part in drafting Exhibit 6?

A. I think the majority of that was done by the company. There may have been some formatting done by members of my team.

MR. KERR: Atara, are you done

with the Disclosure Statement? Or we can keep it open.

MS. MILLER: Keep it open.

Q. Mr. Renzi, I am handing you a document that was previously marked as Westman Exhibit 19, and it's titled ResCap Intercompany Transactions Draft For Lost Product Purposes Only dated April 4, 2013.

Do you recognize this document?

A. I do.

Q. Is this a document that you prepared?

A. It's got FTI formatting but -- so yes, we had some involvement in preparing this.

Q. Referring to page 6 of the exhibit. Where did FTI get the information about the top seven intercompany balances to include in this dec?

A. The company.

Q. What was this dec used for?

A. Just give me one moment, please.

Q. Sure.

A. So I believe this dec was used

Plaintiff's Objection 148:5-151:19 Irrelevant (FRE 401, 402); incomplete (FRE 106)

for a meeting with the senior unsecured notes is my recollection.

Q. And looking at the second transaction between -- on page 6, between Residential Funding and ResCap, it is that the balance generally arose out of the operation of the company's centralized cash management system.

A. I see that.

Q. Is that consistent with your understanding of that intercompany balance?

A. Yes.

Q. Is it also your understanding that the intercompany balance between Homecoming Financial LLC and RFC listed as number 3 on page 7 generally arose out of the operation of the company's centralized cash management system?

A. Yes.

Q. And is it also your understanding that intercompany transaction number 4 between Passive Asset Transactions LLC and GMAC Mortgage LLC generally arose out of intercompany -- out of the operation of the

company's centralized cash management system?

A. Yes, but I would say you need to read it in the context with the bullets further down.

Q. What is that context?

A. Well, as opposed to -- so, for example, you were referring to PATTI and GMACM. It says "Documentation exists reflecting lending relationship between PATTI to ResCap." Whereas, I think -- so, for example, number 3, there is no documentation. Reflecting intercompany relationship. Reflecting -- it reflects documentation exists reflecting the reverse from RFC to Homecoming. So there are a variety of different items to point out between -- I just wouldn't read it, I guess my point is I wouldn't just read it exclusively one bullet.

Q. I just want to know if the balance generally arose out of the operation -- if it's your understanding that the balance generally arose out of the operation of the company's centralized cash management system?

A. That's my understanding.

Q. Okay. And is it your understanding with respect to intercompany transaction number 5 between Executive Trustee Services and GMACM, that the balance generally arose out of the operation of the company's centralized cash management system?

A. It's my understanding.

Q. Is that also your understanding with respect to intercompany transaction number 6 between RFC and RFC Asset Holding II LLC that the balance generally arose off the operation of the company's centralized cash management system?

A. Well, the first sentence in a -- a paragraph of others. So, yes, I mean, they all have additional comments. So it's not exclusive. But there are others.

Q. Mr. Renzi, do you have experience in other bankruptcy cases dealing with companies that use centralized cash management systems?

A. Yes.

Q. And --

M. RENZI

A. Or non-bankrupt companies, also.

Q. And is it your experience that centralized cash management -- have you been involved in any company that uses a centralized cash management system to effectuate equity transactions?

MR. KAUFMAN: Objection; form.

A. I have been involved -- so I have been involved with other companies with centralized cash management that deal with intercompany notes. So -- and there are a variety of different things including the way they handle the intercompany notes. Not balances, but notes.

Q. Have you ever been involved in -- have you ever been involved with a company that used a centralized cash management system where balances that accrued pursuant to the centralized cash management process were recharacterized from debt to equity?

MR. KERR: Objection.

A. I don't think so.

Q. Have you been involved in all of your experience in any case where debt

Plaintiff's Objection 152:16-23 Irrelevant (FRE 401, 402); unduly prejudicial (FRE 403)

M. RENZI

transactions have been recharacterized?

A. I think so. But it's been -- I can't recall any one recently. I have been involved in this one for two years.

Q. Can you recall any specific example?

A. Not at this moment.

Q. Does ResCap continue to use a centralized cash management system to this day?

A. It does.

Q. And do intercompany balances continue to accrue under the centralized cash management?

A. That's my understanding, yes.

Q. How are postpetition intercompany balances that are generated as a result of the operation of the cash management process being treated in bankruptcy?

MR. KERR: Objection.

A. I think they are being treated as administrative claims.

Q. As debt?

A. No.

Plaintiff's Objection 153:9-23 Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); incomplete (FRE 106)

M. RENZI

MR. KERR: Objection.

A. Administration claims.

Q. Mr. Renzi, you knew before you started work on ResCap that intercompany balances could -- that there was a possibility that intercompany balances could be recharacterized as equity by the bankruptcy court, right?

A. You are asking me before I started working for ResCap? Before I started working for ResCap, I dealt with international companies that are non-public. I can't disclose them. That dealt with intercompany notes that were incredibly well documented. And had formal agreements where they were formally followed, and they were also -- there was a clearinghouse for every month for those intercompany notes and there was a much more formal process than my experience here.

Q. I think you testified you believed you had worked on an engagement in which debt transactions were recharacterized. Is that your testimony?

M. RENZI

A. Yeah, I think so. I can't recall which one it was.

Q. But you think you did?

A. I think I did. Yes.

Q. So you knew before you came to -- before you started working on ResCap that there was a possibility that under bankruptcy rules, certain debt transactions could be recharacterized as equity, right?

A. I believe there -- I believe there are certain instances where things can be recharacterized as equity.

Q. And you knew that before you started working on ResCap, right?

A. Yes.

Q. Okay. Did you ask the company for information regarding intercompany balances -- let me restate that.

When did you start asking the company for information relating to intercompany balances?

A. I would say the spring of 2012. Sometime in that point. Before the bankruptcy filing.

Plaintiff's Objection 155:6-25 Irrelevant (FRE 401, 402); incomplete (FRE 106)

M. RENZI

Q. Is it possible it was in December of 2012?

A. That would be --

Q. That's way after, sorry. My pages are mixed up. So spring of 2012?

A. Yeah.

Q. Before the filing, did you understand what factors courts considered to determine whether or not an intercompany balance to be recharacterized?

A. I mean, obviously, this is a subject of great debate because we are here. So -- and in the beginning, we certainly asked many questions and discussed a variety of different issues about the intercompany balances and that's why these documents that are presented before us have been created. My understanding is that things to consider with intercompany balances are whether or not interest was paid, whether or not there are formal documents that govern the balances, whether or not there is principle repayment. There is intent of repayment. That those are things that should be considered when

JSN Objection 156:8-157-:4 Calls for legal conclusion; impermissible lay opinion (FRE 701, 702)

evaluating whether or not an intercompany balance is, as you have you said, for example, equity or debt.

Q. You asked the company specifically for information related to factors that you and counsel understood courts consider in doing that analysis before the bankruptcy filing, right?

MR. KERR: Objection.

A. I believe, yes. I think it was in early spring 2012.

Q. And the company provided as much information as they could to you in the spring 2012 before the bankruptcy filing, right?

MR. KERR: Objection.

A. I believe that's correct. I know that it evolved because if there are e-mails that were sent to me, I've, obviously, produced all the e-mails, but there are a number of discussions. So I think there are people in the accounting department that were producing balances and accounting information and not trying to practice law, so to speak.

Plaintiff's Objection 157:5-158:4, Irrelevant (FRE 401, 402); incomplete (FRE 106)

M. RENZI

So they were just trying to be responsive to my questions or others with my direction and questions regarding intercompany balances.

Q. Did you send them a set of ten or more specific questions relating to intercompany -- the factors that courts consider in evaluating intercompany balances?

MR. KERR: Objection.

A. We have discussed -- we have discussed intercompany balances many times with the company. I don't remember specifically trying to ask them legal factors that govern whether or not -- that govern these balances. But I have asked numerous times about as much information as we could get. Some of it prompted by the JSN advisors, for example.

Q. In all instances, did the company endeavor to give you as much information as it had or could provide in response to your questions?

Plaintiff's Objection 158:19-159:2 Irrelevant (FRE 401, 402); incomplete (FRE 106)

MR. KAUFMAN: Objection.

MR. KERR: Objection.

A. I have no reason to believe

otherwise.

Q. Did you ever conclude that the intercompany balances were not debt transactions?

A. By myself, no.

Q. Did FTI ever conclude that the intercompany balances were not debt transactions?

A. We relied on counsel to determine whether or not, but we haven't had a specific task to determine whether or not they are equity or debt.

Q. And is it your understanding that counsel has determined that the intercompany balances are equity?

MR. KERR: Objection.

A. I would let counsel speak for themselves.

Q. You haven't been instructed by them one way or another?

A. I think in terms of running scenarios, we have certainly discussed the scenarios. In terms of coming up with a global settlement, in which we have done in

M. RENZI

mediation, I probably can't speak to that.

Q. Were you involved in settlement discussions with the UCC relating to intercompany transactions?

MR. KERR: And with respect to that, you can answer that question. But, again, he, just be -- that in light of the mediation confidentiality, you can't disclose, if you were, you can't disclose the contents of it, but you can answer that question.

A. I was in discussions but the content was under mediation.

Q. And when did discussions with the UCC relate to intercompany transactions start?

A. Well, discussions regarding intercompany transactions and intercompany balances started when they asked questions regarding the documentation that was available for them. And I suspect that the -- postfiling, because there wasn't an UCC before filing, that they were asking

questions about intercompany balances.

Q. And was it your understanding that you and the UCC were taking adverse positions regarding the validity of the intercompany balances? Sorry, that the debtors and the UCC?

MR. KERR: Again, if you can answer that question without -- I just don't want you to disclose anything that's subject to mediation confidentiality. And if you can answer that question based on information you received outside the mediation.

A. I think -- my recollection is determining what the intercompany balances were and how to treat them were all done under mediation. But we have, with -- in terms of talking with the UCC. In terms of providing information to the UCC, we did and Houlihan, we did that on numerous occasions prior to mediation, with Houlihan, post -- pre and postfiling with the UCC, obviously, postfiling.

M. RENZI

Q. I am going to hand you a document that's been marked Westman Exhibit 15.

A. I have a lot of paper in front of me. Is there anything I can put away?

Q. You can put it all away. I can tell you when to take something new out.

A. Okay.

Q. Just to frame my questions, I am not interested in delving into mediation privileged communications. I am interested in understanding why this document, which was produced by the UCC, is designated for settlement discussions purposes only.

A. I am sorry, which document?

Q. This document, which was previously marked as Westman Exhibit 14, which is an E-mail from you to a number of people.

MR. MARINUZZI: Did you say 14?

MS. MILLER: Exhibit 15, sorry, I misspoke. 15, thank you.

Q. It is an E-mail from you dated September 17, 2012, to a number of people including advisors for the UCC and

M. RENZI

AlixPartners and others, and it attaches a document, which is labeled Privileged and Confidential For Settlement Discussion Purposes Only. And I am trying to understand what the basis for that designation is.

MR. KERR: You are asking the witness?

MS. MILLER: Yes. All I want to know is whether when he sent this E-mail in this document, he was actively involved in settlement discussions with the UCC regarding intercompany balances and whether they were taking adverse positions to one another such that there could be a settlement privilege on this document.

MR. KERR: If you know, Mark.

A. I don't know. It just says "MoFo draft, 4-24-2012" at the top.

Q. In what context were you providing this document to the UCC's advisors?

A. I think they asked for as much information that we had regarding

intercompany balances and the intercompany relationships. So we were providing what we had. And it may have been -- it appears to be a draft.

Q. Were you involved in preparing the draft document?

MR. KERR: Just -- objection. You're talking about the draft -- what exactly when you say "the draft document," what are you referring to?

MS. MILLER: Sorry, the first attachment, which is entitled Intercompany Balance Analysis Based on Summary of Top Ten Intercos.

A. I believe I was involved with discussions with MoFo and the company while it was being compiled. But we talked about this subject many times. So --

Q. Were you actively engaged in mediation discussions with the UCC in September 2012 relating to intercompany balances?

A. I don't think so.

Q. Were you actively engaged in

settlement discussions outside of the context of the mediation with the UCC in September of 2012?

MR. KERR: Mr. Renzi personally?

Q. Were you involved?

MS. MILLER: Was Mr. Renzi or FTI involved?

A. Well, it was an evolving process. So was this formal mediation at this point in time? I don't think Judge Peck was asked to participate at this point in time, but that's my recollection. But were we discussing information with the UCC about these over a period of time prior to mediation, clearly they were requesting, as this document is evidence, requesting information, all the information that we had, and my belief is we provided substantially similar information through the JSN and JSN advisors. I don't remember being adverse to them at this point in time. But that's my recollection.

Q. Mr. Renzi, I am handing you a document that's been previously marked as Dondzila Exhibit 12, and it is an E-mail from

M. RENZI

Brian McDonald to Barb Westman, copying you and others dated October 25, 2012, regarding intercompany follow-up.

Do you see that document?

A. I am on the E-mail, yes.

Q. And you see the very last page of the exhibit has a chart with entity and year running across the top column, the top row.

Do you see that?

A. I do.

Q. Do you know what this chart is reflecting?

A. It just says "Legend X in AP," but I think I would have to go back and understand the context for me to say any more than that.

Q. Okay. So if you turn back to the document -- the page with the Bates stamp ending in '7038. There is an E-mail from Dabin Strauss to Brian McDonald and others in which Dabin writes "Pursuant to Mark's E-mail yesterday regarding intercompany transactions, we would also like to analyze financial statements for the 24 entities

involved at the petition date." It says, "Attached is a complete list of the petition date entities which have been marked from those financial statements we have been able to locate in the data room and relativity."

A. This is the first time I have seen this E-mail. But I see the writing.

Q. Do you understand that certain ResCap subsidiaries filed stand-alone financial statements?

Plaintiff's Objection 167:9-15, Incomplete (FRE 106); lack of personal knowledge (FRE 602)

A. I think that they did. But I -- meaning I would have thought GMAC and RFC, since they are the main operating entities, may have. But I don't recall specifically.

Q. Do you recall whether you reviewed any stand-alone financial statements filed by ResCap's subsidiaries?

MR. KAUFMAN: Objection to form. Just for clarification, when you say "file," what do you mean? So I understand the question.

MS. MILLER: I am going to restate it because I think it is also not true that they are stand-alones.

M. RENZI

I think they are consolidated at the subsidiary level. So let me just restate the question altogether.

Q. Mr. Renzi, did you review any stand-alone financial -- sorry.

Mr. Renzi, did you review any financial statements prepared by ResCap's subsidiaries?

A. It's been awhile if I have. But I suspect that I did.

Q. Do you recall -- do you recall how those subsidiary audited financials reflected intercompany balances?

MR. KERR: Objection.

A. I would say a couple of things. I don't know if the financials were audited, number one, and I don't recall, whether or not, how they were reflected in the intercompany balances.

Q. Do you think if and how intercompany balances are reflected on subsidiary financials would be relevant to your analysis of whether the intercompany balances are valid debt transactions?

Plaintiff's Objection 168:5-11 Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903); incomplete (FRE 106)

JSN Objection 168:12-20 FRE 611(a) (Non-responsive)

M. RENZI

MR. KERR: Objection.

A. Sorry, do you mind repeating the question?

Q. Do you think whether and how intercompany balances are reflected on subsidiary financials would be relevant to your analysis of whether the intercompany balances are valid debt transactions?

MR. KERR: Objection.

A. If they were presented in their financial statements, it doesn't mean that says that they are value -- valid intercompany balances. It was a method to record things in the cash movement, for example, as one item on the balance sheets. So whether or not it was debt or not, I don't think I was opining on that.

Q. Mr. Renzi, I would like to show you a document that was previously marked as Westman Exhibit 7. And looking at the bottom of the first page, it's an E-mail from you to Cathy Dondzila and Barb Westman dated April 20, 2012, and the subject is "Bounce intercompany follow-up."

Plaintiff's Objection 169:5-170:7 Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903)

A. Yeah, I see that.

Q. Looking down at number 2, you write, "Were any intercompany balances reported in any public regulatory filings as debt or equity?"

A. I see that.

Q. Why did you want to know that?

A. I think this was a compilation of questions that we had from a variety of different people, and we thought it was a relevant question.

JSN Objection 170:3-12, Hearsay (FRE 802)

Q. Why did you think it was a relevant question?

A. We were trying to assess each one of the intercompany balances and to be as diligent as we possibly could and to provide as much information, not only to ourselves, but to MoFo and then, obviously, to other third-parties that have questions regarding it. So we were trying to be unbiased as to the way we were asking the questions. We were trying to just skip to the facts, and that is why Question 2 would be relevant. In retrospect, I don't think they were in a

Plaintiff's Objection 170:13-171:9 Incomplete (FRE 106)

position necessarily to opine on the legality of that that is implied by that question, but nonetheless, we did ask it. It is not a bad E-mail.

Q. You have got some good responses with a lot of information, also.

A. You got the timing right, it fits into the spring of 2012.

MS. MILLER: Let's go off the record for a few minutes. I am close to done.

MR. KERR: Sure.

THE VIDEOGRAPHER: The time is 2:56; we are going off the record.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: The time is 3:06; we are back on the record.

BY MS. MILLER:

Q. Mr. Renzi, in your liquidation analysis, the JSNs would still retain any claims they have against Ally, right?

A. I believe so.

Q. Okay. And you didn't attribute any value to those claims in the liquidation

analysis, right?

A. No.

Q. And in the liquidation analysis, and in the plan, I guess, the FHA VA loans are subordinated?

A. FHFA?

Q. Sorry, yes, the FHFA.

A. Everybody gets it wrong.

Q. Too much FH. FHFA claims are subordinated, right?

A. It depends.

Q. And what does it depend on?

A. Well, liquidation analysis has two scenarios. The high scenario they are subordinate with the rest of the securities claims. The low, they are paired to GUC at certain legal entities.

Q. Did you consider a scenario in the liquidation analysis under which the Monoline claims were subordinated?

A. I don't believe so.

Q. Why not?

A. I mean, the liquidation analysis could have a thousand scenarios or more. So

I thought it was reasonable to present the information in the way it was presented.

Q. And if you had subordinated the Monoline claims or the RMBS claims, that would have resulted in higher recovery to the JSNs under the liquidation analysis, right?

A. No.

Q. No?

A. It depends.

Q. What does it depend on?

A. Well, I mean, if you move one lever, let's say, just for argument's sake, there are 100 levers, 100 meaningful levers, if you move one lever such as if there is an AFI contribution in a liquidation analysis, there would be many other things that will change. Because -- and there are how long to recover, what the claims of other constituents could be. I mean, there have been assertions from the RMBS trustees of up to $44 billion in claims. I am sure under certain scenarios, they would argue and fight to get as big a claim as they possibly could under a liquidation analysis. But what is

presented in the liquidation analysis, in my opinion, is reasonable.

Q. Looking at the Disclosure Statement, which is Renzi Exhibit 6.

A. Could I just open one of the smaller ones?

MR. KERR: No, it is in this big one.

Q. Looking at page 51 of 201 on the top.

A. Further back?

Q. No, to the front. 51 in the first count.

A. First count, 51 of 201. Almost there.

Q. Mr. Renzi, did you review the section of the Disclosure Statement related to -- sorry, the discussion in the Disclosure Statement relating to the compromise of intercompany balances?

MR. KERR: Objection. Reviewed at any time?

MS. MILLER: Yes.

A. Yes.

M. RENZI

Q. Did you draft this section?

A. No.

Q. Looking at page 40, towards the bottom of the paragraph.

A. 40 of the document or 50 of the --

Q. I am confusing. Yes, page 50 of 201 on the top, page 40 of the actual document.

A. Yep. I am there.

Q. It says that "The debtor's books and records reflect various intercompany payables and receivables amongst various debtor entities as of the petition date."

Do you see that?

A. I do.

Q. And then it goes on to say that "These balances were accumulated through tens of thousands separate transactions over a period of years from a course of dealing whereby certain debtors made payments under prepetition loan agreements for the benefit of other debtors or by operation of the debtors centralized cash management system."

M. RENZI

Do you see that?

A. I do see that.

Q. And do you believe that that's an accurate statement?

A. I think it's a partial description but an accurate statement.

Q. Looking at page 51 of 201 on the top, Page 41 on the bottom, looking at the second full paragraph.

A. Starting with "after"?

Q. Starting with after. The second sentence says, "While the intercompany balances generally were a result of the debtor's shared cash management system" and then continues, you agree, again, that the intercompany balances generally were a result of the debtor's shared cash management system, right?

A. Well, it says it but that's saying it in whole. It doesn't mean that one intercompany balance is different than another.

Q. Understood.

A. So, yes, it says that up here in

that paragraph.

Q. Okay. And it also says, just before that, it says that "After conducting the analysis, the debtors and creditors committee, based on their independent review and analysis, believe that the intercompany balances reflected in the schedules lack many of the indicia of true debt and likely would not be enforceable intercompany balances."

Mr. Renzi, based on your personal review of intercompany balances and the related documentation and information, do you believe that the intercompany balances had any indicia of equity transactions?

MR. KERR: Objection.

A. I believe this statement at the top is correct. That the top of that paragraph. So is this is true, I believe that it is one in the same. I think it is binary. If it is not debt, then it is not enforceable. And that's equity would be not enforceable. Or subordinated. Which, I think, could be used interchangeably in that sentence. Yes, so I agree with the sentence

at the top of the page. Excuse me in that -- in the paragraph starting "after," excuse me.

Q. Right smack in the middle of the page?

A. In the middle of the page.

Q. Do you believe that the intercompany balances had indicia of equity transactions?

A. I think it's a derivation of that sentence. So based on that premise, yes.

Q. Did you do an analysis of whether the various counterparties to the intercompany transactions could have engaged in equity transactions when the intercompany balances were accrued?

MR. KERR: Objection.

A. Could you do that again, please?

Q. Yeah. Did you look, for example, when an intercompany is flowing cash from a subsidiary to a parent, did you analyze and consider whether that subsidiary could make a distribution to its parent?

A. Well, I think your question presupposes that we could analyze every

single one of the transactions that occurred between legal entities and, no FTI did not do that. I don't think anybody, even the debtors, could probably do that. I think somewhere along here, it says that there were many transactions creating these balances.

Q. Did you do it for any transaction?

A. Tens of thousands of separate transactions over a period of years from a course of dealing.

Q. Did you do that analysis for any intercompany transactions?

A. We answered questions of ourselves that, when discussing with counsel, we felt were relevant to determine whether or not these balances reflected or could be considered debt. And those criteria would include whether or not principle repayments were being made. Whether or not there were documentation to support the balance in the proper economics and the right direction of that balance. Whether or not there was interest being paid and accrued. Whether or

not there was a term for the intercompany balances, a formal term for repayment. And whether or not -- another consideration if there was debt forgiveness, there was an arm's length process in evaluating it. Those things would be considered.

Q. Mr. Renzi, do you understand that in consideration -- in considering whether a transaction should be recharacterized, really, you are looking at whether the transaction, when it happened, was a debt transaction or an equity transaction?

MR. KERR: Objection.

A. I would defer to counsel for that nuance. I wouldn't have had an opinion other than discussing it with counsel before we applied financial analysis to that.

Q. So I want to focus not on your analysis or consideration of whether the transaction is debt or not. I want to focus on what analysis you did to determine whether the transaction was a proper equity transaction or not.

MR. KERR: Objection. Go ahead.

M. RENZI

A. I understood. I understand your question.

Q. So did you consider whether, if the intercompany balances were accrued as a result of equity transactions, whether those transactions would have violated internal ResCap or Ally policies?

A. You keep using a different set of language than I would say what we have done. They may be one in the same. But the considerations that I listed before are considerations that we took when evaluating intercompany balances. So whether or not you are saying -- whether or not I was asking myself whether or not they were equity, we were doing the opposite to determine whether or not they were debt and they had indicia of debt. So could it be a corollary that by determining whether or not their debt is equity, I suppose you can say that. But I don't think of it in the same context that you are presenting the question.

Q. So did you ever look at it through the lens of is this a valid equity

Plaintiff's Objection 181:24-182:6 Incomplete (FRE 106)

transaction as opposed to is this a proper debt transaction?

MR. KERR: Objection.

A. I looked at it from the perspective of is this debt.

Q. Looking at Page 42?

A. Top or bottom?

Q. Sorry, 52 top, 42 bottom, thank you. Romanette iii in the bottom paragraph, says "The inability to reach consensual agreement with numerous creditor constituencies absent consensual resolution of the intercompany balances"?

A. I am on -- there is two Romanette iii's, where are we?

Q. Bottom one. The last paragraph Romanette iii. On the bottom paragraph.

A. Got it.

Q. Okay. Inability -- let me start again. Page 52 of 201 in Renzi Exhibit 6, Romanette iii in the bottom paragraph reads "The inability to reach consensual agreement with numerous creditor constituencies absent consensual resolution of the intercompany

Plaintiff's Objection 182:20-184:3 Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); lack of foundation (FRE 602, 901, 903); incomplete (FRE 106)

balances and inextricably related issues."

Which creditor constituencies were insisting on resolution of the intercompany balances?

MR. KERR: Objection.

A. I think that was part of the mediation.

MS. MILLER: There has to be something that supports the statement in the Disclosure Statement.

MR. KERR: There may be. Mr. Renzi is not the 30(b)6. If you want to ask if he knows of what it does. He is not the 30(b)6 on this statement in the Disclosure Statement. If you want to ask --

Mr. Renzi, I think it is -- I believe what she is asking you is whether or not, if you know, who the creditors that are being referred here, and if you know that, you can tell her.

A. I believe it to be the unsecured creditors committee. You are asking a

specific constituent within that, that I think only know that through mediation.

Q. And do you know what the inextricably related issues being referred to in this paragraph are?

A. I just want to read the full paragraph to myself to understand the context a little better.

Q. Sure.

A. I believe that it's referencing that these balances arose over a period of time, and to unwind every single transaction would be incredibly difficult to do. That's what I think it's getting at. So to litigate every movement and balance, I think, would be -- there wouldn't be enough funds in the estate to do that. There are tens -- as it says prior to this, there are tens of thousands of -- let's see what it says. "Tens of thousands of transactions over a period of years." That would be pretty extensive, in my opinion.

Q. How is that different from Romanette ii which says that the decision to

compromise the intercompany balances is reasonable in consideration of -- Romanette ii says "the costly and time assuming litigation that would result from any effort to enforce the fugitive of intercompany balances"?

MR. KERR: Again, I object.

If -- Mr. Renzi, if you have testimony on that, you can give that, too.

But he is not your 30(b)6. He is not our 30(b)6 on meaning of the Disclosure Statement.

Mr. Renzi, if you have personal knowledge, you can answer.

A. I just believe they are corollaries.

Q. Mr. Renzi, was there anyone at FTI more involved than you in the collection and assessment of information related to intercompany balances?

A. I would say Gina Gutzeit wrote an expert report on intercompany balances. So she may be. But, yes, in the earlier periods

of this case, people at my direction were gathering information for me. So I say I was heavily involved in that part. But I would say myself and Gina.

Q. Was Gina involved in the review, collection, review, and analysis of intercompany related materials before she began working on her expert reports submitted in connection with Phase II?

A. I can't speak to how much Gina did in regards to that.

Q. Did you work with Gina on that before she started preparing her expert report?

A. We did separate things. Gina was doing separate things than I was doing. So she may have done it in another context. We didn't specifically work on this together. It seems like I have been writing a few expert reports recently. So while she was writing hers, we were not working together on hers. Because I was busy writing the ones that we are reviewing here.

Q. And just so my questions were

Plaintiff's Objection 186:6-187:11 Irrelevant (FRE 401, 402); lack of personal knowledge (FRE 602); incomplete (FRE 106)

clear, in the era before you were drafting expert reports, when you were asking Miss Westman and Ms. Dondzila for information and collecting that and reviewing that related to the intercompany balances, were you working with Gina on those issues?

A. She may have been working on them for separate reasons, but we weren't working on them together at that point in time, that I recall.

Q. Okay.

A. There could have been. But I don't think so.

MS. MILLER: I don't have anymore questions. Thank you very much for your time.

(Continued on next page to include jurat.)

M. RENZI

MR. KERR: Anybody else have any questions? Good, I think we are done.

Thank you.

THE VIDEOGRAPHER: The time is 3:26; this is the end of the deposition tape labeled 6, November 6, 2013.

(Whereupon, at 3:26 p.m., the Examination of this Witness was concluded.)

_____

MARK RENZI

Subscribed and sworn to before me this _____ day of _____, 2013.

_____

NOTARY PUBLIC

E X H I B I T S

| EXHIBIT NUMBER | EXHIBIT DESCRIPTION | PAGE |
|---|---|---|
| Exhibit 1 | Expert Report of Mark Renzi Dated October 18, 2012 | 27 |
| Exhibit 2 | RCUCCJSN 11241765 through '99 | 84 |
| Exhibit 3 | RCUCCJSN 30047089 | 84 |
| Exhibit 4 | RCUCCJSN 11874351 through '4364 | 92 |
| Exhibit 5 | Expert Report of Mark Renzi Intercompany Balances dated 11/1/2013 | 105 |
| Exhibit 6 | Corrected Disclosure Statement with Exhibits filed on August 23, 2013 | 138 |

I N D E X

EXAMINATION BY PAGE
MS. MILLER 5

INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS PAGE
(NONE)

C E R T I F I C A T E

STATE OF NEW YORK )
: SS.:
COUNTY OF NASSAU )

I, REBECCA SCHAUMLOFFEL, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of November, 2013.

_____

REBECCA SCHAUMLOFFEL

WITNESS ERRATA SHEET

Witness Name: Mark Renzi

Case Name: In Re Residential Capital LLC

Date Taken: November 6, 2013

Page #_____ Line #_____

Should Read: _____

Reason for Change: _____

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Reason for Change: _____

Witness Signature: _____

**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.,***
**Case No. 12-12020(MG)**

Deponent: Mark Renzi
Deposition Date: November 6, 2013

| Citation | Testimony |
|---|---|
| 9:7 | to understand its business |
| 9:8 | and understand some |
| 11:15 | there ~~has~~ have been |
| 26:25 | ~~2012~~ 2013 |
| 27:4 | October 18, ~~2012~~ 2013 |
| 43:2 | ~~deficiencies~~ deficiency claims |
| 49:3 | Paragraphs 33 and 34 |
| 57:13 | to postpetition interest |
| 57:14 | to postpetition interest |
| 66:8 | ; |
| 72:19 | ~~Veil Peterson~~ veil piercing |
| 76:13 | FHFA |
| 76:14 | ~~VA~~ mortgage assets. What are FHFA ~~VA~~ mortgage |
| 77:16 | FHFA ~~VA~~ |
| 77:21 | FHFA ~~VA~~ |
| 78:3 | FHFA ~~VA~~ |
| 79:21 | FHFA |
| 79:22 | ~~VA~~ |
| 80:3 | FHFA ~~VA~~ |

| Citation | Testimony |
|---|---|
| 80:25 | FHFA ~~VA~~ |
| 83:7 | FHFA ~~VA~~ |
| 83:16 | FHFA ~~VA~~ |
| 107:6 | good estimates |
| 125:9 | PAT~~T~~I |
| 126:5 | PAT~~T~~I |
| 128:23 | PAT~~T~~I |
| 142:25 | PAT~~T~~I |
| 143:11 | PAT~~T~~I |
| 145:4 | PAT~~T~~I |
| 145:6 | PAT~~T~~I |
| 145:14 | PAT~~T~~I |
| 146:4 | PAT~~T~~I |
| 146:20 | PAT~~T~~I |
| 150:8 | PAT~~T~~I |
| 150:10 | PAT~~T~~I |
| 148:22 | deck |
| 148:25 | deck |
| 172:5 | FHFA ~~VA~~ |

Date: 18 Nov 2013

Signed: _____
Mark Renzi

J. YOUNG

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| In re: | Chapter |
| RESIDENTIAL CAPITAL, LLC, et al., | Case No. 12-12020(MG) |
| Debtors. | Jointly Administered |
| 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. | |

REPORTED BY: KATHY S. KLEPFER
JOB NO. 66942

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's designation or counter-designation
Orange Highlighting = Joint Designation

**The Debtors and the Committee object to the JSNs' use of the deposition of Mr. Young on the ground that this deposition may not be used under Bankruptcy Rule 7032 except to the limited extent that Mr. Young was designated as the Debtor's Rule 30(b)(6) witness with respect to the Tax Allocation Agreement.**

**The Debtors' counter-designations reflected herein are to be admitted, if at all, only upon admission of the JSNs' corresponding affirmative designation.**

VIDEOTAPED DEPOSITION

OF

JAMES YOUNG

New York, New York

November 6, 2013

J. YOUNG

November 6, 2013

9:05 a.m.

Videotaped deposition of JAMES YOUNG, held at Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

J. YOUNG

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J. YOUNG

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J. YOUNG

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ALSO PRESENT:
MATTHEW SMITH, Legal Video Specialist

J. YOUNG

THE VIDEOGRAPHER: This begins tape labeled number 1 of the videotaped deposition of James Young in the matter of In re Residential Capital, LLC, et al., for the United States Bankruptcy Court for the Southern District of New York.

This deposition is being held at 601 Lexington Avenue in New York, New York, on November 6, 2013 at approximately 9:05 A.M. My name is Matthew Smith for TSG Reporting, Incorporated. I'm the legal video specialist. The court reporter is Kathy Klepfer, in association with TSG Reporting.

Will counsel please introduce yourself for the record.

MR. COHEN: David Cohen, Milbank Tweed Hadley & McCloy, with my colleague Nicole Nielson, on behalf of the JSN noteholders, the Ad Hoc Group, and the Notes Trustee.

MR. BROWN: Judson Brown, Kirkland & Ellis, on behalf of Ally Financial, Ally Bank, and the witness.

MR. SIMON: Norm Simon of Kramer Levin on behalf of the Committee of Unsecured

J. YOUNG

Creditors.

MR. CHRISTENSEN: Dale Christensen of Seward & Kissell on behalf of US Bank.

MR. MATZA-BROWN: Daniel Matza-Brown from Morrison & Foerster LLP on behalf of the debtors.

THE VIDEOGRAPHER: Thank you, and the will court reporter please swear in the witness.

* * *

J A M E S Y O U N G, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. COHEN:

Q. Good morning, Mr. Young.

A. Good morning.

Q. As you just heard, I'm David Cohen. I represent the Ad Hoc Group of JSN Noteholders and the Notes Trustee.

Have you ever been deposed before?

A. Yes.

Q. How many times?

A. At least two.

Q. When was the last time you were deposed?

A. During the examiner process for the -- for the bankruptcy proceeding.

Q. How long did that deposition last?

A. I don't recall exactly, but probably six to seven hours.

Q. When did that deposition occur?

A. I don't recall the exact date.

Q. Do you recall approximately, month and year?

A. First quarter of this year.

Q. Prior to that, when was the -- the other time that you were deposed?

A. Many, many years ago, ten, fifteen-plus years ago for a divorce that was in our firm where I was at the time. Not mine, but somebody who reported to me was going through a divorce. I was deposed to give some information about their financial status.

Q. Okay. When you were deposed by the examiner, did you take an oath like you took this morning?

J. YOUNG

MR. BROWN: Objection to form.

A. To the best of my recollection, yes.

Q. Okay. So you understand that you're testifying under oath just like you would be in a courtroom?

A. Yes.

Q. And that you will be subject to the penalties of perjury if your testimony is not truthful?

A. Yes.

Q. All right. Cover some ground rules that will hopefully help us speed you along today.

It's very important --

A. Actually, I'm sorry, I remember another time I was deposed, if I could.

Q. Okay.

A. It was in a -- an SEC matter related to ResCap, and that would have been approximately a year ago.

Q. And what was that SEC matter?

A. Disclosure on rep and warrant issues.

Q. Can you be more specific?

A. I -- well, all I can say is the

deposition -- the list of questioning was all about what the disclosures were in the financial statements of ResCap with respect to rep and warrant, representations and warrants for mortgages, the liabilities for mortgages sold by ResCap, and the disclosure of the rep and warrant obligation and those related matters.

Q. During what period of time were the disclosures at issue?

A. I do not recall, but quite a bit in the past, meaning I'm just speaking to the fact that ResCap deregistered from the SEC, you know, quite a while ago, three-plus, four years ago, so it would have been somewhere between the time ResCap was a first a filer, which to the best of my recollection would have been the third quarter of 2005, to when ResCap deregistered, and I can't remember that exact timing, but it was probably '09, '10, somewhere in there.

Q. Did your testimony relate to your responsibilities while you were employed at ResCap?

A. Yes.

Q. Okay. They did not -- your testimony

did not relate to your employment with Ally?

MR. BROWN: Objection to form.

A. Correct.

Q. Okay. So let's go back to some of the ground rules. The court reporter, although we're taking a videotape, the court reporter is actually making a transcript of everything that's said. So it's very important that only one of us speak at a time. So if you would let me finish my question before you begin your answer, and I'll let you finish your answer to the best of my ability before I ask the next question, we'll have a clean transcript, okay?

A. Understood.

Q. If any of my questions are vague, unclear, ambiguous to you, please ask me or let me know that and I'll do my best to clarify, okay?

A. Okay.

Q. If you need to talk to your attorney at any time, let me know and I'll do my best to accommodate that.

A. Okay.

Q. And if you want to take a break, just

let me know and I'll do my best to accommodate that as well.

A. Okay.

Q. What did you do to prepare for this deposition?

A. I met with counsel from Ally, Judson Brown. I met with counsel from the Debtors.

Q. Okay. Who from the Debtors did you meet with?

A. Sorry, the gentleman that is at the end of the table here, and I think there were at least one or two others in the room. I don't recall their names.

Q. From the Debtors?

A. Yes.

Q. And it was Debtors' outside counsel?

A. Yes.

Q. How many people from your own law firm, from Kirkland & Ellis, were there?

A. Three at different times.

Q. Okay. How many times did you meet --

A. Sorry. Also in the room was in-house counsel from Ally.

Q. Who was that?

A. Frank Kuplicki, who is at the table.

Q. How many times did you meet with lawyers to prepare for your deposition?

MR. BROWN: Objection to form.

A. Once.

Q. When did that happen?

A. Yesterday.

Q. How long did you spend with them?

A. Total time was approximately 9:30 to 5 P.M. So eight, eight hours. Eight to eight and a half hours.

Q. During that time, was counsel for the Debtor present the entire time?

A. No.

Q. Of that eight, eight and a half hours, how many hours was counsel for the Debtor there?

A. Approximately two to three.

Q. And was that at the beginning, the end, middle of your prep session?

A. Beginning.

Q. And what did you discuss with counsel when counsel for the Debtors were there?

MR. BROWN: Objection form. I instruct you not to answer.

J. YOUNG

MR. COHEN: On what basis?

MR. BROWN: Privilege.

MR. COHEN: With a third party there?

MR. BROWN: Third party? Debtors' counsel. They're not a third party.

MR. COHEN: They're a third party vis-a-vis your client.

MR. BROWN: No, they're not. We've got a common interest with the Debtors.

BY MR. COHEN:

Q. Are you going to answer my question?

MR. BROWN: I instruct you not to answer, Jim.

A. No, I can't answer your question.

Q. Other than meeting with counsel yesterday for eight hours, what did you do to prepare for the deposition?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. I just met with counsel, reviewed documents yesterday, and that was the extent of my preparation.

Q. Did you review any transcripts of other depositions that have been taken in this

case?

A. No.

Q. What documents did you review during your preparation for this deposition?

A. Oh, there were various documents, including agreements, e-mails, certain -- certain sections of the Examiner's Report, those types of documents.

Q. Okay. What agreements did you review?

A. Well, you say "review." I would say I, you know, I was presented with a document and I would look at a particular section. I wouldn't say I reviewed the entire document.

Q. Okay. What agreements did you look at?

A. The -- we looked at the MMLPSA, which I think you're familiar with.

Q. I am.

A. Certain aspects of the swap agreements. We looked at drafts of tax sharing agreements.

Q. When you say "drafts of tax sharing agreements," what do you mean?

MR. BROWN: Objection to form.

J. YOUNG

A. I mean tax sharing agreements that were not effective.

Q. What do you mean when you say "tax sharing agreements that were not effective"?

A. I mean they weren't -- I'm sorry, would you repeat your question or --

Q. What do you mean when you say "tax sharing agreements that were not effective"?

A. They were not effective. They were not in place. They were not operational.

Q. On what basis did you conclude that these drafts were not operational?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. The -- because they were unexecuted.

Q. Unexecuted by whom?

A. Unexecuted by the parties to the document.

Q. By both parties?

A. To the best of my knowledge, yes.

Q. Did you review any tax sharing agreements that were executed by only one party?

A. I don't recall.

Q. Are you aware of any tax sharing

agreements that were executed by only one party?

A. I don't recall. I don't know.

Q. You don't know if there was a tax sharing agreement that was signed only by Ally but not by ResCap?

A. I don't recall.

Q. Okay. How many drafts of tax sharing agreements did you look at? How many different drafts?

A. To the best of my recollection, primarily two.

Q. You looked at two drafts of tax sharing agreements?

A. I looked at two tax sharing agreements.

Q. Okay. How many drafts of tax sharing agreements did you look at?

A. Well, I would say I looked at one unexecuted agreement. The second agreement I can't recall right now if it was executed or not.

Q. Do you recall what the difference between the two agreements you reviewed yesterday in preparation for this deposition

were?

A. There were I'm sure several differences, not all of which I can recall.

Q. Okay. Just tell me what you can recall about the differences.

A. There was one key difference, and that key difference being the -- how -- how ResCap would be treated if there were tax losses at ResCap which could not be utilized by ResCap but could be utilized by the parent company.

However -- let me rephrase that. Tax loss attributes that would be allocated to ResCap that would -- could be used by the filer, the actual tax filer, which was the parent.

Q. That unexecuted draft, do you recall ever receiving a copy of that draft during your time at ResCap that had been executed by Ally?

MR. BROWN: Objection to form.

A. I do not recall.

Q. You don't know?

A. I don't -- I don't recall.

Q. Okay. Do you recall ever executing a tax allocation agreement on behalf of ResCap?

A. I believe I ended up executing a tax

agreement on behalf of ResCap eventually, yes.

Q. And did the tax allocation agreement that you ultimately executed on behalf of ResCap have the treatment with respect to losses that you were talking about in the draft?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. The tax -- the tax attributes that I was referring to being allocated to ResCap, it did not contain that provision.

Q. Why not?

MR. BROWN: Objection to form. Calls for speculation.

A. Well, we've got -- I mean, depends on how much time you want to talk about it, but there's a lot of reasons.

Q. Okay. We have seven hours.

A. Okay. The -- there are -- so tax sharing agreements -- first of all, the tax sharing agreement, the purpose of the tax sharing agreement is to allocate for financial reporting purposes, and nothing else, tax attributes to an entity as a part of a consolidated group.

Q. What is the basis for your belief that the purpose of a tax sharing agreement is to allocate for financial reporting purposes and nothing else?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. I'll rephrase that. I will say the primary purpose of the tax allocation agreement is to -- is to allocate the tax attributes of an entity for financial reporting purposes.

Q. So you switched to say it is the primary purpose and not the sole purpose, correct?

MR. BROWN: Objection to form.

A. That is what I switched, yes.

Q. Okay. So, in switching from sole purpose to primary purpose, there can be other things in a tax sharing agreement; you would agree with that, right?

MR. BROWN: Objection to form.

A. There, you know, from my perspective, you know, there could be other reasons for a tax allocation agreement.

Q. What other reasons can you think of?

A. I can't think of what they would be, which is primarily why I said for the sole purpose, but primarily there could be other reasons to ensure entities are treated fairly in the tax sharing agreements.

Q. When you say "treated fairly," what do you mean?

A. "Treated fairly," meaning that it's a fair and equitable treatment between the parties.

Q. Who makes that decision?

MR. BROWN: Objection to form.

A. The parties to the agreement.

Q. So when you reviewed the draft yesterday in preparation for your deposition, is that a draft that you had negotiated with Ally in your capacity as the CFO of ResCap?

MR. BROWN: Objection to form.

A. I was involved in the discussions, one of several people from ResCap.

Q. Who else from ResCap was involved in those discussions?

A. Oh, our legal --

Q. Let me finish my question before you

Plaintiff's Objection 21:15 – 24:9 Inadmissible hearsay (FRE 802)

Plaintiff's Objection 21:15-23:3: irrelevant (FRE 401, 402)

start answering.

Who else from ResCap was involved in those discussions?

A. Our legal counsel. Internal legal counsel.

Q. Who was that?

A. Tammy Hamzehpour.

Q. Anyone else?

A. There may have been other individuals in ResCap that I don't recall on the tax side and on the controller group who would have looked at the tax sharing agreement.

Q. Any names come to mind?

A. I can't be sure. Cathy Dondzila may be one.

Q. Anyone else?

A. John Demro may be another name.

Q. Who is Mr. Demro?

A. At the time, he was the -- he was a Tax person in ResCap.

Q. What was his position within the Tax Department?

MR. BROWN: Objection to form.

A. I don't recall exactly, but he would

have been the -- one of the lead ResCap Tax people.

Q. Did there come a time when that draft that you reviewed yesterday in preparation for your deposition was presented to you for signature?

MR. BROWN: Objection to form.

A. I do not recall.

Q. Do you know whether ResCap's board had directed you to sign the draft that you reviewed yesterday in preparation for your deposition?

MR. BROWN: Objection to form.

A. I believe they delegated the authority to me to execute the document when I was ready to do so.

Q. At the time you presented -- did there come a time where you presented the draft that you reviewed yesterday to ResCap's board for approval?

MR. BROWN: Objection to form.

A. There was a time we presented the draft and the -- when you say for approval, it was for the delegation of the authority to complete the transaction when I felt it was

necessary and appropriate to do so.

Q. Was the draft that you reviewed yesterday in preparation for your deposition the document that was presented to the board in connection with the request for that approval?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. I cannot be sure of that.

Q. Okay. We'll get into this in more detail later. You said you also reviewed e-mails. Do you recall specifically any of the e-mails that you reviewed yesterday in preparation for this deposition?

A. Well, yes.

Q. Okay. Which e-mails did you review?

A. How would you like me to identify them?

Q. Describe them for me.

A. An e-mail from -- there were a lot of e-mails. E-mail from -- I, actually, I can't remember who exactly they were from. They could have been from multiple people. So I really can't say if it's a particular person, but it would have been a combination of people --

Q. Okay.

A. -- perhaps on e-mails, including Bill Marx, Jim Mackey, Tammy Hamzehpour, and the like. I mean, those are the three that come to mind at this moment.

Q. Okay. What was the subject matter of the e-mails that you reviewed yesterday in preparation for this deposition?

MR. BROWN: Objection to form.

A. Well, to the best of my recollection, certainly the tax sharing -- e-mails relating to the tax sharing agreement. At this point in time, the -- those are the ones that are coming to my mind.

Q. So all the e-mails you reviewed yesterday in the eight hours you prepared for this deposition, the only ones you recall related to the tax sharing agreement?

MR. BROWN: Objection to form.

Mischaracterizes testimony.

A. No, I'm attempting to recall what they were.

Q. Okay.

A. And I -- I want to make sure I'm

J. YOUNG

accurate, and I can't say exactly if there were -- there were other e-mails, but I can't -- I want to be specific on the topics that are in those e-mails and I can't recall the specific topics.

Q. Okay. So my --

A. Or specifically who they were -- would have been to or from.

Q. Right now we're talking about topics, and I'm asking about e-mails that you reviewed yesterday during your eight-hour prep session for this deposition, and it's your sworn testimony that the only topic you recall as you sit here today from your prep session yesterday relates to the tax sharing agreement?

MR. BROWN: Objection to form. Asked and answered.

A. Yeah, I am -- I want to be accurate and I'm -- and I'm -- I can't recall exact topics.

Q. Okay. You said you also reviewed sections of the Examiner's Report. Which sections did you review?

A. There's only one section that I recall

Plaintiff's Objection 26:22-33:5 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

reviewing was the section on calculating the damages on the -- I believe it was on the tax sharing agreement. It was a very brief, very brief review, and I did not spend any time understanding that calculation.

Q. What do you mean when you say, "I did not spend any time understanding that calculation"?

A. I looked at it, and through my discussion with counsel basically was counsel, you know, you don't need to understand --

MR. BROWN: Jim, I'm going to instruct you not to reveal privileged communications with counsel. His question was a little bit different. If you can answer his question without revealing privileged communication with counsel, you can do so. Otherwise, do not reveal privileged communications with counsel during your prep session.

BY MR. COHEN:

Q. Let me repeat my question. What do you mean when you say you did not spend any time understanding that calculation, and "that calculation" being damages on the tax sharing

agreement in the Examiner's Report?

MR. BROWN: Objection to form.

A. I mean there's a calculation in there with some additions and some subtractions in it and it requires some time to understand it, and I did not take the time to understand it.

Q. Why didn't you take the time to understand it?

MR. BROWN: Objection to form.

A. There was no reason for me to.

Q. Why do you believe that to be the case?

MR. BROWN: Objection to form.

A. I didn't believe there would be a reason for me to understand it.

Q. So it was irrelevant to you?

MR. BROWN: Objection to form.

A. It was not important to me at the time.

Q. And "the time" being yesterday?

A. Correct.

Q. How about before yesterday, was the Examiner's assessment of damages related to the tax sharing agreement ever important to you?

A. What do you mean by "important"?

Q. Well, you said yesterday it wasn't important for you to focus on it. I'm using "important" in the same sense that you did.

MR. BROWN: Objection to form. Mischaracterizes testimony. Vague.

A. I don't believe their conclusion on that matter was ever important to me personally.

Q. Why not?

A. Well, primarily because I completely disagreed with their premise and conclusion and I've got a daily job to do and I'm doing my daily job.

Q. What aspects of the Examiner's premise did you disagree with?

A. I disagreed with the fundamental premise that there's some view that there's a claim there related to the generation of capital that should be paid attention to.

Q. Why do you disagree with the fundamental premise that there's a claim related to the generation of capital that should be paid attention to?

A. Because the tax sharing agreement has

nothing to do with the generation of capital.

Q. What is the basis of that belief?

A. Well, I'd say my 30 years as a financial executive, a lot of it has -- a lot of it has to do with accounting and my experience with tax allocation agreements, generating capital, particularly during the time where we're talking, you know, the time we're referring to.

In my 30-plus years of financial experience, including many years of accounting background, not once has a tax sharing agreement been talked about or utilized to generate capital for a company.

Q. Is that true with respect to Ally's other affiliates like its insurance affiliates?

MR. BROWN: Objection to form.

A. I don't know the answer to that.

Q. Did you read the Examiner's Report when it came out?

MR. BROWN: Cover to cover?

Objection to form.

A. Well, what do you mean by "read"?

Q. Do you not understand what the word

"read" means?

A. Well, I did not read the entire thing cover to cover, no. I read certain sections of it, certain sections. I didn't study it in-depth. I did not read the whole thing cover to cover. So I did not read it in its entirety.

Q. But you read certain --

A. I read certain sections of it.

Q. How did you decide what sections you wanted to read?

A. It was primarily curiosity at that point.

Q. But you have a 2000-page report. How did you decide which sections you wanted to read --

A. I reviewed --

Q. Let me finish my question before you answer.

You have a 2000-page report. How did you decide what sections you wanted to read?

MR. BROWN: Asked and answered.

A. I started with the Executive Summary as the natural place to start.

Q. And from there, what did you do?

MR. BROWN: Asked and answered.

A. I looked at sections I was curious about.

Q. How did you -- what sections were you curious about?

A. Curious about the sections that I was involved in providing some information on, but not necessarily all of those sections.

Q. So which sections were you interested in where you provided information?

MR. BROWN: Objection to form.

A. I was particularly interested in the tax sharing agreement section because of what I just explained, that my view on that is that it was, you know, an incorrect conclusion by the Examiner.

Q. Were there other sections that you were interested in after reading the Executive Summary?

A. There may have been a couple of other sections that I read. I don't recall specifically what they were. Generally speaking, I did not spend a lot of time with the Examiner Report, primarily because I had other

work to do and it was not something that was critical for my day-to-day responsibilities.

Q. Did you search for your name in the Examiner's Report?

A. I did not do any kind of electronic search for my name.

Q. What was --

MR. BROWN: I understand the phone line isn't working. I know there are people trying to dial in to Mr. Young's --

MR. COHEN: So why don't we take a break and see if we can get that to work.

MR. BROWN: I agree.

THE VIDEOGRAPHER: The time is 9:34 A.M. We're off the record.

(Recess.)

THE VIDEOGRAPHER: The time is 9:37 A.M. We're on the record.

MR. BROWN: We have now opened the phone line. Apologies to those on the line for inadvertently not opening it before.

Anyone on the phone line, please identify yourself for the record.

MR. ADAMS: Good morning. Jason Adams

J. YOUNG

from Kelley Drye.

MR. GELACEK: And Zachary Gelacek, ReedSmith.

MR. BROWN: Anyone else on the line?

(No response.)

MR. BROWN: Great. Thank you.

BY MR. COHEN:

Q. So, Mr. Young, before we took the break, you testified that you did not do an electronic search for your name, you just read the Executive Summary and decided which sections you wanted to dig in deeper; is that a fair characterization?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. That's correct. I did not do a word search on my name. I read the Executive Summary, looked at other pieces that I were interested to look at.

Q. And other than the tax sharing agreement, do you recall what other pieces you looked at when the Examiner's Report was released?

A. Not specifically, but I'm sure I would

Plaintiff's Objection 34:9-36:3 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

have looked at sections around areas that I would have been involved with discussions with the Examiner on.

Q. What areas were those?

A. There were numerous. Tax allocation agreement, MSR swap, MMLPSA, among others. The general state of ResCap at the time. Businesses that were sold. Transactions that occurred. Actions to raise capital. Numerous items.

Q. And you looked at all of those sections in the Examiner's Report?

MR. BROWN: Objection to form.

A. I don't recall.

Q. With respect to the tax sharing agreement, were you pleased with the way the examiner characterized your role?

A. No.

Q. Why not?

A. I took personal offense to how I was characterized.

Q. Why?

A. Because it was characterized that there was some -- some measure of breach of fiduciary responsibility, which there was

absolutely no basis for and, in my opinion, was completely unfounded.

Q. So when you read that in the report, what did you do about it?

MR. BROWN: Objection to form.

A. I didn't do anything about it other than, you know, let people know who I may have been casually talking to about it within Ally that -- that the Examiner's position on that entire issue is completely without merit.

Q. Who within Ally did you let know that?

A. I don't recall specifically, but I'm sure I would have talked to my immediate manager or boss, the CEO of Ally Bank.

Q. Who was that?

A. Barbara Yastine.

Q. Anyone else?

A. Not that I recall specifically.

Q. How about with respect to the MSR swap, were you pleased with the way the Examiner characterized your role there?

MR. BROWN: Objection to form.

A. No, that's another area where I think he completely misunderstood the fact set and

Plaintiff's Objection 36:20-37:2 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

came to an incorrect conclusion.

Q. What did you do about that?

A. I didn't really feel like there was any action I could take, so I didn't do anything.

Q. How about the MMLPSA, were you pleased with the way the Examiner characterized your role in connection with that issue?

MR. BROWN: Objection to form.

A. No, same -- same. I think there was a misunderstanding, misconstruing the facts and -- and -- and the conclusion was without merit.

Q. Is there anything that you read in the Examiner's Report with respect to your role that you thought he got right?

A. I didn't read everything in the Examiner's report with respect to my role.

Q. I'm only asking about the sections that you read. With respect to the sections in the Examiner's Report that you read, do you think the Examiner got anything right in connection with your role?

MR. BROWN: Objection to form. Do you mean the conclusions that the Examiner

Plaintiff's Objection 37:7-13 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

reached on those issues?

BY MR. COHEN:

Q. Do you understand my question, Mr. Young?

MR. BROWN: Or do you mean Mr. Young's role with respect to those issues?

BY MR. COHEN:

Q. Do you understand my question?

A. Would you repeat it, please?

Q. Sure. With respect to the sections in the Examiner's Report that you read, do you think the Examiner got anything right in connection with you?

MR. BROWN: Objection to form. Vague. Unclear. Ambiguous. I don't even know what that question means.

MR. COHEN: Well, that's good, because we'll be able to take it up with the judge in a week when these designations go in. So you can stand by your objections and we'll argue them in court.

THE WITNESS: I don't really recall specifically anything that I read that, yeah, I agree with his position on that

Plaintiff's Objection 38:11-39:17 Inadmissible hearsay and double hearsay (FRE 802), irrelevant (FRE 401, 402), unduly prejudicial (FRE 403), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), incomplete (FRE 106)

matter. I would have to refresh my review of the report of the sections that I read to really answer the question, but to the -- that's what I can say to the best of my recollection right now.

BY MR. COHEN:

Q. So, to the best of your recollection as, in your role in the tax sharing agreement, the MSR swap, and the MMLPSA, he got it all wrong?

MR. BROWN: Objection.

Q. Is that right?

MR. BROWN: Objection to form.

A. I believe that the conclusions reached were -- were not supported by the underlying facts.

Q. He also expressed opinions about your truthfulness in the report; isn't that right?

MR. BROWN: Objection to form.

A. I don't believe so. There's only one section I thought that he -- he indicated something about my fiduciary responsibility to ResCap.

Q. But did he also express opinions as to

whether your version of events was credible?

MR. BROWN: Objection to form.

A. I don't recall.

Q. Where are you currently employed?

A. I'm currently employed with Ally Bank, a subsidiary of Ally Financial Inc.

Q. What is your title?

A. Chief financial officer.

Q. How long have you held that position?

A. I first entered the bank in approximately April or May of 2011. At that time, the title was chief financial executive. That title recently changed in approximately August of this year to chief financial officer.

There's really no practical difference between the two titles, but for the sake of accuracy, you should know that.

Q. Why did the title change?

A. We -- we had an individual who had a CFO title when I first joined the bank, and that person was reporting to me. So we had that person report to me, and then obviously you can't have two chief financial officers, so I was the chief financial executive.

Plaintiff's Objection 40:5-18 Inadmissible hearsay (FRE 802)

That person ended up leaving a short period of time after, but we replaced them with another individual with the title of chief financial officer and controller, and that individual we reassigned to another position in August, and at that time I took the chief financial officer title.

Q. At the time you joined Ally in April or May of 2011, who held the CFO position?

MR. BROWN: Objection to form.

A. I want to make sure I'm clear that I joined Ally Bank.

Q. I'm sorry. Okay.

At the time you joined Ally Bank in April or May of 2011, who held the CFO position?

A. Lisa Gerner.

Q. When did Ms. Gerner leave?

A. To the best of my recollection, in the fourth quarter of 2011.

Q. Why did she leave?

MR. BROWN: Objection to form.

A. I don't know.

Q. Did she quit?

A. Yes.

Q. She wasn't fired?

A. Correct.

Q. Who replaced Ms. Gerner and took the position of CFO-controller at Ally Bank?

A. Larry LaCombe.

Q. And did Mr. LaCombe hold that position until August of this year?

A. Yes.

Q. What is his position now?

A. He is senior director, affiliate governance.

Q. Does that position report to you?

A. Yes.

Q. Who held that position prior to Mr. LaCombe?

A. That's a new position.

Q. What does that position entail?

A. That position is responsible for ensuring our -- that the Ally Bank's transactions with its affiliates are properly structured, documented, and settled in accordance with Federal Reserve Regulation 23a, b.

Q. Who had responsibility for ensuring

that compliance prior to the creation of this position that Mr. LaCombe now holds?

A. It was a shared responsibility across several functions within the bank, including Finance, Legal, the Risk function.

Q. Any other operational units?

A. Well, every function the bank has responsibility to make sure that we're complying with regulations, so I would say that the businesses as well. Within the bank there's a mortgage business and a deposits business.

Q. So across -- it cuts across both the business lines and the support lines?

MR. BROWN: Objection to form.

A. The responsibility cuts across, yes.

Q. Both business and --

A. Business and financial.

Q. -- and the back office?

MR. BROWN: Objection to form.

Q. Where did you go to college?

A. I went to Luther College in Decorah, Iowa.

Q. What did you study there?

A. A number of things, but I ended up

with an accounting degree.

Q. All right. What year did you graduate?

A. 1981.

Q. And when you graduated, where did you go to work?

A. I went to work for KPMG, a public accounting firm. At the time, it was referred to as Peat Marwick Mitchell & Co.

Q. That's way back.

A. It's way back.

Q. Where did you work?

A. Minneapolis, Minnesota.

Q. What position did you have?

A. I started as a staff accountant.

Q. How long did you stay at Peat Marwick or KPMG?

A. Approximately 24 years.

Q. So 2005?

A. Yes.

Q. What position did you hold when you left?

A. My position at KPMG?

Q. Yes.

J. YOUNG

A. I was an audit partner.

Q. Did you have a practice specialty?

A. Yes, I did.

Q. What was that?

A. Banking and financial services.

Q. Are you a CPA?

A. I was a -- I have a CPA certificate. I do not have an active license to be -- to practice CPA. Since I left KPMG, there was no need to have an active license so I did not renew the license.

Q. What is a CPA certificate?

A. Simply a designation that you have passed the CPA exam and have a certain number of years of experience in accounting.

Q. If you wanted to get your license back, what would that entail?

A. I'm not sure since I haven't tried to do it in nine years, but I would guess it's not much more than send in a fee.

Q. All right. All right. Why did you leave Peat Marwick, or KPMG at the time, I guess?

A. I left for what I thought was -- I

Plaintiff's Objection 45:22-47:16 Inadmissible hearsay (FRE 802)

left for a combination of business and personal reasons.

Q. What are the business reasons?

A. The opportunity at Ally -- at GMAC at the time I felt was very attractive intellectually with providing me, you know, a new avenue to -- to experience the business world rather than at KPMG where I was auditing businesses.

Q. Was -- when you say GMAC, what entity are you referring to?

MR. BROWN: Objection to form.

A. General Motors Acceptance Corporation, which was a sub at the time of General Motors, which was the parent company of ResCap. So when I joined the consolidated group of companies, I did join ResCap, which again was a wholly-owned sub of General Motors Acceptance Corp., which was a wholly-owned sub of General Motors.

Q. Was GMAC a client of yours when you were at KPMG?

A. I was working on -- I was doing some work for GMAC, yes, when I was with KPMG.

Q. What type of work were you doing?

A. I was seconded as the chief internal auditor for GMAC.

Q. What were your responsibilities during your secondment?

A. Overall responsibility for the risk assessment of GMAC's businesses, the oversight of the audit program, the oversight of the people on the team, and the execution of the audit plan.

Q. When you say the "oversight of the audit program," what do you mean?

A. I mean managing the audit program to ensure it was adequate, comprehensive, done appropriately in accordance with auditing standards.

Q. When you joined GMAC, what position did you take?

MR. BROWN: Objection to form. Mischaracterizes testimony. I think he said he joined ResCap.

MR. COHEN: Actually, he didn't, but...

MR. BROWN: We can look at the transcript.

J. YOUNG

MR. COHEN: We can, and you'll be proven wrong.

THE WITNESS: Sorry, would you repeat the question?

BY MR. COHEN:

Q. Yes. When you joined GMAC, what position did you take?

MR. BROWN: Object to form. Misstates the testimony. I think he said he joined ResCap.

A. I was the chief accounting officer of ResCap. The controller and chief accounting officer of ResCap, which is a wholly-owned subsidiary of GMAC.

Q. What were your responsibilities as the controller and chief accounting officer of ResCap?

A. Responsibilities were to, at the time, consolidate financial information for the subsidiaries of ResCap; ensure, you know, controls were in place, and related matters.

Q. What do you mean by "related matters"?

A. Well, just making sure that the financial statements were prepared accurately.

Plaintiff's Objection 48:7-50:12 Inadmissible hearsay (FRE 802)

Q. So that was important to you, that the financials were accurate?

A. Yes.

Q. Do you think during your tenure at ResCap the financial statements were accurate?

A. I know during my tenure at ResCap in role as controller, the financial statements were fairly presented in all material respects.

Q. What do you mean by "fairly presented in all material respects"?

A. That's the -- that's the accounting standard for publicly issued financial statements.

Q. Yeah, but what does that standard mean?

MR. BROWN: Objection to form. Calls for speculation.

A. It means that the financial statements are fairly presented such that if a user of those financial statements were reading those financial statements or using them to make decisions, that those were credible for making those decisions.

Q. Okay. And so it was your belief

during your tenure at ResCap if someone was looking at ResCap's financials or one of its subsidiary's financials, if you looked at the financial statement, they would be able to make credible decisions based on those financials?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. I would say the consolidated financial statements of ResCap, yes, that is the case. I was not responsible for all of the subsidiary financial statements.

Q. Who was responsible for the subsidiary financial statements?

A. There would have been hundreds of subsidiaries. There would have been accounting teams responsible for those subsidiary financial statements.

Q. And to whom did those people report?

MR. BROWN: Objection to form.

A. They would have varied over time. They did not report to me when I first joined ResCap. At some point in time, I'm sure my tenure at ResCap they would have reported to me, but not when I first joined.

J. YOUNG

Q. When do you think they started to report to you?

A. I don't recall exactly.

Q. Okay. So when you joined ResCap in 2005, you were the chief accounting officer and the controller of ResCap, right?

MR. BROWN: Objection to form.

A. Correct.

Q. So if you didn't have responsibility for the subsidiaries' financials, who did?

MR. BROWN: Objection to form. Asked and answered.

A. There were accounting people within each of the subsidiaries. ResCap was a very thinly -- very thin group of -- of human resources were designed that way. You had other operating subsidiaries with full teams of accountants and financial people in them.

I don't recall the exact name of those operating entities, but I would commonly refer to them as GMAC Residential, what we used to call Resi, and RFC would have had complete teams of financial people.

ResCap was a Holding Company where we

Plaintiff's Objection 51:5-59:19 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402)

consolidated those results and issued financial statements for external purposes, including when we registered with the SEC in September of 2005.

Q. But if there was a problem in RFC's or Resi's financials, where did the buck stop within the ResCap group of companies?

MR. BROWN: Objection to form. What time period are you talking about?

A. What kind of problem would you be referring to?

Q. A misstatement in the financials.

MR. BROWN: Objection to form. What time period are you talking about?

A. Material misstatement, when I first joined, I would say it would be a joint responsibility. Those people did not directly report to me.

Q. A joint responsibility between whom? Who shared that joint responsibility?

A. The financial teams in the subsidiaries, and I would take some responsibility as well to make sure that if I

was aware of something, that it would be fixed.

Q. Did there come a time where you did have responsibility for that? I realize your testimony is when you first joined, you didn't.

Did there come a time where the buck stopped with you?

MR. BROWN: Objection to form.

A. I think I did indicate in a previous question that at some point in time those people would have reported to me and the answer would be yes. I don't recall when that time was.

Q. Do you recall what year it was?

A. Well, I would say two thousand -- at least 2008 when I was named CFO of ResCap.

Q. When in 2008 were you named CFO of ResCap?

A. I believe it was March, March or April. I believe it was March.

Q. So as of March or April 2008, as CFO of ResCap, it was your responsibility to ensure that not only ResCap but its subsidiaries' financials fairly presented in all material respects its financial statements?

MR. BROWN: Objection to form.

A. Yes.

Q. Did that include the intercompanies that were reflected on those financial statements?

A. To the extent that intercompanies are a part of the consolidated financial statements taken as a whole, yes.

Q. I'm talking about the individual subsidiaries that were now within your responsibility as of March or April 2008. Did the intercompanies on those subsidiaries' financial statements fall within your purview?

A. Did the intercompanies?

Q. As part of those financial statements --

MR. BROWN: Objection to form.

Q. -- fall within your purview?

MR. BROWN: Objection to form.

A. I need a clarification of the question. When you say the "intercompanies," what do you mean?

Q. So if you had an intercompany on a financial statement, a payable or receivable to an affiliate of ResCap, a sister or a parent or

a child company that would be reflected on one of the subsidiary's financial statements, was it your responsibility to make sure that that was fairly presented in all material respects?

MR. BROWN: Objection to form.

A. In the context of the consolidated financial statements, yes.

Q. Okay. We're going beyond the consolidated financial statements. When you became the CFO of ResCap, did you have responsibility for the subsidiaries' financial statements as well?

MR. BROWN: Objection to form. Asked and answered.

A. And I'm attempting to make the point that the financial statements are a consolidated group of accounts. I'm not referring to the consolidated entity. I would also be referring to GMAC Residential or RFC.

There are all kinds of accounts in those financial statements on those legal entity, standalone basis, and to the extent that those -- I was, yes, would have been responsible at that time in March of '08 for the

consolidated financial statement of that subsidiary in totality, the consolidated financial statement taken as a whole, fairly presented.

Because this comes up in accounting all the time where, you know, this particular account, you know, was off some amount. That's -- that is -- that happens, and but the standard is, and it's a tough standard, the consolidated financial statements are the -- are they fairly presented in all material respects, and yes, I would have been responsible for that.

Q. Okay. You have used the word "consolidated" financial statements a number of times. What does "consolidated" mean?

A. "Consolidated" would mean the roll-up of several legal entity subsidiaries under that certain entity. So, of course, what that means is you could have consolidated financial statements at virtually many, at many levels within the company because there would have been hundreds of subsidiaries.

You can have a roll-up at a low level that included a certain number of companies, it

rolls up to another level, it rolls up to another level.

Q. Are you familiar with the phrase "garbage in, garbage out"?

A. I've heard the phrase, yes.

Q. What do you understand that to mean?

A. I would understand that to mean if -- if information is wrong going in and somebody does something with the information, doesn't check it, takes it for what it's worth and continues to pass it on, that there's no chance of -- of correcting or catching the garbage, as you say.

Q. Okay. In your role as CFO with respect -- of ResCap from April or May of 2008 or March or April of 2008, what did you do to ensure that you didn't have a garbage in, garbage out situation?

MR. BROWN: Objection to form.

A. Can you give me an example of what you would mean by "garbage in, garbage out" --

Q. Sure?

A. -- in the context of what you're asking?

Q. Sure. You're rolling up a number of different legal entities to prepare your consolidated financial statement, right?

MR. BROWN: Objection to form.

A. Yes.

Q. What did you do as CFO of ResCap to ensure that the information you were getting from the different legal entities was accurate and reliable information?

A. We had a system of internal control to ensure, you know, not perfection but a reasoned, you know, a reasoned level of accuracy in financial reporting.

Q. Who was responsible for overseeing that system of internal control ultimately?

MR. BROWN: Objection to form.

A. Ultimately, it would have been the chief financial officer.

Q. And that's you?

A. Correct.

Q. Okay. So, with respect to each legal entity, at least by the time you became CFO in early 2008, not only did you have responsibility for the consolidated financial statement, you

also had ultimate responsibility for each of the individual legal entities' financial statements, right?

MR. BROWN: Objection to form.

A. Ultimately, yes, but there were, again, I would keep in mind hundreds of hundreds of accounting people. But yes, ultimately yes.

Q. Certainly. I mean, you didn't do it all yourself. There were people you relied on, but the ultimate responsibility rested with you, correct?

MR. BROWN: Objection to form. Asked and answered.

A. There were people I relied upon and systems of control I relied upon, but ultimately as the CFO, yes.

Q. Okay.

A. I was responsible.

Q. When did you leave ResCap and move to Ally?

MR. BROWN: Objection to form. Mischaracterizes testimony. He's made clear he moved to Ally Bank.

MR. COHEN: Do you want to -- do you

want to take an oath and testify?

MR. BROWN: No.

MR. COHEN: I'd be happy to depose you too.

MR. BROWN: You just mischaracterized him testimony on this point three times now.

MR. COHEN: Object to the form.

MR. BROWN: I did.

MR. COHEN: And just pretend that you know the Rules of Civil Procedure and abide by them. You can object to the form, but the speaking and coaching objections are ridiculous.

If you want to testify, I'm happy --

MR. BROWN: I just want to get you right.

MR. COHEN: I'm happy to put you under oath. I don't need you to get me right. We have a transcript. You can make an objection. They're going to go into court. If it's mischaracterized, the judge can fix it.

Object to the form and abide by the rules.

J. YOUNG

MR. BROWN: I did.

MR. COHEN: Do you have my question in mind?

MR. BROWN: Objection to form.

THE WITNESS: Would you repeat the question, please?

MR. COHEN: Certainly.

Would you read back my last question?

(Record read.)

MR. BROWN: Objection to form. Mischaracterizes testimony.

MR. COHEN: Coaching the witness.

THE WITNESS: I left ResCap and moved to Ally Bank in May of 2011. I believe it's May, April or May, somewhere in there.

BY MR. COHEN:

Q. Under what circumstances did you leave ResCap and move to Ally Bank?

MR. BROWN: Objection to form.

A. I was asked by the company to make the move and I considered the move and I made the move.

Q. When were you asked by the company to make the move?

Plaintiff's Objection 61:18-64:19 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402)

A. First asked I believe I would say January/December or January -- December of '10 or January of '11.

Q. Did they explain why they wanted you to make the move?

MR. BROWN: Objection to form.

A. The discussion was around needing more experience and -- in the bank.

Q. What experience were they looking for in the bank?

MR. BROWN: Objection to form.

A. Heavy accounting experience, financial reporting experience, planning, forecasting, budgeting. Just senior executive experience for Ally Bank.

Q. Were you replacing someone within Ally Bank?

A. No. As I think I said before, there was a CFO in Ally Bank and that person reported -- ended up reporting to me after I moved into the bank.

Q. So you took a new position?

MR. BROWN: Objection to form.

A. Correct.

Q. Did you get a raise?
A. Not that I recall.
Q. Did you get a bonus?
A. For moving?
Q. Yes.
A. Not to my knowledge.
Q. And these discussions started in December of 2010 or January of 2011?
A. Correct.
Q. When was a tax allocation agreement completed between ResCap and Ally?
MR. BROWN: Objection to form.
A. I don't recall specifically. I could check the record as to when that document was signed, but I don't recall the exact day.
Q. Was it in the same general time period?
MR. BROWN: Objection to form.
A. I don't recall.
Q. Do you recall whether you were negotiating the tax allocation agreement, the second tax allocation agreement, as the Examiner refers to it, at the same time you were talking about leaving ResCap and going to Ally?

MR. BROWN: Objection to form. Mischaracterizes testimony. Vague.

A. I don't recall that.

Q. But you're sure that the discussions were in December 2010 and January 2011 about you leaving ResCap and going to Ally?

MR. BROWN: Objection to form.

A. To the best of my recollection, yes.

Q. What are your responsibilities as CFO at Ally Bank?

A. Traditional CFO responsibilities, including accounting, financial reporting, internal control, treasury activities. In this case, as we've discussed earlier, affiliate governance, which is compliance with Federal Reserve Act 23a and b for affiliated transactions. Small levels of strategy work and regulatory coordination of examinations.

Q. Anything else come to mind?

A. Not at this time.

Q. When you say "small levels of strategy work," what do you mean?

A. I mean that I have one individual who spends part-time. The official title is

Strategy. The reason I say small levels is because Ally Bank is a wholly-owned subsidiary of Ally Financial Inc. and strategy is not something that a subsidiary institution will do on an aggressive, full-time basis. So it's primarily about thinking about the bank's future in some level of context of what AFI was thinking about in the future.

Q. Is it fair to say that AFI dictates the strategies of the bank?

MR. BROWN: Objection to form.

A. I wouldn't say it's fair. I don't think it's fair to say they would dictate the strategy, no, but certainly they need to be coordinated.

Q. Well, if the strategy isn't coming from the subsidiary, except in a small way, where is the strategy coming from?

MR. BROWN: Objection to form.

A. Strategy is a coordinated effort between AFI and the bank, but I wouldn't say they dictate it.

Q. Do they suggest it?

MR. BROWN: Objection to form.

A. Well, they certainly lead.

Q. So AFI takes the lead on strategy, is that the right way to characterize that?

MR. BROWN: Objection to form.

A. From my perspective, the AFI leadership and strategy is important for the bank to understand and execute against, yes.

Q. Do you have any position with AFI?

A. I do not have any position with AFI.

Q. So you're not an officer of AFI?

A. Correct.

Q. You're not an employee of AFI?

A. I'm an employee of Ally Bank, which is a wholly-owned subsidiary of AFI, but I'm not an officer of AFI.

Q. My question is, are you an employee also of the legal entity AFI?

A. I am not.

Q. Okay.

A. To my knowledge.

Q. I'm handing you a copy of a document which has previously been marked as Westman Exhibit 1. Would you take a moment to look at this?

Plaintiff's Objection 66:22-25 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402)

J. YOUNG

MR. CHRISTENSEN: Do you have extra copies, Mr. Cohen?

MR. COHEN: Yes, we're handing them around.

BY MR. COHEN:

Q. Let me know when you're done.

This document for the record is titled "The Ad Hoc Group of Junior Secured Noteholders' Notice of Rule 30(b)(6) Deposition," and it's directed to ResCap.

A. Okay.

Q. Have you seen this document before?

A. I believe I was showed this in my meeting with my counsel.

Q. That was the meeting that happened yesterday?

A. Yes.

Q. Before yesterday, had you ever seen a copy of this before?

A. No.

Q. Do you understand that you have been designated to testify on behalf of ResCap as to certain topics in Westman Exhibit 1, this 30(b)(6) notice?

Plaintiff's Objection 67:6-68:17 Inadmissible hearsay (FRE 802)

MR. BROWN: Objection to form.

A. I do understand that.

Q. Okay. You've been designated to testify on behalf of ResCap as to item 14, which is on page 10 of this document.

Would you let me know when you're there?

A. I'm there.

Q. Are you able to testify truthfully and completely as to all matters relating to the First 2009 Tax Allocation Agreement and the Second 2009 Tax Allocation Agreement?

A. Yes.

Q. Now I'm handing you a document that has previously been marked as Marx Exhibit 1.

Would you hand --

MR. BROWN: Do you have copies for --

MR. COHEN: Yes, the witness is holding them.

MR. BROWN: Oh. I've just never seen you pass the copies for counsel to the witness. Sorry.

MR. COHEN: If the reporter were sitting across from me, I would have handed

them to her.

BY MR. COHEN:

Q. Let me know when you're through with this document, Mr. Young.

This document, for the record, is titled "The Ad Hoc Group of Junior Secured Noteholders' Notice of Subpoena to Ally Financial Inc."

A. Okay.

Q. Have you seen a copy of this document before?

A. I believe I saw this yesterday in my session with counsel.

Q. Before yesterday, had you ever seen a copy of this document before?

A. No.

Q. Do you understand that you've been designated to testify on behalf of Ally Financial Inc., AFI, with respect to certain topics in Marx Exhibit 1?

A. Yes.

Q. So let's turn to page 7 of Marx Exhibit 1. Are you able to testify truthfully and completely as to number 1, "All matters

Plaintiff's Objection 69:3-72:9 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402)

concerning the August 1, 2009 conversion to fair-value accounting and the decision to demand a $51.4 million payment from GMAC Mortgage in relation to the Brokering Consumer Loans Bank project"?

A. Yes.

Q. Would you turn to page 8 of this document. Let's look at item number 11. Are you able to testify truthfully and completely as to all matters relating to the MMLPSAs between GMAC Mortgage and Old GMAC Bank and between GMAC Mortgage and Ally Bank?

A. Yes.

Q. Let's look at item number 12. Are you able to testify truthfully and completely as to all matters relating to the Pipeline Swaps between GMAC Mortgage and Old GMAC Bank and between GMAC Mortgage and Ally Bank?

A. Yes.

Q. Let's look at item 13. Are you able to testify truthfully and completely as to all matters relating to the 2008 Broker Agreement between GMAC Mortgage and Old GMAC Bank and between GMAC Mortgage and Ally Bank?

A. Yes.

Q. All right. In your capacity as the chief financial officer of ResCap, were you responsible for ensuring compliance with Ally's accounting policies?

MR. BROWN: Objection to form.

A. I would have said I was responsible for the compliance with ResCap's accounting policies.

Q. Did ResCap have separate accounting policies from Ally?

A. To the best of my recollection, at certain periods of time, yes.

Q. During what periods of time did ResCap have separate accounting policies from Ally?

A. I don't recall exactly.

Q. Was it at the beginning of your tenure or the end of your tenure --

MR. BROWN: Objection.

Q. -- as the CFO of ResCap?

MR. BROWN: Objection to form.

A. I can say at the beginning of my tenure at ResCap, as controller and chief accounting officer, not at my time as the CFO

because I don't recall at the time I was CFO, but at the time of joining as controller and chief accounting officer, I do believe there were separate accounting policies at that time.

Q. But you don't recall by 2008 whether there were separate accounting policies?

MR. BROWN: Objection to form.

A. Correct.

Q. When you became the CFO of Ally in 2011, did Ally have uniform accounting policies that applied to all of its affiliated companies?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. You keep using the word "Ally," but I was with Ally Bank, and there is a difference between Ally, AFI, and Ally Bank, as you've pointed out before. So I believe you're asking me about Ally Bank, but perhaps you would rephrase the question?

Q. Sure. Within the AFI group of companies, which includes Ally Bank and includes ResCap, are there uniform accounting policies as we sit here today?

MR. BROWN: Objection to form.

J. YOUNG

A. I would say there are uniform accounting policies for items that apply to each of those individual companies, yes, and what I mean by that is there could be something that's accounted for in an affiliate group of companies that doesn't exist in the bank and, hence, there's no -- there would be no accounting policy for an insurance product.

So, but to the extent that they are policies applying to similar products in similar accounting items, yes.

Q. Well, let's -- let's step back. Does the Ally group of companies have an accounting policy book that applies to all of the companies, irrespective of whether every item in that manual applies?

MR. BROWN: Objection to form.

A. The Ally group of companies at AFI and the Ally group of companies have accounting policies that apply to everyone.

Q. All right. And so if in one of the legal entities they don't have a product for which there's a policy, they don't have to apply that policy, right?

Plaintiff's Objection 73:13-75:18 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602)

A. That's correct. In addition, Ally Bank, for instance, does have its own governance over accounting policy, but it is driven by the common policy of the AFI group of companies.

Q. When did those common policies come into effect?

MR. BROWN: Objection to form.

A. I do not recall.

Q. But you do recall when you started in 2005 as the controller at ResCap there were not common policies?

A. I think I indicated that there were separate accounting policies at ResCap, and whether they were common from a content perspective, I can't say, but there were separate accounting policies at ResCap at that time.

Q. But and at some point that shifted so that there were common policies for all of the Ally group of companies?

MR. BROWN: Objection to form.

A. Yes.

Q. And by the time you became CFO at ResCap in 2008, those common policies applied?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. I don't recall when they -- when the common policies came into play.

Q. In your capacity as the CFO at ResCap and now as the CFO at Ally Bank, the ultimate responsibility for ensuring compliance with those policies rests with you, right?

MR. BROWN: Objection to form.

A. For Ally Bank, yes, and at my time at ResCap when I was CFO for ResCap, yes, for ResCap.

Q. And that would also include the subsidiaries, if any, of Ally Bank and the subsidiaries, if any, of ResCap, right?

MR. BROWN: Objection to form.

A. Yes.

MR. COHEN: You want to take about a five-minute break?

MR. BROWN: Absolutely.

THE VIDEOGRAPHER: The time is 10:38 -- I'm sorry, 10:28 A.M. We're off the record.

(Recess.)

J. YOUNG

THE VIDEOGRAPHER: The time is 10:42 A.M. We're on the record.

BY MR. COHEN:

Q. Mr. Young, before the break, you went through a list of your responsibilities as CFO of Ally Bank, do you recall that?

A. Yes.

Q. Among your responsibilities you did not include legal advice, did you?

A. I don't recall. I don't think I did, no.

Q. Do you believe providing legal advice is within your area of responsibility?

A. No.

Q. So it is not within your area of responsibility to interpret contracts, right?

A. Interpreting contracts is different than providing legal advice. Businesspeople are -- businesspeople are party to contracts all the time and contracts need to be interpreted between the parties. In fact, I'd go so far to say that the agreement between the parties in a contract is -- is extremely important to businesspeople.

Plaintiff's Objection 76:5-103:20 Inadmissible hearsay (FRE 802) (except for 94:24-101:21)

76:5-80:9: irrelevant (FRE 401, 402), waste of time (FRE 403)

Q. So it is within your area of responsibility to interpret contracts?

MR. BROWN: Objection to form.

A. It's part of our responsibility to come to an agreement with a counterparty from a business perspective with a contract.

Q. Is it within your area of responsibility to interpret contracts?

MR. BROWN: Objection to form. Asked and answered.

A. Can you give me a specific example of what interpreting a contract may mean to you?

Q. Sure. Someone hands you a contract and asks you, What are my obligations and rights under this agreement? Is that something that you would give an opinion on?

MR. BROWN: Objection to form.

A. It depends on the contract and the complexity of the contract, the contract terms. It would depend on a whole host of issues.

Q. So in certain instances you would provide interpretations under contracts in your capacity as the CFO of Ally Bank; is that your testimony?

MR. BROWN: Objection to form.

A. I would not provide a legal interpretation of a contract, no.

Q. And if there was a question as to what Ally Bank's rights and responsibilities were under a contract, would you ask someone with expertise in that area --

MR. BROWN: Objection.

Q. -- to help you?

MR. BROWN: Objection to form.

Q. As a general matter?

MR. BROWN: Objection to form.

A. If I had a question on an Ally Bank contract, I would ask counsel to assist.

Q. And if you needed an opinion as to what the right interpretation of a contract would be, you would typically go to counsel, right?

MR. BROWN: Objection to form.

A. Well, there are many ways to interpret contracts. And you know, you used the words "right interpretation." Sometimes there's not always a right interpretation. And ultimately a contract is between parties, business parties,

not attorneys. So I'm not sure I can answer your question.

Q. When you became CFO of Ally Bank, there were contracts in place that you had not negotiated, right?

MR. BROWN: Objection to form. You mean as of August of this year?

A. When I became CFO of Ally Bank in May of 2000 -- April or May of 2011, there would have been contracts in place that I was not a party or not involved in negotiating.

Q. Okay. And with respect to those contracts where you hadn't negotiated and you didn't have your own sense of what the deal was, if there was a question as to how to interpret the agreement, would you ask a lawyer to help you --

MR. BROWN: Objection.

Q. -- typically?

MR. BROWN: Objection to form.

A. I may ask a lawyer or I may ask a lawyer in addition to businesspeople as well.

Q. But to be clear, you would not take it upon yourself to give legal advice to someone,

right?

A. I believe I answered that question.

Q. So the answer is?

A. The answer is I would not; I am not qualified to give legal advice.

Q. And you're not licensed to practice law?

A. I am not licensed to practice law.

(Young Exhibit 1, a document bearing Bates Nos. ALLY 242848 through 242866, marked for identification, as of this date.)

Plaintiff's Objection 80:10-88:11: irrelevant (FRE 401, 402), lack of foundation (FRE 602, 901, 903)

MR. COHEN: We marked it Young 1.

BY MR. COHEN:

Q. Mr. Young, the reporter has handed you a document which has been marked Young Exhibit 1. It has the Bates number ALLY 242848 through 242866. It's titled Accounting Policy 1075, Related Party. Would you take a moment to look at this document?

(Document review.)

A. Okay.

Q. Have you seen Young Exhibit 1 before?

A. Not that I recall.

Q. Before we took the break, you were

testifying about accounting policies that applied to the entire Ally group of companies. Is this one of those policies?

A. It would appear to be, although it's dated January 1, 2010. It says on the front of it, "Distribution: All Ally," and the scope of the document indicates that it -- well, yeah, I think under the purpose it indicates policy -- well, you can read it. So, yeah, it looks to be the case, yes.

Q. So this is a policy that, as of January 1, 2010, would also have applied to ResCap?

A. Well, I think, as I said before, I do not recall when ResCap would have moved to a common set of policies with AFI.

Q. Well, let's --

A. So I don't know.

Q. Let's look at page -- it's the second page of Young Exhibit 1. It has the Bates number ALLY 242849, and I'd like to focus your attention on Section 2.0, which is Purpose.

A. Yes.

Q. The document states that, "The purpose

of Accounting Policy 1075, Related Party (Policy) is to establish guidelines for the reporting of related party transactions. This policy provides a uniform standard for such items and is applicable throughout all Ally Financial Inc. and its direct or indirect subsidiaries, including all Lines of Business (LoBs), Business Units (BUs), and Global Functions (collectively, Ally). Adherence to this policy is the responsibility for the LoB Controller, or similar role."

Do you see that scope of -- of how Ally is defined there?

MR. BROWN: Objection to form.

A. I see it.

Q. Is it your understanding that ResCap and its subsidiaries would fall within that scope?

A. Yes.

Q. Okay. So if you look at the top of that page, it says that this policy is effective January 1, 2010. Do you see that?

A. Yes.

Q. And at the time, you were the CFO of

ResCap; is that right?

A. That's correct.

Q. And as CFO of ResCap, you had ultimate responsibility for ResCap's consolidated financials and the information that was flowing into those, right?

MR. BROWN: Objection to form. Asked and answered.

A. Yes, as the CFO of ResCap, I had the responsibility for the consolidated financial statements of ResCap.

Q. Okay. And was it also your understanding as the CFO of ResCap that you should be abiding by Ally's accounting policies?

A. Again, as I think I've said before, at some point in time, the accounting policies of ResCap and the accounting policies of AFI became one and the same body of accounting policies. I don't recall exactly when that occurred.

ResCap's accounting policies would be in compliance with Generally Accepted Accounting Principles, just as AFI's accounting policies would be in accordance with AFI -- I'm sorry, with Generally Accepted Accounting Principles.

Whether this particular policy applied to ResCap at the time you're asking and you're inferring that ResCap did not have a similar policy, I don't know the answer to that.

Q. Well, this document you just agreed with me that ResCap fell within the scope as defined in Section 2.0, right?

MR. BROWN: Objection to form.

A. Yes.

Q. And you see at the top of this page where it says "Effective Date: January 1, 2010," do you see that?

A. Yes.

MR. BROWN: Objection to form.

Q. Does that lead you to believe that this policy would apply to ResCap at least as of January 1, 2010?

MR. BROWN: Objection to form. Asked and answered.

A. The content of this policy would either apply to ResCap or ResCap would have its own policy. It would have similar GAAP, Generally Accepted Accounting Principle, guidance in it.

Q. Would you look at Section 3.0, which says Scope. The first sentence says, "This Policy addresses U.S. Generally Accepted Accounting Principles (U.S. GAAP) and reporting requirements related to related party disclosures." Do you see that?

A. Yes.

Q. Would GAAP be different for Ally as defined in Section 2.0 and ResCap, or is GAAP consistent?

MR. BROWN: Objection to form.

A. GAAP is consistent -- you referred to Section 2.0. Did you mean 3.0?

Q. Well, 3.0 says that this policy is to implement GAAP. 2.0 you have already agreed would include ResCap. My question is is GAAP something different for ResCap?

MR. BROWN: Objection to form.

A. No.

Q. Okay. So if this policy is implementing GAAP, as it says in Section 3.0, and it applies to ResCap in Section 2.0, do you have any reason to believe ResCap would have a different policy as of January 1, 2010?

MR. BROWN: Objection to form.

A. I have no reason to believe if they did have a different policy, a separate documented policy, that it would be any different in substance than this policy.

Q. Okay. Did you have any understanding as the CFO of ResCap in January 2010 when this policy came out that you had discretion not to follow it at ResCap?

A. At ResCap, we followed Generally Accepted Accounting Principles. So, irrespective of the issuance of a documented policy at what level it came out, meaning AFI, ResCap, or Ally Bank, the entity would follow Generally Accepted Accounting Principles.

Q. Issue respective of this policy?

A. This policy documents Generally Accepted Accounting Principles.

Q. So it would apply at ResCap?

MR. BROWN: Objection to form. Asked and answered.

A. The content would apply to ResCap, yes.

Q. And did you, as the CFO of ResCap,

have the ability to choose not to follow this accounting policy?

MR. BROWN: Objection to form.

A. What I'm trying to say is that you're pointing to this policy, and as I've said before, there may have been a different policy, but it had the same content. Of course, Generally Accepted Accounting Principles would have to be applied to all entities. That's not a question.

If you're asking about this specific policy, I'm saying is that, yes, ResCap had to follow Generally Accepted Accounting Principles. This policy documents what that would be. It is possible there was another policy at the ResCap level with substantially the same discussion about Generally Accepted Accounting Principles, because there is no difference in applying Generally Accepted Accounting Principles between the entities.

But I can't say that this particular policy on this piece of paper is the one that ResCap was following at the time.

Q. Notwithstanding the fact that ResCap

is included within the scope of this policy?

MR. BROWN: Objection to form.

A. Again, I -- again, I -- all I can say is, yes, they are part of the consolidated group of companies. I'm just trying to make a point that there may have been a separate accounting policy.

Q. But you're not aware of any?

A. I'm not -- I don't recall any right now.

Q. Would you turn to the second-to-the-last page. It has the Bates number ALLY 242865. I would like to direct your attention to Section 10.0, which says, "Affected Areas and Exceptions." That section states, "This Policy applies to all of Ally. There are no exceptions to this policy." Do you see that?

A. I do.

Q. Does that refresh your recollection as to whether this policy would apply to ResCap?

MR. BROWN: Objection to form. He's asked and answered this.

A. No.

Q. Do you have any reason to believe that

Plaintiff's Objection 88:25-89:5: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)

Section 10.0, which says, "This Policy applies to all of Ally. There are no exceptions to this policy," is an untrue statement?

A. No reason to believe that.

Q. What is a related party transaction?

A. The common definition would be a transaction between parties under common control, either direct or indirect, such that -- such that the potential exists for the transaction not to be comparable to an arm's length transaction.

Q. What do you mean when you say "the potential exists for the transaction not to be comparable to an arm's length transaction"?

A. I mean it could not -- it would not be comparable to an arm's length, meaning the terms of the transaction between related parties may not be the same terms of a comparable transaction with a non-related party.

Q. Under Ally's accounting policies with respect to related party transactions, is there any presumption as to whether those transactions are arm's length or not?

MR. BROWN: Objection to form.

Plaintiff's Objection 89:6-90:19: lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402), improper lay opinion

Plaintiff's Objection 89:6-90:19: lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402), improper lay opinion, lack of foundation (FRE 602, 901, 903)

A. Would you repeat the question, please?

Q. Sure. Under Ally's accounting policies with respect to related party transactions, is there any presumption as to whether those transactions are arm's length or not?

MR. BROWN: Objection to form.

A. I would have to read the policy to refresh my recollection of that.

Q. So, as CFO of ResCap from 2008 up through today as CFO of Ally Bank, you don't know what the policy is on that?

MR. BROWN: Objection to form.

A. I understand what Generally Accepted Accounting Principles is with respect to that point, and if there could be transactions that -- with a related party that -- that are not comparable to a third party terms.

Q. Under GAAP is there a presumption with respect to related party transactions as to whether they are arm's length?

A. I would believe under GAAP the presumption is that a related party transaction is not an arm's length.

Q. Okay. Well, let's look at the third page of this document. It has the Bates number ALLY 242850, which says, "Standards, Practices and Procedures." Let me know when you're with me.

A. Okay.

Q. The first sentence there says, "There is a general presumption that transactions between related parties cannot be carried out on an arm's length basis." Do you see that?

A. I do.

Q. And that's in Ally's accounting policy, right?

MR. BROWN: Objection to form.

A. That is in this document, which is Ally's accounting policy, yes.

Q. And we saw in Section 10.0 of Young Exhibit 1 at Bates No. 242865 that that policy applies to all of Ally and there are no exceptions to that policy. Do you see that?

MR. BROWN: Objection to form. Asked and answered.

A. Yes.

Q. So, within all of Ally with respect to

Plaintiff's Designation 91:2-92:10: lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402), improper lay opinion, lack of foundation (FRE 602, 901, 903)

related party transactions, there is a general presumption that transactions cannot be carried out on an arm's length basis; would you agree with that?

MR. BROWN: Objection to form.

A. I would agree that that presumption is present in Generally Accepted Accounting Principles, so I'm not surprised at all it's in this policy.

Q. Okay. And as the CFO of ResCap and the chief financial executive and later chief financial officer of Ally Bank, it's your responsibility to enforce these policies, right?

A. My responsibility is to -- to -- with the accounting policy, wherever it exists, at ResCap or Ally Bank, and the recording of related party transactions in accordance with GAAP, yes, it would be my responsibility for recording them and disclosing them.

Q. Do you know what a cash management system is?

Plaintiff's Objection 92:21-93:19: lack of personal knowledge (FRE 602)

A. I would believe there are hundreds of different types of cash management systems.

Q. How about within the Ally group of

companies, have you ever heard the phrase "cash management system" described within the Ally group of companies?

MR. BROWN: Objection to form.

A. Not in any detailed way.

Q. How about at the ResCap group of companies, did it have a cash management system?

A. What do you mean by "cash management system"?

Q. You're not familiar with the phrase?

MR. BROWN: Objection to form. He's already testified there could be hundreds --

A. I think --

MR. BROWN: -- of different types.

A. Yeah, I said there's hundreds of different types of cash management systems. It's a very generic, broad term. It could mean virtually anything.

Q. So, within ResCap, if someone says describe ResCap's cash management system, you would say there could be hundreds of different things, I have no idea what you're talking about?

A. No, I could describe the cash

management practices of ResCap.

Q. Please do.

A. To the best of my recollection, at the time I was CFO of ResCap, cash management would involvement different things, including cash flow forecasting, monitoring of bank accounts, collateral monitoring, financing sources. All involve processes and systems for exchanging cash, monitoring cash, and there's likely others, but those would be the main attributes of the system.

Q. When you say "exchanging cash," what do you mean?

A. Just settling cash between parties.

Q. Between which parties?

A. Could be any -- any counterparty that ResCap would have.

Q. Would it also include ResCap's affiliates within the cash management system, as you understand it?

MR. BROWN: Objection to form.

A. Yes, as I understand it.

Q. And did ResCap's application of a cash management system create intercompany payables

94:24-101:21: No objection

and receivables?

MR. BROWN: Objection to form.

A. There would have been intercompany receivables and payables among the ResCap group of companies as well as intercompany receivables and payables with outside the ResCap group of companies with other AFI affiliates or AFI itself.

Q. Would those, pursuant to GAAP and Ally's accounting policy, have been related party transactions?

A. Yes, I would say they would.

Q. And under GAAP and Ally's accounting policy, they're presumed to not be at arm's length, right?

MR. BROWN: Objection to form.

A. The GAAP assumption for presumed to not be at arm's length is there to drive disclosure of those transactions, but, yes, that presumption exists in GAAP and would have existed throughout the time I was at ResCap when there were intercompany transactions being recorded.

Q. So the answer is yes, intercompany

transactions are presumed not to be at arm's length under GAAP and Ally's accounting policies, right?

MR. BROWN: Objection to form.

A. They're presumed to be -- they're presumed not to be arm's length not because they aren't arm's length; it's because they require additional disclosure under GAAP.

Q. Okay. Let's dig a little bit deeper into Ally's accounting policy, which is reflected in Young Exhibit 1. Would you turn to the page with the Bates No. ALLY 242854. I'd like to draw your attention to Section 6.3.1, which is titled Presume Lack of Arm's-Length Basis." Do you see that?

A. I do.

Q. And it says, "The nature of a transaction may be indicative that the arrangement is not being conducted on an arm's length basis and is a related party transaction. Examples may include..."

So these are examples in Ally's accounting policy of what related party transactions may look like; do you agree with

that?

MR. BROWN: Objection to form.

A. I agree.

Q. The first bullet says, "Borrowing or lending on an interest-free basis or at a rate of interest significantly above or below market rates prevailing at the time of the transaction." Do you see that?

A. I do.

Q. So one of the indicia of a related party transaction is that it's interest-free under Ally's accounting policy and GAAP, correct?

MR. BROWN: Objection to form.

A. Would you repeat your question, please?

MR. COHEN: Would the reporter read my question back, please?

(Record read.)

MR. BROWN: Objection to form.

THE WITNESS: Read it one more time, please.

COURT REPORTER: Sure.

(Record read.)

MR. BROWN: Objection to form.

MR. COHEN: Can you let the record reflect that the question was read back twice?

COURT REPORTER: Yes.

THE WITNESS: Yeah, I don't think that's right. I think you're indicating that -- I think your question says that because it's interest-free, it -- well, if -- I'm not sure I understand your question.

I mean, just because -- all related transactions are not interest-free, and I think that's what your question is asking.

BY MR. COHEN:

Q. I'm not suggesting that all related transactions -- related party transactions are interest-free, but under GAAP and Ally's accounting policy, related party transactions can be interest-free, correct?

A. It is possible, yes.

Q. And that's reflected in Ally's own accounting policy, right?

A. Yes.

Q. Okay. So let's look at the fourth bullet point. It says, "Making loans with no scheduled terms for when or how the funds will be repaid." That's the first sentence. Do you see that?

A. I do.

Q. So related party transactions under Ally's accounting policy and GAAP can include transactions where there are no scheduled terms for when or how the funds will be repaid, right?

MR. BROWN: Objection to form.

A. This is a list of terms that are indicative that an arrangement may not be at arm's length, and that's it. So it's indicative -- it's a term that's indicative when you're assessing a transaction and it contains, for example, some of these terms, then it's indicative of something that may not be arm's length and therefore needs to be recorded and reported as a related party transaction.

Q. And that --

A. Potentially.

Q. And that would also include, if you go another three bullet points down, "Loans to

parties that do not possess the ability to repay," right?

A. It would apply to everything on this list.

Q. Okay. But that -- if a related party transaction has those attributes, borrowing on interest-free with no scheduled terms and the loan is to a party that doesn't have the ability to repay, that doesn't impact whether it is a payable or a receivable, does it?

MR. BROWN: Objection to form.

A. Well, I would say it depends on the facts and circumstances of the actual under -- under the actual agreements from an accounting perspective.

Q. Well, actually, according to 6.3.1, there may not be an agreement at all. So what do you do then?

A. Then you have to -- then you have to figure out the facts and circumstances and account for it appropriately, even considering it's a related party transaction, and that could take various forms.

So if there's an explicit agreement

not to repay, for instance, it could be accounted for as something other than an intercompany payable or receivable.

Q. When would you do that accounting?

MR. BROWN: Objection to form.

A. If the facts and circumstances of a particular transaction are such that it would dictate that there's separate accounting. So based on facts and circumstances.

Q. But my question is would you determine that when the obligation to pay or the right to receive payment was incurred or would you do it years later? What does GAAP provide in that regard?

MR. BROWN: Objection to form.

A. GAAP would provide for an assessment at the initiation of the transaction, and then an ongoing assessment if facts or circumstances or terms change, the accounting could be changed.

Q. So if at the time of the transaction the obligation to pay or the right to receive payment was incurred, you would have to determine under GAAP whether it in fact was a

Plaintiff's Objection 101:22-103:20: lack of personal knowledge (FRE 602), irrelevant (FRE 401, 402), improper lay opinion

related party transaction and it was a loan or something else, right?

A. At the time of the initiation of the transaction, you would determine whether it was -- how it should be accounted for under GAAP, including considerations of non-arm's length terms if they so exist.

Q. And would you agree with me that one of the overarching principles of GAAP is to fairly reflect the financial statements, the financial condition of the reporting entity?

A. Yes.

Q. So GAAP, if you were recording a -- an asset, a receivable, under GAAP, if you didn't think it was a receivable, you shouldn't record it as a receivable; that's one of the overarching principles of GAAP, right?

MR. BROWN: Objection to form.

A. It's a very general, broad statement, but I would generally agree, yes.

Q. Okay. So if you had billions of dollars of intercompany payables and receivables on your financial statements under GAAP, if you didn't believe those to be payables and

receivables, you wouldn't be recording them as payables and receivables, right?

MR. BROWN: Objection to form.

A. Are you referring to specific transactions?

Q. I'm referring generally.

MR. BROWN: Objection to form.

Q. Do you need my question again?

A. Would you re-read it, please?

(Record read.)

MR. BROWN: Objection to form.

THE WITNESS: If the facts and circumstances of the receivable or payable were such that the accounting professional had a -- had information available that would indicate that there was no intent to pay or there, you know, then yes, it wouldn't be recorded as a receivable or a payable.

BY MR. COHEN:

Q. Okay. And during your time as CFO at ResCap and later as chief financial executive and CFO at Ally, you prepared your books in accordance with GAAP, right?

J. YOUNG

MR. BROWN: Objection to form.

A. I am not the CFO of Ally.

Q. Bank. I'm sorry. Let me reask the question because I think we have a definitional problem.

When I said "Ally," I meant Ally Bank, but let me give you the more precise question. I forget I'm deposing an accountant.

During your time as CFO at ResCap and later as chief financial executive and CFO at Ally Bank, you prepared your books in accordance with GAAP, right?

A. Yes.

Q. And one of the things you were required to do under GAAP, as you just testified, is look at the payables and receivables and reassess whether they in fact were payables and receivables, right?

MR. BROWN: Objection to form.

Q. GAAP required that, didn't it?

MR. BROWN: Objection to form.

A. GAAP requires an assessment of -- of the intercompany, an assessment of payables and receivables, inclusive of intercompany.

Q. And that's an ongoing requirement, right?

A. It's an ongoing requirement, but it's a very complex and detailed analysis.

Q. But it's not something that you can ignore and still be GAAP-compliant, right?

A. You can make your judgment and, you know, you either -- you either make an adjustment or you disclose the transaction. That's part of the reason for the GAAP disclosure requirements is the fact that these could be on non-arm's length basis, and as such, the disclosure is important for the reader to understand, if there is a user of the financial statements.

Q. But under GAAP, it's not okay to book a payable and receivable say in 2009 or 2010, and say, you know what, three years later I'll actually revisit whether that's a payable or a receivable; that's not okay, is it?

MR. BROWN: Objection to form.

A. Now you're introducing the passage of time and you seem to be taking a view that there's facts known at the initiation of the

transaction that may not be known.

Q. Well, what I'm saying is you testified that you have an ongoing obligation to look at this. You can't ignore it for years and then reassess years later. If something comes up in the interim, you've got to adjust your financials, right?

A. You've got to consider the facts and circumstances and potential adjustment.

Q. On an ongoing basis?

A. On an ongoing basis.

Q. Okay. And that's required by GAAP irrespective of Ally's policy, right?

MR. BROWN: Objection to form.

A. Yes.

Q. And Ally's policy, as you testified, is an attempt to implement GAAP, right?

MR. BROWN: Objection to form.

A. That would be my opinion, yes.

Q. Okay. So it should be one and the same, right?

MR. BROWN: Objection to form.

A. Ally's policies follow GAAP.

Q. Okay. ResCap's policies also follow

GAAP, right?

MR. BROWN: Objection to form.

A. ResCap's policies would follow Generally Accepted Accounting Principles, yes.

Q. Okay. During your time as the CFO at ResCap and then later as the chief financial executive and CFO at Ally Bank, are you aware of anybody trying to mislead people through the financial statements of ResCap or Ally Bank?

A. No.

Q. So you're not aware of people recording things as payables and receivables when they didn't believe them to be payables and receivables?

A. I'm not aware of that.

Q. Okay. If you were aware of that as the CFO of ResCap and then later the chief financial executive and CFO of Ally Bank, you would have fixed it, right?

A. I certainly would have understood the facts, understood the -- if somebody is raising an issue, why they're raising the issue, and assessed the situation and determined if an adjustment were necessary.

Plaintiff s Objection Young Tr. at 107:6-122:18 Inadmissible hearsay (FRE 802), irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), improper lay opinion, lack of foundation (FRE 602, 901, 903)

Q. So if someone came to you and said there's billions of dollars of payables and receivables, intercompany payables and receivables on these books, but it's not really a payable and receivable, you would have fixed that, right?

MR. BROWN: Objection to form. Asked and answered.

A. Yeah, I think I did just say that if -- I don't know if you're referring to a specific transaction or not, but the process would involve understanding someone's concern, going through the facts and circumstances, assessing if an adjustment needed to be made, assessing whether disclosure should be made, which maybe hadn't been there for whatever reason, that there's a process that would be followed to make that determination.

Q. Would you turn to -- we're still on Young Exhibit 1. It's the page with the Bates number ALLY 242857.

We're looking at the bottom of the page, which is 6.5.2, titled the "Debt Forgiveness or Extinguishment." Do you see

that?

A. I do.

Q. That section says, "Extinguishment of debt transactions between related entities may be in essence capital transactions. As such, forgiveness of debt and related interest between related parties and the associated gains or losses generally should not be classified as income statement items but rather as capital transactions." Do you see that?

A. I do.

Q. Is that consistent with your understanding of GAAP?

A. Yes, when particularly if -- yes. Yes.

Q. Okay. So if you're going to extinguish or forgive debt rather than treating that as income, you treat it as an equity contribution, right?

MR. BROWN: Objection to form.

A. Could you repeat the question, please?

(Record read.)

MR. BROWN: Objection to form.

A. No, it depends on the facts and

circumstances of the forgiveness.

Q. Okay. Under what facts and circumstances would related party extinguishment or forgiveness of debt be treated as an income statement item?

A. When -- when it's, for instance, not a -- that it's a -- not a long series of -- of demonstrated factual history of rotating to debt, forgiveness, debt, forgiveness, debt, forgiveness.

If there's a history of a long series of transactions, short-term in nature, that could -- could create a set of facts and circumstances where an accounting professional might say these are capital transactions, they're not debt. But it's -- but that's one instance.

There are obviously other instances where debt forgiveness, even between related parties, is not a capital transaction. This is not -- I mean, this says "may in essence be" -- "may be in essence." It's not a -- it's not a "at all times." So there are certainly circumstances where it would be not capital.

Q. Well, certainly the first sentence says, "May be in essence capital transactions," but the second sentence says, "As such, forgiveness of debt and related interest between related parties and the associated gains or losses generally should not be classified as income statement items, but rather as capital transactions."

Doesn't that mean that a capital transaction is the default and the income statement item is the exception?

MR. BROWN: Objection to form.

A. I -- I think it's a facts and circumstances assessment.

Q. Where in this policy does it say it's a facts and circumstances?

A. It's clearly embedded in Generally Accepted Accounting Principles and every word of Generally Accepted Accounting Principles is not in that policy.

Q. Okay, but what -- what section of GAAP, what standard should I look to to get backup for your assertion?

A. I don't have chapter and verse to

quote to you right now.

Q. Okay. For purposes of Ally's accounting policy, which we've seen in Section 10.0 applies to all of Ally with no exceptions, forgiveness of debt and related interest income between related parties and the associated gains or losses generally should not be classified as income statement items but rather as capital expenditures, that applies to all of Ally; that's its own policy, right?

MR. BROWN: Objection to form.

A. The policy -- you have read -- you read the policy. That is what the policy says, and I'm indicating that the application of the policy requires an assessment of the facts and circumstances.

Q. And my question is under Ally's own policy, by saying it generally should not be classified as income statement items, the default is it's a capital item, not an income statement item; can you agree with that?

MR. BROWN: Objection to form.

A. Not necessarily. I mean, default -- it's facts and circumstances.

Q. Even though the policy says it generally should not be?

A. It's also the first sentence says "entities may be in essence capital transactions." It's -- it's facts and circumstances based, but it's a -- it's presenting a burden of proof that, you know, it's -- it's, as GAAP would, that there's a certain level of skepticism there, which is appropriate.

Q. Okay. When you say it's presenting a burden of proof that there's a certain level of skepticism, what do you mean?

A. I mean that -- that the disclosure of intercompany related party transactions is important and in a GAAP concept, and I think we've already discussed the fact that -- that some of the policy, there's a presumption that there's not arm's length, and so that is the presumption going in.

It doesn't mean it's the default. It's the presumption going in, which means, of course, you have a burden of proof that transactions are either arm's lengths or, in

this particular, very detailed case, accounted for, you know, as the income statement has rather than capital transactions.

Q. So let's back up a little bit. Just because a transaction is not arm's length, that doesn't mean that it's not a debt transaction, right? The issue between income statement and capital account only comes up in the forgiveness context, right?

MR. BROWN: Objection to form.

A. No, I mean, you can have a related party transaction where you're providing cash or capital to an affiliate or of a related party in some instance, and if the, you know, if there's an underlying agreement or the terms and conditions -- I'll use a easy example -- indicate that there's no repayment requirement, even though the agreement may say it's -- it's a, you know, receivable or a debt agreement, but there's a term in there where it says there's no repayment requirement, that's on the front end, not during your forgiveness period but on the front end of the transaction, you know, just hypothetically, in my view, that would be a

capital transaction from day one, not a receivable or payable that was later forgiven.

Q. What about the situation where there is no agreement at all, we looked at the examples in Young Exhibit 1, where you have payables, intercompany payables and receivables where there is no agreement and no stated interest rate, and that still shows up on the books and records prepared in accordance with GAAP as payables and receivables. That's properly classified, isn't it, even though there's no agreement?

MR. BROWN: Objection to form.

A. Yes.

Q. Okay. And the only issue with respect to whether it's an income statement item or a capital account item is when you talk about forgiving that payable, isn't that right, or if you come up with other information in your ongoing assessment?

A. Well, again, I would say that, despite the fact that on the initial recording of a receivable and payable that you were describing that may not have, may not have -- I don't know

if they do or don't have underlying agreements, but I'll take your assumption that there's no underlying agreement -- if there's a pattern of repayment and settlement, then, you know, that -- that is appropriately classified as an intercompany receivable and payable upfront, without an agreement.

Q. So we've been talking for a while about debt forgiveness. You're familiar with that phrase, right?

A. Yes.

Q. What does that mean?

A. It means forgiving of debt.

Q. When you say "forgiving," what do you mean? What does the forgiveness part refer to?

A. If one party owes somebody some money and the other party says, well, you don't need to pay me back, I'm forgiving the debt, that's debt forgiveness.

Q. Okay. So if it wasn't actually debt, then you wouldn't need to talk in terms of forgiveness, right?

MR. BROWN: Objection to form.

A. If -- if what wasn't debt? I don't

understand.

Q. Without a debt -- you can't forgive debt that isn't owed, do you agree with that?

A. I agree with that.

Q. Okay. So if you're talking about forgiving debt, there has to be a debt that's owed, right?

A. On the face of it, yes.

Q. All right.

(Young Exhibit 2, a memo bearing Bates Nos. RCJSNII0025838 through 258239, marked for identification, as of this date.)

BY MR. COHEN:

Q. Mr. Young, the reporter has handed you a copy of a document that's marked Young Exhibit 2. It has the Bates No. RCJSNII0025838 through 258239. Would you take a look at that?

MR. COHEN: This is a document entitled Request for Action by the ResCap Executive Committee, Capital Allocation from ResCap to Residential Funding Company, LLC (RFC), GMAC Residential holdings LLC (Resi), and GMAC Mortgage LLC (GMACM) for Quarter 4 TNW Shortfall."

A. Okay.
Q. Have you seen this document before?
A. I don't recall seeing it. However, I was CC'd on it, so it's certainly possible that I have.
Q. Do you have any reason to believe you didn't get it?
A. No.
Q. Have you seen documents like this before?
A. Well, I -- this document is a request for action by the ResCap Executive Committee. I would have seen those before.
Q. Have you seen documents requesting the ResCap Executive Committee to forgive debt and convert that debt into a capital contribution?
A. I believe I've seen that before, yes.
Q. What was the purpose of that request?
MR. BROWN: Objection to form.
A. Well, I was not the CFO of ResCap at the time of this memo, so I can -- I wasn't a part of the detailed discussions of this, of this memo.
Q. Does that mean you don't know what the

purpose of the request was for?

A. I have a, I would say, general understanding that the purpose was for, as it indicates in the memo, to -- to provide capital for some -- for subsidiaries in order to meet tangible net worth covenants.

Q. Would you look at the second page of the document. It has the Bates number ending with 839 under the last section of Request. Do you see that?

A. You said 839?

Q. 839. It's (indicating).

MR. BROWN: It's got two different sets of Bates numbers.

MR. COHEN: Yes, I'm looking at the one at the top.

THE WITNESS: Okay. Oh, I see. Thank you. All right.

BY MR. COHEN:

Q. It's the second page of the document.

I would like to direct your attention under Request to the second sentence, "Specifically, I request approval of capital contributions in the form of forgiveness of

affiliate borrowings from RFC in the amount of $700 million," and then it goes on. Do you see that?

A. I do.

Q. And as we talked about, because they're requesting forgiveness, there has to be a debt there, otherwise it doesn't make any sense, right?

A. Agreed.

Q. Okay. You can put that one aside.

I'm going to hand you a document which has previously been marked as Hamzehpour No. 3. Would you take a moment to look at this?

(Document review.)

MR. COHEN: This has the Bates number RC40006568 through 6570. It's a memo dated June 25, 2009 from James N. Young, ResCap CFO, to the ResCap Executive Committee, Subject: Request for action by the ResCap Executive Committee, Capital Allocation from GMAC Residential Holding Company to GMAC Mortgage LLC (GMACM).

BY MR. COHEN:

Q. Let me know when you're through that.

A. Okay.

Q. Is this a memo you wrote?

A. I would suspect yes.

Q. Are you James N. Young?

A. I am.

Q. All right. And in June of 2009, you were the ResCap CFO?

A. Yes.

Q. You were also a member of the ResCap Executive Committee at that time?

A. I believe that's true.

Q. All right. At the bottom of the first page of Hamzehpour Exhibit 1, you state, "For the above reasons, I request the authority to allocate the capital of ResCap to its subsidiary GMACM by means of debt forgiveness by GMAC Residential Holding Company, LLC for the purpose of," and then it goes on?

MR. BROWN: I think this was Hamzehpour 3, David.

MR. COHEN: Isn't that what I said?

MR. BROWN: No, it's not.

MR. COHEN: Sorry.

BY MR. COHEN:

Q. At the bottom of the first page of Hamzehpour 3 is the language I just read? Do you see that?

A. Yes.

Q. So what you're asking for is to forgive the debt, and as we talked about, forgiveness doesn't make any sense without debt, right?

A. Yes.

Q. And you not only wrote this memo, if you look at the last page of Hamzehpour 3, which ends in 570, you actually signed approving your request, right?

A. Yes.

Q. So you were in favor of forgiving this debt, right?

A. Yes.

Q. All right. Thanks.

MR. COHEN: Take about five minutes? I'm going to go into a new topic.

MR. BROWN: Okay.

THE VIDEOGRAPHER: The time is 11:41 A.M. We're off the record.

(Recess.)

J. YOUNG

THE VIDEOGRAPHER: The time is 11:50 A.M. We're on the record.

BY MR. COHEN:

Q. Mr. Young, do you agree that in 2008 ResCap was facing severe liquidity issues and at the same time Ally Bank had excess liquidity?

MR. BROWN: Objection to form.

A. In 2008, ResCap, yes, had -- had liquidity issues. I cannot speak to Ally Bank, as I wasn't part of Ally Bank at that time.

Q. Are you familiar with the Brokering Consumer Loans to Bank project?

A. Yes.

Q. What was that project?

A. Generally speaking, it was a project to have ResCap broker loans to Ally Bank and then Ally Bank -- and then ResCap generally would buy them back under the MMLPSA.

Q. What was the purpose of that arrangement?

A. Well, this was back in two thousand an -- the end of 2008, is that correct? Do you -- could you refresh my recollection on when the broker arrangement came into play?

Plaintiff's Objection 123:5-128:20 Inadmissible hearsay (FRE 802)

Plaintiff's Objection 123:5-11: lack of personal knowledge (FRE 602)

Q. We'll give you a document.

A. Thank you.

Q. I'll give you -- I'll represent to you that the date of the broker agreement is 20 November 2008, and maybe at lunch we can make a copy of the document.

A. Okay. All right. Yeah, so end of 2008, beginning of 2009, the purpose of the agreement was to have ResCap origination production be brokered to Ally Bank and, again, sold to the -- sold to the -- back to ResCap.

The advantage to ResCap was the fact that it -- that arrangement would be a mechanism to essentially replace some third-party funding of ResCap's origination pipeline that would have been strained at the time.

Q. In what way did it replace third-party funding of ResCap's origination pipeline?

A. By the way, I want to state for the record that my responsibility as ResCap's CFO did not include Treasury. The treasury function did not report to me.

You had asked me about my responsibility at Ally Bank. I did have

responsibility for Ally Bank Treasury, but not ResCap Treasury as CFO.

Q. But you also testified earlier that you understood that you have been designated as Ally's corporate representative with respect to all matters relating to the MMLPSAs between GMAC Mortgage and Old GMAC Bank and between GMAC Mortgage and Ally Bank, irrespective of your responsibilities, rights?

A. Yes, I understand that. I just wanted to state for the record.

Q. Okay. But you're able to testify as --

A. I am.

Q. -- to these issues? Okay.

A. And I'm sorry, then repeat the question?

(Record read.)

A. Well, it provided for the loan to be brokered to Ally Bank so Ally Bank would fund the loan with the -- with the counterparty and then sell it back to ResCap under the MMLPSA. So that is a -- that is an effective replacement of funding requirements for those loans.

Q. Are you familiar with the 250.250 exception?

A. Not in a detailed way, but I am familiar with that phrase, yes.

Q. What is your general understanding of that?

A. The -- excuse me, that there is -- there is a restriction on the amount of origination activity that the bank is allowed to acquire. I believe that's what that refers to.

Q. Do you know whether it relates to any Federal Reserve requirements, bank regulatory requirements?

A. Well, I think I just said it's a bank regulatory -- it's a bank limitation on the amount of origination activity it can -- it could take from an affiliate.

Q. Did the Brokering Consumer Loans to Bank project impact that limitation?

MR. BROWN: Objection to form.

A. I don't recall.

Q. So you don't know whether loans brokered to Ally Bank by GMAC Mortgage and then originated by Ally will be subject to that limit

Plaintiff's Objection 126:2-127:4: lack of personal knowledge (FRE 602), improper lay opinion

or not?

MR. BROWN: Objection to form.

A. I don't recall right at this moment.

Q. What was ResCap's agreement with Ally regarding how they would be paid under -- so ResCap would broker the loan, broker it up to Ally, and then buy it back.

What were the payment arrangements that existed between the parties?

MR. BROWN: And by "Ally" you mean Ally Bank?

MR. COHEN: I do.

THE WITNESS: The payment arrangements for the repurchase of the loan would have been governed by the MMLPSA.

BY MR. COHEN:

Q. And what did the MMLPSA provide with respect to payment?

MR. BROWN: Objection to form. At what time?

A. That --

MR. BROWN: Objection to form.

A. That the, to the best of my recollection, as of the most recent version of

the MMLPSA, which I'm most familiar with, it would have involved the repurchase of all the loans that are held for sale by Ally Bank, and the document, of course, has all the terms of that agreement.

Q. Do you have a general understanding of what ResCap was to receive from Ally under the MMLPSA?

MR. BROWN: Objection to form.

A. The MMLPSA is an agreement between ResCap and Ally Bank where Ally Bank is selling the loan. So the receiver in that situation is Ally Bank. I think you'd mentioned the other way around.

Q. Uh-huh.

A. But the terms of the transaction again are set forth, but there's specific terms in there in terms of what the purchase price was to be.

Q. As between GMAC Mortgage and Ally Bank, who realized the benefits of points or other origination fees under the MMLPSA?

MR. BROWN: Objection to form. Which MMLPSA are you talking about?

J. YOUNG

MR. COHEN: In 2008.

MR. BROWN: The one that was operative before or after July 1, 2008?

MR. COHEN: The one dated November 20, 2008.

MR. BROWN: That's a broker agreement. You just made --

MR. COHEN: I'm sorry.

MR. BROWN: -- that representation.

It's dated July 1, 2008.

MR. COHEN: We're going to have to come back to this topic. We're going to need to make some copies during lunch.

MR. BROWN: Okay.

MR. COHEN: If that's okay.

MR. BROWN: You want to take a moment, I can hand them right now and have copies made of whatever document you need.

MR. COHEN: Yes, let's go off the record.

THE VIDEOGRAPHER: The time is 12 P.M. We're off the record.

(Pause in the proceedings.)

THE VIDEOGRAPHER: The time is 12:01

P.M. We're on the record.

BY MR. COHEN:

Q. Earlier today we were talking generally about tax allocation agreements and the Examiner's review of that. Do you remember that?

A. Yes.

Q. What is a tax allocation agreement?

A. From my perspective, the primary purpose of a tax allocation agreement is to -- to provide an understanding of how the tax attributes of a subsidiary that's within a consolidated tax return with -- it files a consolidated tax return with its parent would record tax -- those tax attributes for financial reporting purposes.

Q. Was ResCap party to a tax allocation agreement?

MR. BROWN: Objection to form. What time period are you talking about?

A. ResCap at a point was -- they had a tax allocation agreement, yes.

Q. At what point in time?

A. I would, to the best of my

recollection, if it wasn't the entire period of time that I was at ResCap, there were only small breaks in time, and -- and Generally Accepted Accounting Principles also has a default if there is no tax sharing agreement in place for how you would record the tax attributes on the subsidiaries' books and records.

Q. What is the GAAP default for how you would record the tax attributes on the subsidiaries' books and records?

A. It's referred to as a pure standalone basis, so it would essentially be that the tax attributes would be recorded as if that subsidiary entity was in fact the taxable entity, which of course, it's not, but that's the default under GAAP and the preferred. The reason it's a default is it's preferred under GAAP.

Q. Why is that preferred under GAAP?

A. Because we've talked before about the users of financial statements being able to make decisions from financial statements, and a standalone tax basis -- the disclosures and recording of an entity's tax attributes using a

standalone tax basis is easiest for the reader to understand because it's what any other consolidated tax filer would record.

Q. And is the purpose of a tax allocation agreement to get out of the GAAP default and contract for something else?

MR. BROWN: Objection to form.

A. Not in my opinion.

Q. When ResCap was a party to a tax allocation agreement with Ally, did it report as though it was the consolidated tax filer?

MR. BROWN: Objection to form. And by "Ally," you mean AFI?

MR. COHEN: I do.

THE WITNESS: There was various points in time where ResCap was treated differently for tax purposes. I don't recall the exact dates, but at some point in time when I joined the company, ResCap was a -- an LLC or C Corp., and somewhere along the line it moved to a partnership, so at that -- during that point in time, there were no tax attributes recorded as a partnership because of the fact that it was a partnership.

Then it -- then it moved off of that back to an LLC and -- and then certainly during all those periods of time, except for the partnership years, ResCap was utilizing the GAAP default, preferred, standalone tax attribute reporting method.

BY MR. COHEN:

Q. Do you recall in 2009 Mr. Marx negotiating with you over a tax allocation agreement between AFI and ResCap?

A. I recall, yes, some back and forth on tax sharing agreements, yes.

Q. Who was Mr. Marx?

A. He was a tax representative from Ally Financial Inc.

Q. Does he still work for Ally Financial Inc.?

A. I don't know.

Q. When is the last time you talked to him?

A. I can't recall, but it's been quite a while.

Q. On the ResCap side of negotiating the tax sharing agreement, who had responsibility

Plaintiff's Objection 133:24-134:23 Irrelevant (FRE 401, 402)

for that?

A. I think, as we said before, it was a -- it was a combination of Finance, myself, meaning Legal, Tammy Hamzehpour, and I would have had perhaps other people on the Finance and Tax staff look at it. That's when we -- you asked me for the names and I told you Cathy Dondzila and John Demro.

Q. As between that group of people, who would you say had the lead role? Who was primarily responsible for negotiating?

A. I would say myself, with Tammy Hamzehpour close behind.

Q. Did you mark up drafts yourself?

A. I don't recall.

Q. Do you recall, as between the team at ResCap, anybody marking up drafts?

A. No, I don't recall.

Q. Who had responsibility for communicating ResCap's position to Mr. Marx?

A. I would say, again, a combination of myself and Tammy Hamzehpour.

Q. Did you consider the tax sharing agreement to be a related party transaction?

J. YOUNG

MR. BROWN: Objection to form.

A. Yes.

Q. Did you consider the negotiation of the tax sharing agreement to be an arm's length negotiation?

A. Yes.

Q. Why?

A. Because it was.

Q. And what aspects of the negotiation lead you to the conclusion that it was an arm's length negotiation?

A. Because there was the discussion back and forth, there was considerations, not in the legal sense but conceptual considerations back and forth, just we -- it was arm's length. There wasn't any -- it was arm's length.

Q. When you say "conceptual considerations back and forth," what do you mean?

A. I mean what is the proper GAAP accounting outcome for a tax allocation agreement or most preferred; what's fair or what's not fair.

Q. What is the most preferred GAAP

outcome under a tax sharing agreement?

A. I think I did answer this one, but it's a standalone basis where the tax attributes are accounted for as if the entity were a filer, but of course, it's not.

Q. Who made the determination from ResCap's perspective as to what was fair and not fair?

MR. BROWN: Objection to form.

A. There was a process that ResCap went through to ensure that it was fair. That process included internal discussions with counsel, meaning Tammy Hamzehpour, discussions with the Executive Committee and the board of ResCap, discussions with the independent directors of ResCap, and ResCap had -- ResCap's independent directors also retained independent outside counsel, which is also, you know, for all those reasons that it was clearly arm's length.

Q. When you were dealing with Mr. Marx in your capacity as CFO of ResCap --

You were CFO at the time, right?

A. Yes.

J. YOUNG

Q. Whose interests, which corporate interests were you concerned about?

A. ResCap.

Q. Did you have any concern for Ally Financial's corporate interests while you were undertaking these negotiations?

A. My primary corporate interest was with ResCap. I -- Ally Financial Inc. at the time was a very important source of funding for ResCap, but my primary fiduciary responsibility was clearly with ResCap.

Q. You say -- what do you mean by your primary corporate interest was with ResCap? What does that mean?

A. It means my -- my corporate interest was with ResCap, pure and simple.

Q. Did you have a secondary corporate interest?

A. I did not have a secondary corporate interest.

Q. During the time that you were negotiating or discussing the tax sharing agreement with Mr. Marx, were you also discussing leaving ResCap and going to Ally

Plaintiff's Objection 137:22-138:15: irrelevant (FRE 401, 402)

Bank?

MR. BROWN: Objection to form.

A. No.

Q. Are you sure?

A. I have certainty that they were not connected in any way, and I believe that most of those conversations occurred well before anybody mentioned to me anything about going to Ally Bank, but I -- but it's possible that the signing of the final tax sharing agreement was dated in January of 2011, which was at or about the same time I may have been first asked to move to Ally Bank, but they are in no way connected.

Q. When you say "final tax sharing agreement," what do you mean?

A. I mean the updated version. There were several tax sharing agreements in place that during the time I first got there, during the time of the partnership, there was a tax sharing agreement in place. It needed to be updated, and I'm talking about the final, updated, executed version, which I think, you know -- well, yes, the final executed version,

which I believe was signed in January of '11.

Q. Prior to January of '11, did you receive a different version of a tax sharing agreement that had been signed by Ally Financial?

A. I -- I don't recall ever receiving -- I don't know. I don't know. I don't recall. We certainly talked about the draft, but you're asking me if I ever saw a document signed by somebody from Ally Financial, and I don't recall.

Q. Do you recall whether Ally Financial ever sent you, prior to January of '11, a document with instructions for you to sign?

MR. BROWN: Objection to form.

A. I believe they -- they had prepared something that was to be sent to me. There was -- and I have seen that. At some point in time, I'm sure I saw that.

(The court reporter has technical issues and there is a pause in the proceedings.)

THE VIDEOGRAPHER: The time is 12:15 P.M. We are off the record.

(Recess.)

J. YOUNG

THE VIDEOGRAPHER: The time is 12:17 P.M. We're on the record.

BY MR. COHEN:

Q. Mr. Young, I'm handing you a document which has been marked as Marx Exhibit 4. Would you take a moment to look at that, please.

I'm also going to hand you a document that has been marked Marx Exhibit 3. For the record, Marx Exhibit 3 has the Bates Nos. RC40016279 through 16384. It's titled, Exhibit A, Amended and Restated Agreement for the Allocation of United States Federal Income Taxes.

Marx Exhibit 4 has the Bates No. RC00028796 through 28801. It's also titled Amended and Restated Agreement for the Allocation of United States Federal Income Tax.

BY MR. COHEN:

Q. Mr. Young, have you seen these documents before?

A. I have.

Q. What is Marx Exhibit 3?

A. It's Amended and Restated Agreement of the Allocation of the United States Federal

Income Tax that is unexecuted.

Q. Is this a document that you negotiated on behalf of ResCap with Mr. Marx, who was negotiating on behalf of AFI?

A. It was never executed. So it was a topic of conversation, but it was never in force.

Q. Is Marx Exhibit 3 a document that you negotiated on behalf of ResCap with Mr. Marx, who was negotiating on behalf of AFI?

A. I discussed the -- I discussed this tax sharing agreement with him, yes. It's not a final document, so I think your use of the termed "negotiated" implies that it is.

Q. Why do you believe it's not a final document?

A. Because it was never executed.

Q. Do you know whether it was executed by AFI?

A. I don't recall.

Q. Was Marx Exhibit 3 ever presented to ResCap's board?

A. I believe it was, yes.

Q. Was Marx Exhibit 3 presented to

ResCap's board with a recommendation as to what the board should do with Marx Exhibit 3?

A. Yes.

Q. What was that recommendation?

A. That recommendation was to accept that tax sharing agreement.

Q. Why was that the recommendation to ResCap's Board?

A. Because it met the standard of being fair, plus it was beneficial to ResCap.

Q. In what way did it meet the standard of being fair?

A. It's an alternative for under a tax sharing agreement. Under GAAP, you know, it's a -- it's an agreement between related parties, which again, in this case, not arm's length. This particular draft was not arm's length, and it had an aspect to it that was -- was beneficial to ResCap, and so, yeah, it was -- it was -- it was -- it was given to the board for and suggested to be approved.

Q. Who made that recommendation to the board?

A. I don't recall exactly, but it was

likely to be myself and/or Tammy.

Q. Was it your personal belief as CFO of ResCap that this is a document that ResCap should sign?

MR. BROWN: Objection to form.

A. The -- was there a --

Could you repeat the question?

(Record read.)

MR. BROWN: Objection to form.

A. I would say it would be an alternative of something that we would have signed, which is why I gave it to the board, yes.

Q. What do you mean it would have been an alternative of something that we would have signed?

A. I mean, there are other alternatives as well that are -- that are -- that continue to be fair and, in the bigger scheme of things, ended up being the one that we signed. So it was fair for that purpose. There were alternatives for that purpose.

Q. At the time Marx Exhibit 3 was presented to ResCap's Board of Directors, was it your view that this document should be signed?

MR. BROWN: Objection to form.

A. Yes.

Q. Why did you believe that to be the case?

A. Because it accomplished the objective under the tax sharing agreement and had an additional benefit to ResCap.

Q. What was that additional benefit to ResCap?

A. That it contained a provision that was -- would allow ResCap to, under the tax sharing agreement, receive some temporary cash and temporary capital that, if offered by AFI, from a ResCap perspective, we were going to take.

Q. What do you mean by "temporary cash or temporary capital"?

A. This is a tax sharing agreement. A tax sharing agreement is all about recording tax attributes of a subsidiary and exchanging cash with the counterparty to the -- to the agreement, and those cash are two-way cash flows. But tax is tax and ResCap was not the tax filer. What we're talking about is ResCap

recording taxes as if it were.

Everybody knows tax is tax. You pay tax out. The only thing about tax is it's complicated and there's timing differences. Sometimes you pay more tax. And tax is different than financial reporting. Your taxable income is not the same as your financial reporting income.

I'm not talking about ResCap. I'm talking about the tax filer. So there are timing differences, but at the end of the day, tax is tax, meaning you pay your tax on what you earned, no more, no less, again, if you're a filer.

So, to the extent that there are timing differences, yeah, cash could come in, but it's going to go out because of the timing difference in tax. The timing differences I'm referring to would be something like the charge-offs of the allowance for loan loss or accelerated depreciation, whereby you don't have to pay the tax to the U.S. Government until at a later point in time.

All those complexities are all cash

back and forth, and all this provision did was accelerate, and eventually, at least at the time, we didn't know, we couldn't predict the future. It accelerated something that was going -- you know, it's temporary. It's not -- it's going to go back at some point in time from a tax perspective. That's what I mean by "temporary."

Q. What do you mean when you say, "At least at the time we didn't know. We couldn't predict the future"? What are you trying to caveat there?

A. I'm trying to say that the -- the particular advantage to ResCap at the time we were discussing this agreement with Bill Marx related to the fact that ResCap incurred losses, and under the standalone fair tax sharing agreement that everybody, you know, that most people in the GAAP world use, the -- those losses could not be recorded on ResCap's financial statements because we didn't know what the future Ally holds.

And this we could spend a lot of time talking about how taxes are recorded for

financial statement purposes, and again, I want to emphasize none of this is real tax at the ResCap level. This is all just accounting for financial reporting purposes.

All the tax attributes are owned by AFI and they are the tax filer. This is all about recording these entries at the ResCap level, pure and simple. But the losses of ResCap occurred -- incurred at that time in a standalone method of accounting but would not be benefited because you carry things back, but you can also carry things forward.

The accounting -- GAAP doesn't allow you to recognize a carry-forward until it actually occurs, but when it does occur, it occurs, and of course, you can't -- we don't know, you can't predict the future, and that's partially why GAAP indicates you can't recognize the benefit of a carry-forward until it occurs.

What this -- what this provision essentially did was create a situation where, for accounting purposes, ResCap would recognize that ahead of time but, otherwise, it wouldn't be able to under GAAP, and so the accounting

would result in a capital contribution.

But it's temporary because the next year -- and by the way, I think ResCap did in fact make money that would come right back under the tax sharing agreement and be paid back up.

Q. So it was a two-way agreement?

A. It was a two-way agreement.

Q. Now, you said that you recommended to the board and you thought that ResCap should sign Marx Exhibit 3 because it met the standard of both being fair and it was beneficial to ResCap.

What is the benefit to ResCap under Marx Exhibit 3?

MR. BROWN: Objection to form. Asked and answered.

A. Yeah, the benefit is I just explained the fact that there's a term in here that would allow ResCap to record for financial reporting purposes the tax benefits of the loss ahead of when ResCap would otherwise be able to under a tax sharing agreement.

This is all accounting. This is not actual tax filing because that all belongs to

AFI, and that would have created an increase in ResCap's capital at that time, a temporary increase in capital at that time.

And ResCap, of course -- we had a whole set of stuff going on to get our capital where we needed to get our capital, real capital -- transactions, cash, cash transactions, forgiveness of debt, whatever -- to generate real capital within ResCap.

So there was a -- there was a benefit there, but it was not significant from my perspective because of what I've said. One is it's temporary; two, that's not the purpose of the agreement in any, shape or form or in any way, and we had so much going on with our only source of funding, AFI. That's where the important capital generation activities were coming.

I was not going to back-door some -- some -- some -- some sort of strange accounting results for the sake of putting ResCap at risk.

Q. What do you mean, "I was not going to back-door some sort of accounting for the sake of putting ResCap at risk"?

J. YOUNG

MR. BROWN: Objection to form.

A. I'm saying that the -- that provision was -- they call it a little bit of a windfall to ResCap if it would have stayed, a temporary, temporary accounting capital addition if it would have stayed in there, temporary.

But, but the real needs of ResCap were being addressed elsewhere with AFI, and real transactions, not -- this is not to generate capital. This is tax allocation, financial reporting, pure and simple, two-way exchange of cash so that the readers of the financial statements can understand the financial statements of ResCap.

So what I'm saying is I -- and you'll get to it, but the Marx piece came out. We still had a very fair agreement, and in my view, that was the best position to be for ResCap because I did not want to jeopardize the real capital-generation activities that we were dealing with AFI on.

Q. When you said the Marx piece came out, what piece are you referring to?

A. I'm referring to the section that

we've been talking about that provides this -- this accounting increase to capital ahead of when it otherwise would be.

Q. Why did you refer to that as the Marx piece?

A. Simply because you referred to it as the Marx document.

Q. Oh, because it's Marx Exhibit 3?

A. Yes.

Q. Who originally proposed that provision in Marx Exhibit 3? Was it AFI or was it ResCap?

MR. BROWN: Objection to form.

A. It was not ResCap.

Q. Was there anybody else involved in the negotiation besides AFI --

A. No, but I --

Q. Let me finish.

Was there anybody else involved in the negotiation besides AFI and ResCap?

A. Not to my knowledge.

Q. Okay. So if it wasn't ResCap, AFI put it in, right?

A. Yes.

Q. All right. And you understood that to

Plaintiff's Objection 151:19-24 Lack of personal knowledge (FRE 602)

be a benefit to ResCap in addition to an otherwise fair agreement, right?

A. I understood it to be a temporary accounting benefit to ResCap in an agreement that is more than fair.

Q. Why do you think it's more than fair?

A. Because it's not arm's length. There is no way this agreement could exist on an arm's length basis.

Q. Even without this beneficial clause in it?

MR. BROWN: Objection to form.

A. I would have to speculate as to whether a third party would enter into a standalone tax sharing agreement, and I care not to speculate. But that standalone agreement is -- is the exact same agreement that most every other tax filer would report under.

(The court reporter has technical issues and the luncheon recess is taken.)

THE VIDEOGRAPHER: The time is 12:34 P.M. We're off the record.

(Luncheon recess.)

J. YOUNG

AFTERNOON SESSION

THE VIDEOGRAPHER: The time is 1 P.M. We're on the record.

J A M E S Y O U N G, resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. COHEN:

Q. Mr. Young, before lunch, we were talking about Marx Exhibit 3 and Marx Exhibit 4, and I believe you testified that Marx Exhibit 4 was an arm's length agreement but Marx Exhibit 3 was not. Did I get that right?

A. I would, yeah, I would say that Marx Exhibit 3 would not be something that a -- a third party would enter into with ResCap. I indicated that Marx Exhibit 4 is more akin to what other entities do for reporting of -- of income tax and so more akin to what you could perhaps find in the marketplace, although I'm not aware of any other tax sharing agreement among unrelated entities that has existed in the market.

Q. Was there any other reason other than you couldn't find another counterparty outside

of the Ally group of companies to enter into terms similar to Marx Exhibit 3 that you concluded that it was not arm's length?

A. Marx Exhibit 3, which is the document that has the -- I'm sorry, I just want to make sure we're talking about the same document.

Q. Sure. Take your time.

A. I'm sorry, could you re-read the question again?

(Record read.)

A. I don't believe Exhibit 3 is something that ResCap could obtain from any third party.

Q. But you also recognize that you've never seen a Tax Allocation Agreement between an entity and a third party, right?

MR. BROWN: Objection to form.

A. I've never seen such a thing, that's correct.

Q. So even Marx Exhibit 4, by that definition, would not be arm's length, correct?

A. Potentially, yes.

Q. Now, when you told me earlier that Marx Exhibit 4 was arm's length, you mentioned the process that ResCap went through before it

approved Marx Exhibit 4, and you mentioned internal discussions, the Executive Committee, the board, independent directors, independent from directors outside counsel, everybody had reviewed and discussed Marx Exhibit 4; is that correct?

MR. BROWN: Objection to form.

A. At the time, yes, I believe everybody had discussed this, yes.

Q. Was that also true with respect to Marx Exhibit 3?

MR. BROWN: Objection to form.

A. I would suggest that I believe the answer to that would be yes.

Q. Okay. When -- do you recall when you -- Marx Exhibit 3 was presented to ResCap's board?

A. I believe it was August of 2010 or July or August of 2010, I believe.

Q. Why is Marx Exhibit 3 -- why does the first paragraph say "this amended and restated agreement made as of November 1, 2009" if it wasn't presented to the board until August of 2010?

A. Because there was an existing tax sharing agreement in place since that point in time and this -- this obviously is an amendment of that agreement.

Q. Did the board approve ResCap's entering into Marx Exhibit 3?

MR. BROWN: Objection to form. Asked and answered.

A. Yeah, I did answer that question before. They delegated the authority for me to execute the agreement when I was ready to do so.

Q. Did they delegate to you the authority to negotiate away benefits that ResCap was receiving under Marx Exhibit 3?

MR. BROWN: Objection to form.

A. If there was a material change in the contract, I, irrespective of whether it was delegated or not, I would have gone back to the board and discussed that with them.

Q. Was there a material change in Marx Exhibit 3 before you signed it?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. I never signed Marx Exhibit 3.

Q. Was there a material change in the tax sharing agreement contemplated between ResCap and AFI before you executed the document?

MR. BROWN: Objection to form.

A. There was -- there was a change. The section that we've been referring to was taken out.

Q. My question is was that change material?

A. It's not material to the fairness of the agreement, but it's a significant enough change to the agreement where I felt it was necessary to take it back to the board.

Q. Why did you feel that was necessary?

A. Well, because it's a, you know, it's a change that was discussed and, I mean, a feature that was discussed previously and -- and it was revised, so I would naturally go back to the board.

Q. What was the board's reaction when you went back to them?

A. I don't recall specifically, but we had a fulsome discussion about the removal of that provision, what it meant from a tax

accounting perspective, and had discussion with the independent -- the independent director's counsel on the -- on the new agreement and the change.

Q. What did the independent director's counsel tell you?

MR. BROWN: Objection to form.

A. Well, we just discussed the overall purpose of the agreement, the fairness of the agreement. They were asking some questions about the provision, a couple of the provisions in the document, including the provision that was ended up being removed, and in addition, they wanted another adjustment made to the agreement that we did sign, and that change was made by -- by AFI.

Q. Did you have an understanding as to whether the board considered Marx Exhibit 4 to be as good of an agreement for ResCap as Marx Exhibit 3?

MR. BROWN: Objection to form.

A. I -- I have a view that, at the end of the day, the board agreed with the recommendation that Marx Exhibit 4 is fair and

appropriate for tax reporting purposes for ResCap.

Q. My question was did you have an understanding as to whether the board considered Marx Exhibit 4 to be as good of an agreement for ResCap as Marx Exhibit 3?

MR. BROWN: Objection to form. Asked and answered.

A. I don't have a view. I -- I don't recall a particular discussion, but as we've talked before, there was a -- an accounting capital benefit, temporary capital benefit that was removed, and that was discussed.

Q. So at least you recognized that you were giving something away by agreeing to Marx Exhibit 4 as opposed to Marx Exhibit 3, right?

MR. BROWN: Objection to form.

A. There was an adjustment to the agreement, but in the larger context of the purpose of the agreement and other things going on, I agree that -- I acknowledge that it was a give on that to -- to protect -- to come out with an agreement that's fair for this particular purpose and maintain the continued

discussions on capital on other fronts not involving this agreement.

Q. Did anyone from AFI suggest to you that if you didn't agree to drop that benefit from the tax sharing agreement, that they wouldn't give you capital?

A. I don't think anyone specifically had that discussion with me, no.

Q. So that was just a concern that you had that you raised internally with yourself?

A. No, I --

MR. BROWN: Objection to form.

A. The -- I certainly had at some point in time understood from AFI that they were very concerned about the provision that we're talking about, and concerned to such a degree that my professional judgment, yeah, it could have had an impact on -- on future transactions or even when we may have been working on it at the time.

Q. Now, you've testified repeatedly that this is just a temporary accounting benefit, right?

MR. BROWN: Objection to form.

A. It -- it is accounting for tax and it

depends on future events, but over the course of time in a normal situation, yes, there would be ins and outs, that one year may come in, the next year would go out.

Q. Did you have an understanding, given your view that this was a small accounting benefit, as to why AFI was so concerned about it?

MR. BROWN: Objection to form.

A. Well, my understanding as to why AFI was concerned about it was that it was a -- it would be a mechanism for contributing capital in some form, even if temporary, that was not fully contemplated by AFI or agreed to or -- or could be monitored or in any kind of way.

Q. When you say "contributing capital," you're talking about cash, right?

A. I'm talking about the accounting under a tax sharing agreement that would have resulted in the accounting for this as capital. There would have been cash coming through, but as a tax sharing agreement, as I said before, it's not permanent capital.

Q. But AFI certainly wasn't concerned

about accounting entries; they were worried about paying cash to ResCap, right?

MR. BROWN: Objection to form.

A. No, I think they would be concerned about accounting entries because the accounting entry would create capital and -- and it, you know, an increase in capital. Of course, it would take the form of cash. I'm not saying it's not. I'm saying it could be temporary, depending on future events, but the point is it's not a contemplated capital transaction. It's not a transaction where -- where we needed capital, our primary provider of capital at the time, our sole provider of capital at the time was AFI.

We were in very thoughtful, deep discussions about providing capital above the kind that we needed, permanent capital, not capital that comes through a tax sharing agreement, that had the risk of being returned in the subsequent year, and those -- those discussions were extremely important.

Q. You testified that AFI included this beneficial provision in Marx 3, right?

A. Yes.

Q. It wasn't your idea, right?

A. Correct.

Q. And that's the provision that called for AFI to make capital contributions to ResCap, right?

MR. BROWN: Objection to form.

A. The provision allows for the accounting by ResCap of a -- the benefit of a tax loss prior to the tax loss on paper, because again, as I've said, these are tax attributes, these are not -- these are taxable attributes that are allocated to ResCap; they're owned by AFI.

The only reason capital contribution even comes into play is because of Generally Accepted Accounting Principles, and we've actually had this discussion a little bit before. A related party transaction that is not arm's length could be a capital contribution, and that is -- that is really what we're talking about here, is the -- is the -- is that aspect of the agreement.

Q. But to be clear, this is not about a

paper loss and an accounting entry. That's not why AFI was concerned. AFI was concerned because they were going to have to give ResCap cash, right?

MR. BROWN: Objection to form.

A. No, I think it was --

MR. BROWN: Asked and answered.

A. No, I think it was because of the -- of the manner in which there would have been provided. We have all kinds of, on the other side of the equation, and proof of history of AFI giving capital to ResCap in various forms -- cash, debt forgiveness, loans. It was the form that it was coming in.

This, and again, it's not designed to be a capital contribution. It's for accounting for tax purposes. It would have resulted in an entry and the movement of cash, but that was not the reason for the agreement. It didn't have anything to do with capital.

Q. But AFI put this in. How could you say that they didn't want it in there? They gave it to you.

MR. BROWN: Objection to form.

A. I can say that they didn't want it in there because they -- they ended up saying, you know, that was something that they hadn't contemplated.

Q. What was something they hadn't contemplated?

A. The provision we're talking about and providing capital through a tax sharing agreement on a -- on an unplanned basis.

Q. Did you ask them why they put it in in the first place?

A. I may have. I don't recall.

Q. Do you recall what they told you?

A. No.

Q. You said you've looked at portions of the Examiner's Report?

A. Yes.

Q. Did you look at how much the Examiner calculated AFI would have had to pay to ResCap if Marx Exhibit 3 had been signed by you?

A. I looked at it briefly yesterday.

Q. Okay. Do you know that the Examiner calculated it at $1.77 billion?

A. I believe that's what the piece of

paper says.

Q. Okay. And do you understand that the Examiner was talking about cash transfers?

MR. BROWN: Objection to form.

A. I don't know what the Examiner was talking about. I haven't studied that section of the -- of the document.

Q. Do you know whether the Examiner in calculating $1.77 billion was using an Ally contribution as part of a settlement of $750 million?

A. I don't know.

Q. If the Ally contribution as part of a settlement went up, say, to $2.1 billion, would the damages under Marx Exhibit 3 go up?

MR. BROWN: Objection to form.

A. I don't know.

MR. COHEN: Let's mark this. This is 3.

(Young Exhibit 3, a document bearing Bates Nos. ALLY 435003, marked for identification, as of this date.)

BY MR. COHEN:

Q. Mr. Young, the reporter has handed you

Plaintiff's Objection 166:25-167:8: inadmissible hearsay (FRE 802)

a document that's been marked Young Exhibit 3. It has the Bates No. ALLY 435003. Would you take a moment to look at this.

(Document review.)

A. Yes. Okay.

Q. Have you seen this document before?

A. I have seen this, yes.

Q. Did you receive this document on or around September 9, 2010?

A. To the best of my recollection, no.

Q. When do you recall first seeing this document?

A. I do not recall seeing the document when I would have received it, but I'm aware of the fact that there was problems with this binder getting circulated and I'm highly confident I did not receive it around or near September 9.

Q. Do you recall receiving the binder?

A. I don't.

Q. How do you know you didn't receive it on or around September 9?

A. Because I -- I have no reason to sit on things. I don't sit on things as a matter of

course and I -- things just don't sit on my desk, so I couldn't have gotten it.

Q. When did you -- when do you recall first seeing this document?

A. I mean, my best recollection is yesterday.

Q. On or around September 9, 2010, did you have an understanding whether AFI's view was Marx Exhibit 3 really boiled down to just a handful of signatures each?

A. Will you repeat the question?

(Record read.)

MR. BROWN: Objection to form.

A. Do you mean completion of Marx Exhibit 3 was solely dependent upon signatures?

Q. Yes.

A. I would have thought that the case that would have been the -- well, there may have been -- actually, I don't know. There may have been some items that were changed in the documents between the time I had last seen it, but generally speaking, it was, subject to a final review, it was -- it was subject to being signed, to be executed.

Q. What do you mean by "subject to a final review"?

A. Well, if I've been delegated authority to approve something, I'm not going to just sign it. I'm going to take a final look at it and make sure it's in line with what the board had delegated for me to do.

Q. When you presented Marx Exhibit 3 to the board, there weren't items in there that you felt required further negotiation, were there?

A. Not to my recollection.

Q. And looking at Young Exhibit 3, I would like to direct your attention to the last paragraph where Mr. Marx writes, "The package looks daunting, but it really boils down to a handful of signatures each. We'll be calculating the 2009 tax allocation within the next month or so."

Does that refresh your recollection as to whether in September 2010 AFI thought the document was ready to be signed?

MR. BROWN: Objection to form.

A. I really can't speak for AFI. I was with ResCap at the time.

Plaintiff's Objection 169:13-25: inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602)

Q. And your view was, other than doing one last read through it, you were ready to sign it, right?

MR. BROWN: Objection to form.

A. My view was we're doing one final review to make sure everything was in order, I would have signed it.

Q. So if they had walked it over to your office, you would have read it, and if nothing was out of order, if it was consistent with what you presented to the board, you would have signed it, right?

MR. BROWN: Objection to form.

A. Given that hypothetical case, yeah, I would have signed it.

(Young Exhibit 4, an e-mail string bearing Bates Nos. ALLY 0245484 through 5485, marked for identification, as of this date.)

BY MR. COHEN:

Q. Mr. Young, the reporter has handed you a document marked Young Exhibit 4. It has the Bates No. ALLY 0245484 through 5485, and this is a string of e-mails which I'll represent to you

Plaintiff's Objection 170:2-16: inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602)

Plaintiff's Objection 170:17-171:6: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

you are not on.

Would you take a moment to look at this document.

(Document review.)

A. Okay.

Q. Did you have an understanding that in mid October 2010 AFI realized the impact of the provision in Marx Exhibit 3 that we've been discussing?

MR. BROWN: Objection to form.

A. At some point in time, I do believe I was informed about their concern.

Q. What did they tell you?

A. To the best of my recollection, that, you know, they were just realizing that this could result in -- could result in the recording of capital contributions and exchange of cash under a tax sharing agreement that involved two-way payments and changes over time and, accordingly, could result in capital contributions to ResCap that were not contemplated or otherwise formally agreed to in a more -- in a more fulsome, intentioned way.

Q. What do you mean "formally agreed to"?

A. Well, as I've said before, a tax sharing agreement is not a mechanism to generate capital; it's a mechanism to account for tax.

ResCap needed capital, obviously. Our sole source of capital was AFI at the time. It was extremely important that we negotiate with AFI to obtain capital, and again, they were our sole source of capital.

And we had many transactions where we formally sat down with them, went over what we needed from a capital perspective, and figured out how to get the capital in a thoughtful, reasoned, intentioned way, and we wanted that to continue.

Q. But they never threatened to take it away, did they?

MR. BROWN: Objection to form.

A. Take what away?

Q. Capital.

MR. BROWN: Objection to form.

Q. They never told you if you didn't sign Marx Exhibit 3, that they wouldn't provide capital, did they?

MR. BROWN: Objection to form.

A. Well, I could -- did they come right up and call me and say no, but I knew that they were concerned about the transaction and -- and it was a tax sharing agreement.

We had other mechanisms for obtaining capital. We didn't have to -- to "gotcha" on this with them in order to not, you know, to get capital in another way from them, and it was a tax sharing agreement.

Q. Well, you testified that ResCap in vetting this agreement took it to the board of directors, took it to the Executive Committee, took it to the independent directors, took it to outside counsel for the independent directors. You had reviewed it. The Legal Department had reviewed it. The tax people had reviewed it. The finance people had reviewed it. It certainly was formally agreed to within ResCap, wasn't it?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. As a tax sharing agreement, it was formally agreed to, yes.

Q. Every --

A. Within ResCap.

Q. Within ResCap --

A. Within ResCap.

Q. -- every provision of Marx Exhibit 3 was formally agreed to, wasn't it?

MR. BROWN: Objection to form.

A. The tax sharing, as a tax sharing agreement, it was, yes, it was agreed to and taken to the board.

Q. Okay. And on the AFI side, AFI is the one who made the offer in the first place because they put it into Marx Exhibit 3, right?

MR. BROWN: Objection to form.

A. Yes, we didn't ask for it.

Q. Okay. Let's go back to Young 3. If you look in the second paragraph after the enumerated items, I'd like to direct your attention to the third sentence, which says, "Anita Bhama advises that no additional governance is required at the Ally Financial Inc. level." Do you see that?

A. I do.

Q. Do you know who Anita Bhama is?

A. I know who Anita Bhama is.

Plaintiff's Objection 174:16-175:17: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

Q. Who is Anita Bhama?

A. She is on the Legal staff of AFI.

Q. Is she a lawyer?

A. To the best of my knowledge.

Q. Okay. So AFI proposes the language in Marx Exhibit 3, sends it to you, you negotiate it over a period of months, they understand you take it to the board of directors, who authorizes you to sign it after ResCap fully agrees with it, and AFI's lawyer says, no additional governance is needed. Do you still think AFI hadn't formally agreed to it?

MR. BROWN: Objection to form.

A. All I can -- all I knew was Anita Bhama was on the piece of paper. I don't know what Anita Bhama did.

MR. COHEN: Would you read back my question, please?

(Record read.)

MR. BROWN: Objection to form.

THE WITNESS: Again, I -- I don't know when I saw this piece of paper because the -- the information was lost. At some point in time, I was advised that they had

not agreed to it prior to me signing. And I don't let things sit on my desk.

BY MR. COHEN:

Q. And you just took them at their word?

MR. BROWN: Objection to form.

A. Took them at their word that they were not agreeing to it?

Q. Yes, that they had not formally agreed to it?

A. I believe I got a communication from the AFI CFO saying that they hadn't vetted it.

(Young Exhibit 5, an e-mail string bearing Bates Nos. ALLY 0424657 through 4658, marked for identification, as of this date.)

BY MR. COHEN:

Q. Would you take a moment to look at the document the reporter has marked as Young Exhibit 5. It's got the Bates No. ALLY 0424657 through 4658. It's a series of e-mails, and as with Young Exhibit 4, I'll represent to you that you are not copied on these e-mails.

(Document review.)

A. Okay.

Plaintiff's Objection 176:13-25: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

J. YOUNG

Q. Who is Mr. Mackey?

A. He was the I believe interim CFO of Ally Financial Inc. at that time.

Q. Did you have dealings with Mr. Mackey in connection with the tax sharing agreement?

A. I believe, as I just said, I was informed by him via e-mail that they had not yet vetted that around this time, around this period of time.

Q. Did you know that their view was that ResCap thought they were -- that AFI was just finalizing documents?

MR. BROWN: Objection to form.

A. Would you repeat the question, please?

(Record read.)

MR. BROWN: Objection to form.

A. I did not know what their view was.

Q. Do you know as we sit here today whether AFI has already used virtually all of its NOLs?

MR. BROWN: Objection to form.

A. I don't know.

Q. Do you know as we sit here today whether AFI has used pretty much all of the

Plaintiff's Objection 177:11-18: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

J. YOUNG

capital losses from subsidiaries, its subsidiaries, other than ResCap?

MR. BROWN: Objection to form.

A. I don't know.

(Young Exhibit 6, Master Mortgage Loan Purchase and Sale Agreement, Draft, 6/26/08, bearing Bates Nos. ALLY 0201210 through 0201225, marked for identification, as of this date.)

BY MR. COHEN:

Q. Mr. Young, the reporter has handed you a document marked Young Exhibit 6. It has the Bates No. ALLY 0201210 through 0201225, and it's titled Master Mortgage Loan Purchase and Sale Agreement, and it says Draft, 6/26/08.

A. Yes.

Q. Have you seen this document before?

A. I have, yes.

Q. What is this document?

A. This is the governing document over loan sales between GMAC Bank and GMAC Mortgage, LLC, which is a wholly-owned subsidiary of ResCap.

Q. Would you look at page 14 of this

Plaintiff's Objection 178:12-181:8: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

document. It has the Bates No. ALLY 0201224.

A. Yes.

Q. Notwithstanding that Young Exhibit 6 says "draft" on the cover, do you see your signature on page 14?

A. I do.

Q. Is it your understanding that this is the execution version of this document, that this is the operative MMLPSA?

MR. BROWN: Objection to form.

As of July 1, 2008?

MR. COHEN: Yes.

THE WITNESS: As of July 1, 2008, I would say yes.

BY MR. COHEN:

Q. How long was this document in effect? During what period of time?

MR. BROWN: Objection to form.

A. I don't recall exactly when it may have been amended, if it were amended, subsequent to this point in time, but this or some amended version was -- would have been in place through, up to or near the filing date of ResCap.

Q. Did you have an understanding with respect to the Mortgage Loan Purchase and Sale practices between GMACM and Ally Bank that Ally for a period of time would recognize as revenue only the net interest carry for the period that the loan was on Ally's books?

MR. BROWN: Objection to form.

A. I'm -- it depends on what time you're talking about. The -- the agreement would have -- the agreement was complicated. It was complex. Whether there was a period of time where interest carry only occurred, I can't say. I'm not sure.

Q. What is interest carry only?

A. That would be where you have a mortgage loan on your books and you record interest income on that loan, and that's the -- that's the sole piece, meaning the interest carry would be the interest income from the loan on the books.

Q. And you're talking about from Ally Bank's perspective, you don't know whether there was a period of time where that's the only thing it got?

A. Correct.

Q. All right. So do you know whether there was a period of time where GMAC Mortgage realized the benefit of any points or other origination fees?

A. I -- I can't -- I don't know for sure. It's a complex agreement.

Q. What is your understanding of the economics of Young Exhibit 6?

MR. BROWN: Objection to form.

A. My understanding of the economics of this is that the -- the bank would be in a position to fund these loans and that the bank would then -- and of course, ResCap would originate broker loans to the bank.

ResCap would then purchase the loans back from Ally Bank, sell the loans off to the market, Fannie and Freddie, and my high-level understanding of the agreement is that -- that Ally Bank would cover its costs and make a return and that most of the risks and rewards would flow to ResCap in the entire process of loan origination, loan sale and recording and servicing.

Q. When you say Ally Bank would cover it costs and make a return, what do you mean?

A. Well, I mean that Ally Bank is a regulated institution and transactions with affiliates need to be on arm's length from a regulatory perspective. So you can't have a transaction where the bank is not covering its costs with an affiliate or for any reasonable return.

Now, that reasonable return could come in a lot of forms. It could come in interest carry. It could come in the form of value gains when the loans are booked. Origination fees. Of course, there's costs to originate. There's underwriting costs. There's broker fees to be paid.

It's a complex set of factors, but they are I'd say common in the industry. But again, the answer to your question, the transaction would need to be arm's length from the sense of covering costs and there to be a reasonable return for Ally Bank or they couldn't enter into the transaction.

Q. Okay. With respect to Young Exhibit

6, what is the economics of the covering of cost and reasonable rate of return that Ally Bank was taking under this agreement?

MR. BROWN: Objection to form.

A. Well, you say "taking." It was allocated under the agreement, but it was -- there was -- it would have changed over time based upon the language of the contract.

Q. What language are you referring to?

A. The purchase price was defined as -- as it's net carrying value is defined by Generally Accepted Accounting Principles. I'm referring to Section 1.9 under Article 1 of Definitions.

Q. And how would that change over time?

A. Well, it could change over time because carrying values could change. So, for instance, the loans we're talking about are the loans held for sale on the books of Ally Bank, and under Generally Accepted Accounting Principles, depending on what period of time we're talking about, there would have been a couple of different options to in terms of how to record the carrying value of the loan, either

on a fair value basis, a lower of cost or market basis, or a fair value basis because you're applying hedge accounting to the portfolio of loans.

Q. Is it your testimony that if Ally changed the way it was accounting for the loans, that the economics under this contract would change?

MR. BROWN: Objection to form.

A. I am suggesting that if the -- the accounting, if the -- if the accounting changed, it could change the -- it could change the economics, yes.

Q. I'm not asking whether it could; I'm asking whether it did?

MR. BROWN: Objection to form.

A. I -- all I can speak to is my time at ResCap, so I really can't speak to the economics that may have been applied, you know, prior to -- prior to my time at the bank. I can tell you that, through the entire course of the agreement, this contract language was followed and there was a change to fair-value accounting in the bank at some point in time that did --

Plaintiff's Objection 184:6-185:18: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

that did create some changes in economics.

Q. You told me earlier, you testified that you understood that you were the 30(b)(6) witness, the corporate representative from Ally, and that you could testify truthfully and completely as to all matters relating to the MMLPSAs between GMAC Mortgage and Old GMAC Bank and between GMAC Mortgage and Ally Bank, do you remember that?

A. Yes.

Q. How did the economics change in Young Exhibit 6 when Ally switched to -- when Ally Bank switched to fair value accounting?

A. Well, the -- it's carry value would have increased on day one. So the carrying value would have gone to a fair value rather than a lower of cost or market.

Q. And what impact would that have had on Ally Bank and ResCap?

A. Generally speaking, that would -- by the way, I'm sorry, I should also mention that moving to fair-value accounting would not only mean that the loans are recorded at fair value but also any kind of accounting that was

connected with lower of cost or market would also be unwound, and one of those accounting conventions is the deferral of fees and costs, commonly referred to as FAS -- FAS91, F-A-S-9-1. That would have been undone as well.

So the accounting rules would have been followed and so what would have happened at the time would be that any kind of fees and costs would have been sort of taken out of the deferral equation, taken out of cost basis, taken out of the definition because they're no longer in the carrying value, and then it becomes a mark to market loan.

The pure fact of moving to a fair-value accounting does not of itself mean day one there's any kind of dramatic change. What could happen over time, and what did happen over time, is that the fair value of a loan when you originate it could change based on market conditions, and that did happen over time.

Q. And what impact did that have, that change have on the economics of Young Exhibit 6 for Ally Bank and ResCap?

MR. BROWN: Objection to form.

A. That change in the market, if that's what you're asking about --

Q. I am.

A. -- occurred? The change in the market would have had a -- been increased economic impact on the day one value of the loan. It would have decreased the origination fees that would have been received by the bank.

It's a phenomena where a loan is originated -- the customer basically has a choice of here's an amount of origination fee to pay and here's your interest rate. I think we've all been through it that if you pay a higher fee or a lower origination fee, your right is going to go up or down.

So it's the dynamic of those -- of that fact that will drive a lower origination fee and a higher value on the loan in the market, but that's all driven by market conditions.

Q. At the end of the day because of that change in the market, as a result of Ally Bank switching to fair-value accounting and the related changes that came with that, did this

contract become more lucrative to Ally Bank and less lucrative to ResCap?

MR. BROWN: Objection to form.

A. I would say it became more lucrative to Ally Bank. I wouldn't necessarily say it became less lucrative to ResCap because this is a market change and my view is there is more profit overall in the market. So it's not like the profit in the market was a contained sphere that grew through mortgage rates coming down and -- and then a lot of refinance activity, so there was a lot of economics flowing to both ResCap and the bank.

Q. But on a per-loan basis, if you assume that the market did not grow, you take that phenomenon out, on each loan as a result of those changes, this contract became more advantageous to Ally Bank and less advantageous to ResCap, right?

Plaintiff's Objection 188:15-189:18: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

MR. BROWN: Objection to form.

A. No. Actually, I'm saying even on a loan-by-loan basis, the profit on that loan could expand.

Q. But as between the profit on the

loans, Ally Bank was taking a greater share on each loan and ResCap was taking a smaller share; as between the two of them, the economics changed, correct?

MR. BROWN: Objection to form. Mischaracterizes testimony. Asked and answered.

A. I'm saying that if you got a finite, you know, and the market grows, I can't tell you if it was, you know, 90/10, 80/20, if it stayed 90/10, 80/20. It may have, but the numbers were bigger for everybody. I have not done the analysis to know if there was a pro rata detriment to ResCap.

Q. Do you know if anyone at Ally Bank did do that analysis?

A. Not that I'm aware of.

Q. Do you know who Adam Glassner is?

A. I do.

Q. Who is Mr. Glassner?

A. He's an ex-employee of Ally Financial and Ally Bank.

Q. What was his job?

A. I'm sorry, I need to correct that. I

Plaintiff's Objection 189:24-190:13: Inadmissible hearsay (FRE 802)

believe he was an ex-employee of Ally Bank. He was a dual officer of Ally Bank and GMAC Mortgage, I believe.

I guess I shouldn't say. I don't know who actually -- he was in the group of companies of AFI.

Q. Do you know whether he ever raised concerns about the way Ally Bank was interpreting Young Exhibit 6?

MR. BROWN: Objection to form.

A. I am aware of the fact that he raised a -- a question.

Q. What question do you recall him raising?

A. I believe, to the best of my recollection, the substance of his question was that the day-one gains we're talking about here under fair-value accounting, even in an expanding market of profitability, should not have been accruing to Ally Bank.

Q. Did he explain how he came to that view?

A. Not to me.

Q. To anyone at Ally Bank?

Plaintiff's Objection 190:25-191:8: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

MR. BROWN: Objection to form.

A. To anyone at Ally Bank? Not that I'm aware of.

Q. Did anyone explain to you his specific concern?

MR. BROWN: Objection to form.

A. Not to my recollection.

Q. Did you do anything when you heard about that concern?

A. Yes.

Q. What did you do?

A. I, first of all, informed my superiors. I may have first found out about it -- I can't even -- I don't recall who I may have even first found out from about the issue.

I would have launched an investigation into the concern, so we embarked upon a process between ResCap, Ally Bank, and AFI to determine whether his concerns had merit.

Q. What conclusion was reached?

A. That the contract was followed at all times on a consistent basis, so no change was made.

Q. Do you know whether Ally Bank actually

demanded that -- that ResCap return some money to it for a period of time where Ally contended the contract was not followed?

A. I'm aware of that, yes.

Q. And why did Ally Bank do that?

A. I would have to refresh my recollection of the specific facts, but it had something to do with cash being passed to -- to ResCap by the bank when the bank was under fair-value accounting and, accordingly, then not in accordance with the contract.

Q. Did Ally Bank also demand interest on that money?

A. I believe the answer to that is yes.

Q. Why?

A. Because it is a regulatory requirement that if there is a transaction between affiliates that was considered an error, that the bank is reimbursed for interest. It's a regulatory requirement.

Q. Do you consider Young Exhibit 6 to be a related-party transaction?

A. Yes.

Q. Would you turn back to Young Exhibit

Plaintiff's Objection 192:22-197:12: Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

1, please, and I'd like to direct your attention to the page with the Bates No. ALLY 0242856.

A. I'm there.

Q. And I'd like to focus your attention to 6.4.2, which is Transfers of Financial Assets. Do you see that?

A. I do.

Q. And the first paragraph says, "Transfers of assets between a parent and subsidiary or between entities under common control should generally be accounted for by the receiving entity at the carrying amounts in the accounts of the transferring entity at the date of the transfer (i.e., historical costs)."

Do you see that?

A. Uh-huh.

Q. Is that the way Young Exhibit 6 works?

MR. BROWN: Objection to form.

A. I would say yes.

Q. How so?

A. Because this is referring to the carrying amount that's recorded in an entity. So Ally Bank, the carrying amount is fair value and the purchase price is at the net carrying

amount, which is fair value. It's -- there's not -- and it's done according to the agreement 45 days later. There is no separate mark to market that's done when the transaction occurs to up refresh the value from when it was first put on the books of Ally Bank.

This is -- this is referring to a transaction, and this would -- this would -- this is an example where it's recorded by one entity, and if it's purchased by the related entity, it should be purchased at their carrying value, which is what it says.

Q. Well, it says historical cost?

A. And that is their -- it's -- well, it's the carrying amounts. I mean, why it says historical costs, it's not always going to be true, so I can't explain why it -- why they put that in there, but it's at the carrying amount.

The reason it's in there is because, under Generally Accepted Accounting Principles, it's getting to this view that you don't refresh the value. It doesn't mean it can't -- it's not a fair value to begin with, but you don't refresh it on the day that you do the

transaction.

Q. In your view, is fair value the same thing as historical cost?

A. It may or may not be.

Q. What is the difference between fair value and lower of the cost or market?

A. That would -- the primary difference there is that, under fair-value accounting, you would record an asset at a higher or lower value depending on the market. Lower of cost or market is different in the sense you would only record the downside but not the upside.

Q. When you say "higher or lower value depending on the market," higher or lower than what?

A. Than your -- than your previous value.

Q. Where do you get the previous value from?

A. From your established basis on your books, so...

Q. Would that be historical cost?

A. Well, it may or may not be depending on how the account -- how the account is accounted for.

Q. Is fair value the same thing as historical cost?

MR. BROWN: Objection to form. Asked and answered.

A. Well, I mean, the -- there weren't gains running through Ally Bank's books, if that's what you're asking.

Q. No, I'm asking you whether historical cost is the same thing as fair value?

MR. BROWN: Objection to form.

A. And I would say generally not, but it -- I think it depends on facts and circumstances. I mean, you could have a purchase of an asset and you're at a cost and that is the fair value.

Q. So it might be, but by definition, it is not?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. It might be, but by definition, I would say it's trying to get at two different things, yes.

Q. Okay. And so if you have a contract which is a transfer of financial assets, I take

it you agree that Young Exhibit 6 contemplates transfers of financial assets?

A. Yes.

Q. And it contemplates transfers of financial assets between related parties?

A. Yes.

Q. And so if you have a contract that has transfers of financial assets between related parties for something other than historical cost, it would violate Ally's accounting policy, correct?

MR. BROWN: David, I'm not going to let you do that. Look at the second paragraph of 6.4.2.

MR. COHEN: You can cross when I'm finished.

MR. BROWN: And I will.

MR. COHEN: Okay.

MR. BROWN: I'm not going to let you mislead the witness on the document.

MR. COHEN: You can cross when I'm done.

MR. BROWN: Believe me --

MR. COHEN: You can object. That's

J. YOUNG

what the rules provide.

MR. BROWN: Objection.

MR. COHEN: Do you need a copy?

I take that as a no.

Would you read back my last question, please.

(Record read.)

MR. BROWN: Objection to form.

A. I don't think that's always the case. We were not violating any Ally accounting policy.

Q. How do you know that?

A. Because I've been practicing GAAP for 30 years. I know accounting, and we weren't violating any -- any accounting policy.

Q. Before --

A. It was also audited by external auditors. It was audited by internal auditors. Many eyes were on it. We were not violating any accounting policy.

Q. But you didn't do that work yourself, right?

MR. BROWN: Objection to form.

A. Which work?

Plaintiff's Objection 198:10-199:25: Inadmissible hearsay (FRE 802)

Q. The work of determining whether this contract, Young Exhibit 6, complied with Young Exhibit 1, Ally's accounting policy?

MR. BROWN: Objection to form.

A. I didn't specifically look at it, but I certainly have enough experience to know whether it would have or not.

Q. Okay. And as of this morning, you testified that until today you had never even seen Young Exhibit 1, right?

A. That's correct.

Q. Okay. So you certainly, in making your determination in real-time as to whether Mr. Glassner's concerns were founded, you didn't make reference to the policy, did you?

MR. BROWN: Objection to form.

A. I did not make reference to the policy. I'm not sure I need -- I don't believe I needed to.

Q. When you joined ResCap in 2005, were you involved with ResCap's portfolio of mortgage servicing rights?

A. I would have been involved in the context of accounting for them, yes.

Q. Did you have any dealings with respect to entering an arrangement with Ally Bank so that Ally would hold the mortgage servicing rights in order to realize savings, economies of scale?

A. I assume --

MR. BROWN: Objection to form.

A. I assume you're referring to the, what we commonly call the MSR swap agreement.

Q. I am.

A. And I was not a party to the initiation or development of that. I can't tell you when it first came into play, but I am certainly aware of the agreement.

Q. What is your understanding of what that agreement calls for?

A. My understanding of that agreement is that it is essentially a hedge vehicle such that the Ally Bank is obtaining a hedge of their -- of the asset on the books of Ally Bank, and that hedge is in the form of a total return swap, which is essentially what the MSR swap is, a total return swap.

Q. Do you have an understanding as to

what happens with increases in the value of Ally Bank's mortgage servicing rights vis-a-vis GMAC Mortgage under the MSR swap?

MR. BROWN: Objection to form.

A. I have an understanding, yes.

Q. What is that understanding?

A. It's a complicated -- it's a very complicated agreement, but the general understanding is that changes in the -- in the value of the MSR that come from market value changes or value creation under the capitalization mortgage servicing rights is swapped to ResCap in exchange for a LIBOR-based return. And the same is true if the value goes up or the value goes down for those reasons I discussed or indicated. All that would flow to ResCap.

In addition, servicing income, expenses, things of that nature would also flow ResCap. So it was a total return swap, and Ally Bank would receive a LIBOR-based return and it acts as a very effective hedge of the asset.

Q. Is there anything in the MSR swap that limits the universe of mortgage servicing rights

to which it applies?

MR. BROWN: Objection to form.

A. I think that it applies to -- there was a common knowledge among the parties to which the -- how the agreement was to be applied.

Q. And what was that common knowledge?

A. They would act as a total return swap; that -- that increases the day-to-day changes in the value would be swapped back and forth; servicing income and servicing fees would be swapped back and forth; but particularly, the purchase of MSRs from a correspondent loan were not passed back and forth for obvious reasons. It's a purchase of an MSR, it's not the creation of an MSR, but that the creation or the capitalization of an MSR that would come through a -- a non-correspondent loan, that value would be passed to ResCap.

Q. Could you give me the obvious reasons why correspondent loans were excluded in practice?

MR. BROWN: Objection to form.

Mischaracterizes testimony.

A. Because they were -- they were purchased by Ally Bank. There was a cash out-of-pocket to Ally Bank. It would be completely nonsensical for Ally Bank to pay a third party for that MSR, pass cash to ResCap along with all the economics of the asset, and -- and not -- and not get -- only get it back once from ResCap, potentially.

So it's a double purchase of an asset, which is completely nonsensical.

Q. Do you have any understanding as to whether the language in the agreement comports with the parties' practice?

MR. BROWN: Objection to form. What agreement are we talking about?

A. Which agreement are you referring to?

Q. The MSR swap.

MR. BROWN: Objection to form.

A. Which component of the MSR swap?

Q. Any component.

MR. BROWN: Objection to form.

A. The language is -- is -- the language is -- is not specific to that point.

Q. What does that mean?

Plaintiff's Objection 203:12-204:9: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

A. It means it doesn't come right out and say correspondent loans which are purchased by Ally Bank for which a payment is made are -- are removed from the cash flows that go back to ResCap, but that is in what prac- -- that is the practice that was in place, that was the intent of the parties, and it was the logical conclusion to a total return swap.

Q. How do you know that was the intent of the parties?

A. Because the parties were operating under the agreement for years without any question.

Q. And to be clear, there's nothing in the swap that distinguishes among mortgage servicing rights, right?

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. Again, I don't believe the MSR swap -- the MSR swap does not specifically talk about correspondent loan MSR versus consumer-originated loan MSR. It's not in there. There are things in those agreements that I -- that I view have indications of what

Plaintiff's Objection 204:15-205:3: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

J. YOUNG

the purpose was and why we did what we did, but there's not specific language.

MR. COHEN: Why don't we take a break. I'm going to go through my notes. We may be wrapping up.

MR. BROWN: Okay.

THE VIDEOGRAPHER: The time is 2:12 P.M. We're off the record.

(Recess.)

THE VIDEOGRAPHER: The time is 2:24 P.M. We're on the record.

BY MR. COHEN:

Q. Mr. Young, during the break, did you discuss your deposition testimony with anyone?

A. We discussed a few things, yes.

Q. What did you discuss about your deposition testimony?

A. We discussed an item that refreshed my recollection on the question you had about whether the economics changed with respect to the MMLPSA, and I now recall that the bank was always under fair-value accounting from the date of Exhibit 6 that you have through the entire period of the arrangement.

Plaintiff's Objection 205:17-208:23: Inadmissible hearsay (FRE 802)

The fair value treatment prior to August of 2009 was a result of an election to use hedge accounting on the HFS portfolio of the bank. And when you elect hedge accounting, you do -- you have the ability under GAAP to record those -- the asset side on a fair-value basis. And the bank was under fair-value accounting from the entire time of this period.

You had asked me about the -- the payment that was made from the -- from the -- from ResCap to the bank that was a result of the investigative work we did that I described, and we had all parties at the table, including an outside review by KPMG as an independent party and the interlogger of AFI, by the way, was also involved, and we looked at the accounting in accordance with the agreement, and there was a period of time from January 1 of '09 through July 31 of '09 where we had made an error on the accounting -- I'm sorry, not on the accounting. We made an error in the -- under the MMLPSA because the bank was, under fair-value accounting, the contract requires the purchase price to be at its net carrying value, which was

fair value, and the payment came about because the -- that's not what was used under the contract for that period of time January 1, '09 through July 31 of '09, and all parties agreed that that was the case, ResCap, Ally Bank, and AFI, and hence, the payment was made from ResCap to Ally Bank with interest as we discussed.

Q. And that payment was a related-party transaction, right?

A. That payment was between related parties.

Q. Was that an arm's length negotiation?

A. I would say absolutely. It was both sides. No one coerced anyone to come to the conclusion they came to.

Q. Was legal counsel involved?

A. I believe the answer to that is yes.

Q. Who specifically?

A. I don't know who specifically, but to the best of my recollection, Anne Cummings, who was the chief auditor of AFI, had indicated that either Global Security or Legal was involved.

Q. Who represented ResCap?

MR. BROWN: Objection to form.

A. This would have been in March of 2012, by the timing of this review, and my primary dealings were with Jim Whitlinger, who was the CFO of ResCap at the time.

Q. He's not a lawyer, is he?

A. Not to my knowledge.

Q. Who was legal counsel for ResCap?

MR. BROWN: Objection to form.

A. I do not recall.

Q. Do you recall whether ResCap had legal counsel?

A. I don't know if ResCap had legal counsel on that matter or not.

Q. Did AFI have legal counsel?

A. I think I just responded that -- that Anne Cummings, the chief auditor, informed me that legal counsel, internal counsel. I'm not sure if external counsel was involved.

Q. Other than that issue, did you discuss other aspects of your deposition testimony during the break?

A. No.

Q. Could you explain in detail the investigative work that AFI did after hearing

Plaintiff's Objection 208:24-210:7: lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible hearsay (FRE 802)

Mr. Glassner's concerns?

MR. BROWN: Objection to form.

A. I can explain certainly what I was aware of and what I participated in. It was a -- so I believe Mr. Glassner first let -- first came up to Internal Audit, I believe, perhaps, or maybe the Controller's Group at AFI. The AFI Audit Committee was informed, to the best of my knowledge. The Ally Bank Audit Committee was informed.

The detailed work would involve pulling out the agreements, re-reading all sides, re-reading the agreements, and a detailed analysis of the transaction flow during that period of time to see how the -- the cash settlements were occurring during the period of time in question. And so there was detailed accounting work done by the accounting teams.

In addition, as I mentioned, AFI, perhaps even AFI's Audit Committee, engaged KPMG as an independent party. KPMG came in, reviewed transactions, performed interviews, issued a report on the -- on the matter and -- and of course, that was considered. And again, in the

J. YOUNG

end, the conclusion was that absent the period of time where the -- from January 1 of '09 through August of -- through July of '09 when the $50 million payment was made between ResCap and the bank, that the transactions were accounted for in accordance with the agreement.

MR. COHEN: Pass the witness.

MR. BROWN: Nothing at this time for Mr. Young.

MR. CHRISTENSEN: Nothing here.

MR. MATZA-BROWN: Nothing.

MR. COHEN: Thank you very much for your time. Appreciate it.

THE VIDEOGRAPHER: This concludes today's deposition. The time is 2:31 P.M. We're off the record.

oOo

_____

JAMES YOUNG

Subscribed and sworn to
before me this day
of 2013.

_____

J. YOUNG

CERTIFICATE

STATE OF NEW YORK )
: ss
COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That JAMES YOUNG, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 6th day of November, 2013.

_____

KATHY S. KLEPFER, RPR, RMR, CRR, CLR

J. YOUNG

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J. YOUNG

NAME OF CASE: In Re Residential Capital LLC
DATE OF DEPOSITION: November 6, 2013
NAME OF WITNESS: James Young
Reason Codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----------X
IN RE:
RESIDENTIAL CAPITAL, LLC, et al.

Civil Action No. 12-12020 (MG)
----------X

***HIGHLY CONFIDENTIAL***

VIDEO DEPOSITION OF AL CELINI

Philadelphia, Pennsylvania

November 8, 2013

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Designation & Counter-Designation
Orange Highlighting = Joint Designation

Reported by:
Rebecca Schaumloffel, RPR, CLR
Job No: 66995

November 8, 2013
9:03 a.m.

Video deposition of Al Celini, held at the WESTIN HOTEL, 99 S. 17th Street, Philadelphia, Pennsylvania, New York before Rebecca Schaumloffel, a Registered Professional Reporter, Certified Livenote Reporter and Notary Public of the State of New York.

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* * *

A. CELINI

THE VIDEOGRAPHER: This is the start of tape labeled number one in the deposition of Al Celini taken in the matter In Re Residential Capital, LLC, et al. being held in the United States District Court, Southern District of New York, civil action number 12-12020 (MG).

The deposition is being held at the Westin Philadelphia, 99 South 17th Street, Philadelphia, PA 19103. The date is November 8, 2013. The time is 9:03.

Counsel will be appearing on the stenographic record.

Please swear in the witness.

A L C E L I N I, called as a witness, having been duly sworn, testified as follows:

MS. MILLER: Before we start, I just want to correct on the record the caption that was put on the record at the beginning of the deposition stated that the case was pending in the

A. CELINI

District Court for the Southern District of New York, and the case and the civ number put on the record is actually related to the case which is this case that's pending in the Bankruptcy Court for the Southern District of New York.

MR. BROWN: Atara, do you want counsel to identify themselves on the record before you begin?

MS. MILLER: I think they are identified on the record already.

MR. BROWN: Let's have everyone on the phone identify themselves. We had an additional beep there. I want to make sure everyone on the phone is identified on the record.

MR. DENK: That's Kurt Denk from Kramer Levin on behalf of the Committee. K-U-R-T, last name D-E-N-K.

MR. ADAMS: Jason Adams from Kelley Drye.

MR. STANISCI: Jared Stanisci

A. CELINI

from Cadwalader.

MR. BROWN: Anyone else on the phone?

MS. KAM: Sarah Kam from Reed Smith on behalf of Wells Fargo.

MR. BROWN: Anyone else on the phone? Okay.

BY MS. MILLER:

Q. Good morning, Mr. Celini. I am Atara Miller from Milbank, Tweed, Hadley and McCloy, and we represent the ad hoc group of junior secured note holders in this action.

THE VIDEOGRAPHER: One moment, please. I don't know if the witness was sworn in. I apologize.

MS. MILLER: He was.

A. Okay.

Q. Do you understand that you are under oath here today?

A. Yes, I do.

Q. And you have been sworn in, right?

A. Yes, I have been.

Q. With that, I am going to go over

A. CELINI

just a couple of basic ground rules for a deposition. As you know, today's deposition is both being videotaped, but it's also being recorded by the Court Reporter in a stenographic written record. She is writing down every word that I say and that you say. So if you could wait for me to finish asking my questions before you start answering, that would be appreciated, and I will do the same. If you could, also, give verbal responses to my questions, no nods of the head, smiles, et cetera.

A. Understood.

Q. And there may be times during the day where your counsel will object to a question that I ask. I am going to ask to you still answer my question, unless you are specifically instructed by your counsel not to answer that question.

Does that work?

A. Understood.

Q. Okay. If at any time during the day you want to take a break, just let me know. I would be happy to take a break. I

A. CELINI

am just going to ask that you answer any question that I have already placed that's pending before you -- before we take a break. Okay?

A. Yes.

Q. Mr. Celini, have you ever been deposed before?

A. No.

Q. Did you sit for interviews with the examiner?

A. Yes.

Q. Were those interviews recorded?

A. Yes, they were. I believe they were.

Q. Is it your understanding that those were audio recordings?

A. Yes.

Q. And were you under oath when you gave those interviews?

A. No, I was not.

Q. Do you believe that everything that you told the examiner was truthful and accurate?

A. Yes, absolutely.

A. CELINI

Q. Would it be consistent with the testimony that you would have given had you been under oath?

A. Yes.

Q. Mr. Celini, where do currently work?

A. I'm an executive officer for Sun National Bank based out of Vineland, New Jersey.

Q. How long have you been there?

A. About 11 months.

Q. When did you first start working for Ally?

MR. BROWN: Objection to form. What do you mean by "Ally"?

MS. MILLER: Either Ally or any of its subsidiaries.

A. It was in 2001, I believe, January of 2001. And at the time, it was GMAC.

Q. And did you work for GMAC?

A. Yes.

Q. What was your position when you first joined in 2001?

A. CELINI

A. I joined as the CFO of GMAC Bank.

Q. How long did you hold that position for?

A. Three years.

Q. And what was your next position?

A. Chief risk officer.

Q. And how long did you hold that position for?

A. Three years.

Q. Did you have any other positions after being chief risk officer?

A. Director of lending development.

Q. And how long did you have that position for?

A. Again, until I departed. Until I left.

Q. And when did you leave?

A. It was at the -- I believe it was at the end of 2009.

Q. And just so we are clear, did there come a time when GMAC Bank became Ally Bank?

A. Yes.

Q. When was that?

A. CELINI

A. I forget the actual date that it occurred. I know there was a rebranding initiative, so I don't recall the exact date. But it was part of my last four years that I was there.

Q. Throughout the time that you described when you were CFO, chief risk officer and then director of lending development, you always worked for GMAC Bank or Ally Bank?

A. Correct, yes.

Q. You have to wait me for to answer -- finish my question.

A. I have to get my --

Q. It's okay. We will get into a groove.

A. My groove, yes.

Q. So you continuously worked for the entity that was known as either GMAC Bank or Ally Bank as applicable during the relevant period?

A. Yes.

Q. So if I say "Ally" today, unless I am more specific, I will be referring to

A. CELINI

Ally Bank or GMAC Bank. Is that understood?

A. Understood.

MR. BROWN: I will object to that. Just because Ally has been used so differently throughout these cases by different folks. Ally is sometimes referred to Ally Financial, Inc. Ally has sometimes referred to Ally Financial, Inc. and its non-debtor Ally subsidiaries. Ally at times has referred to Ally and all of its subsidiaries. So if you want to refer to Ally Bank as Ally, that's fine. But I will have to object to the question because it is just not going to be clear to me what Ally means.

MS. MILLER: Well, I am telling you right now what Ally means. It means Ally Bank.

MR. BROWN: Fine. I am telling you unless the question is clear, I am just going to have to object. Because using Ally to refer to Ally Bank is

entirely unclear.

MS. MILLER: If that's the basis for your objection, you can object and you can defend that to the bank when it's clearly defined a term on the record and the witness has accepted that definition.

Q. So we will go ahead with, if I refer to Ally, I will be referring to Ally Bank, which is the entity that you are familiar with and that you were personally employed by; is that right?

A. Yes.

Q. Okay. If I refer to "the bank," you will also understand that I am referring to Ally Bank or GMAC Bank as applicable during the period I'm talking about, right?

A. Yes.

Q. Can you just go through your post-high school education for me?

A. Post high-school --

Q. College and on.

A. The undergraduate degree, Fordham University, major in accounting. Graduated

1984. Sat for the CPA exam a few years later. Passed the New York State public certified accountant and that's my formal -- I have not attended graduate school. So I have done my professional, all my CPU during that time.

Q. And are you currently a certified public accountant?

A. Yes, I am.

Q. Have you maintained that certification throughout the period from the time you got it until today?

A. Yes.

Q. What were your duties and responsibilities as CFO of GMAC Bank?

A. To oversee all the financial activities, financial reporting and safety and soundness of the bank in its financial matters.

Q. What responsibility, if any, did you have for reviewing financial statements prepared by ResCap subsidiaries, ResCap and its subsidiaries?

A. None.

Q. And what were your duties and responsibilities as the chief risk officer?

A. To establish the risk parameters, risk monitoring activities for credit risk, operational risk, which would include compliance as well as safety and soundness of the depository.

Q. When you say "compliance," are you including compliance with applicable regulations?

A. Yes.

Q. And are you also including compliance with GAAP accounting principles?

A. It's not my responsibility as chief risk officer, it was not.

Q. What else were you ensuring compliance of, regulations and anything else?

A. Regulations. Obviously, regulations, compliance with the bank's policies.

Q. Were you responsible for reviewing bank policies?

A. Yes.

Q. Were you responsible for

reviewing major transactions to ensure that they complied with the applicable regulations and bank policies?

MR. BROWN: Objection to form.

Q. You can answer.

A. Yes.

Q. What were your duties and responsibilities as director of lending development?

A. They were primarily to work to expand the asset activities of the bank. Working with the various affiliate entities of GMAC. That would be auto lending, commercial lending, mortgage lending activities.

Q. And what are the asset activities of the bank?

A. The bank was primarily -- had mortgage lending assets, mortgage assets, residential mortgage assets as the primary asset base. Also did -- at various times had auto financing activities in it, and we did some commercial real estate lending for some auto dealers.

A. CELINI

Q. So was one of your jobs to increase the amount of residential mortgage assets that the bank was --

A. Yes.

Q. --involved with?

A. So the answer is yes.

Q. She is very good. She got your answer, but you should still wait.

A. I will get with it eventually.

Q. Mr. Celini, can you explain what the 250.250 exemption is?

A. 250.250 exemption is a -- sort of an acronym for Reg W 12 CFR, I think it's 243 K, I think, I forget the actual citation, but it's -- it was the exemption that was allowed under Reg W to allow a depository to purchase assets from affiliated entities, and it created a series of limitations and restrictions as to how it could be acquired and the types of assets that could be acquired.

Q. And did it also have limitations on the amount of assets that could be acquired?

Plaintiff's Objection 18:11-19:18 Irrelevant (FRE 401, 402)

A. Yes.
Q. What were those limitations?
MR. BROWN: Objection to form.
Q. You can answer.
A. Limitations were no more of 50% of production.
Q. No more than 50% of production could be from assets being acquired by a related entity?
MR. BROWN: Objection to form.
A. So I don't recall the letters and verse of the regulation today. So there were -- there were restrictions as to who was 50% of the production of the affiliate, I believe, that was the requirement there, and no more than 50% of the depository's assets could be from those activities as well.
Q. And what -- does Reg W regulate affiliated entity transactions?
A. Can you clarify that? I am not sure.
Q. What is Reg W?
A. Reg W is a banking regulation that requires, specifies the terms and

conditions by which a bank can do business with a non-banking affiliates. So prescribes a litany of, you know, items, you know, prohibited covered transactions, low quality asset activities and prohibits the purchases of assets from affiliates and certain conditions subject to exemptions.

Q. Did that apply to Ally -- or GMAC Bank or Ally Bank's transactions with GMAC Mortgage?

A. Can you clarify that? What type -- so it would apply for a number of transactions. A lot -- many of its transactions, but the exemptions only applied to certain ones. So I need clarification.

Q. Let me reask my question. For purposes of Reg W, was GMAC Bank or Ally Bank considered a banking entity?

A. Yes.

Q. And GMAC Mortgage was a non-banking affiliate, right?

A. Right, it was a 23A affiliate.

Q. Were you responsible for viewing the bank's records to ensure compliance with

A. CELINI

Reg W?

MR. BROWN: Objection to form.

At what time period are you talking about?

MS. MILLER: When he was the chief risk officer.

A. Yes.

Q. And did you -- did you have that responsibility at any other time?

A. As CFO, I had responsibility as well.

Q. And so if my calculation is right, that's from about 2001 when you joined the bank through, approximately, 2007?

A. That sounds correct.

Q. Do you know exactly when you transitioned into being the director of lending development?

A. I don't recall the specific date.

Q. Do you recall approximately when in 2007 or 2008 that happened?

A. That's probably --

MR. BROWN: Objection to form. Mischaracterizes testimony.

A. CELINI

MS. MILLER: No speaking objections, please. You can just object to form.

A. Again, I don't recall a specific date. It was probably in midway through 2007 would be my, you know, best estimate.

Q. And did there come a time -- sorry, did the 250.250 exemption limit the amount of expansion in the residential mortgage assets that the bank could acquire?

MR. BROWN: Objection to form.

A. Atara, I think you need to clarify it for me. In what way? It limited -- can you be more specific as to what --

Q. Let me ask it differently. In reviewing the bank's records, did there come a time where you understood that the bank was getting close to the limitations imposed even under the 250.250 exemption?

MR. BROWN: Objection to form.

A. So, yes, there were -- we carefully watched the level of production purchase from the affiliates and carefully

Plaintiff's Objection 22:17-23:15 Irrelevant (FRE 401, 402)

monitored it to know when we were coming close or near to the limits and monitored it carefully so we would not exceed.

Q. And did there come a time when you observed that you were coming close to those limits?

MR. BROWN: Objection to form.

A. So various times, so yes. I mean, you know, we -- we -- it happened several times. I mean, during -- from the beginning of the bank's existence to when we started using the exemption, through its entire existence. I mean, again, we watched that level very carefully.

Q. Can you explain, very generally, how mortgages -- mortgage assets were acquired and then either -- how mortgages were acquired by the bank at the time that you joined the bank?

A. Again, you want to be more specific? Because the bank had several ways to acquire mortgages when I joined the bank.

First, when I joined the bank, it -- there was no native origination

capacity of the bank. It was formed as a de novo. So we built those functions. So at inception, its first assets that it was buying were through the 250.250 exemption. So it purchased loans that it had evaluated and underwritten as to meet its criteria, its set credit policy criteria, and it would underwrite and review the loans, and then, after closing, it would buy them as closed loans.

Q. Who would it buy those loans from?

A. It bought loans from GMAC Mortgage.

Q. And did there come a time when the bank started originating loans itself?

A. Yes.

Q. And when was that?

A. I don't recall the specific dates, but soon after the bank was formed, the bank, you know, moved -- acquired the origination capacity, the individuals and systems and platforms of GMAC Mortgage's correspondent lending group and its warehouse

lending group. So even then, you know, as a correspondent, the bank didn't originate it, purchased loans from third-party correspondence. But it had a small group that it -- a small group within that did broker loans. So -- but it wasn't its primary activity. So the bank did very little of its own native origination to purchase closed loans from third-party correspondence. It purchased loans using the 250.250 exemption.

Q. About what timeframe was that?

MR. BROWN: Objection to form.

A. Atara, I don't recall the date. It was generally, probably in the bank's early years. Maybe 2003. Sometime.

Q. And did that continue to be the way that the bank acquired loan assets, by purchasing them from GMAC Mortgage under the 250.250 exemption, acquiring them under correspondent lending agreements and some small amount of origination through the bank itself until 2000 -- late 2007?

A. So those methods were the primary

asset -- acquisition strategies used. I don't recall the date. But in -- when we -- the financial crisis started, you know, started to bubble in, probably, 2007, late 2007, when we -- in my new role as director of lending development, was tasked with the ways to explore, ways to, you know, accelerate or expand our lending beyond the 250.250 exemption with our affiliate GMAC Mortgage.

Q. What were the benefits to the bank in expanding its lending capacities beyond the 250.250 exemption?

Plaintiff's Objection 26:12-24: Irrelevant (FRE 401, 402)

A. As a source of the benefits we would accrue from having, you know, greater asset base to earn net interest spread, fees, originations, et cetera. So just advantageous for it to use, you know, to deploy its liquidity to earn -- to earn, have an interest earning assets. The bank had ample liquidity and in 2007, there were challenges starting, in some severe challenges, at the affiliate.

Q. And what would the impact have

A. CELINI

been on the bank if GMAC Mortgage didn't have the liquidity to originate loans?

MR. BROWN: Objection to form. Mischaracterizes testimony. He said GMAC Bank.

MS. MILLER: You said I did?

MR. BROWN: No, I think the witness said GMAC Bank.

A. So can you clarify your question, Atara, are you asking about the bank, the benefits to the bank or the benefits to the affiliate?

Q. My question is, not benefits -- you answered benefits. I appreciated that. My question now is, what would the impact on the bank have been if GMAC Mortgage was unable to acquire -- was unable to originate loans that were then available for acquisition by the bank?

MR. BROWN: Objection to form.

A. I believe I understand the question. So I will answer. The -- the affiliate was one of the major sources of earning asset acquisition that we had. Not

Plaintiff's Objection 27:14-28:9 Irrelevant (FRE 401, 402)

the only. We had correspondent capability to buy from third parties. So, you know, if the affiliate wasn't able to originate, we would lose an opportunity to have, you know, make available to us, you know, conforming, you know, Fannie Mae, Freddie agency loans that were, you know, of a favorable risk profile for us.

Q. So if GMAC Mortgage didn't have enough liquidity to be able to originate the loans, the bank would have lost or would have had a significant source of assets negatively impacted, right?

MR. BROWN: Objection to form.

A. Atara, I wouldn't characterize it as "significant." It would have been one of the ways that, you know, the bank was always able to originate on its own. We just -- you look to maximize, you know, your acquisition. So if the affiliate was not there, the bank would have been fine. It would have had more than adequate activities there. So to sustain itself. Didn't need the -- the bank never needed the AFI's assets. It desired

JSN Objection
28:10-29:11
FRE 611(a)
(Non-responsive)

A. CELINI

them for its own profitability. And, you know, again, GMAC Mortgage was a service provider to us as well. Subserviced our loans. They provided administrative services to us. So, you know, if our -- if the affiliate was not able to originate, it could have been -- it could have weakened them to a point that they would not have been able to support our activities and we would have had to get them from third-parties.

Q. And would the bank have had to pay more if it had to get those services from third parties?

MR. BROWN: Objection to form.

A. I am not sure, Atara. I mean Reg W requires that you -- services be, you know, under 23B, be at market rates or better to the bank. So we would have been able to find those services and been able to sustain ourselves fine.

Q. Reg W doesn't really require that it be market rate, right, you said market rate or better?

MR. BROWN: Objection to form.

A. CELINI

THE WITNESS: I am not quite sure why -- that you are objecting. But whatever you want do, you're fine.

Q. He's just going to object to every question, so you can ignore it and keep on answering.

MR. BROWN: That characterization, Mr. Celini, is incorrect. As you have already seen, I don't object to every question. I only object when I don't understand the question or when she mischaracterizes your testimony or any number of things. Her question that she just asked --

MS. MILLER: Nope. No speaking objections.

MR. BROWN: -- Mischaracterizes your testimony and was entirely unclear to me.

Q. The basic rule, let's go over it again. He is going to object. Unless he specifically says "I instruct the witness not to answer," you can just disregard his

objection. He is putting it on the record. He will have to justify it before the Court. Unrelated to this deposition. You just go ahead and answer.

A. My point is, if I don't understand --

Q. Ask for clarification.

A. I'll make sure you clarify.

Q. Thank you.

A. So again, therefore, can you restate your question again? Sorry.

Q. Yes. I don't remember it. A transaction would still be consistent with Reg W if it was at a better than market rate for the bank, right?

MR. BROWN: Objection to form.

A. I understand and that's correct. 23B requires arm's length terms, market terms or better to the depository.

Q. And Reg W is specifically intended to protect commercial banks, right?

MR. BROWN: Objection to form.

A. In general. I am not an attorney. But in general, the requirement of

the foundation of Reg W, in my judgment, is it was established to protect insured depositories from, you know, from abuses that could occur from non-banking activities.

Q. In late 2007, do you recall approximately what percentage of the bank's mortgage assets were being acquired from GMAC Mortgage?

A. I don't recall.

Q. Do you remember if it was something north of 40%?

MR. BROWN: Objection to form.

A. Honestly, I can't answer that. We kept the -- we kept ourselves close to the 50% limit but just below it to make sure that we had cushion for any potential coverage transactions that could arise. So, again, I don't know the exact number, but typically, we would give ourselves some cushion away from the 50% level. So it would be not 50%, it would have to be some number less than 50%.

Q. So 47% sounds like it might be reasonable?

Plaintiff's Objection 32:6-23Irrelevant (FRE 401, 402)

A. CELINI

MR. BROWN: Objection to form.

A. You know, I can't answer that. I don't know. Again, it could have been that number. It was monitored on a daily basis.

Q. When you say that you wanted to give yourself some amount of cushion away from 50% level, what percentage of cushion would you have been comfortable with?

MR. BROWN: Objection to form.

A. Any number -- as a general rule, we try to give ourselves a level of cushion based on the amount of transactions we had. So a covered transaction, a violation would occur if we exceeded that. So the range could vary from time to time. So, again, I don't feel comfortable giving you, telling you what the cushion was. I mean, it varied depending on, you know, where we were with the originations. What was the -- what was our intercompany balance with the affiliate. You had to aggregate many exposures to see where you were with your, you know, transactions with affiliates. So it varied.

Q. Would 25% have been the number

A. CELINI

that you were looking at or would that be too much of a cushion?

MR. BROWN: Objection to form.

Asked and answered.

A. In general, 20% or did you say 25?

Q. I said 25.

A. 25 would probably be too big of a cushion. But I am sure that -- in any point in time, we may have had a 25% difference from -- away from our 50. So that would be, generally, would have been viewed as, you know, more than enough cushion, but I am sure, again, it varied up and down.

Q. Would 35% have been viewed as more than enough cushion?

MR. BROWN: Objection to form.

A. I think I answered your question. I don't know -- I think I am -- I have made this clear to you that, you know, there is a 50% limit. We managed it to make sure that we didn't exceed it. And, you know, some days we were closer to it. Other days we were off. Again, it depended on our asset

A. CELINI

sale activities. You understand that in the banking world you acquire assets and you also sell them. So at any point in time your asset levels can fluctuate up and down. So it was not a precise measurement that we had. We knew what our top limit was. And the bottom limits could vary.

Q. Right. So I understand all of them. I am not asking you about what the asset level was. What I am asking you about is you knew what your top limit was and you said that you observed and monitored to make sure that you had a sufficient cushion, and I am trying to figure out when you say "sufficient cushion," is that 5%, is it 10%, is it 25%?

MR. BROWN: Objection to form.

A. So I think I understand your question, and I am telling you that the amount of cushion depended on the aggregate exposures we had with our affiliates. And it could change from time to time. Dependent on what -- if we had asset sales activities, what our other native production levels were.

A. CELINI

In other words, if the bank had it was originating -- if it's own native production levels originations came, were lower, that could create an issue with the limit. So we had to -- so you had to look at the seasonal, cyclicality of originations and the asset sale activity. So we didn't, you know, it varied. And I hope you don't have to ask me this again. You know, we made sure we didn't exceed it. And, you know, the bottom limit, you know, it depended on.

Q. So you said in about late 2009, when you transitioned to being -- sorry, you said in around late 2009, you were tasked with developing ways to expand the lending capacity of the bank. What were you referring to?

MR. BROWN: Objection to form.

I think he said he left in 2009.

Q. Did I say 2009?

A. Yes.

Q. Sorry. Let me restate that. In late 2007, when you were tasked with considering ways to expand the lending assets

at the bank, what did you come up with?

A. We had a variety of different strategies that were laid out and one of the major ones that we -- that we were looking to expand was because of the restrictions required under the Reg W 250.250 limits, it was fairly -- it was a difficult task to monitor your levels and limits. It was a fairly, you know, to stay in compliance. So one of the activities that I was tasked with was to find a way to have a brokering activity done between the affiliate and the banks so the bank could have more of its own origination capacity under the regular -- under the rule. So those would count as originations so we would not have to -- we would have a bigger portion. We wouldn't have to watch the 250.250 limit as much.

Q. Can you explain what brokering activity was?

A. Do you want me to explain sort of --

Q. To whom?

A. Do you want to understand what a

mortgage brokering is or this specific transaction?

Q. The specific brokering activity that you -- that was one of the core parts of this initiative.

MR. BROWN: Objection to form.

A. I believe I understand your question. The brokering -- the brokering strategy that was being evaluated was to have GMAC Mortgage broker loans to GMAC Bank. Or if it was Ally, at the time. I don't know if it was at the time. So -- but the bank. So to have them broker loans so that the bank would underwrite and fund the loans in the bank's name.

Q. And whose idea was that?

A. A number of people. We had a task force that was tasked to work on that. It was a fairly large group of people.

Q. And what was your role in that task force?

A. I was the executive -- one of the executive sponsors. I was the bank's executive sponsor.

A. CELINI

Q. What's it meant to be the executive sponsor?

MR. BROWN: Objection to form.

A. I was the executive that was, you know, that oversaw the project, the work streams of the various tasks that were assigned there and the different teams that were working on it.

Q. Do you know who Joe Cortese is?

A. Joe Cortese was the bank's chief accounting officer.

Q. Do you recall whether Mr. Cortese had any involvement in this task force?

A. I don't recall. I don't recall specifically. He may have. But I don't recall -- because he wasn't -- he came to the bank at a different period of time. So I am not sure if he was directly involved at the project when I was involved with it.

Q. And what about, do you know who Cathy Dondzila is?

A. Yes, I do.

Q. And do you recall whether Cathy Dondzila was involved in this project

A. CELINI

when you were --

A. Not early on in the project. But later on.

Q. What was her involvement later on?

A. She was a representative from GMAC Mortgage. I think she was one of the finance representatives from the affiliate.

Q. And do you recall what her responsibilities were?

MR. BROWN: Objection.

Objection to form.

A. Again, she was one of the finance project members from the affiliate.

Q. Do you recall having any discussions with her about the project?

A. Atara, I had multiple discussions with almost -- primarily with the project leads, the work stream leads, but we conversed with many people. So on lots of topics. So I am sure I had a conversation with her, or one or two.

Q. Was Cathy Dondzila one of the project leads?

A. CELINI

A. I don't recall. But, again, she was -- she was in the work stream for finance for the affiliate.

Q. So did this idea develop into what became known as the broker consumer loans to bank project?

A. I don't recall what the end project was. I think we just -- we just called it broker to bank as that was the way I characterized it. I don't know if it had a formal -- that may be somebody else's characterization.

Q. I will go with broker to bank because materials I have seen have BCL2B, which is very complicated. Broker to bank is much simpler.

A. It was a large initiative. There were a number of stakeholders involved. The project team probably consisted of maybe 30 to 40 people at various times based on different -- different approaches.

Q. As the executive sponsor, were you actively involved in discussions relating to the broker-to-bank project?

MR. BROWN: Objection to form.

A. I was actively involved at the high level components. A lot of the discussion was in the weeds at the functional level, systems, ledgers, accounting. So I didn't get involved in the day-to-day granular discussions of the work streams. Only at the top level project level.

Q. So were you responsible for developing the major objectives of the project?

A. Yes.

Q. Who else was involved in developing those objectives with you?

A. There was an executive from the affiliate. I am trying to remember. There were a couple -- there were a number of executives of the affiliate. Jim Ferriter was probably the one who ended up being the sponsor on the affiliate side. Again, there were a number of sponsors that were being considered. So he probably ended up being the one at the end.

Q. Is there anyone else at the bank

who was involved in developing the general -- overall objectives of the project?

A. We had many. We had full input from the executive team, the CFO, chief accounting officer. You know, we had -- it was -- it was -- my multiple stakeholders at the bank had input into it.

Q. And was part of your job collecting their input and then implementing it as part of the project?

A. Yes.

Q. And what was your understanding of the overall objectives of the project?

A. The goal was to develop a regulatory GAAP compliant -- regulatory and GAAP compliant methodology that would allow for the safe and sound brokering of loans from the affiliate within the bank's credit parameters to fund in the bank. Close in the bank's name.

Q. And did you have discussions about what the net economic impact of the transaction was supposed to be?

MR. BROWN: Objection to form.

A. CELINI

A. There were numbers of discussions. The primary objective was to be able to have the bank provide liquidity to fund these -- fund the loans within its credit parameters.

Q. Mr. Celini, you testified earlier that you were interviewed by the examiner in connection with your activities at the bank; is that right?

A. Yes.

Q. Do you understand that the examiner issued a report with respect to his investigation into the bank and ResCap?

A. I understand that they did, but I have not seen it.

Q. Mr. Cortese, I am going to show you a document --

MR. BROWN: Celini.

Q. Sorry, Mr. Celini. I am reading off the labels. It's not my fault.

Mr. Celini, I am going to show you a document that was previously marked in this matter as Cortese Exhibit 8.

Mr. Celini, if you could look

A. CELINI

back to the document that's Bates stamped on the bottom EXAM0015456. It is a Power Point presentation titled Brokering Consumer Loans to Bank Project, Legal Entity Revenue Expense and Broker Fee Proposal, dated November 19, 2008.

MR. BROWN: I don't want to cause a problem with your deposition. For some reason my document has multiple pages with the Bates stamp ending in '54 and multiple pages with Bates stamp ending in '55.

MS. MILLER: Right. Those were produced in native form and native files are given a single Bates number that prints on every page of that document. So those were two native attachments and then there is the document that we are actually looking at, which is the one --

MR. BROWN: 56.

MS. MILLER: -- that begins EXAM00015456.

MR. BROWN: Got it. Thank you.

A. CELINI

Q. Mr. Cortese, have you ever seen this document before?

A. I am not Mr. Cortese.

Q. I am going to do that throughout this exhibit.

Mr. Celini, have you seen this document before?

MR. BROWN: By "this document," are you referring to the entire E-mail package that is Cortese Exhibit 8 dated February 28, 2012, or just the Page '456?

MS. MILLER: I'm just referring to the Power Point document that I identified on the record, that begins at page EXAM00015456.

MR. BROWN: Does that Power Point go through the end of the document? Just so I know what document we are talking about.

MS. MILLER: It ends at EXAM00015476.

MR. BROWN: Thank you.

A. Atara, can you restate your

A. CELINI

question now that we have gotten that squared away.

Q. Yes. Mr. Celini, have you ever seen the Power Point presentation titled Brokering Consumer Loans to Bank Project dated November 19, 2008?

A. No.

Q. Mr. Cortese, if you can --

MR. BROWN: Celini.

Q. Sorry. It's going to be a longer day than I thought.

Mr. Celini, if you could turn to the page ending in the Bates stamp '459 titled Summary. It says "The GMAC Mortgage broker will have a lending relationship with GMAC Bank." Is that a true statement under the broker-to-bank project?

A. Well, GMAC Mortgage was to have a brokering relationship to the bank. So you said lending relationship. But it would be a brokering relationship as the objective. So, yes, GMAC Mortgage was to be the broker and the bank was to be the lender.

MR. BROWN: Lines 9 through 10?

A. CELINI

MS. MILLER: Yes, I misread it.

It is a reading problem on my end.

Let me clean that up. Thank you

for --

A. More coffee. That's what I always tell them.

Q. We might need to take a break.

Mr. Celini, looking at the summary on the page ending in Bates stamp '15459, it says "GMAC Mortgage broker will have a brokering relationship with GMAC Bank (lender.)" Is that an accurate statement under the broker-to-bank project?

A. Yes.

Q. It then says that "GMACM will enter into a broker agreement with GMACB where GMACM will perform origination and processing services and submit loan application packages."

Is that also consistent with your understanding of the project?

A. Yes.

Q. So we are clear, GMACM is referring to GMAC Mortgage, right?

A. CELINI

A. Yes.

Q. And GMAC B is GMAC Bank?

A. That's correct.

Q. And looking down to bullet number 4, it says "GMAC Bank will recognize fee income, net carry, incur broker fees and underwriting expenses." Is that also consistent with your understanding?

A. It's -- the primary objective of this activity was for the bank to fund loans in a regulatory compliant way through a brokering activity. So in -- an make sure it recognized all of its income and expenses under GAAP and that it complied with the regulations as it did it. So fee income would be part of it. Net carries is something that needs to be defined. You know, that can have different interpretations. But it would definitely incur broker fee in underwriting.

Q. Okay. Mr. Celini, do you have an understanding of what the Cost Basis for GMAC Mortgage's purchases of the loans from the bank was supposed to be?

A. CELINI

A. I have an understanding of what the term Cost Basis professionally. But I don't -- didn't have privy to all of the, you know, the basis and methodology used by the affiliate. It wasn't my responsibility to oversee those.

Q. Okay. Looking at the next page in the Power Point presentation -- before we get there. Do you understand that --

MR. BROWN: It's a problem with my mic. It fell off. You are fine. He is just trying to tell me to put on my mic.

Q. Is there a difference -- sorry. Strike that.

Can there be a difference between GAAP accounting entries and a net economic impact of a transaction?

MR. BROWN: Objection to form.

A. I am not sure I understand -- I am not sure I understand where you are going with that. But, no, I don't quite understand. So GAAP accounting is the law, right. We have to -- you would have to

follow in the situation. So -- and the other term that you said, I recall, could be again, defined. It is net economic impact. I don't know what that would contain, right.

Q. So let me give you an example. If GMAC Bank originates a loan and collects $10 of fees related to that loan and defers the $10 of fees under FAS 91 and then sells that loan to GMAC Mortgage, do you have an understanding of what, from a GAAP accounting perspective, the bank would show as income?

A. So, yes. In that example, as you explained it, the -- whatever deferrals were booked as, under FAS 91 would need to be reversed when the loan was sold.

Q. Okay. And what do you mean -- how would -- how from a technical accounting and ledger entry perspective would you reverse the FAS 91 deferrals?

MR. BROWN: Objection to form.

A. You actually want me to explain debits and credits here?

Q. I do.

A. So when you defer the $10 fee

under FAS 91, you would debit the deferred fee account, and when you sell the loan -- and then that deferral would be accreted into income over the duration of the loan asset, and at some point in time, if the loan was sold before that duration had been, you know, between the end of the loan period, loan's life on the balance sheet, you would credit. So reverse out the deferred loan fee and debit, you know, an expense or another revenue account. In this case it would be a revenue account, as you would credit the asset and debit the revenue account for this. If you want, I can draw T accounts and map that out.

Q. I might give you a piece of paper.

A. Okay.

Q. I am going to hand you a piece of paper, which, when you are done marking it, we will mark it as Celini Exhibit 1. Can you map out what you were just describing?

A. So I have done -- on this account I have shown T accounts for when the loan is

booked or funded, how it is booked, debits, credits, cash, loan and fee.

Q. Can you describe the numbers, the entries and the numbers?

A. Using your example, if the loan was originated at -- for 100 and it had a $10 fee -- fee incurred, that you would book the loan at 100. You would debit loans at 100. You debit deferred fees for 10 and you'd credit cash for 110, for the amount of the cash outflow.

Transaction 2 would be loan sale. So at that time, you would credit the UPB of the loan, whatever it was remaining. But in your example, 100, okay. You would reverse -- you credit the loan fee for 10 and you would -- again, depending on the period of whether this occurred. If it occurred the same day, you'd take the whole amounts out. But if it occurred one month later, it would be whatever, less the deferral would be. So if you -- in this case, let's make it nine. Make it clear for your example. You would have -- when you book -- when you book the

fee income, so you take off -- you credit one in this example. Cash would be -- let's just use 109 in the example. So that's what would come out, 109. So you would accrete the income of one so 109.

Q. Then in your example -- thank you. We will mark this as Celini Exhibit 1, please.

(Whereupon, Celini Exhibit 1, Hand drawn T accounts example was marked for identification as of this date by the Reporter.)

Q. In your example, when you are referring to fees, are those fees collected by the bank or paid by the bank?

A. It would be paid by the bank, in this case, as part of the loan. The loan origination. The amount of the cash that went out on the first loan would be 110.

Q. So not -- not points collected by the bank from the consumer in connection with the origination?

A. So the accounting for loan acquisition is a complex matter, and what I

just did is I just used an example of fees paid by the bank in case of showing the fee -- the cash was going out. So the accounting for the UPB of origination fees and the various costs associated with, you know, a loan origination is a complex matter. I am not prepared to map out all the entries here to do the activities that would happen. If there were servicing book accreted, there's a fairly complex activity.

Q. Understood. And you put in your example loan sale at 109.

A. Um-hum.

Q. That was assuming that the loan is being sold at UPB plus the value of any fees that were also outlaid by the bank, right?

A. It's just for illustrative purposes. I just used an example of 109. Loans can be sold at premiums or discounts.

Q. I am just trying to make sure we clearly understand the example. So the loan sale, in this example, is 109, which is, basically, equivalent to the UPB and the

remaining deferred fee?

A. In this example, I just used a simple example of saying that you would have accreted one of the ten of the deferred fee into income. That's all. So it's just an example. Loans can be sold at premiums or discounts in any activity. So the amounts could change. It could have been sold at 115 and had a different economic impact. So I just used as an example for illustrative purposes. Okay.

MS. MILLER: I would like to mark as Celini Exhibit 2, a document which is excerpts of the report of Arthur J. Gonzalez as examiner in this matter. But only -- it is a 2,000 page report. Only those portions which reference you.

(Whereupon, Celini Exhibit 2, Excerpts of the Report of Arthur J. Gonzalez was marked for identification as of this date by the Reporter.)

MR. BROWN: What have you excerpted here? Okay. So you have

A. CELINI

just cherry picked pages, that's what it appears to be?

MS. MILLER: It includes the entirety -- I am going to focus on Section B starting on page V 89 titled GMAC Mortgage Bank Contracts With Ally Bank Government Loan Sales, Brokerage, Servicing and Related Derivative Transactions, and I believe the entirety of that section is included.

MR. BROWN: Atara, I will note for the record that this does not appear to be an excerpt from the examiner's report as the examiner produced his report. There is maybe highlighting or something in multiple places throughout this document. And I can assure you when I looked at the examiner's report, there was no highlight in any of those 2200 pages.

MS. MILLER: Right. If you would stop asking me questions and let me identify --

MR. BROWN: I didn't ask a

A. CELINI

question. Just made a statement for the record.

MS. MILLER: Right. So if you would stop making statements on the record and let me properly identify my exhibit, I would explain that.

MR. BROWN: I gave you a couple opportunities. I didn't hear anything about the highlighting. I wanted the record to be clear. If you want to make a statement on the record, go for it.

Q. Mr. Celini, I have given you an excerpt of the examiner's report in which we've highlighted portions where the examiner has referenced specifically statements made by you or in which he has statements in which he supports with references to statements by you.

Have you had any discussions with anybody about the examiner's report before today?

A. No.

Q. Do you know what the examiner

A. CELINI

concluded?

A. I have no idea.

Q. What topics did the examiner ask you about?

MR. BROWN: Objection to form.

A. There was a fairly wide range of discussions. I don't recall all of them. We talked about affiliate agreements. We talked about my background. My tenure. So it covered a very wide range of topics.

Q. Did you speak to the examiner about the broker-to-bank project?

A. I believe it was included in the discussion.

Q. Mr. Celini, do you have an understanding of what revenues the bank was supposed to retain in the brokering to bank project?

MR. BROWN: Objection to form.

A. Just trying to -- let me try to understand it. So what do you mean? Do I have an understanding of the broad terms? Can you give more clarification?

Q. Do you have an understanding of

A. CELINI

the broad terms?

A. Yes.

MR. BROWN: Objection to form.

Q. Overarching principles?

A. Yes.

Q. What were those -- what was that understanding?

A. The brokering activity was to generate, you know, bring assets to the bank for us to originate in our name with our funding. And that we would follow GAAP in the recordation of those -- that funding activity. You know, as prescribed by our chief accounting officer. And that it would be Reg W compliant. It was a sourcing activity. A way -- you know, to get loans recognized. So loans should have been funded by the bank in order for us to, you know, to get those assets and utilize our liquidity.

MS. MILLER: Let's take a quick break.

THE VIDEOGRAPHER: We are now going off the video record. That concludes tape number one. The time

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is 10:12.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: We are now back on the video record. This commences tape number 2, November 8, 2013. The time is 10:29.

Please continue.

BY MS. MILLER:

Q. Good morning, Mr. Celini. So I handed you, before we broke, a document that we have marked as Celini Exhibit 2, which is certain excerpts of the examiner's report in this matter with portions that are specifically referencing you highlighted.

I would like you to turn, if you could, to page V 124, which is also page 124 of 175 on the top. And there is a section here that's titled Genesis of the Brokering and Consumer Loans to Bank Project. And in this report, starting after footnote 629, the second highlighted portion, it says "The 250.250 program sales to the bank were reaching this limit in the summer and fall of 2008 and in at least one instance the limit

A. CELINI

was exceeded."

Is that the same 250.250 limit that we were discussing earlier today?

MR. BROWN: Objection to form.

A. Yes.

Q. And then it goes on to say, "However, loans brokered to the bank by GMAC Mortgage and then originated by the bank in its own names would not be subject to this limit."

That's consistent with your testimony earlier this morning, right?

A. That's correct.

Q. And then it says, "Further, switching to a broker model not only offered the prospect of increase in the number of loans which could be funded through the bank, but the projected savings to the GMAC Mortgage of 10 to 21 basis points over loans originated by GMAC Mortgage but would increase the volume of MSRs that could be retained by the bank."

Is that also an accurate statement?

A. CELINI

MR. BROWN: Objection to form. He has already testified he hasn't seen the document or the report, for that matter.

MS. MILLER: I am asking him whether that statement is accurate based on his knowledge, understanding and personal involvement in the broker-to-bank project.

MR. BROWN: Objection to form.

A. So, again, I have only seen this now. I remember we talked at the, you know, the examiner's discussion, we talked about a lot of things. So these -- these terms that you show me so far are consistent with what I -- we talked about with the examiner.

Q. Okay. And then it says, "S. Celini," and I think that's referring to you, "the sponsor of the broker-to-bank project for the bank noted, quote, 'There was very widespread knowledge that the affiliate had high cost liquidity and no liquidity and that if we didn't do this -- if we didn't find a way to do this, that there would be a

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bad outcome on the other side.'"

Do you see that?

A. I see that in the report.

Q. Do you recall making that statement to the examiner?

A. I don't recall the specific wording. We talked about a lot of things in the context, so we talked about a lot of things. I don't recall making that specific statement. But if it's here, obviously, it was recorded as such.

Q. Sitting here today, do you believe that statement to be true?

A. Be true -- I mean, yeah, this was 2007. The market was in turmoil and in 2008, Lehman -- we all know what happened. So the affiliate was definitely facing a liquidity crunch.

Q. And then it continues, "The project was made a priority." Do you believe that the project was -- the broker-to-bank project was a priority at this time in late 2007?

A. Yes, it was. Like I said, there

A. CELINI

was large project teams, multi-functions, all working on it as a priority.

Q. And then the examiner says that there was an -- that "There was a project team assembled under the direction of project -- of bank project leader and Celini subordinate Debra Scott."

Who is Debra Scott?

A. She was a project manager who worked for me at GMAC Bank.

Q. What was her specific involvement in the broker-to-bank project?

A. She was the project manager for the bank on the initiative.

Q. And would you say that she was the person at the bank most familiar with all aspects of the broker-to-bank project?

A. No, I wouldn't say that. She was the project manager managing the work streams that had a lot of technical inputs. So the project manager trying to keep people on task and organized is her primary role.

Q. So she had an understanding of what everybody was supposed to be doing and

A. CELINI

was actually doing in the project, right?

MR. BROWN: Objection to form.

A. I think I answered that one. She is the project manager. I am trying to be as explicit -- I mean, doesn't -- not an expert in anything other than keeping people on track and focused.

Q. And a requisite of being able to keep people on task and focused is having an understanding of what people are supposed to be doing, right?

MR. BROWN: Objection to form.

A. There are defined work stream tasks. Whether they be finance, treasury, accounting, systems. You know, this was a huge endeavor. So she knew that what the work streams were as we defined them in the project. She doesn't know everything that's happening with IT. She isn't an expert in IT or accounting or anything like that. So she knew the work streams and their deliverables. I answered that a few times.

Q. Turning now to page B 126 in the report. I am going to also hand you a

A. CELINI

document that was previously marked as Cortese Exhibit 4. I am going to try not to call you Mr. Cortese throughout this portion of the examination.

Mr. Celini, I have handed you a document that was previously marked as Cortese Exhibit 4, which the upper portion of the exhibit is an E-mail chain from 2012 that you were not involved in. But if you look down to the fourth E-mail down from the top in the chain at the bottom of the page marked EXAM00003975, it is an E-mail from Jill Horner to you and Mr. Whitehead copying Debra Scott and Elizabeth Manafie (phonetic) from September 3rd, 2008.

Do you see that?

A. I see that E-mail, yes.

Q. And the next E-mail down, so going back chronologically in that chain is an E-mail from you to Mr. Whitehead copying a number of people from September 2008. Do you see that?

A. Yes.

Q. And in it, in that E-mail, you

A. CELINI

say "Matt, see my comments in red below."

Do you understand that to mean that you provided interlineated comments in response to Mr. Whitehead's E-mail that's the first E-mail in the chain, also from September 2, 2008?

A. Yes.

Q. I searched the documents that were produced to us in this matter, and we were not provided with a color copy of this E-mail, which makes it somewhat less helpful to follow exactly what you've added in response to Mr. Whitehead's questions and what was Mr. Whitehead's text.

But if you look at the examiner report, I believe he has italicized those portions -- well, maybe not. I guess we have to see if we can figure out what you added in response to Mr. Whitehead's comments. Just looking at Cortese Exhibit 4, and looking at the first E-mail in the chain -- sorry, the bottom E-mail in the chain, first chronologically, last in the document, from Mr. Whitehead to you dated September 2, 2008,

but which includes your comments. It says "Al, based on our conversation on Friday, I wanted to confirm that only revenue the bank is going to recognize is the net carry, i.e., interest income/expense. All of the other income/fees, i.e., origination fee, loan discount fee, income (points, rate lock fee, overage/shortage/subsidies, underwriting fee, other ancillary fees) will be payable to the bank (lender) from the borrower and not the mortgage company and will be capitalized within the Cost Basis of the loan and essentially sold to mortgage at the Cost Basis as the purchase price."

Is it your understanding that you responded "CORRECT" to that inquiry in all caps immediately after the portion that I read into the record?

A. Just give me sometime to read here. Reading this E-mail as it has been laid out, the capitalized term is correct. Looks like my response is to these statements, yes.

Q. And then the E-mail continues and

A. CELINI

says, "All the traditional rev/EXP reimbursement items that normally be recognized by the originator be borne by GMAC B and capitalized into the loan basis accordance with GAAP. These items will not reside on the bank's P&L, deferred onto B/S and will be recognized on the mortgage P&L once the loan is sold to GSEs."

Do you know whether that's part of your response?

A. No, that's not part of my response.

Q. Okay.

A. I believe my response is only to the capitalized activity to that -- in that statement. I believe the rest of this was Matt Whitehead's commentary.

Q. Okay. So Matt Whitehead continues three lines down and says "This would effectively make the bank P&L neutral to the way it currently conducts business and would act essentially as a funder of loans and not impacted by any market or interest rate movement." And then it says "correct"

in square brackets after that.

Is it your understanding that the "correct" in brackets is also your response to Mr. Whitehead's comment?

A. Give me a moment to read so I can read the context of it. It is complex.

Q. Sure.

A. I believe the bracketed term is, yes, my response, correct.

Q. Sitting here today, do you believe those are accurate statements and responses?

MR. BROWN: Objection to form.

A. I need you to clarify that.

Q. Do you have any reason, sitting here today, to believe that your response "correct" was inaccurate?

A. It is really important to understand this was a large project, had multiple scenarios and this E-mail, as presented here, could have been one of the scenarios that was presented that was being discussed through the -- through the project team. So we had several scenarios being

worked through. So this may have been my -- this document -- my statements here as to correct were in the context of this document and the scenario that we probably were working through here. So the ultimate resolution, this may or may not have been what the project ended up implementing.

Q. Any reason to believe that this is not what the project ended up being implemented?

A. I don't believe this is what the end up -- I mean, let me try to -- do I have any reason to believe this is not, I do believe there were at least five or six other scenarios that we worked through. And also have to understand that some of this was for management reporting, not necessarily legal entity reporting comments. So GAAP rules, you know, for the legal entities, are the prevailing activity. So a lot of these commentaries were -- here were talking about different management reporting treatments.

Q. So if I understand what you are saying is that the management reporting

treatment might view a transaction as not having an impact on the bank's income statement even though there are GAAP entries on the bank's income statement; is that right?

MR. BROWN: Objection to form.

A. You need to clarify that. Try that one more time.

Q. If the bank collects income related to a loan originated but that income is then offset by a reduction in the purchase price -- in the sale price of the mortgage, from a management perspective, that's a no gain no loss from the bank; is that right?

MR. BROWN: Objection to form.

A. I think you need to be -- first off, GAAP is the prevailing activity that needs to be recognized on the legal entities. Management -- management reporting for segment -- for segment reporting for in a business unit evaluations can look at a lot of components. So -- and again, this is, you are pointing to me one E-mail in probably what was several thousands that were

Plaintiffs' Objection 73:10-74:4
Lack of foundation (FRE 602, 901), lack of personal knowledge/ speculative (FRE 602)

exchanged on several scenarios. So, I mean, that could -- that could have been one of the context. But I can't tell you for certain.

Q. Outside of the context of what did or didn't happen. As a general management and accounting matter, if a bank -- if the bank originates a loan with a $100 UPB, and the bank collects $10 in points from the consumer, and the bank then sells that loan to GMAC Mortgage for $90 dollars, would the bank's balance sheet -- sorry, would the bank's P&L recognize $10 of income collected from the consumer?

MR. BROWN: Objection to form.

A. You know, you are talking about a hypothetical situation?

Q. Right.

A. I don't want to proffer -- you know, in that example, I don't see how it is relevant to what we are talking about here.

Q. Based on your -- okay. What's your understanding of how the bank actually accounted for -- sorry. Let me step back.

When the bank originated a loan,

A. CELINI

what fees, costs and expenses were associated with it?

MR. BROWN: Objection to form.

A. I answered you before. First off, the accounting for mortgage loan activities is a complex and, you know, complex activity governed by multiple statements underneath GAAP and underneath various scenarios. Depends whether something is originated at a discount, premium, whether you have fees deferred, non-deferred. Whether there is a servicing asset that's created or not. So it is a complex activity. I am not prepared to give you a recitation of the GAAP accounting activities that are going to need to be recognized in this scenario.

Q. I don't think I asked you about GAAP accounting. Let me step back, if I used a term that you are saying is a technical term.

What fees would the bank have associated with originating a loan?

MR. BROWN: Objection to form.

A. So in general, they can be

A. CELINI

numerous types. There can be origination fees. There can be processing fees. There can be appraisal fees. There is a long list of fees that are out there and their treatments for recognition are complex and vary depending on what they are. They can be a premium, a discount. I believe I answered this question just before in terms of what fees and types of activities could be there.

Q. You said there are a lot. I am asking you do you have a list of them?

MR. BROWN: Objection to form.

Are you asking for expenses to the bank, too, or just fees that a borrower pays to the bank? I'm just not clear, sorry.

MS. MILLER: I am going to ask all of them.

So right now, I am looking specifically for fees that are paid to the bank.

MR. BROWN: Objection to form.

A. I am trying to understand context of fees. You have discount points. And, you

A. CELINI

know, again, premium -- premium or discount that could come. Again, I am not prepared to give you a complete recitation of all those activities.

Q. And what expenses would the bank have related to the origination of a loan?

MR. BROWN: Objection to form.

A. Expenses, typically -- typically that would be incurred would be the cost for, you know, underwriting evaluation, cost for any direct expenses incurred in the origination, and those could be many, right. So those are the typical types of things you would do. Appraisals. You know, credit reports. People to check. You know, make sure the fees have been validated. So there is many fees that would be expenses that would be incurred in originating a loan.

Q. Mr. Celini, what did you do to prepare for your deposition today?

A. I arrived here and showed up to talk to you about my recollections and knowledge from this time back in several years ago. So I have not -- I mean, I

A. CELINI

prepared by -- the only thing I did was I can say is for the examiner report that, you know, when I was here to testify in front of the examiners. That's the only time I have thought about, today and that examiner report, is the last time I have talked or thought about these activities.

Q. So you haven't spoken with any counsel for Ally or the debtors in connection with your deposition today?

A. No.

MR. BROWN: If you want to take a short break, I will tell Mr. Celini about what he can and cannot reveal in light of the privilege. I think he is slightly confused by your question.

A. Yeah, I mean, can --

Q. Did you meet with --

A. Clarify, please.

Q. Did you meet with any lawyers to prepare for your deposition today?

MR. BROWN: Like I said, I am willing to take a very short break, talk to Mr. Celini and tell him what

A. CELINI

he can and cannot reveal pursuant to the privilege.

THE WITNESS: I would like to take a break, please, that way I can have that discussion.

MS. MILLER: I have a question pending, and I will instruct you that unless you are being directed by your lawyers not to answer my question, you can answer my question whether or not you met with lawyers to prepare for your deposition today.

MR. BROWN: I think what he is telling you is he needs to inquire about what he can reveal and not reveal subject to the privilege.

MS. MILLER: Are you instructing him not answer the question?

MR. BROWN: No, I am not.

MS. MILLER: So he can answer the question. It is a yes or no question. He can answer it.

MR. BROWN: If he doesn't know whether he can answer affirmatively or

A. CELINI

not without revealing privileged information, he has already asked and you said --

THE WITNESS: I would like to take a break.

MS. MILLER: I am telling you -- you should instruct him to answer the question. That's the appropriate response here. It is not to take a break to direct your witness and to coach him.

MR. BROWN: I am not going to coach him. I'm going to tell him the extent of the privilege.

MS. MILLER: You can tell it to him right here on the record.

MR. BROWN: I will tell him that off the record.

MS. MILLER: I don't understand.

Q. I have asked you a question. Are you refusing to answer my question?

A. My answer is I would like to take a break so I can fully understand the context for with input from my counsel.

A. CELINI

Q. I have asked you a yes or no question --

A. No.

Q. -- about whether you met with your lawyers. No?

A. I am answering that I would like to take a break so I can get clarity here as to what my, you know, the appropriate, you know, privileged requirements are. I just don't understand your question and I want clarity.

MR. BROWN: Mr. Celini, so she can get the record she wants, you can answer that question, whether you met with counsel with a yes or a no. And then you can take a break and we can discuss the scope of anything else that she can ask you and what you should be able to reveal in response to those questions. But you can answer the existing question whether you met with counsel or not with a yes or a no.

Q. I am going to ask it again.

A. CELINI

Mr. Celini, did you meet with counsel to prepare for your deposition today?

A. Yes.

Q. And how long did you meet with counsel for?

A. A couple of hours.

Q. Okay.

MS. MILLER: We can go off the record and take a break.

THE VIDEOGRAPHER: Off video, 10:53.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: Back on, 10:55.

BY MS. MILLER:

Q. Mr. Celini, are you represented by counsel here today?

A. Yes.

Q. And who is your lawyer?

A. Counsel who is to my right, Judson.

Q. Did you sign an engagement letter with them?

A. No.

A. CELINI

Q. Did they ask you if you would like to retain them as your lawyers?

A. No.

MR. BROWN: I'll give you a representation on the record that, as a former employee of Ally Bank, Mr. Celini does have an agreement with Ally. Not specifically with Kirkland. I will represent that to you on the record.

Q. Mr. Celini, are you paying your own legal fees and expenses related to this deposition?

A. Yes.

Q. So you are paying Kirkland and Ellis?

A. Let me clarify. I am paying for my own expenses. I am not paying fees for -- to any attorneys.

Q. And do you have an understanding of who is paying those fees?

A. My former employer, that would be Ally.

Q. And how many times did you meet

A. CELINI

with attorneys from Kirkland in connection with your deposition here today?

A. Once.

Q. Did you have telephonic conversations in addition to that meeting?

A. One phone call.

Q. And how long was the phone call?

A. Very brief. Just to setup an appointment.

Q. And did you meet in person?

A. Yes.

Q. And when did you meet?

A. Yesterday.

Q. And did you review documents?

A. We talked about many things. We had --

MR. BROWN: Mr. Celini, don't reveal the subject matter of our conversation. You can answer her question whether you reviewed documents or not with a yes or a no.

A. Yes.

Q. And did you discuss any prior testimony that's been given in this action?

A. CELINI

A. Thinking about it yesterday, no.

Q. Do you understand that Mr. Cortese was deposed in this matter?

A. I am not aware of anybody else who has been involved in this.

Q. And did you discuss -- did you discuss the examiner's report with counsel yesterday?

A. No.

Q. Okay. How many documents did you review with counsel?

MR. BROWN: You can answer that with a number as best you can recall.

A. Two or three.

Q. And did any of the documents that you reviewed specifically refresh your recollection about anything?

A. I mean, they refreshed it since, you know, since the time of my report to the examiner. That's all.

Q. And what documents did you look at that refreshed your recollection?

A. Gosh, what did we look at? We looked at a bunch of them, like I said. So

A. CELINI

probably the one that comes to mind is the Master Mortgage Loan Purchase and Sale Agreement.

Q. What specifically were you refreshed by in looking at the MMLPSA?

MR. BROWN: Objection to form.

A. Just we -- it's been a number of years, counselor, since I have dealt with these things. So just reviewed it to remember what, you know, looked at what the terms and conditions were.

Q. And was the document -- this E-mail chain that I marked as Cortese Exhibit 4, a document that you reviewed that refreshed your recollection?

A. No, I don't recall, no. I don't recall seeing this document.

Q. And what about the Power Point that had previously been marked as Cortese Exhibit 8, is that a document that you reviewed that refreshed your recollection?

A. Let me see which one that is.

MR. BROWN: The one at page EXAM '15456; is that right?

A. CELINI

MS. MILLER: Yes.

A. So, this document was shown to me yesterday.

Q. Did it refresh your recollection about anything?

A. No. I am sorry, I had my -- so, no, I gave the same answer that I --

MR. BROWN: Mr. Celini, don't reveal privileged communications. She is not asking for that. She is simply asking whether this refreshed your recollection. You can answer that with a yes or a no.

A. No.

Q. What other documents did you look at other than the MMLPSA that refreshed your recollection?

A. I don't recall. We looked at a bunch.

Q. Did you review affiliate transaction memos that refreshed your recollection?

A. I believe there was one in there, so yes.

A. CELINI

Q. And do you recall which ones specifically?

A. No.

Q. Were there any e-mails that you reviewed that refreshed your recollection?

A. No.

Q. Any other documents or types of documents that you reviewed that refreshed your recollection?

MR. BROWN: Objection. Asked and answered.

A. No.

Q. Did you review the MSR swap agreements?

A. That could have been inside there. Again, we met -- it wasn't extensively. So we looked at that -- that may have been in there. I don't recall. Let me answer your question, I don't recall if that was in there.

Q. Mr. Celini, do you recall which MMLPSA you reviewed that refreshed your recollection?

A. No.

A. CELINI

Q. Do you recall whether it was the MMLPSA that was amended and restated as of July 1st, 2008?

A. No, I don't recall if that was the specific document.

Q. I am going to hand you a document that's previously been marked as Cortese Exhibit 2. It's the Master Mortgage Loan Purchase and Sale Agreement between GMAC Bank and GMAC Mortgage LLC amended and restated as of July 1, 2008. Bates numbered ALLY_0201210 through '1225.

Mr. Celini, was anyone other than Mr. Brown in attendance at the meeting either in person or by telephone yesterday?

A. Yes.

Q. Who was that?

A. (Indicating.)

MR. BROWN: Jodi.

Q. Anyone else?

A. No, sorry.

Q. Mr. Celini, I have handed you what has been marked as Cortese Exhibit 2. Does this refresh your recollection about

A. CELINI

whether it is the July 1, 2008, MMLPSA that you reviewed yesterday?

A. So, this may have -- this may have been one that I looked at yesterday. I mean, we looked, like I said -- so, no. Wait a minute. Can I get clarification? Let me step back here.

So we had a number of documents. So this document, as you are presenting it to me here, refreshes my recollection of this document.

Q. Does it remind you whether you saw this document yesterday or not?

A. I answered that question to you already.

Q. And you answered it no?

A. No.

Q. Mr. Celini, do you see that this document has a draft header on the top of the first page?

A. I see it.

Q. And the dates are bracketed both on the front page Bates ending '1210 as well as in the first recital -- sorry, the first

paragraph above the recitals in '1211?

A. Yes.

Q. Do you understand this to be the final executed version of the July 2008 amendment and restatement to the MMLPSA?

A. Based on the fact that it is executed by all the parties, yes.

Q. Just to be clear, you were an attesting witness to Mr. Groody's signature; is that right?

A. Yes.

Q. And that's on page ALLY_0201224. Did you review drafts of this agreement before it was executed?

A. The answer is probably, yes. I mean, the fact these typically go through multiple drafts before they are finalized, so I am sure I did.

Q. Do you have an understanding why the MMLPSA was amended and restated in July of 2008?

A. So these agreements change from time to time based on a number of inputs. So I don't recall specifically why July 1st one

could have been done. It could have been as a result of a regulatory examination, inputs, comments. It could have been for a number of reasons.

Q. Do you recall whether it was amended in connection with the broker-to-bank project?

A. No. They are separate. They are not related activities.

Q. Does the MMLPSA -- does the MMLPSA have any relationship to the broker-to-bank project?

A. I think I just answered that. No, they are separate. One was for an inflow activity. Discovering the sale of loans, outflow activity.

Q. And the bank and GMAC Mortgage had an MMLPSA long before the broker-to-bank project, right?

MR. BROWN: Objection to form.

A. Yes.

Q. Okay. And when GMAC Mortgage was originating loans, the flow of loans, as I understand it, and you tell me if I am right,

is that GMAC Mortgage would originate, GMAC Mortgage would then sell the loans to the bank and the bank would then sell the loans back to GMAC Mortgage pursuant to the MMLPSA, whichever MMLPSA version was applicable at the relevant time, and then GMAC Mortgage would then sell the loans to GSEs or other third-parties, is that the general flow?

MR. BROWN: Objection to form.

A. You need to be more specific. So when? So at different times the flow may have varied.

Q. In early 2006; sorry, in early 2007.

A. So that -- at that time period, yes, it would have been the general flow. So we used the -- the bank was purchased underneath the exemption. In general that was before the brokering activity started or purchased from correspondence, as I explained to you earlier, and would generally hold, you know, would warehouse the loans prior to their ultimate delivery offered to the GSEs or ultimate investors.

A. CELINI

Q. And under that scenario, for loans that GMAC Mortgage was originating, who retained any fees paid by consumers?

MR. BROWN: Objection to form.

A. I am not sure. I mean, you know -- so if it was originated -- I am not sure. You'd have to clarify who retained what -- what fees? What type of fees?

Q. So if points are paid by a consumer and GMAC Mortgage originated the loan and then sold that loan to the bank, did GMAC Mortgage pass that -- those fees -- sorry, those origination points onto the bank?

A. Thank you for the clarification. Yes, they would have. We purchased a closed loan. So it was -- whatever, you know, fees, origination fees or in a capitalizable activity, whether it be premiums or discounts, were in there.

Q. What was the cost that GMAC Mortgage paid for those loans when it acquired them from the bank under the MMLPSA?

MR. BROWN: Objection to form.

A. CELINI

Which MMLPSA are you talking about?

Q. In early 2008. Sorry, early 2007.

MR. BROWN: So before Cortese 2?

MS. MILLER: Before Cortese 2.

A. I need to see what that agreement looked like at that time. So whatever the -- whatever -- would be governed by whatever the MMLPSA terms and conditions were in effect at that time.

Q. Do you have an understanding, sitting here today, of what those terms and conditions were?

A. I don't have a recall -- I don't have a recollection specifically as to the terms and conditions at that time. I would have to see the document.

Q. Do you have a general recollection of what they were?

A. No.

Q. After the broker-to-bank project was implemented, GMAC Mortgage would make initial contact with the customer as the broker and would then refer that customer to

the bank and the bank would then originate the loan and then sell that loan to GMAC Mortgage under the MMLPSA and then GMAC Mortgage would then sell those loans to GSEs or other third-parties; is that right?

A. So the sales would govern whatever the terms of the MMLPSA were at that time. As a general flow, that's how the overall transactions were.

Q. Okay. So looking at Cortese Exhibit 2, which is the document Bates stamped ALLY_0201210, which is the amended and restated MMLPSA dated July 1, 2008. Could you turn to Section 1.24 on page 3, which is titled Purchase Price. You see that the purchase price with respect to first lien mortgage loans means the Cost Basis plus reserves associated with the loans?

A. I see that section.

Q. And is that -- do you have any reason to believe that that was not the purchase price under this agreement?

A. No, I have no reason not to believe.

A. CELINI

Q. Okay. Looking at the definition of Cost Basis in Section 1.9 on page 2, Cost Basis, it says "Means, with respect to a mortgage loan, its net carrying value as defined by the accounting principles generally accepted in the United States of America as amended to include without limitation the unpaid principle balance of such mortgage loan plus or minus any premium or discount paid, net deferral fees or costs, accrued interest and basis adjustments from derivative loan commitments, hedge accounting or lower of cost or market adjustments."

Do you see that?

A. I see it.

Q. What do you understand that to mean in your own words?

A. My understanding Cost Basis is GAAP. So it is as defined here. The Cost Basis of the loan as originated with -- under GAAP.

Q. And what is "plus or minus any premium or discount paid, net deferral fees or cost accrued interest and basis

JSN Objection 97:17-22: FRE 611(a) (Non-responsive)

adjustments from derivative loan commitments, hedge accounting or lower of cost or market adjustments" mean?

MR. BROWN: Objection to form.

A. So what does that mean?

Q. Yes.

A. I mean, these are, again, the GAAP terms that are typically associated with, you know, the Cost Basis of a loan. It's fair value accounting.

Q. This is fair value accounting?

A. Because it includes basis from derivative loan commitments, hedge accounting a lower to cost market adjustments. So it is GAAP.

Q. You understand that to be fair value of accounting?

A. Yes.

Q. Do you understand that there is a difference between fair value accounting and lower of cost or market accounting?

A. Yes, I understand them and I understand them both to be GAAP depending on what was being applied at the time. What our

overall principles that were being used.
Q. And you understand that this Cost Basis is referring to fair value accounting?
A. I answered that, yes.
Q. Do you understand what accounting the bank was using in July of 2008?
A. Should be fair value accounting, if that's the way it was defined here. I wasn't the CFO at the time so --
Q. And if it wasn't fair value accounting, what would you understand this provision to mean?
MR. BROWN: Objection to form.
A. GAAP. I answered you already. So, again, it is generally accepted accounting principles. GAAP. Whatever GAAP was being followed at the time.
Q. So I am trying to understand in plain English if the bank were using lower of cost or market accounting, what would GMAC Mortgage pay GMAC Bank for a loan?
MR. BROWN: Objection to form.
A. I believe I have answered that to you.

A. CELINI

Q. I would like you to answer it again.

MR. BROWN: Objection to form.

A. You know, I don't know where you are going with it. So I believe I have answered it to you. Here, as defined underneath the MMLPSA, it is Cost Basis as defined as GAAP. So I can't opine as to what the affiliate's accounting was. I can only opine as to what I generally know was the bank's accounting. And if the bank was using GAAP, that's what it should be. I mean the bank is using GAAP it is going to be whatever its GAAP accounting is at the time.

Q. You keep saying GAAP?

A. Yes.

Q. And you are including GAAP to mean either fair value or lower of cost or market, right?

A. Yes.

Q. Whatever was being used by the bank at the time?

A. Yes. Because either or -- either of those two is GAAP.

A. CELINI

Q. Either of those two is GAAP, and do you have an understanding -- I guess you already said. Do you know -- were you involved in any discussions in July of 2008 about transitioning the bank's accounting to fair value accounting?

A. No, that's chief risk officer, no.

Q. Who was responsible for putting together this amended and restated MMLPSA?

MR. BROWN: Objection to form.

A. The parties that were here. The signatories, I would assume.

Q. Is it your understanding that Mr. Groody drafted this agreement?

MR. BROWN: Objection to form.

A. So as a signatory, I would assume that he was the drafter. I am sure he had inputs from counsel as well. So both parties.

Q. Okay. Were you involved in negotiating this agreement with GMAC Mortgage?

A. I can't recall. I was involved

A. CELINI

in reviewing. As an attester, I was involved in reviewing these documents but I didn't negotiate.

Q. Were you involved either as an active participant or as an observer in any discussions with GMAC Mortgage related to this agreement?

A. As an observer, yes.

Q. Did you participate in meetings as an observer related to this agreement with GMAC Mortgage?

A. I don't recall, honestly. I mean, we -- I reviewed almost -- I had to review almost all of these things. So I would review them. I don't know if I -- I don't recall if I participated in any specific meetings on this.

Q. Were you -- do you know if there was any -- strike that.

In the discussions that you were a part of between GMAC Bank and GMAC Mortgage related to the MMLPSA, did the bank ever tell GMAC Mortgage that it was intending to transition to fair value accounting?

A. CELINI

MR. BROWN: Objection to form.

A. I have no idea. I don't -- no. Again, I didn't -- I answered your question already. I'm an attester. I was a reviewer. I didn't negotiate the terms of this.

Q. Right. But you said that you participated in discussions as an observer. I want to know, any discussions that you ever heard about this agreement between GMAC Bank and GMAC Mortgage, did GMAC Bank represent to GMAC Mortgage that it was intending to transition to fair value accounting?

MR. BROWN: Objection to form.

A. Let me make sure -- as my role as an observer in these meetings, were those statements -- I can answer I am not aware of any of those discussions during my participation as an observer.

Q. Do you know when the bank transitioned from lower of cost or market accounting to fair value accounting?

A. No.

Q. Do you know whether under this definition of Cost Basis there had been a

A. CELINI

material impact on the transaction if, depending on whether Ally Bank were using fair value or lower of cost or marketing accounting?

MR. BROWN: Objection to form.

A. I don't understand. What transaction?

Q. Would the cost -- would the definition of Cost Basis, under the MMLPSA, be different if the bank were using fair value or lower of cost or market accounting?

MR. BROWN: Objection to form.

A. I am not too sure. You are asking me do I know if the transactions were -- been different? I mean they would be. One would be under fair value and one would be under low COM. So yes, they would be different.

Q. And would the purchase price be different?

A. Yes, they would be different because they would be under two different basis. Different basis, right. So it is obvious, right, they would.

Plaintiff's Objection 104:9-25, Lack of personal knowledge/ speculative (FRE 602); calls for legal conclusion

A. CELINI

Q. And do you think that the purchase price is a core term of the MMLPSA?

MR. BROWN: Objection to form.

A. It's here. It is in the document. So it is -- all terms are important.

Q. Mr. Celini, looking back at the E-mail chain that was previously marked as Cortese Exhibit 4. I believe you stated earlier that there were a number of scenarios being discussed and you're not sure one way or another whether this E-mail is talking about the final scenario; is that right? Sorry, so the record is clear, the E-mail exchange between yourself and Mr. Whitehead that appears on EXAM '0003976.

A. Yes, I answered you. I already answered you. There were -- I'm not certain that this was the final version as to the way the project. But like I said, there were multiple versions, extensive discussions with the team and a number of scenarios which some of them never came to fruition.

Q. Can you tell me how the

discussion in this E-mail chain differs from the final scenario that was implemented?

A. No, I --

MR. BROWN: Objection to form.

A. No.

Q. It might not differ at all, right?

A. I don't -- I don't know. I mean -- so I don't know. I don't know how it -- I have to see what the final broker agreement and the final MMLPSA. Those are the driving documents. So these e-mails may have been one of thousands, like I said, various scenarios. So I can't tell by looking at these e-mails.

Q. So you said that the broker agreement and the MMLPSA were the driving agreements. What were they the driving agreements of?

A. The brokering activity and the sales activities.

Q. So sitting here, based on your recollection and understanding of the agreement -- of the agreements as they were

A. CELINI

finalized, there is nothing in this E-mail that you can identify as being inconsistent with the final scenario that was implemented in the project, right?

MR. BROWN: Objection to form.

A. Yeah, that I don't get. So my view of this -- my looking at these e-mails tells me what? Can you clarify?

Q. I am asking you if, sitting here today, you can tell me if there is anything in this E-mail that is inconsistent with your understanding of the end result of the broker-to-bank project?

MR. BROWN: Without showing him the documents he just referenced?

A. I can't tell.

MS. MILLER: Yes, without showing him the documents?

MR. BROWN: Objection to form.

Q. Based on your recollection of the project.

A. I can't answer that question. I can't answer it looking at this E-mail without looking at -- again, these e-mails

A. CELINI

were not the driving, you know, end result of the documents. I have already answered that. So I can't answer that just by looking at this E-mail.

Q. Do you have an understanding of what the final agreements reflected?

MR. BROWN: Objection to form.

A. I had an understanding. I don't recall them, the nuances of all of them. I would have to look at the agreements to have -- to refresh my understanding of those.

Q. Mr. Cortese, during the time that the -- sorry, Mr. Celini, during the time -- Mr. Celini, during the time that the broker-to-bank project was ongoing, about how much time of yours did it occupy?

A. This is in the middle of the debt crisis. It was madness. It was all hands on deck. So who knows. I mean, it was -- we were working extensively. So, I mean, how much percentage of my time, I don't recall how much. It was a lot. And it was a large project. No small task.

Q. So did you spend multiple hours

A. CELINI

every day working on the broker-to-bank project?

MR. BROWN: Objection to form.

A. I mean, yes.

Q. And how long did the project last for?

A. Several months. I don't recall how long. Several months.

Q. Were you consistently involved from beginning to end?

A. Yes.

Q. And during that time, did you feel like you had a strong understanding of the project and its components?

A. Yes.

Q. From the time that you left Ally Bank until you were interviewed by the examiner, have you thought much about the broker-to-bank project?

A. Have I thought much about it?

Q. Yeah.

A. No, not much. But I thought that project, basically, let GMAC Mortgage and ResCap live for another couple of years. It

A. CELINI

wasn't on my mind every day. But it was a Herculean effort that allowed them to live.

Q. So you didn't sit around at night and review all of the details of the agreement?

A. No. No.

Q. When were you interviewed by the examiner?

A. Honestly, I don't recall the date.

Q. Does February 2013 sound right?

A. Sounds about right. It was cold.

Q. It was cold outside?

A. It was cold outside. It was here in Philadelphia. No offense, I don't remember what I ate for dinner last night. My assistant keeps track of my calendar. So whatever my calendar says. If that's what the examiner says, that's the date it was.

Q. Does she calendar what you eat for dinner?

A. No, she doesn't.

Q. Mr. Cortese, looking at -- Mr. Celini, I will stop.

A. CELINI

A. It is actually comical.

Q. You do laugh every time, and I want wait to ask you when we are off the record what's so funny about being thought of as Mr. Cortese. I thought he was a lovely gentleman.

MR. BROWN: I don't think it is anything thought of Mr. Cortese. The fact that you consistently do it. I think he knows it is inadvertent.

THE WITNESS: Yes.

Q. It is much more meaningful after you are a real person.

A. Just a second. Let me put my microphone back on. It fell off. Okay. I am back.

Q. Mr. Celini, looking at page V 134 in the examiner report.

MR. BROWN: Sorry, where are we?

MS. MILLER: Sorry, we are in Celini 2.

MR. BROWN: Okay. What page?

MS. MILLER: Page V 134.

Q. It says, beginning in the second

A. CELINI

sentence of the first full paragraph, it says "Celini explained that the contemplated allocation of revenues and expenses generally was the same as that under the existing contractual agreements."

Do you agree with that?

A. For what context? I mean, what are we speaking of? Just looking here. I am reading the page.

Q. Sorry, let me just reorient you in where we are. We are in the section of the examiner's report that's discussing the genesis of the brokering consumer loans to bank project and its objectives.

A. So again, I have never seen the examiner's report, so I am just reading it the way I can understand context.

Q. Sitting here today, do you think that's -- that it is accurate -- an accurate statement to say that the contemplated allocation of revenues and expenses generally was the same as that under the existing contractual agreements?

A. Again, what are existing

A. CELINI

contractual relationships, arrangements, what does that mean?

Q. So if you look at footnote 673, which is what that statement is referencing, it has a citation to your interview and it says, "For prebroker agreement, bank originated loans, the affiliate, GMAC Mortgage, received the P&L impact of origination income and expenses, quote, 'We were not recognizing gains and losses on these activities.'"

Do you see that?

A. Okay. I see the footnote and I am trying to get myself oriented to this context here. So explain the contemplated allocation -- generally was the same under the existing contractual agreements. Okay. I am just looking at the remainder of the paragraph to get context here. So in particular for the agreement. Okay, so now once I have read this, can you restate your question? You want to know if the sentence, the second sentence there --

Q. Right.

A. CELINI

A. That "Celini explained that the contemplated allocations of revenue and expenses generally was the same as under the existing contractual arrangements." So when I read this, I don't recall the context of my comment here. But this would tell me that, when I look at this, is that the -- the allocation of revenue expenses was -- is under existing -- was underneath the existing MMLPSA, is that what it is inferring? I am not sure. It is not clear what it is inferring to me. Contractual arrangements seems to imply affiliate agreements. Doesn't say which one. The one that drives revenues and expenses probably would have been the MMLPSA. Because that would have governed the terms of what the sale of our loans was from. So, again, where are we going with this? I am confused.

Q. Okay. Was the bank recognizing gains and losses on its purchase and sale of loans from GMAC Mortgage and back to GMAC Mortgage before the broker agreement?

MR. BROWN: Objection to form.

A. CELINI

What time period? I don't know what this is.

A. Which one? Again that's prebrokers so that would be what, what month? Again, the answer is the same thing. Whatever the MMLPSA that was enforce, in place at that time would have been the way that we were generated revenues, and honestly, I don't recall the exact terms and the dates that they were in place, so whatever the documents said.

Q. Do you have any reason to dispute that, under the MMLPSA, that was governing immediately prior to the broker agreement being entered into, that the bank was not recognizing gains or losses on those activities?

MR. BROWN: Objection to form.

A. So I need to see the specific document before I can make any assertion as to whether -- what was happening. Because I just don't recall. Again, it is not committed to memory as to what was -- what the basis for accounting was being done at

A. CELINI

that time.

Q. You don't dispute you said that to the examiner, right?

MR. BROWN: Objection to form.

A. It is here. I made many statements to the examiner. It is hard to really understand the context of this one within the overall. If it's here, it is probably accurate that I did say it. But I can't really make out the context from it, Counselor. It is hard to understand just by reading these paragraphs -- this specific paragraph here.

Q. Did you review any documents with the examiner during the examination?

A. Yes, several.

Q. And did you review several versions of the MMLPSA -- sorry, I won't say "versions" -- several different MMLPSAs?

A. Yes, I did.

Q. And did you review the brokering agreement with the examiner?

A. I don't recall. I know we looked at several MMLPSAs. I don't know if we

A. CELINI

looked at the broker agreement. We may have.

Q. The last -- very last sentence in that paragraph --

MR. BROWN: Are we on the same page, sorry?

Q. The same page. Last sentence in that paragraph which starts the last four words on the page says "The cost based pricing for loans purchased effectuated under the 2008 MMLPSA in July 2008 pipeline swap as implemented would have captured the effect of the FAS 91 deferrals."

Do you know what that means?

MR. BROWN: Objection to form.

Q. Sorry let me reask. Do you know what the effect of the FAS 91 deferrals would be?

MR. BROWN: Object to form.

A. No, not in this context.

Q. Under lower of cost or market accounting, what effect would five -- FAS 91 deferrals have on the purchase price under the July 1, 2008, amended and restated MMLPSA, which was marked Cortese Exhibit 2?

A. CELINI

MR. BROWN: Cortese 2?

A. So in what section of -- in this document? So FAS 91 deferrals are part of the Cost Basis of the loan.

Q. And what effect do they have on the Cost Basis of the loan?

MR. BROWN: Objection to form.

A. What effect do they have?

Q. Yes.

A. Typically would increase the Cost Basis.

Q. And if the bank were collecting fees from the consumer, what effect would those fees, if deferred under FAS 91, have on the Cost Basis of the loan?

MR. BROWN: Objection to form.

A. I just answered that. So any fee that is deferred is -- I answered that. So it increases the Cost Basis of the loan.

Q. Okay. So if a customer pays $10 in points to the bank, the bank defers those $10, the Cost Basis, on the loan with the UPB of $100, the Cost Basis of the loan is what?

MR. BROWN: Objection to form.

A. CELINI

At what time?

Q. Under this agreement, lower of cost of market accounting.

MR. BROWN: Objection to form.

A. So first off, you are mixing here. So points are not FAS 91 deferral fees, okay. So points are part of the premium or discount that is paid when you originate a loan. So the answer to your question is the same. Fees collected that are deferrable under FAS 91 are part of the Cost Basis of the loan. Answer. Asked. Answer.

Points collected are not part of FAS 91 deferral. They're part of the UPB or premium or discount, which is different from a FAS 91 adjustment.

Q. So when you say fees collected, they increase the Cost Basis -- when you say fees collected by the consumer, you're talking about origination fees, processing fees?

MR. BROWN: Objection.

Q. Appraisal fees and the like,

A. CELINI

right?

MR. BROWN: Objection. I think you misspoke. You said fees collected by the consumer.

Q. Sorry. When you say fees collected from the consumer, you are referring to origination fees, processing fees, appraisal fees and the like, right?

MR. BROWN: Objection to form.

A. I answered that before.

Q. What was your answer?

MR. BROWN: Objection to the form.

A. You can look at the tape. There are various ones. So there is a laundry list. You can look down a HUD 1 and see what the fees that are there, and those fees that are shown on the HUD 1, some of them are capitalizable and deferrable and others are not. So, again, there is a long list of them. So application fees, origination fees. Those are just examples of them. You have asked them and I have answered those. I cannot recite the whole list off of the

A. CELINI

HUD 1.

Q. I am not asking you to recite the list. You don't like going with my hypothetical of a simple single fee that you collect. I am okay with that. But what I want to understand is, if the bank is collecting money from the consumer, whether that's increasing or decreasing the Cost Basis under lower of cost -- if the bank is using lower of cost or market accounting under the definition of Cost Basis in Section 119 of the July 1, 2008, MMLPSA?

MR. BROWN: I think you mean 1.9.

MS. MILLER: 1.9.

MR. BROWN: Objection to form.

A. In principal, any fee that is not a pass through, in other words, an appraisal fee is collected from a consumer but is paid out through to an appraisal, third-party person. So any fee that's not paid out as part of a pass through would become part of the basis of a loan.

Q. And I want to know if it

A. CELINI

increases or decreases the Cost Basis?

MR. BROWN: Objection to form.

A. I answered this before. It would increase the Cost Basis of a loan. Just by its nature of the deferral. Deferral, debit, equals increase the basis.

MS. MILLER: I think we have to go off the record because we are at the end of the tape.

THE VIDEOGRAPHER: We are now going off the video record. That concludes tape number 2. The time is 11:47.

(Whereupon, a recess was held.)

THE VIDEOGRAPHER: We are now back on the video record. This commences tape number 3, November 8, 2013. The time 11:59.

Please continue.

BY MS. MILLER:

Q. Mr. Celini, why did you leave the bank?

A. I was left -- I was terminated based on the reorganization as an executive

Plaintiff's Objection 122:22-123:25 Irrelevant (FRE 401, 402)

changeover.

Q. What is an executive changeover?

A. Folks from another institution show up with a CEO and one by one replace the executive team of the previous organization. So a number of my colleagues, Mr. Groody, our chief risk officer, every one of them, most of the executive team was relieved with the arrival of a new CEO and chairman. So reorganization.

Q. And when was -- when did that happen?

MR. BROWN: Objection to form.

Q. When was the executive changeover?

A. The dates of my employment should be on the record. You guys should know that. So that happened in 2009. November of 2009.

Q. Was the timing around the same for your executive colleagues that you just mentioned?

A. On or about. Over plus or minus months. I was one of the last ones to be around.

A. CELINI

Q. And Mr. Celini, do you know that -- do you know who Mr. Glassner is, Adam Glassner?

A. Yes.

Q. Who is Mr. Glassner?

A. Adam Glassner was head of capital markets for -- he ran correspondent lending and capital markets for us at ResCap and he had a role in the bank. He oversaw the correspondent lending group for a small time, for a short period of time.

Q. And did Mr. Glassner have any involvement in the broker-to-bank project?

A. Not that I recall. A lot of people came in and out of it so --

Q. And did the MMLPSA govern the purchase by GMAC Mortgage of correspondent loans that the bank held?

MR. BROWN: Objection to form.

A. I answered that earlier this morning, right. The bank originated -- the bank had various asset acquisition activities, so the correspondent activities those loans were in the bank. Or purchased

A. CELINI

by the bank.

Q. So my question is, whether GMAC Mortgage bought those assets from the bank under the MMLPSA?

A. Yes.

Q. So the MMLPSA, stated differently, the MMLPSA did not only cover those mortgages that were either originated by GMAC Mortgage or by the bank depending on the period?

A. We covered all mortgages.

Q. Okay. Are you aware that there was an investigation conducted into certain accounting under the MMLPSA after your departure?

A. No, not specifically.

Q. Do you know generally?

A. No.

Q. Do you know that Mr. Glassner raised concerns about how the bank was -- what revenues the bank was retaining under the MMLPSA agreement?

A. No.

Q. I am going to represent to you

A. CELINI

that at the time the July 1, 2008, Master Mortgage Loan Purchase and Sale Agreement was signed and became effective, which is marked as Cortese Exhibit 2, was signed and became effective, the bank was using lower cost or market accounting for its mortgage assets, okay?

MR. BROWN: For all mortgage assets? You can represent what you want to represent. But I will tell you that representation isn't correct.

Q. Mr. Cortese -- sorry, Mr. Celini, did you have an understanding of what accounting the bank was using for mortgages acquired by -- sorry, that it was acquiring from GMAC Mortgage?

MR. BROWN: Objection to form.

A. What period of time? When?

Q. In July of 2008.

MR. BROWN: Objection to form.

A. I don't recall specifically. It would be GAAP whatever it was. I don't recall the specific basis that was being used.

A. CELINI

Q. Under GAAP, you could choose different accounting methods, right?

A. Sure, yes.

Q. And they can all be GAAP compliant, right?

A. Yes.

Q. And one of them would be lower of cost or market, right?

A. Yes, that's correct.

Q. And another one would be fair value, right?

A. That's correct as well.

Q. And those are not the same, right?

A. That is correct.

Q. And I am asking you, if you know, whether July 1, 2008, the bank was using lower of cost or market accounting?

A. Honestly, I don't recall.

MR. BROWN: Objection.

THE WITNESS: Sorry.

A. I don't recall. Honestly, I don't recall.

Q. Okay.

A. CELINI

A. It's a long time ago.

Q. When you were the CFO of GMAC Bank, what accounting was the bank using for mortgage loans acquired from GMAC Mortgage?

A. That would have been in 2001 through 2003, approximately, correct?

Q. Right. I think you said 2004, but yeah.

A. So we were in during in that time. It was a long time ago. Probably using low COM at the time and again, that applies to -- we may have used some fair value assumptions on certain parts of our portfolio, but for our held for investment portfolio, it would have been one way. We could have had another basis for our held for sale. All portfolios are not accounted for in the same way.

Q. And did you have an understanding or do you recall whether there was a different accounting basis used for the held for income portfolio? Held for investment portfolio?

MR. BROWN: Objection to form.

A. CELINI

At what time?

Q. When you were CFO of GMAC Bank.

A. The portfolio would have been on a low COM basis.

Q. Would that have been the same for the held for sale portfolio?

A. It's been awhile back. So I think -- it probably was at the beginning and then we moved it to, you know, a fair value over a period of time. But I don't recall when that happened. It slips my mind.

Q. Do you know whether it happened while you were the CFO of GMAC Bank?

A. I honestly don't recall when it cut over.

Q. Is it possible that it didn't happen until the end of 2008?

MR. BROWN: Objection to form.

A. Again, I wasn't CFO at the time. It is possible. So, again, this was a long time ago. I don't recall. Could have happened then.

Q. I will represent to you that it happened in late 2008, okay?

A. CELINI

A. Okay.

MR. BROWN: Again, you can represent what you want to represent. I will tell that your representation is incorrect.

MS. MILLER: Okay.

Q. Looking at Cortese Exhibit 2, which is the July 1, 2008, MMLPSA. Can you tell me whether points collected by GMAC Mortgage on loans brokered by GMAC Mortgage to the bank were retained by GMAC Mortgage or the bank?

MR. BROWN: Objection to form. Sorry, I think you might have misspoken. You said points collected by GMAC Mortgage.

Q. Looking at the Cortese Exhibit 2, which is the July 1, 2008, MMLPSA, can you tell me whether points collected by the bank on mortgages -- on loans brokered by GMAC Mortgage to the bank were retained by GMAC Mortgage or the bank?

MR. BROWN: Objection to form.

A. So were retained by the mortgage

Plaintiff's Objection 130:18-133:23 Lack of personal knowledge/ speculative (FRE 602)

company or retained by the bank?

Q. That's what I want to know.

A. So your question was retained by the mortgage or the bank? So let me think through here. So points collected would be part of the basis of the loan. It would be part of the UPB and those, again, would have been part of the description as covered here for Cost Basis on the MMLPSA. So points collected, discount points collected by the bank at its origination would have been included in the Cost Basis of the loan when sold.

Q. Okay. At the end of the entire transaction, at the end of the sale, I want to know who has the net economic benefit from the points collected, if it's held by the bank, who benefits from it, the bank or GMAC Mortgage?

MR. BROWN: Objection to form.

A. So we answered that. The accounting that's prescribed here is -- that's where -- that's how the benefit -- the GAAP benefit is derived here. So as

described in this MMLPSA or when -- whatever one was in place, that's where the economic benefits were ascribed to. It is ascribed here in the agreement.

Q. I am asking you, based on your familiarity with these agreements, what the benefit was. That's what I am asking you.

MR. BROWN: Objection to form.

A. So what the benefit was? Okay, so there is a number of benefits. So it describes -- they are described here. Sorry not trying to be argumentative. The bank would earn interest carry. It would have -- when it sold the loans, it would get whatever the gains and losses are described in the MMLPSA at that point in time.

Q. Okay. Can you detail for me the gains and losses that were described in the MMLPSA?

A. In this document?

Q. In this document with the assumption that the bank was using low COM accounting.

MR. BROWN: Objection to form.

A. I have to study the agreement to make sure I understand the pieces at the time.

Q. Take as much time as you need.

A. Okay. So as described in this document here, the bank would accrue, and you were asking me for the benefits derived by the bank, correct?

Q. Right.

A. The bank would accrue the income for its holding period. And upon its sale, it would be relieved at its Cost Basis plus or minus any of its, you know, derivative loan or hedge accounting, low COM adjustments. So that would take the bank out at no gain or loss. So its benefit would be the coupon interest that it earned during the period.

Q. And what benefits would be derived from the bank -- by the bank if the bank were using fair value accounting?

A. The same.

Q. And is your testimony based on your review today of the MMLPSA consistent

A. CELINI

with your recollection of the agreement from the time that you were at Ally Bank?

MR. BROWN: Objection to form.

A. These statements are made based on review of the agreement that's here. That's all I can -- I mean, I don't recall. Assuming that these were executed, that means they were in place. So that's what was happening at the time. So, again, I was not the CFO. I was an attester to this agreement. So it is an inference, but that's what was in place.

Q. And if the parties wanted to modify that, to provide gain for the bank under this agreement, would they have to amend the agreement?

Plaintiff's Objection 134:14-19 Lack of personal knowledge/ speculative (FRE 602); calls for legal conclusion

MR. BROWN: Objection to form.

A. So, yes, they would have to.

MS. MILLER: We can take a quick break. I might be done.

THE VIDEOGRAPHER: We are now going off the video record. The time is 12:16.

(Whereupon, a recess was held.)

A. CELINI

THE VIDEOGRAPHER: Back on, 12:25.

BY MS. MILLER:

Q. Mr. Celini, I would like to mark as Celini Exhibit 3, a document Bates stamped RC '0030534 through '550, and it is the Broker Agreement dated November 20, 2008, between GMAC Mortgage -- sorry, between GMAC Bank, GMAC Mortgage and Ditech LLC.

(Whereupon, Celini Exhibit 3, RC '0030534 through '550 was marked for identification as of this date by the Reporter.)

Q. Mr. Celini, do you recognize this document?

A. Yes, I do.

Q. And were you involved in the preparation of this document?

A. Yes, I was.

Q. And did you -- were you involved in the negotiation of the terms of this agreement?

A. Yes, I was.

Q. And were you involved in the

A. CELINI

drafting of this agreement?

A. Yes, with counsel.

Q. Did you sign this agreement?

A. Yes, I did.

Q. And you executed the agreement on behalf of the bank, right?

A. Yes.

Q. And, Mr. Celini, why were you the bank representative who was designated to execute this agreement?

MR. BROWN: Objection to form.

A. I am an officer of the bank. The two parties here were the executive sponsors.

Q. The executive sponsors --

A. Yes.

Q. -- for the broker-to-bank project that we have been talking about?

A. Yes.

Q. Is this agreement the culmination of that project?

A. It is obvious, yes.

Q. Nothing is obvious unless it is on the record. I will ask that again. Is the Broker Agreement the culmination of the

A. CELINI

broker-to-bank project?

MR. BROWN: Objection to form.

A. Yes.

Q. Does this refresh your recollection that it ended in around late November 2008?

A. Yes.

Q. And can you describe, generally, what the Broker Agreement provided?

MR. BROWN: Objection to form.

A. The terms and conditions by which the affiliate would broker loans to the bank, you know, in accordance with regulatory requirements and generally accepted accounting principles.

Q. And did the -- sorry, did GMAC Mortgage receive a brokering fee in connection with its services provided under the Broker Agreement?

A. Yes.

Q. And how are those brokering fees established?

A. Generally, through a 23 B compliant process of serving what market

A. CELINI

prices are for broker fees in the marketplace. Similar types of transactions.

Q. And do you recall whether, under the MMLPSA, GMAC Mortgage would effectively reimburse the bank for any broker fees that it was paid?

MR. BROWN: Objection to form.

Q. Because they would be considered a cost to the bank and therefore, increase the Cost Basis of the loans being purchased?

A. I believe we've already answered questions from the MMLPSA. This is a separate document that governs the sale of loans. Nothing to do with the brokering activity.

Q. If the bank paid a brokering fee in connection with the loan, would that increase or decrease the Cost Basis under the MMLPSA?

A. It would be an expense. So would it increase the basis of the loan? I have to think. It would be an expense to the bank for the cost incurred by the affiliate to source the loan. I believe under GAAP that

A. CELINI

would have been included in the basis of the loan.

Q. Okay. So from GMAC Mortgage's perspective, it was collecting a broker fee but that was then also increasing the Cost Basis that it had to pay for the loans when it acquired them in the next step under the MMLPSA?

MR. BROWN: Objection to form.

A. I need clarification on that. Walkthrough that.

Q. Okay. So in Step 1, GMAC Mortgage makes a contact with a customer and brokers that customer to the bank and the bank pays GMAC Mortgage a broker fee in connection with that activity and that happens -- that's governed by the Broker Agreement, right?

A. That's correct.

Q. The bank then has a loan, which GMAC Mortgage is going to purchase from the bank under the MMLPSA, right?

A. That's correct.

Q. And under the MMLPSA, the

A. CELINI

purchase price is the Cost Basis of the bank, right?

MR. BROWN: Objection to form.

A. Whatever the MMLPSA is in effect at that time, right, yes.

Q. And under the July 1, 2008, MMLPSA, the Cost Basis would be increased by the broker fee that was paid to GMAC Mortgage, right?

A. Yes.

MR. BROWN: Objection to form.

A. So yes, the Cost Basis would be increased. GMAC Mortgage would recognize the broker fee in income right away. That's for their activities. So it is a deferrable cost into the Cost Basis of the loan for the bank for the affiliate's income.

Q. Right. Then when GMAC Mortgage buys the loan from GMAC Bank, it is purchasing it at the Cost Basis, which has been increased by the broker fee, paid to GMAC Mortgage under the Broker Agreement, right?

MR. BROWN: Objection to form.

A. CELINI

A. As defined under Section 1.9, it would be in there. And you would need to reverse out the income that it recognized upfront. So you can't book revenue twice. You'd have to reverse out the revenue it recognized at origination and then when it purchased the loan.

Q. So under that scenario, GMAC -- it doesn't matter to GMAC Mortgage whether the brokering fee is $1 or $100, right?

MR. BROWN: Objection to form.

A. You know, again, I can't speak for the affiliate on their -- when the bank's requirements are that it be compliant with 23B.

Q. 23B requires that it only be at market or better for the bank, right?

A. That's the general requirements, yes.

MS. MILLER: I would like to mark as Celini Exhibit 4, a document Bates stamped ALLY_0017869 through '877.

(Whereupon, Celini Exhibit 4,

A. CELINI

ALLY_0017869 through '877 was marked for identification as of this date by the Reporter.)

Q. Mr. Celini, I have marked as Celini Exhibit 4, a document entitled Affiliate Transaction Memo, which is from you to file regarding the Master Mortgage Loan Purchase and Sale Agreement amended and restated 6-1-07 with a date June 6, 2007, revised 10-31-2007. Do you recognize this document?

A. Yes, I do.

Q. Is it a document that you prepared?

A. Yes, it is.

Q. And did you draft it?

A. Yes.

Q. Do you recall why you revised this memo in late October of 2007?

A. I don't know. It was a long time ago. When I look at the change here, it could have been a number of reasons. In this case, it could have been in response to a regulatory examination finding or -- at the

time. I don't recall specifically, but it could have been -- it may have been because of a finding from the FTIC.

Q. Do you recall if there were any findings from the FTIC in or around October of 2007 that you may have been responding to?

A. My memory is fuzzy back to the specifics of the report of the examination at the time. I do know that the FTIC did have some concerns about the terms and conditions. So at various times.

Q. And when you say "terms and conditions," you mean specifically the terms and conditions of the MMLPSA?

A. Yes. And the marketing pricing. There was discussion. They felt comfortable with market pricing.

Q. And turning to page 2 of the -- sorry, is this a document that you reviewed yesterday that refreshed your recollection?

A. I am sorry, can you repeat?

Q. Did you review this document with counsel yesterday and did it refresh your recollection?

A. CELINI

A. No.

Q. Sorry, looking at page 2 of Celini Exhibit 4, and looking under the bullet that says "23B compliant pricing source for first lien loan sales is arrived at through the following constructs." Do you see that right in the middle of the page?

A. Yes.

Q. Then it says, "1, loan sales to affiliate occur at the actual market value price paid by GMACB to acquire such loan from affiliated or third-party correspondence."

Do you see that?

A. Yes.

Q. Then it says "Plus/minus accrued interest discount and premium." Do you see that?

A. That's correct. I see it, yes.

Q. Is that consistent with how you read the MMLPSA, the July 1, 2008, amended and restated MMLPSA that we were just looking at?

MR. BROWN: Objection to form.

This document is from 2007.

A. CELINI

A. You are talking about two separate documents.

Q. Sorry.

A. This is for 2007. The other one was 2008.

Q. Thank you.

MS. MILLER: Mr. Celini, I would like to mark as Celini Exhibit 5, the a document Bates stamped ALLY_0018275 through '290, which is the Master Mortgage Loan Purchase and Sale Agreement between GMAC Bank and GMAC Mortgage LLC amended and restated June 1, 2007.

(Whereupon, Celini Exhibit 5, ALLY_0018275 through '290 was marked for identification as of this date by the Reporter.)

Q. Mr. Celini, looking at the definition of Cost Basis on page '18277 of Celini Exhibit 5. Can you explain how, if at all, it differs from the definition of Cost Basis in the July 1, 2008, MMLPSA which was previously marked as Cortese Exhibit 2?

A. CELINI

A. The two terms from Section 1.9 of each agreement varying that the one from 2008 reflects fair value accounting basis. Net carrying value.

Q. What does the Cost Basis in Celini Exhibit 5 for 2007 MMLPSA reflect?

A. It is GAAP as defined under Cost Basis. So that would probably be a low COM type of basis.

Q. What do you understand the reference low COM to mean in the definition of Cost Basis in Cortese Exhibit 2?

MR. BROWN: Objection to form.

A. We answered that before.

Q. Can you tell me what the answer was?

MR. BROWN: Objection to form.

A. I will repeat. Fair value accounting concept for the Cost Basis as defined -- as it defines it shows adjustments from derivative loan commitments, hedge accounting, lower cost of market adjustments.

Q. Comparing the 2007 and 2008 MMLPSAs does the purchase price to be paid by

A. CELINI

GMAC Mortgage differ?

MR. BROWN: Objection to form.

A. Haven't we answered this before?

Q. I don't think we have looked at the 2007 MMLPSA before, no.

A. The 2007 document refers to purchase prices. There is a difference between market value and Cost Basis of the mortgage loan at the cutoff date. And the Cost Basis. So this is a -- in 2007 version reflects, so the way a market value for purchase. So the difference between market -- the difference between market value and cost plus the Cost Basis of the mortgage. So this indicates that the purchase price would be at market from the affiliate.

Q. Under the 2008 MMLPSA, the purchase price was at Cost Basis?

MR. BROWN: Objection to form.

Q. Right?

MR. BROWN: Objection to form.

A. Yes, that's what the document says. Let me clarify. In the 2008 document, the document states first liens was at Cost

Basis. Second liens was at market value.

Q. And what was the net benefit retained by the bank under the 2007 MMLPSA?

A. Net benefit underneath the 2007?

Q. Right.

A. As described by, in the affiliate transaction memo, which is your Exhibit 4. It is described in there.

Q. So looking at the page 3 of Celini Exhibit 4, the last sentence of the indented paragraph says "The agreement allows the bank to participate in transactions in which it enjoys the benefits of interest spread and market securitization activity generating gains and liquidity at the direct cost of legal investment bank underwriting and upper costs normally associated in these types of transactions."

A. Correct. In this case the bank earns a carry during the period for first mortgage assets. And has a forward commitment for sale, so it doesn't take any price risk. No gain or losses on sale, on the sale or disposition of the assets.

A. CELINI

Allows the bank to manage its liquidity asset appropriately.

MS. MILLER: I have no further questions. Thank you.

MR. BROWN: Mr. Celini, before we go off the record I have some questions for you, but if you need a break --

THE WITNESS: No, that's fine. Proceed.

EXAMINATION BY

MR. BROWN:

Q. Mr. Celini, let's go to Cortese Exhibit 2. Do you have that?

A. Yes.

Q. This is the July 1, 2008, MMLPSA you were discussing earlier, correct?

A. Yes.

Q. Let's turn to page 2, definition of Cost Basis on 1.9 or at 1.9. Do you see that?

A. Yes.

Q. The MMLPSA provides a definition for Cost Basis, right?

A. Yes.
Q. Cost Basis is a defined term in the agreement?
A. That is correct.
Q. Do you see where it says "Net carrying value as defined by accounting principles generally accepted in the United States of America"?
A. Yes.
Q. As a CPA and finance executive, do you understand that net carrying value has a particular meaning under GAAP?
A. Yes.
Q. Do you also understand that the phrase "accounting principles generally accepted in the United States of America" refers to U.S. GAAP?
A. Yes.
Q. If the bank's accounting methodology is lower of cost or market, what is its net carrying value as defined by GAAP?
A. Under low COM, the carrying value -- the Cost Basis would be the UPB of the loan plus or minus any discount, premium

or discount purchased. So that's points paid at a discount at origination. Plus any fees that would be appropriate to be deferred under FAS 91.

Q. And in your answer, you just used the phrase Cost Basis. Were you referring to the defined term Cost Basis as it exists in the MMLPSA?

A. No, I was referring to it in GAAP.

Q. Okay. So if the -- if the bank's accounting methodology were lower of cost or market, was its net carrying value, as defined by GAAP, Cost Basis?

A. It would be the lower of that cost or market price.

Q. And you provided the definition of what the Cost Basis would be in your previous answer?

A. Yes.

Q. If the bank were using fair value accounting methodology, what would its net carrying value be as defined by U.S. GAAP?

A. What would its net carrying

value, is that the term used or did you say fair value?

Q. Sorry. So let's go back. You understand that net carrying value has a particular meaning in U.S. GAAP, right?

A. Yeah.

Q. Is that correct?

A. Yes.

Q. If the bank is using a fair value accounting methodology, what is its net carrying value as defined by GAAP?

A. Net carrying value would be the UPB of the loan plus or minus any premium or discount plus any deferred fees that would be, you know, capitalizable under FAS 91 plus or minus any hedge gains or derivative gains that would be used to hedge the specific asset.

Q. If the bank were using fair value accounting, would its net carrying value as defined by GAAP be the fair value of the asset?

MS. MILLER: Objection; leading.

A. Yes, it would be the fair value.

A. CELINI

It reflects the net of all those adjustments.

Q. If the bank -- strike that.

Are you familiar with hedge accounting?

A. Yes.

Q. What is hedge accounting?

A. It's a nomenclature -- it's another name for a fair value accounting. It reflects the hedge gains. Hedge accounting reflects the impact of the specific hedges identifiable against a loan or a pool of loans to be net against its activity.

Q. Is hedge accounting similar to fair value accounting?

A. Yes.

Q. If the bank were using hedge accounting, what would its net carrying value as defined by GAAP be for a particular asset?

A. Again, it is a technical term. The GAAP is explicit but it would be the fair value. Net. That's the net -- that would be the fair value of the loans.

Q. What is the difference between the fair value of an asset and the assets or

the Cost Basis of an asset?

A. So let me be careful here. Because the GAAP is extensive. It is the volatileness that describes it -- the fair value generally reflects the net impact to the cost of a loan, the basis of a loan at origination. The cost of originating a loan less the mark-to-market adjustments of any derivatives or hedges that you have on that -- on specifically, identified against that asset. So it brings it to its market or fair value, essentially.

Q. So the fair value is the fair value under GAAP, right?

JSN Objection 154:14-18: FRE 611(c) (Leading)

MS. MILLER: Objection.

A. I thought I answered that, but yes.

Q. Mr. Celini, when the bank would enter into an MMLPSA or any other affiliate agreement, would it seek board approval?

A. Yes, that was a requisite under policy.

Q. What do you mean by that?

A. We had -- the bank had an

affiliate bank transaction that required all transactions with affiliates to be subject to formal agreements, in compliance with Reg W. They would be documented by -- accompanied by an affiliate transaction memo which would go through the requirements to say, state its compliance therewith to the various provisions of Reg W that would have to be presented to the board for -- as part of its approval of the agreement.

(Whereupon, Celini Exhibit 6, ALLY_PEO_'8380 through '8741 was marked for identification as of this date by the Reporter.)

Q. Mr. Celini the Court Reporter has handed you Celini Exhibit 6. Do you have that?

A. Yes.

Q. It is a document Bates stamped ALLY_PEO_'8380 through '8741. Do you have that?

A. Yes.

Q. This is a set of materials for a July 2, 2008, Ally Bank board meeting. Do

A. CELINI

you see that?

MS. MILLER: Objection.

A. Yes.

MS. MILLER: It says GMAC Bank.

Q. Celini Exhibit 6 is a set of materials for a July 2, 2008, GMAC Bank board meeting. Do you see that?

MS. MILLER: Objection.

Q. Do you see that, Mr. Celini?

A. I see that.

Q. Do you see there are a list of board of directors right in the middle of the page?

A. Yes.

Q. Do you recognize those to be the board of directors of GMAC Bank on or around July 2008?

A. Those were the directors at that time.

Q. Do you see at the bottom of the first page, there are a list of cc's.

A. Yes.

Q. Were you one of those?

A. Yes, I am.

Q. Would you have received this set of board materials?

A. Yes, I would have.

Q. Would have you reviewed the set of materials?

A. Yes.

Q. Let's turn to the page ending in '8442.

A. I have it.

Q. What is this page, Mr. Celini?

A. It's a resolution for the board. This -- the first page, '8442, is a summary of the resolution describing the action required of the board to amend the MMLPSA and some other agreements, the ISDA and other client agreement, right.

Q. Does this page contain a summary of your revisions to the MMLPSA and of your agreements?

A. Yes, it does.

Q. Do you see in the middle of the page, there is a bullet point says "Major points." Do you see that?

A. Yes.

Q. Right below that --

MS. MILLER: Hold on.

Q. -- says "Amended and restated Master Mortgage Loan and Sale Agreement between GMAC Bank and GMAC Mortgage LLC."

Do you see that?

A. Yes, I do.

Q. Take a minute and review the bullets underneath that heading and let me know when you are finished.

A. Okay, I have read them.

Q. Mr. Celini, does that refresh your recollection why the MMLPSA was amended and restated in July 2008?

A. Yes, it does.

Q. Why was the MMLPSA amended and restated in July 2008?

A. Basically, it was a FDIC request and probably part of a report of examination or earlier in that year.

Q. What was changed in the July 2008 MMLPSA in response to an FDIC request?

A. The resolution requires the clarification of the term purchase price, I

A. CELINI

think was the defined term.

Q. What do you mean by that?

A. Well, going through this refreshes my memory basically requires us to change the Cost Basis to take -- to change the Cost Basis to reflect the net carrying value under GAAP. And it made some other refinements to the agreement to clarify take out.

Q. And by that, you mean that the FDIC requested that the purchase price be revised to --

A. The net carrying value. The fair value.

MS. MILLER: Wait. He has to finish his question because I am waiting to object to it.

THE WITNESS: I apologize. Getting anxious.

Q. Did the FDIC request that the purchase price be revised to reflect net carrying value under GAAP?

MS. MILLER: Objection.

A. Yes.

JSN Objection
159:21-25
FRE 602, 802 (Lacks personal knowledge; calls for hearsay)

A. CELINI

Q. Was the July 2008 amendment -- MMLPSA amended to reflect GMAC Mortgage's purchase price to be net carrying value under GAAP?

JSN Objection 160:2-10 FRE 611(c) (Leading)

MS. MILLER: Objection; leading.

A. Give me a moment, I will check the actual document.

Q. It is Cortese Exhibit 2.

A. Exhibit 2, right. Yes.

Q. Did GMAC Bank or Ally Bank ever use hedge accounting for its held for sale portfolio?

MS. MILLER: Objection.

A. Honestly, I don't recall.

MR. BROWN: Nothing further at this time.

(Continued on next page to include jurat.)

A. CELINI

MS. MILLER: Anyone else?

We are done. Thank you for your time.

THE VIDEOGRAPHER: That now concludes this video deposition and tape number 3. The time is 1307.

(Whereupon, at 1:07 p.m., the Examination of this Witness was concluded.)

_____

AL CELINI

Subscribed and sworn to before me this _____ day of _____, 2013.

_____

NOTARY PUBLIC

E X H I B I T S

| EXHIBIT NUMBER | EXHIBIT DESCRIPTION | PAGE |
|---|---|---|
| Exhibit 1 | Hand drawn T accounts example | 54 |
| Exhibit 2 | Excerpts of the Report of Arthur J. Gonzalez | 56 |
| Exhibit 3 | RC '0030534 through '550 | 135 |
| Exhibit 4 | ALLY_0017869 through '877 | 142 |
| Exhibit 5 | ALLY_0018275 through '290 | 145 |
| Exhibit 6 | ALLY_PEO_'8380 through '8741 | 155 |

I N D E X


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| MS. MILLER | 7 |
| MR. BROWN | 149 |


INFORMATION AND/OR DOCUMENTS REQUESTED


| INFORMATION AND/OR DOCUMENTS | PAGE |
|---|---|
| (NONE) | |

C E R T I F I C A T E

STATE OF NEW YORK )
: SS.:
COUNTY OF NASSAU )

I, REBECCA SCHAUMLOFFEL, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of November, 2013.

_____

REBECCA SCHAUMLOFFEL

WITNESS ERRATA SHEET

Witness Name: Al Celini

Case Name: In Re: Residential Capital

Date Taken: November 8, 2013

Page #_____ Line #_____

Should Read: _____

Reason for Change: _____

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Reason for Change: _____

Witness Signature: _____

T. Marano

UNITED STATES BANKRUPTCY DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| In re: | Case No. 12-12020 (MG) |
| RESIDENTIAL CAPITAL, LLC, et al., Debtors, | Jointly Administered |
| RESIDENTIAL CAPITAL, LLC, et al., Plaintiffs, | |
| vs. | Adversary Proceeding No. 13-01343 (MG) |
| 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 under that Certain Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy, dated as of December 30, 2009, Defendants. | |

(CAPTION CONTINUED ON NEXT PAGE)

VIDEOTAPED DEPOSITION OF TOM MARANO
New York, New York
Monday, November 11, 2013

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Counter-Designation
Orange Highlighting = Joint Designation

Reported by:
THOMAS A. FERNICOLA, RPR
JOB NO. 67837

T. Marano

(Caption Continued as follows:)

----------x

OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estates of the Debtors,

Plaintiff, Adversary Proceeding

vs. No. 13-01277 (MG)

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,

Defendants.

----------x

November 11, 2013

2:00 p.m.

Videotaped Deposition of TOM MARANO, held at the law offices of Morrison & Foerster, LLP, 1290 Avenue of the Americas, New York, New York, before Thomas A. Fernicola, a Registered Professional Reporter and Notary Public of the State of New York.

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(Telephonically)

ALSO PRESENT:
MICHELLE MAMAN,
Cadwalader Wickersham & Taft
(Telephonically)
LEM LATTIMER, Videographer.

T. Marano

THE VIDEOGRAPHER: This is the videotaped labeled No. 1 of the videotaped deposition of Tom Marano, in the matter of In Re: Residential Capital, LLC.

We are now going on the record. The time is 2:00.

Will counsel please state your appearances for the record.

MR. LIPPS: Jeffrey Lipps, Carpenter Lipps & Leland, representing the Debtors and the witness.

MR. MATZA-BROWN: Daniel Matza-Brown, Morrison & Foerster, on behalf of the Debtors.

MS. FISSELL: Rachel Penski Fissell, on behalf of the ad hoc group of Junior Secured Noteholders.

MS. DeKRAKER: Hailey DeKraker, Milbank Tweed Hadley & McCoy, for the same.

MR. OSTRZEGA: Jonathan Ostrzega, also for the ad hoc group of Junior Secured Noteholders.

THE VIDEOGRAPHER: Thank you.

T. Marano

Will the court reporter please swear the witness in.

MR. FEDER: Benjamin Feder, Kelley Drye & Warren, on behalf of UMB Bank.

(A Discussion was Held off the Record.)

T O M M A R A N O,

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

BY THE REPORTER:

Q. Please state your full name and address for the record.

A. Tom Marano, 111 Oxford Drive, Tenafly, New Jersey 07670.

EXAMINATION BY MS. FISSELL:

Q. Good afternoon, Mr. Marano.

A. Good afternoon.

Q. So I understand that you've been deposed a few times before.

A. Yes.

Q. Okay.

So I won't go over the ground rules. I'll just say if you don't understand any of my questions, please let me know.

A. Okay.

Q. So before we get started, I just want to go over some definitions to make sure we're on the same page.

When I refer to the JSNs, I'll be referring to anyone holding a Junior Secured Noteholders issued by ResCap, LLC in 2008.

Okay?

A. Okay.

Q. The ad hoc group will refer to the JSNs who have formed the group that has hired White & Case, and Milbank and Houlihan Lokey.

A. Okay.

Q. And the Debtors, we'll refer to each of the ResCap entities that are subject to the bankruptcy proceeding in the SDNY, including officers, directors, professionals, employees.

A. Okay.

Q. What did you do to prepare for today's deposition?

A. I met with the gentleman here for

four or five hours on Thursday or Friday of last week, and I met with him for about 45 minutes today.

Q. And did you review any documents in advance of today's deposition?

A. I did review a few documents, yes.

Q. What documents were those?

A. There were a couple of e-mails. I think that was mostly it, just e-mails.

Q. And what is your current role with the Debtors?

A. I am currently the chairman of ResCap.

Q. When did you become chairman?

A. I was the nonexecutive chairman back in 2 -- in spring of 2008. I became chairman and CEO in the summer of 2008. And I resigned as CEO in May of 2013, but retained the title as chairman.

Q. And do you hold any other jobs at this time?

A. No.

Q. What are your responsibilities as chairman?

A. I host regular board meetings of the ResCap board of directors, I will occasionally assist Tammy Hamzehpour, Lew Kruger, other members of the company in market-related questions and activities.

Q. And so while you were CEO of ResCap, you also served as chief capital markets officer and chief mortgage officer of AFI?

A. That's correct.

Q. You served in that dual role between May 2009 and May 2012?

A. That time period is approximately correct.

Q. Can you be more specific?

A. I'm not sure if it was April of 2009 or May 2009, but it's within a month, and it ended -- the dual role ended on May of 2012.

Q. With the filing of the petition?

A. Correct.

Q. How were you compensated when you had the dual role?

A. I'm not sure I understand the question.

Q. What were the components of your

compensation while you held the dual role at AFI and ResCap?

MR. LIPPS: Do you want to know for each position?

BY MS. FISSELL:

Q. Were you compensated separately for each position?

A. No.

Q. So what was your compensation? Was it a combination of stock and cash and --

A. Oh, okay.

Yes. It was a combination of cash and deferred stock.

Q. Deferred stock in AFI?

A. Yes.

Q. So, broadly, if AFI did well, you did well compensation wise?

MR. LIPPS: Objection to form.

Go ahead.

A. It -- the decision of what to pay me was a function of how ResCap did, how AFI did, and how the capital markets in the area did. They looked at multiple components.

Q. Right.

T. Marano

But because part of your compensation was AFI stock, your compensation was tied, to the extent it was made up of AFI stock, to the performance of AFI?

MR. LIPPS: Objection. Asked and answered.

A. I already answered it. It all rolls together and was -- it's not like AFI had a public stock. It's a phantom stock. It's, you know, it's nothing you can really point to.

Q. You were deposed in November 2012; correct?

A. Yes.

Q. And at that deposition you gave truthful answers?

A. Yes.

MS. FISSELL: I'd like to mark this as Marano 1, the transcript of the deposition of Thomas Marano, dated November 12, 2012.

Plaintiff's Objection 12:19-22: Inadmissible hearsay (FRE 802)

BY MS. FISSELL:

Q. And if I could just turn your attention to page 19. And if you look at

line 16, are you saying that your compensation bears -- the question posed to you was, "Are you saying that your compensation bears no relationship to AFI's financial performance?

"Answer: Broadly, if AFI does well, I'll do well, but AFI has a very large number of components that affect their profitability."

Is that answer true?

A. That answer is true.

MR. DONOVAN: I'll object to the form.

BY MS. FISSELL:

Q. Were there other ResCap employees that were also employed at either AFI or Ally and had a dual role similar to the way you did?

Plaintiff's Objection 13:15-23: Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602)

A. Yes.

Q. Who were those employees?

A. I actually can't recall the names at this point in time, but there were several people who had a dual role.

Q. By several, you mean more than 10?

MR. LIPPS: Objection to form.

Go ahead.

A. It might be less than 10.

Q. Was James Aretakis one of those employees?

A. I'm sorry, I don't recall who James Aretakis is.

Q. What about Albert Celini?

A. Al Celini, I think, worked for Ally Bank. I don't know if he worked for ResCap.

Q. Joseph Cortez?

A. I'm not familiar.

Q. Cathy Dondzila?

A. Cathy Dondzila, I believe, worked -- well, she did the accounting work for us at ResCap. I don't recall if she was a dual employee or not.

Q. What about Tammy Hamzehpour?

A. For a period of time Tammy worked for Ally, and then I think for another period of time she -- I know for another period of time she worked for ResCap.

I don't know if she had -- no, Tammy probably had dual responsibilities.

Q. What about William Marx?

Plaintiff's Objection 14:18-24 Lack of personal knowledge (FRE 602)

A. Who?

Q. William Marx?

A. I don't recall who William Marx is.

Q. Barbara Westman?

A. I know who Barbara is, I don't know if she had a dual role.

Q. James Young?

A. I'm not -- again, Jim moved around from ResCap to Ally Bank. I don't know if he was ever an Ally employee.

Q. Is there anyone who you recall having the dual role?

A. I don't recall with 100 percent certainty. There was a couple other people that you could look into, but...

Q. Who are those people?

A. I think maybe Lou Neese may have had a dual role. And who else.

Lou is the only one that comes to mind.

Q. How was it determined which entity an employee would work for?

MR. LIPPS: Objection. Calls for speculation, but go ahead, if you know.

T. Marano

A. It would depend upon the nature of their qualifications and when they were hired. For instance, some people could bring value to both parts of the firm or multiple parts of the firm and other people's skill set was more narrowly focused.

Like I said, in the context of a dual employee, I don't think there were a lot, meaning someone who did two jobs at the same time.

There were plenty of employees that moved between the organization, but very few did two jobs at the same time.

Q. And for employees that did have dual roles, are you aware of how the costs for that employee were allocated?

A. There was, for those types of employees, there was a cost allocation model. I couldn't take you -- I don't recall the specifics of it, but there was a model or, you know, a process.

Q. So, for instance, for your salary, the cost of your salary was split between ResCap and Ally?

Plaintiff's Objection 16:15-17:8 Lack of personal knowledge (FRE 602)

A. In the context of my case, I actually don't know how they did it. I really don't know how they did it. I know we made a lot of money at the parent and we also, you know, had some years where we made a lot of money at ResCap, but I don't know how it was done.

Q. Was there any system in place for monitoring which employees were working for which entity?

A. I didn't do that work, so I couldn't -- I couldn't tell you how it was done. I'm sure there was a process, as I said. You know, that would be more in the H.R. or the accounting area.

Q. Are you familiar with what's been termed the Phase II disputes between the debtors and the ad hoc group?

MR. LIPPS: Objection to form, but go ahead.

A. You'd have to get a little more granular on that for me. I'm sorry. The way -- I sort of know what it is, but you have to -- if you give me specifics, I could help.

Q. Okay.

So are you aware that there's a dispute over the claims relating to intercompany balances between debtor entities?

A. Yes.

Q. And are you aware that there's a dispute over certain claims that the debtors have against Ally?

MR. LIPPS: Objection to form, but go ahead.

MR. DONOVAN: Objection to form.

A. Can you just rephrase it?

Q. Sure.

So, you're aware that there is as part of the plan certain claims that the debtors have against Ally are being settled?

A. That's correct, yes.

Q. And are you aware that the JSNs claim that they have a lien over some of those claims?

A. Yes, I am.

Q. Okay.

Do you know which of those claims the JSNs are asserting they have a lien over?

MR. LIPPS: Objection to form.

A. I really don't know the specifics of their claim.

Q. Okay.

Are you aware that the JSNs are asserting they have a lien relating for -- a breach of contract claim relating to -- relating to the first 2009 tax allocation agreement?

A. I know that scenario where they -- where they have a dispute, yes.

Q. And also relating to the brokering and consumer loans project?

A. I'm aware they have an issue with that, as well, yes.

Q. And the failure to make swap payments based on the value of the entire MSR portfolio?

A. I know they have an issue with the swap arrangement, but I don't understand it the way you've described it.

Q. Okay.

And what about the 2006 bank restructuring?

T. Marano

A. I know they have an issue with that, as well.

Q. And will you be spending any written direct testimony -- sorry, let me back up.

You're going to be submitting written direct testimony to the court tomorrow; correct?

A. Yes.

Q. And have you reviewed that testimony?

A. That's something we have worked on --

MR. LIPPS: I don't want you to talk about conversations that you've had.

THE WITNESS: Lawyers.

MR. LIPPS: It hasn't been submitted, so it's not ready for his review.

MS. FISSELL: Okay. So you're -- okay.

BY MS. FISSELL:

Q. Do you know the substance of what you'll be testifying about?

A. Yes.

Q. Okay.

Unless your attorney directs you not to answer a question, you have to answer the question that I ask.

MR. LIPPS: He's been answering your questions.

MS. FISSELL: Okay.

MR. LIPPS: Just ask the question.

MS. FISSELL: I'll ask it when I'm ready to ask it.

So I don't think it's privileged whether -- were you directing him not to answer whether he has reviewed the testimony? I think those are two questions ago.

MR. LIPPS: Yes.

MS. FISSELL: So you're saying he can -- you're directing him not to answer whether he's actually reviewed the direct testimony.

MR. LIPPS: I'm not going to allow him to testify about conversations we had with respect to the preparation of the written direct testimony. It's not due to

be submitted until tomorrow, so I'm not sure what you're trying to accomplish with the question.

But why don't you ask it and I'll either direct him not to answer or I'll allow him to answer.

MS. FISSELL: Okay. Well, we'll see how far we get. We might just have to adjourn his testimony until after his direct testimony is admitted if you're not going to allow him to speak about the substance of it.

MR. LIPPS: No, he can speak about the substance of his direct testimony.

MS. FISSELL: Okay.

MR. LIPPS: He just said he knows generally what he's going to testify about.

MS. FISSELL: Okay.

BY MS. FISSELL:

Q. So are you -- is the subject of your direct testimony going to cover any of the areas that we just went over that the JSNs or the ad hoc group and the debtors are

disputing?

MR. LIPPS: And I'll allow him to answer it. I just want to understand. You're talking about the intercompany balances and then the four claims that you walked through?

MS. FISSELL: Yes.

THE WITNESS: Can we take a second?

MR. LIPPS: Sure.

MS. FISSELL: Well, you can't take a second while a question is pending.

MR. LIPPS: If he wants to consult with me on whether he's disclosing privilege or not, I think he can do that.

MS. FISSELL: I mean, you're not supposed to have a conference while a question is pending.

Are you directing him not to answer the question?

MR. LIPPS: No. I want to help my client make sure he doesn't close privileged information.

MS. FISSELL: Okay.

It's completely inappropriate to

talk to counsel while a question remains pending.

A. Okay. Rephrase your question or ask me again.

Q. Is the substance of your testimony going to cover any of the topics that we just went over, the intercompany balances, the four claims that the debtors have against Ally?

A. I can't answer that question.

MR. LIPPS: Without talking to me?

THE WITNESS: Yes, without speaking to him.

MR. LIPPS: Will you give me the courtesy of speaking to him?

MS. FISSELL: Why don't we do this. We'll go back to that if we have to.

BY MS. FISSELL:

Q. Why don't you tell me what the substance of your direct testimony is going to be about.

A. The majority --

THE WITNESS: Can I do that?

MR. LIPPS: You can talk about generally what you understand. Obviously,

you haven't --

THE WITNESS: Yes. We haven't finished it.

MR. LIPPS: -- it's not submitted, so...

A. We haven't finished it.

Q. Okay.

A. Generally, the deposition is about the --

MR. LIPPS: The direct testimony.

A. Pardon me, the direct testimony is about the value that we achieved through the process of our actions that led ResCap to a soft landing in bankruptcy.

And there obviously is -- there are some actions we took that I describe in there that may touch on the areas of the dispute you've raised; but in the specific way you've raised them, I can't say that they are a hundred percent addressed at this time.

Q. Okay.

So how does your direct testimony touch upon the areas of dispute?

MR. LIPPS: Objection to form. I

don't see how he can answer that. He hasn't given his direct testimony yet, but go ahead.

MS. FISSELL: I mean, the whole purpose of this deposition is to prevent having us do trial by ambush. And so we are entitled to question what he is going to be testifying about.

If you're not going to let me do that, then we can just adjourn this deposition until Wednesday and cover what's actually in his direct testimony submitted to the court.

MR. MATZA-BROWN: That's not the schedule you've agreed to.

MR. LIPPS: You knew the direct testimony --

MS. FISSELL: Well, this is the subject of his -- of the deposition is what he's going to be testifying about and we're going to explore.

If you want me to go through every -- every issue and every document that he has ever touched, we can spend it

but we're going to be here until 9:00 tonight.

MR. LIPPS: You never --

MS. FISSELL: If you want to --

MR. MATZA-BROWN: -- a long time ago.

MS. FISSELL: If you want to go -- I'm entitled to explore with him what he's going to be testifying about. And if you're not going to let me do that, we will adjourn the deposition.

MR. LIPPS: No, he has answered to the best he can. The problem is you're framing your questions in terms of direct testimony that will not be submitted until tomorrow.

You knew that was the date it was going to be submitted. He's here for the period of time that we have agreed upon. You can ask him --

MS. FISSELL: There's no period of time we have agreed upon. I have seven hours.

MR. LIPPS: Seven hours. Seven

hours is what you have.

MS. FISSELL: Okay.

MR. LIPPS: So if you want to show him document after document for seven hours, you can; but if you have specific questions, ask him a specific question and he'll be able to answer it.

But to frame it around direct testimony that's not even due until tomorrow, I mean, that's what cross-examination --

MS. FISSELL: It's due tomorrow. He should know what he's testifying about tomorrow. You know, and --

MR. MATZA-BROWN: Just ask the question. In that way -- I mean, that was the objection. You're talking about something that doesn't actually really exist yet. I think that we can do this.

BY MS. FISSELL:

Q. What are you planning to testify about in your direct testimony? You said you're going to be touching upon areas that relate to the disputes between the ad hoc

group and the debtors.

MR. LIPPS: Objection.

BY MS. FISSELL:

Q. What are those areas?

MR. LIPPS: Objection.

Mischaracterizes. But go ahead.

A. The deposition largely talks --

MR. LIPPS: Direct testimony.

A. Pardon me. The direct testimony largely talks about the actions that the ResCap board of directors and management team took as we approached bankruptcy to provide for a soft landing.

It talks a bit about the settlement process with Ally, the first, you know, the first round settlement. It talks a little bit -- it addresses a little bit the issues surrounding the value that was achieved through having delivered a soft landing.

Q. Anything else?

A. At the moment, that's all that I can really say I, you know, am on the topic.

Q. Is there anything else that you think you should -- you would like to testify

about?

MR. LIPPS: Objection to form.

A. I prefer to testify about nothing. Unfortunately, I'm here.

Q. All right.

So you said, you've mentioned soft landing a few times.

What are you referring to by the soft landing?

A. There was a risk that ResCap could have gone into a free-fall bankruptcy.

Q. Uh-huh.

A. And we tried to evaluate the impact of a soft landing bankruptcy versus a free-fall bankruptcy on the value of the assets as we're approaching possible consideration of a filing.

So we did a number of things to ensure that we provided as soft a landing as possible, meaning a very large DIP, cooperation with government agencies, cooperation with regulators, retention bonuses, that sort of thing, and consistency of management team.

So we focused heavily on that because we felt that that would ensure that when the assets were liquidated, we would achieve the highest value possible for those assets.

Q. What were the actions that the board took to achieve that?

A. The board encouraged us, myself in particular, to meet with each of the GSEs and the FHFA, HUD. The board encouraged the firm to get settlement with DOJ and the Attorney Generals.

A subcommittee of the board worked on developing a settlement with Ally. The board had a compensation committee and the compensation committee approved the necessary bonuses that we brought forth to the judge for retention. Those sorts of things.

Q. Anything else?

A. That's all I can recall.

Q. You said that you achieved the soft landing by having a large debt, cooperating with the government, retention bonuses, and ensuring consistency of management?

A. As well as coordinating with the GSEs, Fannie, Freddie, and ultimately Ginnie Mae, yes.

Q. Anything else?

A. We actually increased certain staffing levels and brought vendors in to provide support to make sure that the delinquencies on the pool did not spike in the confusion surrounding the filing of ResCap.

Confusion on the part of borrowers, in other words, as to whether or not they needed to make their payments.

Q. And -- okay.

One of the other areas that you said you will be testifying about is the settlement process with Ally?

A. Yes.

Q. So what do you plan to testify about with respect to the settlement process with Ally?

A. Again, it's not finished yet, but I will mention the fact that we, you know, got a $750,000,000 settlement from Ally. That was worked on by John Mack and John Ilany.

Q. Were you involved in achieving the $750 million settlement?

A. No, that was not negotiated by me.

Q. Did you provide any input to Mr. Mack or Mr. Ilany?

A. No.

Q. Other than the fact that Mr. Mack and Mr. Ilany achieved a $750 million settlement with Ally, is there anything else you plan to discuss with respect to that?

A. No.

Q. And you're aware that that settlement ultimately was not agreed to?

A. Correct.

It was ultimately replaced with a second settlement.

Q. So you didn't have any negotiations with Ally with respect to the $750 million settlement?

MR. LIPPS: Objection. Asked and answered.

A. Again, the folks who negotiated that settlement were Ilany, Mack, Carpenter. I'm not sure who else from Carpenter, from Ally's

side.

Q. You said in addition to testifying about the actions that the board took and providing a soft landing, the settlement process with Ally -- well, you said the settlement process, but what you're saying to me now you didn't mean the settlement process, you just mean the fact that there was a one-time $750 million agreed-to settlement between AFI and the debtors?

MR. LIPPS: Objection to form. Argumentative. Also asked and answered.

Go ahead.

A. My testimony does not describe the settlement process in, you know, any level of detail. Because it's written and we refer to it, I think it's, you know, it's the process.

Q. What do you mean by "the process," it, the process?

A. The board had meetings. Information was shared with the board from Mr. Ilany and Mr. Mack and, you know, they did the day-to-day negotiation with Ally, and we ultimately came to -- or they ultimately came

to a $750 million number, and the board ultimately approved that. That's the kind of process.

Q. What was -- you said information was shared with the board from Mr. Ilany and Mr. Mack.

What was that information?

A. They would -- they would on occasion come back after a meeting with the folks from Ally and say, we're making progress, we're not making progress, these are -- you know, there are some sticking points.

You know, they had a view as to whether or not they could get more or less money from time to time out of Ally. So they shared their thoughts with us. But, ultimately, they worked out the best deal that they could get at that point in time.

Q. Do you recall anything else about those discussions with them?

A. Not really, no.

Q. I believe you said there was a third issue that you'd be covering in your planned direct testimony. And you said about, I

believe it was issues achieved post petition? I'm not sure if I'm recalling correctly what you said.

A. Again, I don't recall, you know, where you're going with that, but I know that we did do things post petition. There were specific requirements we needed to meet by -- in the DOJ, AG and Fed settlement, and we brought sufficient resources forward to get those milestones met so we could get the cooperation of the Attorney Generals to allow us to continue to operate in their states while we were in bankruptcy.

You know, those would include the loan modifications, working to complete HARP loan modifications, collecting the Ginnie Mae insurance or collecting the HUD insurance on the Ginnie Mae loans.

So we really, post bankruptcy, shifted a lot of our effort to getting those -- those requirements by the government and the regulators and the GSEs to work smoothly to maximize the value of the assets.

Q. Okay.

T. Marano

Other than the actions that the board took to provide a soft landing and the, what you've termed the settlement process with Ally relating to the $750 million settlement, what else do you plan to testify about?

MR. LIPPS: Objection to form.

A. At this point in time, I've given you the, you know, from what I have completed so far, a majority of what I plan to talk about.

Q. Well, I do not want the majority. I want all of it. So --

MR. LIPPS: Well, you'll get it on the 12th.

A. I can't give you --

MS. FISSELL: We'll go back.

MR. LIPPS: Are you going to waive your right to cross-examine at trial? I mean, you get the right to cross-examine? You'll get his testimony when --

MS. FISSELL: I mean --

MR. LIPPS: -- it's scheduled to be provided.

MS. FISSELL: Right. So you want to

do trial by ambush. That's fine.

MR. LIPPS: Direct testimony with cross is not trial by ambush. I've been doing it for 32 years. That's the way we operate in the courtroom.

The witness swears under oath, stands up, does direct testimony, and then the lawyer on the other side cross-examines. Your deposition is where you can ask questions about specific topics, not trying to somehow preview what he's going to testify about at trial.

BY MS. FISSELL:

Q. You said you going to talk about a little bit about the issues surrounding the value that was achieved through having determined a soft landing.

What was the value that was achieved through having delivered a soft landing?

A. I can name a few things. For instance, we had a large portfolio of Ginnie Mae buyout loans. These were loans that did have government insurance; however, there were significant document deficiencies in the loan

files. The documents existed, but they, because of the acquisitions over the year, years, most of the documents were in a place called Iron Mountain, some of the documents were not in the actual loan files, some of the documents were of a nature that we could not find -- pardon me -- some of the document deficiencies were of a nature that we could not find any counterparty to finance them.

And, in fact, the only counterparty we found that would finance them was Ally. Ally provided a line for these Ginnie Mae documents. I'll be describing that. That allowed us to continue to buy Ginnie Mae loans or loans out of Ginnie Mae pools, modify those borrowers, take those loans that would have traded at 70 cents or 60 cents on the dollar, cure them, get the borrower back on track and redeliver them at 100 cents on the dollar.

Also, by having the line from Ally, we were afforded time to maintain our Ginnie Mae delivery status. We actually got an extension. We negotiated an extension after we were in bankruptcy. That allowed us to

collect the insurance for a longer period of time, and, again, deliver loans to Ginnie Mae for a longer period of time, all of which caused us to get value for loans that, you know, might have sold for 50 to 70 cents on the dollar, got us up to a point where we could get close to par on those loans.

The extra runway we got from Ally and from Barclays through their DIP has put us in a position where we today continue to make progress on curing the document deficiencies.

Q. Other than what we discussed, is there anything else that you will be testifying about?

MR. LIPPS: Objection. Asked and answered.

Go ahead.

A. There will be some -- there will be some testimony about the role and challenges of working with the regulators in that. I think I mention that already, though.

Q. That's okay. You can repeat.

You said some of what you might be testifying about might touch upon areas

related to what we discussed earlier as Phase II issues?

A. Yes.

Q. So how does what we've just gone through touch upon the Phase II issues?

A. I think -- again, my recollection on some of the Phase II issues are whether or not the efforts we've put forth have created value that belongs to the JSNs or someone else.

And I believe -- I would assume -- actually, could you go back over the Phase II --

Q. Sure. Sure.

A. -- issues again. That will be easier for me.

Q. All right.

We'll do it more specifically.

So will anything you will be testifying about touch upon the intercompany balances between debtor entities?

MR. LIPPS: Objection to form.

A. I don't think I'm going to be -- I don't think there's going to be any, you know, extreme detail there. I know we had

intercompany balances, but not -- we had intercompany balances, I know that, but I'm not going to be dwelling on that in the testimony, no.

Q. I understand you might not dwell on it, but are you touching upon it in any way, the intercompany balances?

MR. LIPPS: Just note my objection to form.

Go ahead.

A. Just we're not finished yet, so, I can't tell you, you know, I don't know.

Q. At this point are you aware of touching upon it in any way?

A. Again, I think that I acknowledge it from, you know, what I've seen so far, but it's not particularly detailed.

Q. So what do you --

MR. LIPPS: Just note my objection to form.

BY MS. FISSELL:

Q. What do you acknowledge?

A. Intercompany balances existed.

Q. Okay.

And they no longer exist?

A. I'm not -- that's not in my deposition.

Q. Well, you used the past tense. That's why I asked.

A. Intercompany balances existed from -- there may be intercompany balances today. I'm not an accountant. I haven't looked at the books.

Q. Will you be testifying at all about the first or second 2009 tax allocation agreements?

A. No, I don't think so.

Q. What about the 2006 bank restructuring?

A. I don't think so. I wasn't involved.

Q. The brokering consumer loans project?

MR. LIPPS: Objection to form.

A. I just, you know, I don't know, but I don't think so.

Q. The failure to make certain swap payments based on the value of the entire MSR

portfolio?

MR. LIPPS: Objection to form.

A. Again, I believe I do touch on swap, but not in the way you've described it.

Q. What do you touch upon with respect to the swap?

A. There was swap. That was all part of the relationship between Ally and ResCap.

Q. And what about just the fact that a swap existed between Ally and ResCap?

A. Yes.

Q. Anything else?

A. No.

Q. Will your testimony discuss debt forgiveness related to the intercompany balances between debtors?

MR. LIPPS: Objection to form. Also asked and answered.

A. I don't recall that I had anything in there about that.

Q. Do you recall that there was debt forgiveness related to intercompany balances?

A. There was forgiveness of their company balances, yes.

Q. Will you be testifying about subordination under Rule 510(b) of the Bankruptcy Code?

MR. LIPPS: Objection to form.

A. No, I don't think so.

Q. Will you be testifying about the appropriate allocation of the Ally contribution?

MR. LIPPS: Objection to form.

A. I believe I describe the Ally contribution, but how it's allocated, we never really thought about the allocation, you know, how that would be allocated. Ally's view, the only way we could get a settlement is if we got everybody on board.

Q. How do you describe the Ally contribution?

MR. LIPPS: Objection to form.

A. Ally contributed $750 million for the settlement. Ally provided a DIP of a few hundred million dollars. Ally provided shared services which allowed us to function in a compliant manner. That's, you know, generally how I would describe it or how I do describe

it.

Q. So when I say Ally contribution, you answered referring to the $750 million settlement.

MR. LIPPS: Objection to form. It's argumentative.

A. Ally, the way I look at it is Ally provided a lot of stuff. They provided billions of dollars over, you know, many, many years. They provided a $750 million settlement, which they ultimately raised to north of 2 billion.

They provided infrastructure support, system support, technology support and they provided a DIP, as well as some other funding, assets, other funding functions within the DIP.

Q. Will you be discussing the $2.1 billion Ally contribution or --

A. I don't -- I don't believe I have that number in my testimony.

MR. LIPPS: Just note my objection to form.

BY MS. FISSELL:

Q. Will you be testifying about whether the JSNs are entitled to out-of-court protection?

MR. LIPPS: Objection to form.

A. I'm not a lawyer. I'm not going to decide a legal matter or opine on it. I'm just trying to share the information I have. That's it.

Q. Okay.

So were you involved in the settlement discussions prepetition with the debtors, Ally and the JSNs?

MR. LIPPS: Objection. Asked and answered.

Go ahead.

A. I was at a meeting but did not sit in at the meeting where that was discussed before we filed, yes. I was brought -- I forget what law firm hosted it. I was there, but I was not involved in most of that discussion.

Q. Are you aware that the JSNs, AFI and ResCap agreed to a confidentiality agreement

as part of the post settlement discussions?

A. I don't recall if they did or not. I just don't recall.

MS. FISSELL: We're going to mark as Marano 2 an agreement between Residential Capital, LLC, Ally Financial, Inc. and Davidson Kempner Capital Management LLC.

(A Discussion was Held off the Record.)

(Marano's Exhibit 1, Transcript of the deposition of Thomas Marano dated November 12, 2012, was marked for identification.)

(Marano's Exhibit 2, Agreement between Residential Capital, LLC, Ally Financial, Inc. and Davidson Kempner Capital Management, LLC, was marked for identification.)

BY MS. FISSELL:

Q. So does this refresh your recollection that there was a confidentiality agreement between certain JSNs, ResCap and Ally or AFI?

A. It really doesn't. It's clearly,

Plaintiff's Objection 48:5-8 Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)

it's executed by the general counsel of ResCap, but I just don't recall the document.

Q. Are you aware that the agreement required disclosure of any material nonpublic information by the petition date?

MR. DONOVAN: Objection to form.

MR. LIPPS: Are you asking as to this document, Marano Exhibit 2?

MS. FISSELL: Uh-huh.

MR. LIPPS: Well, just note my objection. He said he doesn't remember the document. So the document will speak for itself.

But go ahead and answer if you can.

A. I -- if you can show me where it says that, I can --

Q. Sure.

If you'll turn to page 4.

A. Okay.

Q. The second full paragraph.

A. Yes. The --

MR. LIPPS: Wait a minute. I think she needs to ask a question first.

THE WITNESS: Sorry.

Plaintiff's Objection 49:19-51:14
Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

MR. LIPPS: She pointed you to it.
What's the question?
BY MS. FISSELL:
Q. Do you read this as requiring Ally or the debtors to disclose any material nonpublic information by May 18, 2012?
MR. DONOVAN: Objection to form.
MR. LIPPS: Objection to form. Also calls for -- potentially calls for a legal conclusion.
Go ahead.
MS. FISSELL: I'll strike that question.
BY MS. FISSELL:
Q. What do you understand this paragraph to be about?
A. I -- so I understand that I've seen this before. This is sort of like a sunlight provision. When you're -- again, I'm assuming this is Ally's document.
But essentially what they're saying to an investor is, we're giving you material nonpublic information. You should not be trading on this information or sharing this

information to others who may trade.

And here it says no later than May 18th, Ally will either disclose the information, and if they don't, then the people who are on the other side of this document can disclose the information and then can trade.

Q. You understand that it's important for funds that manage money in a fiduciary capacity to be able to trade in and out of their positions?

Plaintiff's Objection 51:9-14: objection to form; vague and ambiguous

MR. LIPPS: Objection to form.

A. At times, yes.

Q. Okay.

You're aware that the parties later engaged in a second mediation?

A. By "parties," can you give us --

Q. Oaky. It's not clear. I appreciate you asking for a clarification.

So that the debtors and Ally and the creditors committee engaged in a second mediation.

A. Yes.

Q. And do you agree that the JSNs

wanted to participate in that mediation?

MR. DONOVAN: Objection to form.

MR. LIPPS: Objection to form and assumptions.

A. I don't know what the JSNs wanted to do. I know that the JSNs, if we're talking about the same mediation, they were present.

Q. What mediation are we talking about or do you think that I'm talking about?

MR. LIPPS: Objection to form.

A. The one that was held at 1177 Sixth Avenue. I think the JSNs were there. Maybe they weren't. I don't know.

Q. Is that the mediation that resulted in the global settlement --

A. Yes.

Q. -- embodied in the plan?

A. Yes.

Q. Do you know whether the debtors offered to enter into an agreement similar to what was marked as Marano Exhibit 2 with the JSNs in the second mediation?

A. I don't recall. I recall there were some parties who, no matter what, would not

sign a document like this. But I don't recall if this was offered up as part of the second, I just can't remember.

Q. Who were the parties who would not sign this no matter what?

A. There was -- I think Aurelius was one fund that never wanted to sign these documents. That's kind of what I recall.

Q. Do you know whether AFI was willing to sign this document?

MR. DONOVAN: Objection to form. Foundation.

A. I really don't.

MR. LIPPS: Do you want to take a break?

THE WITNESS: We're at 3:00.

MS. FISSELL: Do you want to take a break?

THE WITNESS: Yes. Now, or at 3:00.

MS. FISSELL: Can we just finish up this, then we can take a break.

THE WITNESS: Sure.

(A Discussion was Held off the Record.)

MS. FISSELL: So I'd like to mark as Marano Exhibit 3 a document that's been stamped AHG20002731.

(Marano's Exhibit 3, Document, Bates No. AHG20002731, was marked for identification.)

BY MS. FISSELL:

Q. Do you know who Dan Gropper is?

A. Based upon the bottom of the e-mail, he's from Aurelius.

(A Discussion was Held off the Record.)

Q. He's our client, so I'd better be able to say it.

A. Yes.

I do not know him, though.

Q. I'll focus your attention on the second or the second e-mail from the bottom that says -- do you know who Ken Eckstein is?

A. Yes, I do.

Q. Who is --

A. He's the lawyer for the Creditors' Committee.

Q. And he says, "Did you hear my

comment." He's writing to Dan Gropper. "Did you hear my comment? Judge was receptive to say the settlement discussions are not MNPI."

Do you understand what MNPI refers to?

A. No.

Q. What if I said it's Material Nonpublic Information?

A. That I mean --

Q. Would that make sense?

A. That makes sense.

Q. And you see that Gropper responds, "I did hear. Thank you. We will come up with the language that will address both business information and negotiations. The attached motion order which you are familiar with should provide insight."

So this is from -- the attachment is from a proceeding from the bankruptcy court in Texas?

A. Okay.

MR. LIPPS: Are you asking him to acknowledge that?

MS. FISSELL: Yes.

A. Yes. U.S. Bankruptcy Court Order, Northern District of Texas. That's what it says.

Q. And it's an order in aid of settlement discussions?

MR. LIPPS: Objection to form.

A. Again, yes, that's what it says.

Q. Okay.

This e-mail is dated December 20, 2012; correct?

MR. LIPPS: Objection.

BY MS. FISSELL:

Q. Sorry.

If you turn back to the first page --

A. Okay.

Q. -- from Dan Gropper to Ken Eckstein, December 20, 2012?

A. Yes.

Q. And at this time was the mediation that led to the global settlement commencing?

A. I don't recall the exact date that we got Judge Peck involved as the mediator. We had obviously wanted to try and mediate

with all the creditors early on.

But whenever Judge Peck got involved and when you Lew Kruger got involved, it -- you know, the whole process picked up steam. I can't remember the dates, though, if that was December 20th. I just don't recall.

Q. Okay.

MR. LIPPS: Is this a good point for a break?

MS. FISSELL: Let me just do two minutes.

I'm going to mark as Marano Exhibit 4 a document that's Bates stamped AHG20002759.

(Marano's Exhibit 4, Document, Bates No. AHG20002759, was marked for identification.)

BY MS. FISSELL:

Q. Let me know when you're ready.

A. (Document Review.)

Okay.

Q. You see that this e-mail is dated January 8, 2013?

A. Yes.

Plaintiff's Objection 57:13-60:15 Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

Q. And that Dan Gropper is attaching a proposed order in aid of mediation?

MR. LIPPS: Are you asking him to look and acknowledge on the document, because he's not on the e-mail chain.

MS. FISSELL: I'm asking him to acknowledge this.

MR. LIPPS: Well, the document speaks for itself. So I'll just object, but go ahead.

BY MS. FISSELL:

Q. And you know that Mr. Gropper says that he wants to get this in the hands of the debtors, in the e-mails --

A. Yes.

Q. -- that you guys had for almost a week.

And if you'll turn to Proposed Order in Aid of Settlement, and if you'll look at paragraph 8 on page 2, paragraph 8A, sub little i?

MR. LIPPS: Is that the one that ends 2761?

MS. FISSELL: Yes.

A. Okay. Do you want me to read all of 8?

Q. I want you to focus on paragraph sub little I.

A. (Document review.)

Okay.

Q. So would you characterize this provision here, as -- I believe you characterized the provision we looked at in the other confidentiality agreement as a sunlight provision.

Do you agree that this paragraph is a similar sunlight type provision?

MR. LIPPS: Objection to form.

A. It's a little different because, again, I'm not a lawyer, but the way I read this is, we could selectively disclose information to various parties to the mediation which would obviously put certain parties at a disadvantage.

There is an opportunity to disclose at some later point. But if we are selectively disclosing, then some parties would be trading on a lack of information.

So I sort of understand the concept that at some point there's a sunlight provision, but it looks like the way this is written is one party has an advantage versus the other.

Q. But you agree that some part of this does contain a sunlight provision?

MR. LIPPS: Objection. Argumentative.

Go ahead.

A. I think somewhere down near the bottom there is a request to disclose by February 28th. So that would give you the sunlight, yes.

Q. I'm going to show you one more document.

MS. FISSELL: I'll mark as Marano 5 a document Bates stamped AHG20002748.

(Marano's Exhibit 5, Document, Bates No. AHG20002748, was marked for identification.)

BY MS. FISSELL:

Q. I'll ask you to flip to the second page of the document stamped 2749. And that's

the same e-mail that we looked on Marano Exhibit 4?

MR. LIPPS: Objection. The document speaks for itself. He's not even on the chain.

But go ahead.

A. (Document review.)

Okay. What was your question?

Q. I just -- you see that that's the same --

MR. LIPPS: She wants you to compare two e-mails.

BY MS. FISSELL:

Q. That's the same e-mail that I showed you as Marano Exhibit 5.

A. Yes. Yes, it appears to be.

Q. And that on January 11th, Mr. Gropper sent Mr. Eckstein an e-mail saying, "Just following up to our conversation of yesterday. Any thoughts?"

MR. LIPPS: Objection. The document speaks for itself.

Go ahead.

A. I see that it's written there, yes.

Q. And then he followed up again on January 15th, the e-mail at the top of the chain?

MR. LIPPS: Same objection.

A. Yes.

Q. And have you ever seen these e-mails before today?

A. No.

Q. Were you ever made aware of these communications between Mr. Gropper and Mr. Eckstein?

MR. LIPPS: You can answer that, but I want to caution you I don't want you disclosing any conversations that you may have had with your counsel.

So you can go ahead and answer the question, but I want to make sure you don't inadvertently talk about conversations that you had.

A. No, I understand.

Mr. Eckstein was not my counsel and I had very limited involvement with him and always I had counsel present. I don't know -- I don't know anything about what Mr. Eckstein

Plaintiff's Objection 62:10-63:12 Irrelevant (FRE 401, 402)

received or didn't receive. I just don't know.

Q. Were you aware that Aurelius made requests to the committee to participate in the mediation?

A. I knew Aurelius -- and this is only through my counsel.

MR. LIPPS: Well, I don't want you disclosing anything that you talked about with counsel.

A. I can't -- I can't comment.

MS. FISSELL: Well, I mean, the fact that he -- whether he knew about a particular fact is not confidential information.

BY MS. FISSELL:

Q. I'm not asking you to disclose any conversations you had about that fact with counsel, but whether you are aware of the underlying fact that Mr. Gropper or Aurelius was reaching out to the committee about participating in the mediation. That's a fact that you can testify to.

MR. LIPPS: Not if he's had

conversations with counsel. I'm not going to have him talking about counsel.

You can ask the committee if they communicated it to him or whatever.

MS. FISSELL: I can ask the committee if they communicated to him. I can ask if he was -- if it was communicated by the committee to him.

MR. LIPPS: You can ask him if the committee communicated to him, as well, but you can't ask him what he learned through his counsel. It's just not going to happen.

MS. FISSELL: I can --

BY MS. FISSELL:

Q. Okay.

Was there ever a time where you were aware that Aurelius had asked to participate in the mediation?

A. Yeah. I can answer that.

MR. LIPPS: You can answer that.

A. I was aware that Aurelius wanted to be part of the mediation process. I was also aware that there were dialogues to try and get

a document that anyone else had signed to make them comfortable.

Why they never signed it, if they ever, indeed, never signed it, I don't know.

Q. Okay.

MS. FISSELL: Okay. We can take a break now.

THE VIDEOGRAPHER: The time is 3:09 p.m. We're going off the record.

(Recess taken from 3:09 p.m. to 3:26 p.m.)

THE VIDEOGRAPHER: The time is 3:26 p.m. We're going back on the record.

BY MS. FISSELL:

Q. You discussed earlier the $750 million settlement with Ally. And were you aware that there was a planned support agreement drafted related to that settlement?

A. Yes.

Q. And do you recall how intercompany claims between debtors, not between debtors and Ally, but between debtors were treated in that first PSA?

A. I don't -- I don't recall the

specifics of it, no.

MS. FISSELL: I'd like to mark as Marano 6 the term sheet for Joint Chapter 11 Plan of Reorganization, which is document No. 6-8.

(Marano's Exhibit 6, Joint Chapter 11 Plan of Reorganization, was marked for identification.)

(A Discussion was Held off the Record.)

BY MS. FISSELL:

Q. If you'll turn to page 7, the top box on that page says Intercompany Claims.

Do you want to read that box.

MR. LIPPS: You want him to read it to himself or into the record or --

MS. FISSELL: He can read it to himself.

MR. LIPPS: Okay.

A. (Document Review.)

Okay.

Q. Does that refresh your recollection as to how intercompany claims were treated under the first PSA?

A. Again, I recall the issue was discussed and addressed. I'm struggling just with the way this is written. I don't understand the impaired and the semicolons. They're like a paragraph before the word "impaired" or should have been just a colon.

I'm just not sure how to read this the way it's written.

Q. Okay.

A. You know, I'm not used to the legalese of a lawyer. You see what I'm saying; right? Like normally I would have written impaired, colon. Why is there a semicolon there?

Q. I'm not here to answer your questions.

A. I don't know how to read this.

Q. My question -- I think you said, though, you do remember how this was refreshing your recollection as to how intercompany claims were treated?

MR. LIPPS: No, he does not say that.

A. No. I recall there was an issue

surrounding intercompany claims. Okay? You know, at -- I am aware of that.

Q. What was the issue?

A. We tended to forgive intercompany claims on a regular basis. And I believe, you know, that in essence we didn't deem them as having any particular value.

Q. And when you say "we," you mean the debtors?

A. The debtors, yes.

Q. So we can ignore, if you will -- bear with me for a minute and just ignore that first sentence, which --

A. Okay.

Q. -- I agree is a bit confusing.

And -- but if you start with the second sentence, which reads, "Unless the Junior Secured claims have been paid in full based upon their secured claims, allowed intercompany claims shall receive in full satisfaction of such allowed intercompany claims an amount equal to its pro rata share of ResCap unsecured claims pool."

Do you understand what that's

saying?

MR. LIPPS: Objection.

A. This, no. This is like the most poorly written sentence I've seen in quite some time. I can't decipher that. I'm totally serious, that is really poorly written.

Q. Do you understand this to be saying that the intercompany claims are being waived and settled at zero?

A. I can't say that. This is -- like, I have not read this in ages, and this is like the worst sentence I've ever seen. I honestly don't know what this sentence says.

Q. Okay. Fair enough.

Do you recall any discussions with Ally about the treatment of intercompany claims in the initial PSA?

MR. LIPPS: By the initial PSA, you're talking about discussions prior to this agreement?

BY MS. FISSELL:

Q. I just -- when I'm referring to the initial PSA, I'm referring to the PSA that is

Plaintiff's Objection 69:24-71:13 Irrelevant (FRE 401, 402)

embodied by the term -- this term sheet that we're looking at here.

A. The original plan support agreement.

MR. LIPPS: I just want to make sure we're not getting into the mediation.

MS. FISSELL: No.

MR. LIPPS: This is prior to --

MS. FISSELL: The prepetition PSA.

MR. LIPPS: Thank you.

A. So your question, do I recall a conversation. I don't recall having any conversations with anyone in Ally about this.

Q. Do you recall anyone telling you that they discussed intercompany claims with Ally in these negotiations?

A. I know --

MR. LIPPS: Well, I'll let you answer; but, again, I don't want you to disclose any specific conversations that you had with counsel in connection with the negotiation of PSA.

A. Again, I know that I discussed with my chief financial officer the topic of intercompany claims, how we did them, how they

worked at the time all this was coming together. So I can disclose that because he's not my lawyer.

Q. You discussed with the ResCap CFO?

A. That's correct.

Q. But you did not have any discussions with Ally about intercompany claims?

MR. LIPPS: Objection. Asked and answered.

Go ahead.

A. I don't recall any conversation with Ally on this.

Q. And you don't recall Mack or Mr. Mack or Mr. Ilany reporting back to the board that they had discussed intercompany balances with Ally?

A. I don't recall. They may have. I don't recall. The only conversations I recall were with my CFO.

Q. And what were those conversations?

A. What exactly was the nature of the intercompany claims. He explained to me how money moved between the various subsidiaries, how periodically we would forgive an

intercompany balance.

I remember discussing the nature by which we forgave them. You know, he reminded me of documents we signed and approved where we would forgive a balance.

Q. And you discussed this with him while -- at the same time that the negotiations for the initial PSA were going on?

A. Around -- around the same period of time, yes.

Q. And what was the purpose of those discussions with your CFO?

A. My CFO and I occasionally talked about documents that were getting created that related to ResCap. We read the documents. That sort of thing.

You know, I can't remember why this was of particular note to him, but we -- I do recall having a conversation.

Q. And who was your CFO at the time?

A. Jim Whitlinger.

Q. Did you discuss with him how intercompany balances would be treated in the

first day filings?

A. I don't recall in the context of how they would be treated in the first day filings.

Q. Did you play any role in how they would be treated in the first day filings?

A. No, I didn't do the first day filings.

Q. Other than mentioning the existence of intercompany balances in your planned testimony, is there anything else that you will be discussing with respect to intercompany balances?

MR. LIPPS: Objection. That's been asked and answered. I also object to the form.

A. I don't recall any detail of intercompany balances as to what I'm going to be saying in my deposition -- direct testimony. Sorry.

Q. Well, just use the word "deposition" for your direct testimony. We all know what you're talking about.

A. Clearly, I'm not a lawyer.

MS. FISSELL: I will mark as Marano Exhibit 7, the Notice of Filing of Corrected Solicitation Version of the Disclosure Statement and Joint Chapter 11 Plan, which is Docket No. 4819.

(Marano's Exhibit 7, Notice of Filing of Corrected Solicitation Version of the Disclosure Statement and Joint Chapter 11 Plan, was marked for identification.)

BY MS. FISSELL:

Q. If you'll turn to page -- you'll have to unrubber band that -- to page 20.

MR. LIPPS: What's the number up top?

MS. FISSELL: You can try page 3201.

A. Yes.

Q. If you look at the second row, the class of claims is intercompany balances. The treatment of claim reads, "On the effective date, as part of the overall compromised body in the plan, intercompany balances shall be waived, canceled and discharged. Holders of intercompany balances shall receive no

recovery on account of their claims."

Do you see that?

A. Yes, I do.

Q. And would you agree that that treatment of intercompany balances is different than the treatment of intercompany balances that we looked at in the term sheet marked as Marano Exhibit 6?

MR. LIPPS: Note my objection to form. I think he said he didn't -- he wasn't sure he could understand what Exhibit 6 was saying, but go ahead.

MS. FISSELL: You can make an objection to form. Stop testifying on the record.

MR. LIPPS: And I'm not testifying, and I appreciate that. But you also have a good faith responsibility to really ask him a question that's grounded in what he's testified to.

But go ahead.

A. Again, based upon the poorly written sentence, I did not understand the other document; but it's clear to me that in this

one that there's -- that there's no value ascribed to the intercompany claims.

Q. And you have no position on whether it's different from the original PSA?

A. Because I can't understand the way that was written, I just can't draw that conclusion.

(A Discussion was Held off the Record.)

BY MS. FISSELL:

Q. Do you recall a time where you and your team began brainstorming a range of possible claims against AFI?

A. Yes, I do.

Q. Do you recall when that was?

A. Probably summer of 2011, maybe.

Q. And was the focus of those claims on claims between the debtors against AFI or Ally?

A. Yes.

Q. And you asked Morrison Foerster to look into certain areas?

A. Yes. We asked them to do an investigation.

Q. Why did you ask them to do an investigation?

A. We needed someone to. We weren't sure at that point in time if we were going to file. We were, you know, in the interest of being prudent, we wanted to have our bases covered if we had to file.

So we reached out to Morrison Foerster because of their long relationship with the firm, frankly, not a particularly warm relationship between Morrison Foerster and Ally, and in the interest of not spooking the market or creating the impression we going to file if we didn't know we were going to file, we hired them to do the work.

Q. And at that time do you believe there were certain claims that the debtors might have against Ally?

A. We were told by Morrison Foerster --

MR. LIPPS: I don't want you to talk about legal advice that you received.

A. Repeat your question. Let's see if I can answer it.

Q. Okay.

At that time, did you believe that there were certain claims that the debtors might have against Ally?

MR. LIPPS: And I'll allow you to answer, but I am going to instruct you not to disclose any information that you received from counsel.

THE WITNESS: I understand.

MR. LIPPS: If you can't answer it, you can't answer it.

But go ahead if you can.

A. At the time we hired Morrison Foerster, I actually didn't know.

Q. You also set up a special review committee, as well?

A. For the claims?

Q. Yes.

A. I actually don't recall if we had a committee to review the claims. We definitely talked about it at board meetings. I don't know if there was a committee.

Or -- no, at that point in time, I don't think we had a committee in the summer of '11.

Q. Did -- by December 2011 had the ResCap board established a special review committee?

A. I think we had a negotiating team. Yes, we did, for -- I think that was John Mack and Jonathan Ilany.

Q. And was one of the things that they were tasked with was implementing a process and procedure for the review and assessment of potential claims arising in relation to transactions with AFI?

MR. LIPPS: Objection to form, but go ahead.

A. I know we had a committee. I don't know, you know, if there was a committee, we would have had rules and guidance for the committee. I just don't know what we had.

Q. Okay.

MS. FISSELL: We'll mark as Marano Exhibit 8, an excerpt from the examiner's report. It's pages Roman Numeral III-244 through Roman numeral III-245.

MR. LIPPS: Just note my objection on the record for the use of it. I think

even the judge has characterized it as hearsay, but you may proceed.

MS. FISSELL: You are aware that you're allowed to use hearsay in depositions.

MR. LIPPS: I'm not stopping you. I'm just objecting.

THE WITNESS: Do you want to number this?

(A Discussion was Held off the Record.)

(Marano's Exhibit 8, Excerpt from Examiner's Report, was marked for identification.)

BY MS. FISSELL:

Q. So you'll turn to page III-246, Roman Numeral III-246.

MR. JOHNSON: Can you repeat that page, please.

MS. FISSELL: It's 246.

MR. JOHNSON: Okay.

BY MS. FISSELL:

Q. Does this -- if you look at the paragraph in the middle of the page, it says,

"Effective December 5, 2011, the ResCap board established the special review committee."

A. Yes.

Q. And then for the purpose of -- and I'll let you read that paragraph to yourself.

A. (Document Review.)

Okay. I've read it.

Q. Does that refresh your recollection of whether the special review committee was also tasked with implementing a process and procedure for the review and assessment of potential claims arising in relation to transactions and interrelationships between the debtors and AFI?

A. Yes.

Q. It does refresh your recollection?

A. It does.

Q. Okay.

And who did they hire to assist them with that analysis?

MR. LIPPS: Objection to form.

A. I'm not sure -- you're talking about their counsel?

Q. Did Ilany and Mack hire anyone to

assist them?

A. I have no idea. They would have had access to Morrison & Cohen, but I don't know if they hired anyone else. I don't recall.

Q. And who is Morrison & Cohen?

A. Those would -- Morrison & Cohen is counsel to the independent committee members -- board members.

Q. Do you know whether Morrison Foerster or -- do you know whether Morrison Foerster ever made a presentation to the ResCap board regarding their analysis of potential claims against Ally?

MR. LIPPS: And I will allow you to respond to the fact of whether or not there was a presentation, but I don't want you to disclose any legal advice or information that you received from counsel as a result of their analysis.

Go ahead.

A. We did. The board did receive a presentation, yes.

MS. FISSELL: The substance of the presentation was disclosed in the

examiner's report. So you're taking the position now that the presentation, although the parts, at least, of the presentation are disclosed in the examiner's reports, which has been publicly disclosed, are --

MR. LIPPS: There was a confidentiality order and strict restrictions on information that the examiner was to receive. And it was never our understanding nor intention to waive any privilege that we have with respect to communications that the lawyers for the debtors provided to the board.

So I'm not going to allow him to discuss legal advice that the board received.

MS. FISSELL: I just want to make sure the record is clear, so if I -- I'll just ask the question and if you want to make the objection --

MR. LIPPS: I'll instruct as appropriate and let him answer as appropriate.

T. Marano

MS. FISSELL: Okay.

BY MS. FISSELL:

Q. What -- what analysis -- strike that.

Did MoFo identify any breach of contract claims that the debtors may have against Ally?

MR. LIPPS: And I'll allow you to answer to the extent you can answer without revealing advice that you received from Morrison Foerster. And if you can't, then indicate that you'll follow my instruction.

A. I was present at a slide show where they put a list of claims up there. I don't recall one way or the other if a breach of contract claim was there. I just don't recall.

Q. Was one of the claims that they had on that slide presentation a claim related to the tax allocation agreements?

MR. LIPPS: And, again, I'll instruct you not to answer to the extent you would reveal legal advice that you

Plaintiff's Objection 84:6-19 Lack of personal knowledge (FRE 602)

received from the company.

A. We would have -- you know, I can't answer it then.

MR. LIPPS: Then you can't answer it. I'll instruct him not to answer it.

BY MS. FISSELL:

Q. Do you recall any of the specific claims that were disclosed in that presentation?

MR. LIPPS: I'll let you answer "yes" or "no" to that.

A. Yes.

Q. What were they?

MR. LIPPS: I'm going to instruct him not to answer to the extent it requires you to reveal information and legal advice that you received from Morrison Foerster.

A. I can't answer it then.

Q. Do you know whether there was a presentation also made to the Ally board relating to claims that the debtors have against Ally?

A. Yes.

Q. Who made that presentation?

A. Actually, I take that back. There was a presentation to Michael Carpenter. I actually don't know if the Ally board was part of the presentation. I don't recall.

Q. Okay.

So there was a presentation to Michael Carpenter about --

A. That's right. And I don't recall if the board received a presentation -- the Ally board received a presentation.

Q. Do you see a copy of the presentation?

A. I don't think so, no.

Q. Were you at the presentation?

A. No, I don't recall being there, no.

Q. Do you know who made the presentation?

A. My recollection is that -- I can't recall which lawyers, but some lawyers from Morrison Foerster were there and some lawyers from Ally's firm were there.

My recollection -- yes, that's it. That's all I know. They had a meeting.

Q. And do you know whether the presentation made to the Ally board was in any way different than the presentation -- I'm sorry. The presentation that was made to Michael Carpenter was in any way different than the presentation made to the ResCap board?

A. I don't --

MR. LIPPS: Objection. Calls for speculation. Go ahead.

A. I have no idea.

Q. Did you have any conversations with anyone at Ally regarding potential claims that the debtors might have against Ally?

A. Yes.

Q. Who?

A. Michael Carpenter.

Q. Anyone else?

A. That's all I recall.

Q. What did you discuss with Michael Carpenter?

A. Michael Carpenter told me that he didn't think Ally owed ResCap anything.

Q. What did you tell him?

A. I said whether you owe us something or not it's going to cost you, you know, some money. And that's it.

Q. That was your entire conversation?

A. Yes.

Q. When was the conversation?

A. It would be towards the end of ResCap being around, you know, probably May 2012, maybe shortly thereafter.

Q. How long did you talk to him for?

A. A brief conversation.

Q. What do you mean by "brief"?

A. Minutes.

Q. So minutes can mean -- are you saying anything less than 60 minutes?

A. Substantially --

MR. LIPPS: Objection.

A. A few minutes at a time. We did not -- once, you know, in this time period we weren't having lengthy meetings. A few minutes.

Q. So that was your only conversation with Michael Carpenter regarding the claims that the debtors might have against Ally?

A. That's all I recall, yes.

Q. Do you recall anything else about the conversation other than what you just discussed?

A. No. That it was going to cost them some real money.

Q. If you could turn to page Roman Numeral III-252, to the second paragraph.

A. "In addition"?

Q. Yes.

The first sentence reads, "In addition, the Morrison & Foerster presentation noted that is arguable that ResCap and AFI acted," quote, "as a single integrated operation in certain respects during the post TARP period."

Do you agree with that statement?

MR. LIPPS: Objection to form.

MR. DONOVAN: Objection to form.

A. I can't answer it because it would be based upon, you know, advice we got from counsel.

Q. You were the CEO of ResCap --

A. Yes.

Q. -- for a number of years. And in your experience as CEO of ResCap, would you agree that ResCap and AFI acted as a single integrated operations in certain respects during the post TARP period?

A. Not necessarily, actually.

Q. Why not?

A. While we may have shared certain resources, we acted as separate and independent companies. The organization was extremely siloed. It was challenging to get various members of different teams or divisions to work together on anything.

So I wouldn't consider it to have been an integrated organization. Not at all.

Q. Do you believe that $2.1 billion contribution from Ally to the estate constitutes substantial consideration?

MR. LIPPS: Note my objection to form.

A. I think it's a lot of money. I don't know what "substantial consideration" means. It's a lot of money.

Q. Will you be including in your

planned direct testimony anything about the amount of Ally's contribution to the estate?

A. Yes.

Q. Will you be commenting on whether it's substantial?

MR. LIPPS: Note my objection to form.

A. Again, we haven't finished it, so I don't know if that particular word -- but I'm telling you here today, 2.1 billion is a lot of money, and I would testify to that if I was asked.

Q. Right now is your testimony planning to include that?

MR. LIPPS: Objection. It's been asked and answered.

Go ahead.

A. Again, I know that $2.1 billion number is in there. I don't recall if the word "substantial" or some other fancy legal term is in there, you know, but I maintain that's a lot of money.

Q. In your planned direct testimony?

MR. LIPPS: Objection.

A. I maintain -- I'm telling you that 2.1 billion is in there. The adjectives in front of it, I don't recall.

Q. Have you done anything to evaluate Ally's $2.1 billion contribution net of tax benefits to Ally?

A. No.

Q. Did you review the examiner's report?

A. Yes.

Q. Do you recall reviewing Footnote 1812 in the examiner's report?

A. I would have to see that footnote. I'm sorry.

Q. Okay.

MR. LIPPS: I'm disappointed.

A. Is it in here?

Q. Some footnotes we know by heart.

MR. LIPPS: I'm disappointed, you don't remember that footnote without looking.

(A Discussion was Held off the Record.)

T. Marano

BY MS. FISSELL:

Q. I'm going to show you what's been previously marked as Aretakis Exhibit 3.

MR. LIPPS: While he's looking at that, I'll just make the same notation on the record. This has been indicated by the judge as being hearsay, and I'll object to it.

BY MS. FISSELL:

Q. If you'll turn to the last page, you'll find Footnote 1812.

A. Okay.

Q. Do you recall reviewing this footnote?

A. Yes. Yes. I recall this section.

Q. And do you recall in particular the calculations in Footnote 1812?

A. Yes.

Q. Did you do anything after you reviewed this calculation?

A. Did I do anything?

Q. Did you ask any professionals about it?

MR. LIPPS: Well, I don't want you

disclosing any --

MS. FISSELL: I didn't ask for the substance. I asked whether he --

MR. LIPPS: Let me just finish my objection.

I don't want you to disclose any substance of conversations with counsel. I will allow you to answer fact of consultation, if it did occur.

A. Okay.

I talked to my CFO about this, about all the tax -- pardon me -- about these tax issues raised here.

Q. And what did you discuss with him?

A. We discussed the fact that since ResCap is not a tax-paying entity and the fact that you can't transfer these NOLs to a third party, that, yes, essentially ResCap was a disregarded entity and it was bankrupt, so the benefit of these NOLs would not follow.

I struggle to understand how the examiner thought there was value here, again, especially since ResCap was not a tax-paying entity.

Q. Did you discuss with -- when you refer to your CFO, you're referring to Mr. Whitlinger?

A. Yes.

Q. Did you discuss with Mr. Whitlinger that this calculation shows that Ally will get a tax benefit from the -- its contribution to the estate?

MR. LIPPS: Objection to form.

Go ahead.

A. That I did not discuss.

Q. If you'll look at the line that reads, "Less assumed contribution by the AFI to creditor's recovery." And that it's 750 million that at that time was the amount of Ally's proposed contribution.

MR. LIPPS: What's the question?

BY MS. FISSELL:

Q. I asked if he saw that on here.

A. Yes.

Q. You see that.

And did you discuss that with your -- Mr. Whitlinger?

A. No, I just discussed whether or not

the tax losses had any value whatsoever to a third party.

Q. To a third party other than AFI?

MR. JOHNSON: I object to the form.

A. Yes. To a nonaffiliated entity.

Q. Did you discuss anything else with Mr. Whitlinger?

A. No.

MR. LIPPS: On that topic or related to that?

MS. FISSELL: Related to Footnote 1812.

A. No.

Q. Did you discuss Footnote 1812 with anyone else?

A. I don't recall anyone else.

Q. And you see that the examiner says at the end of the footnote, "Any additional amount that AFI contributes towards the recovery would produce cancellation of debt-to-income on a dollar-for-dollar basis"?

MR. LIPPS: Objection to form.

BY MS. FISSELL:

Q. At the very bottom.

A. Yes, I see what it says.

Q. And did you discuss that with anyone?

A. No.

Q. Are you aware that the ad hoc group filed an objection to the disclosure statement filed by the plan proponents?

A. The ad hoc group being the JSNs?

Q. Yes.

A. I am aware they filed an objection.

Q. Okay.

I want to show you a document marked as Aretakis 10.

A. Are there multiple copies here or --

Q. Yes. If you'll turn to, I think it's the fourth to last page of the document.

You see that this is --

A. Can I just get the page number on the bottom because it's --

Q. Yes. It's page 2. It's a different page 2. Yes. Exhibit --

A. C?

Q. -- D. Exhibit D, page 2.

A. Got it. Okay.

Plaintiff's Objection 97:12-99:7 Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903)

Q. Do you recall reviewing this table?

A. No, I don't recall this page.

Q. Do you see that this shows the same table that was in Footnote 1812 in the examiner's report?

MR. LIPPS: Objection to form.

A. And the layout's a little different, but it's similar. I see what you're doing because it has more fields.

Q. Right.

And that there's been a comment -- sorry, a column added, and under the row "Less Assumed Contribution by AFI to Creditor's Recovery," it shows the examiner's report number of 750, and then it shows the 2.1 billion.

A. Right. There's two columns added to this report, yes.

Q. Right.

And you'll see that the last row, the examiner had estimated tax benefits to -- the value of tax benefits to AFI at 1.77 billion; right?

A. Yes.

Q. And that using the $2.1 billion number, it's -- the value of the tax benefit to AFI are 2.2 billion?

MR. LIPPS: Objection to form.

A. According to the chart, I see it's 2.2, yes.

Q. Hypothetically, if Ally received tax benefits greater its $2.1 billion payment, would that affect your conclusion that Ally's -- I think your words were "paying a lot of money"?

Plaintiff's Objection 99:8-100:17 Lack of personal knowledge (FRE 602), inadmissible lay opinion

MR. LIPPS: Objection to form and assumptions.

MR. JOHNSON: Objection to form. Hypothetical.

A. I never factored in -- as to what Ally should pay, I never factored in whether there was, you know, a benefit to writing a big check or not.

So I'm not an accountant. I'm not a tax accountant. I just never even considered the tax issue in the context of the way you're presenting it.

Q. But, hypothetically, if they

received benefits greater than their actual payment, would that affect your conclusion?

MR. LIPPS: Objection. Asked and answered. Also without foundation.

Go ahead.

MR. JOHNSON: Objection.

A. All I know is it costs them billions and billion dollars of dollars to get -- to settle this process. I can't come to the conclusion. I don't know.

Q. So your answer is you don't know whether it would change your analysis?

MR. LIPPS: Objection. Mischaracterizes.

A. Not at all. I don't know. I just don't know. I'm not a tax person.

Q. So you feel you need to be a tax person to assess whether if Ally received tax benefits greater than 2.1 billion, whether that would affect your conclusion regarding whether Ally's contribution was significant?

MR. LIPPS: Objection to form. Mischaracterizes.

Go ahead.

A. Again, I think Ally contributed an enormous amount of money. I don't know whether or not they're getting tax benefits for this or not. I'm not a tax person. I don't know. I can't draw that conclusion.

Q. Right.

I understand that you don't know as a matter of course. I'm just saying, hypothetically, if you were to learn that they were getting a tax benefit greater than the actual payment amount, would that affect your conclusion that they are making an enormous payment?

MR. JOHNSON: Objection to form.

MR. LIPPS: Objection to form and assumptions.

A. No, it wouldn't alter my opinion either way, they had to write a big check, no.

Q. I believe you testified earlier you're not familiar with who James Aretakis is?

A. No.

MR. LIPPS: Objection. Asked and answered.

A. Yes. I don't recall who he is.

MS. FISSELL: I'm going to mark as Marano Exhibit 9 the transcript of the deposition of James Aretakis from November 6, 2013.

(Marano's Exhibit 9, Transcript of Deposition of James Aretakis dated November 6, 2013, was marked for identification.)

BY MS. FISSELL:

Q. If you'll turn to page 9 of the transcript.

A. On the transcript --

Q. Yes. Page 9 of the transcript, not of the document. If you'll look at line 6.

"Question: What's your position at Ally?

"Answer: General tax counsel."

Do you see that question was asked and that answer was given?

A. Yes.

Q. Okay.

If you'll turn to page 53 --

MR. DONOVAN: Objection to form.

Plaintiff's Objection 102:3-103:20: Inadmissible hearsay (FRE 802), lack of personal knowledge (FRE 602), inadmissible lay opinion, irrelevant (FRE 401, 402)

Q. -- of the transcript.

A. I'm sorry, what page?

Q. 53 of the transcript. It's page 14 of the document. Look at line -- page 53, line 13.

"Question: At the end of the day, if one's liabilities are known and there is a taxable event in the bankruptcy, is it possible that Ally will receive a tax benefit in excess of $2.1 billion?

"Mr. McCain: Objection to form. Vague, overbroad, calls for speculation.

"Answer: Is it possible? Yes, it's possible."

You see that Mr. Aretakis gave that testimony?

A. Yes.

MR. LIPPS: Note my objection to form.

BY MS. FISSELL:

Q. Does that change your opinion that Ally's contributing an enormous amount of money to the estate?

MR. LIPPS: Objection.

A. No. They wrote a check. They're contributing money. The money would not be in the estate if Ally didn't write the check.

MS. FISSELL: I think we're done, but we're going to take a five-minute break.

THE VIDEOGRAPHER: The time is 4:15 p.m. We're coming off the record.

(Recess taken from 4:15 p.m. to 4:28 p.m.)

THE VIDEOGRAPHER: The time is 4:28 p.m. We're going back on the record.

BY MS. FISSELL:

Q. Are you aware that Berkshire Hathaway holds JSN bonds?

A. I'm not aware of their current position. I don't know.

Q. Are you aware that they had a position at the time of the signing of the initial PSA?

A. I know they held JSNs at one point in time. I don't remember when they traded out of them, or if they traded out of them.

Q. Are you aware that they never signed

the initial PSA?

A. No, I don't recall that they did or didn't.

Q. And you have no -- do you know whether Berkshire Hathaway held more than the aggregate number of -- held more bonds than the aggregate number of JSNs that signed the PSA?

A. Again, I don't recall how many they held. I know they held juniors and they held the senior unsecureds. I just don't recall how many they held.

Q. Did you -- were you aware that they held a significant number of JSNs?

A. I believe -- I knew they held a lot of our bonds in all the categories, like, you know, hundreds -- hundreds and hundreds of millions. Maybe over a billion.

Q. And are you aware that the examiner was appointed at their request?

A. Yes.

MS. FISSELL: No further questions.

MR. LIPPS: Anybody else have any questions?

T. Marano

MR. DONOVAN: No questions.

MR. MATZA-BROWN: No questions.

MR. LIPPS: Going, going, gone. Thank you.

THE VIDEOGRAPHER: The time is 4:30 p.m.

We're going off the record.

(The deposition was concluded at 4:30 p.m.)

(The exhibits were retained by the court reporter to be attached to the transcript.)

_____

TOM MARANO

Subscribed and sworn to before me this day of 2013.

_____

T. Marano

C E R T I F I C A T E

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

I, THOMAS A. FERNICOLA, Registered Reporter and Notary Public within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the proceedings held on November 11, 2013.

That I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of November, 2013.

_____

THOMAS A. FERNICOLA, RPR

---------- INDEX ----------

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Ms. Fissell 7

T. Marano

---------- EXHIBITS ----------

| MARANO'S DESCRIPTION | PAGE | LINE |
|---|---|---|
| Exhibit 1 Transcript of the deposition of Thomas Marano dated November 12, 2012, | 48 | 9 |
| Exhibit 2 Agreement between Residential Capital, LLC, Ally Financial, Inc. and Davidson Kempner Capital Management, LLC, | 48 | 13 |
| Exhibit 3 Document, Bates No. AHG20002731, | 54 | 3 |
| Exhibit 4 Document, Bates No. AHG20002759, | 57 | 14 |
| Exhibit 5 Document, Bates No. AHG20002748, | 60 | 18 |
| Exhibit 6 Joint Chapter 11 Plan of Reorganization, | 66 | 5 |
| Exhibit 7 Notice of Filing of Corrected Solicitation Version of the Disclosure Statement and Joint Chapter 11 Plan, | 74 | 5 |

---------- EXHIBITS (Cont'd)----------

| MARANO's DESCRIPTION | PAGE | LINE |
|---|---|---|
| Exhibit 8 Excerpt from Examiner's Report, | 80 | 11 |
| Exhibit 9 Transcript of Deposition of James Aretakis dated November 6, 2013, | 102 | 5 |

T. Marano

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In Re: Residential Capital, LLC

Dep. Date: November 11, 2013

Deponent: TOM MARANO

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page ____ Line ____ Reason _____

From _____ to _____

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From _____ to _____

Page ____ Line ____ Reason _____

From _____ to _____

_____

TOM MARANO

Subscribed and sworn to before me

this day of 2013.

_____

**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.,***
**Case No. 12-12020(MG)**

Deponent: Thomas Marano
Deposition Date: November 11, 2013

| Citation | Testimony |
|---|---|
| 31:12 | to get a settlement with DOJ and the Attorney |
| 57:4 | and when ~~you~~ Lew Kruger got involved, it -- |
| 65:2 | a document that ~~anyone~~ everyone else had signed to make |
| 65:18 | you aware that there was a plan~~ned~~ support |
| 77:14 | the market or creating the impression we were going |
| 101:19 | either way~~,~~. They~~they~~ had to write a big check~~,~~. No.~~no.~~ |

Date: 11/15/13

Signed: Thomas Marano
Thomas Marano

M. Carpenter

UNITED STATES BANKRUPTCY DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: Case No. 12-12020
RESIDENTIAL CAPITAL, LLC, et al., (MG)
Debtors, Jointly Administered

RESIDENTIAL CAPITAL, LLC, et al.,
Plaintiffs,
vs. Adversary Proceeding
No. 13-01343 (MG)
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 under that Certain Amended and Restated Third Priority Pledge and Security Agreement and Irrevocable Proxy, dated as of December 30, 2009,
Defendants.

(CAPTION CONTINUED ON NEXT PAGE)

**The Debtors and Committee object to the JSNs' use of the deposition of Mr. Carpenter on the ground that this deposition may not be used under Bankruptcy Rule 7032.**

VIDEOTAPED DEPOSITION OF MICHAEL CARPENTER
New York, New York
Tuesday, November 12, 2013

Reported by:
THOMAS A. FERNICOLA, RPR
JOB NO. 67416

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiff's Counter-Designation
Orange Highlighting = Joint Designation

M. Carpenter

(Caption Continued as follows:)

----------x

OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estates of the Debtors,

Plaintiff, Adversary Proceeding

vs. No. 13-01277 (MG)

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,

Defendants.

----------x

November 12, 2013

2:14 p.m.

Videotaped Deposition of MICHAEL CARPENTER, held at the law offices of Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, New York, before Thomas A. Fernicola, a Registered Professional Reporter and Notary Public of the State of New York.

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BY: JASON JURGENS, ESQ.

ALSO PRESENT:
CARLOS LOPEZ, Videographer.

M. Carpenter

THE VIDEOGRAPHER: This is the start of tape labeled No. 1 of the deposition of Michael Carpenter in the matter, In Re: Residential Capital, LLC.

This deposition is being held at 601 Lexington Avenue, New York, New York, on November 12, 2013 at approximately 2:14 p.m.

My name is Carlos Lopez. I am the legal video specialist from TSG Reporting, Inc.

The court reporter is Tom Fernicola, in association with TSG Reporting.

Appearances are noted.

Will the court reporter please swear in the witness.

M I C H A E L C A R P E N T E R,

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

BY THE REPORTER:

Q. Please state your full name and address for the record.

M. Carpenter

A. Michael Alan Carpenter, C-A-R-P-E-N-T-E-R. Alan is one L. 134 Otter, O-T-T-E-R, Rock, R-O-C-K, Drive, Greenwich, Connecticut 06830.

EXAMINATION BY MS. MILLER:

Q. Good afternoon, Mr. Carpenter. My name is Atara Miller, and I'm at Milbank Tweed Hadley & McCloy, and we represent the Junior Secured Noteholders in this action. I'm going to go over a couple of the basic ground rules for this afternoon.

The first is I'm going to ask questions, you'll give me answers, and it would help the court reporter if you wait for me to finish asking a question before you give a response, and I'll try to do the same.

I also got a special request from the court reporter for you to give clear and audible answers so he can take it down. The setup is a little bit difficult for him.

There may be times throughout the afternoon where your counsel may object to a question that I ask. I'm going to ask that

you still answer the question unless your counsel instructs you specifically not to answer the question. If at any time a question that I ask you is unclear or you need clarification, just ask.

Okay?

A. Understood.

Q. Also, if you could give audible answers instead of nods of the heads or other nonverbal gestures or acknowledgments, that would be good.

Okay?

A. Yes.

Q. Also, if you need a break, just let me know; but if there's a question pending, I'm going to ask that you answer the question that I've asked before we take a break.

A. Sure.

Q. Mr. Carpenter, could you tell me what your current position is?

A. I'm the Chief Executive Officer of Ally Financial.

Q. And when did you assume that position?

A. The middle of November 2009.

Q. And when did you first start working for Ally?

A. I joined the board of directors in May 2009.

Q. And what was your employment before you joined Ally?

A. Immediately prior to that I had my own firm called Southgate Holdings. Previous to that I was -- '06 to '09.

And then from '95 to 2006, I had various jobs at Travelers, which subsequently merged into Citi, with Citibank to form Citigroup, and I had a variety of senior management responsibilities in both of those.

I was at GE for 10 years prior to that, and I was in the Boston Consulting Group for nine years prior to that.

Q. And are you currently a member of the board of Ally Financial?

A. Yes.

Q. And have you been a member of the board of Ally Financial throughout the period from when you started in May 2009?

A. Yes.

Q. Mr. Carpenter, I'd like to show you a document that was previously marked as Marx Exhibit 1, which is the ad hoc group of Junior Secured Noteholders Notice of Subpoena to Ally Financial, Inc. And if you look at page 7 of the document, there are a number of deposition topics listed.

Do you understand that you've been identified as the 30(b)(6) corporate representative on behalf of AFI with respect to deposition Topics 2, 3 and 4 listed on page 7?

A. Yes.

Q. And what did you do to prepare for your deposition today?

A. I reviewed with counsel a number of documents on various topics.

Q. And did any of the documents you reviewed with counsel refresh your recollection in any way?

A. Yes.

Q. And which documents did you review that refreshed your recollection?

A. I don't remember which documents. I looked at 20 or 30 documents which collectively refreshed my recollection, which was pretty good anyway.

Q. And do you recall which topics the documents you looked at refreshed your recollection about?

A. I think some of the details of the events that occurred and the dates that occurred and some of the public statements that we made would be the things that would come to mind.

THE WITNESS: Am I speaking clearly enough for you?

THE COURT REPORTER: Yes, thank you.

BY MS. MILLER:

Q. And did you review internal e-mails?

A. I don't recall seeing any internal e-mails.

Q. Did you review public filings by Ally Financial?

A. Yes.

Q. And did you review any PowerPoint presentations that were made to the board of

directors of Ally Financial?

A. I don't believe I did, no.

Q. Did you review any other board materials that were submitted to the Ally Financial board?

MR. DONOVAN: Other than the SEC filings he talks about?

MS. MILLER: Right, yes.

A. Not that I recall.

Q. How long did you meet with counsel?

A. A couple of hours.

Q. And, Mr. Carpenter, do you believe that you're the person most knowledgeable at Ally Financial, Inc. and are competent to testify about the matters identified in Topics 2, 3 and 4, specifically the analysis of claims settled as part of the Ally settlement, all matters concerning the analysis of, including the decision to enter into the Ally settlement, and all matters concerning any analysis of alternatives to the Ally settlement?

A. I believe I am, yes.

MR. DONOVAN: Mark objection to

form.

BY MS. MILLER:

Q. Mr. Carpenter, do you anticipate submitting direct testimony in this case?

A. Yes.

Q. On what topics do you expect to cover in your direct testimony?

MR. DONOVAN: And before you go, Mr. Carpenter, I'm going to let him answer this but, obviously, it's not done yet or submitted; so, I just want to make sure he can answer what he believes it's going to be, based on his work to date.

A. Among other topics, it will address the magnitude of the support that Ally provided to ResCap prior to its filing for bankruptcy. It will address the tremendous support that Ally provided to ResCap during the bankruptcy process which allowed the estate to be able to sell the assets for $4-1/2 billion, and without that help that would not have been possible.

We -- I also talk about the settlement that we reached with the board of

directors and the company prior to or around the time of its filing. I address specifically in several cases the fact that we would not have entered into any settlement whatsoever if it were not for complete and total releases from the estate and from all third parties.

And that I would like to underline that point. I addressed the mediation process that led to Ally increasing the amount of cash that it put on the table as part of the overall settlement and how we got to that. And that Ally's expectations with regard to the future are, obviously, if the plan is confirmed, we'll be happy to write the check, and if the plan is not confirmed, that, in particular, the third-party releases are not granted, then we will withdraw our $2.1 billion support.

I'm sure there are other things, but those are the ones that come to mind.

Q. And do you know that those direct witness statements are being submitted today?

A. Yes. Well, I don't know --

M. Carpenter

MR. DONOVAN: It probably all depends on how long you keep us here today when it will be filed tonight.

MS. MILLER: I guess so. I think there's a deadline, but...

BY MS. MILLER:

Q. You understand that the deadline for submitting witness statements is November 13th?

A. I'm sure my counsel understands that. I don't.

Q. What about the mediation process do you intend to testify about?

A. Well, as I understand it, the mediation process itself is privileged; and, so, therefore, I'm unable to discuss the details of the process itself, simply to say that we entered into a process that, as you know, was supervised by Judge Peck.

We entered into an arm's length negotiation. We listened to his advice and we ended up at a much higher number than I thought was -- would ever be possible and certainly way beyond what I ever thought was

justified.

But in terms of the mechanics of what took place in that room, that I'm not prepared to discuss, unless counsel tells me otherwise.

MR. DONOVAN: No. That's right.

BY MS. MILLER:

Q. Mr. Carpenter, have you ever characterized the $2.1 billion settlement payment as a hostage payment?

A. I don't know that I characterized it as hostage payment, but I certainly have used language like that in different situations.

Q. And what language have you used?

A. I may have used the term "hostage payment." Certainly when I talk to the analytical community, I have used terminology like that. Whether I used it in the context of that payment, I'm not going to say because I don't remember.

But let me simply say that my view of the merits of the case against us and, in particular, as it related to veil piercing and as it related to fraudulent conveyance, was

that there was absolutely no merit whatsoever.

And I would say there's nothing -- nothing has transpired, including the examiner's report, that would cause me to have a different view of that conclusion; that as of today, I don't think the accusations leveled against us had any merit whatsoever.

And, therefore, the characterization of hostage payment, which I may or may not have made, would not be inaccurate.

Q. And what does "hostage payment" mean to you?

A. What it means to me is simply writing a check that is not in proportion to the merits. Now, we did it voluntarily and we did it for sound business reasons.

Q. Mr. Carpenter, will you be available to testify live at trial?

A. Yes.

Q. Were you interviewed by the examiner in connection with your role at Ally?

A. Not by the examiner personally. I was interviewed by the law firm that was representing the examiner.

M. Carpenter

Q. And was that Chadbourne & Parke?

A. I believe it was.

Q. And how many days were you interviewed for?

A. It was a matter of, I think about three hours.

Q. And was your testimony recorded?

A. I don't recall.

Q. Did you review the examiner report?

A. Yes.

Let me be more accurate.

Q. Okay.

A. If I told you --

Q. I was going to be amazed.

A. If I had told you I read that many pages, you would wonder if I was being truthful.

I read the executive summary of the examiner's report.

Q. And beyond reading the executive summary, were there any specific sections that you read more in depth?

A. I didn't read any of the sections.

Q. Did you do a word search for your

name?

A. No, I did not.

Q. Did anyone point out to you where you were referenced and discussed in the examiner's report?

A. I don't believe they did, no.

Q. And was there anything in the executive summary of the examiner report that surprised you when you read it?

MR. DONOVAN: And, Mr. Carpenter, before you expand on the area, obviously, you get legal advice, you shouldn't disclose any legal advice or discussion you had. To the extent you had discussions with nonlawyers or your own review it, that's fine, you can testify about that.

BY MS. MILLER:

Q. I'd say -- so let me restate my question because I didn't read that into it, so let me just be clear.

Is that anything that when you were reading the examiner report surprised you?

MR. DONOVAN: Same instruction.

Plaintiff's Objection 19:20-21:18 Irrelevant (FRE 401, 402)

Plaintiff's Objection 19:20-21:7 Inadmissible hearsay (FRE 802)

A. Fine.

I was not surprised by the complete vindication on piercing of the veil and fraudulent conveyance. I was quite surprised at some of the other things that were mentioned and quantified in the report, which, in my own judgment, have no merit whatsoever.

Q. And what were those other things that were mentioned and quantified in the report that you believe have no merit?

A. I don't remember the details of it because I haven't looked at it in a long time.

There was some crazy notion about taxes which made absolutely no sense to me whatsoever. There was some other crazy notion associated with Minnesota which made no sense to me whatsoever. And big numbers were attached to these things.

The only thing in there that I thought you could at least have a debate on was the transfer pricing associated with mortgages from the bank to ResCap, and did the bank take more of a markup than it should have.

Now I personally don't think they did and we certainly had an accounting firm take a look at it. But it was the only thing that I thought you could even have an intelligent conversation around it. The rest of it, frankly, I thought was garbage.

Q. And when you're talking about the debate about the transfer pricing and the associated with mortgages from the bank to ResCap and whether the bank took more of a markup than it should, are you referring to the discussion about the brokering agreement and the MMLPSA?

A. Yes. What I would refer to as the Glassner question. I'm not sure exactly which agreements, but that was a very small number in the scheme of things.

Q. Mr. Carpenter, do you believe that there were any other claims for which Ally is being released that had merit?

A. No. I mean, remember, I haven't looked at the document in many months at this point; but my recollection of looking at that document was that there were none of those

complaints that had any logic to them whatsoever, or any merit.

Q. I'm going to ask you to put the examiner to the side of your mind right now --

A. Uh-huh.

Q. -- and I'm asking generally whether there were any claims for which Ally is being released as part of the global settlement that you believe have merit?

MR. DONOVAN: And, again, Mr. Carpenter, again, this is a very broad question. So I think it's really just your general reaction, because it can't be -- you're not asking I know for legal advice or counsel of that sort.

MS. MILLER: No.

A. To be honest with you, I don't really know how to answer that question. I mean, the only thing I can tell you is that I did not believe that any of the things that were mentioned in the examiner's report -- many of the things that came out of the examiner's report I'd never heard of before. They were completely out of the blue.

Obviously, I made the point of trying to understand them to form a judgment as to their merits. I concluded, based on professional work with my staff, that, in fact, these new-found theories had no merit whatsoever. And so, I can only really react to the things that are contained in the examiner's report.

Q. Mr. Carpenter, would Ally be willing to go forward with the global settlement if it included a carve-out for the claims related to the Glassner issue, as you characterized it?

A. No. Absolutely not.

Let me say something very, very simple. All right.

The very first negotiation with the debtors, with the board of directors at ResCap, the very first conversation, the whole premise was complete and total releases; otherwise, there was no deal.

And when we went into the mediation, we made it clear, complete and total releases, otherwise, there was no deal. And as of today, complete and total releases, otherwise,

there was no deal.

And if I go back in history, when I first met Mr. Buffett and Mr. Buffett proposed he was one of the person you're representing, when proposed buying ResCap for pennies on the dollar, I said we could have a conversation provided we are completely released from all of these kinds of obligations.

And they made a series of proposals, none of which came to pass because they were unable to cross or unwilling to cross that bridge. So, for two years now, the answer is no deal without complete releases, and that is where we are right now.

And, by the way, I would say the examiner's report, if this whole deal falls apart, I have a lot more confidence with the examiner's report on where it will end up than I did before the report came out.

Q. Because of the examiner report -- sorry, because of the examiner's treatment of the veil piercing and fraudulently conveyance action?

A. Because those really are the two key

M. Carpenter

issues. Everything else is garbage. Technical term.

MR. DONOVAN: That was legal advice; correct?

BY MS. MILLER:

Q. So I take it, then, that Ally would not be willing to go forward with the global settlement if there was a carve-out for claims related to breach of the tax allocation agreement; right?

A. We are not willing to go forward with any carve-outs for anything. This deal has been negotiated with Judge Peck as the mediator. There is no more room for negotiation from start, end of story.

Q. Do you think it was important to have the settlement finalized before the examiner's report was made public?

MR. DONOVAN: Objection to form.

Again, Mr. Carpenter, you can give your own personal reactions, but any legal advice should not be disclosed.

A. I don't know the answer to that, to be honest. I mean, I -- I would say -- I

M. Carpenter

would say to you this.

I would say to you the cost of putting this behind us became so high that I was very much considering whether just to kick the can down the road and see what happened with the report.

And if I look in the rear-view mirror, I almost wish I had.

Q. Mr. Carpenter, do you believe that there was merit to third-party claims that could be asserted against Ally?

A. I have no idea, I mean -- you'd have to define your terms. I don't know what that means. Okay.

Q. Did you think that Ally had material exposure on rep and warranty claims?

MR. DONOVAN: To the extent your knowledge comes from legal advice either way, you should not disclose that.

And your question is seeking legal advice.

BY MS. MILLER:

Q. When you were negotiating the global settlement, did you consider a value that

third-party claims against Ally might have?

A. You mean a numerical value?

Q. Numerical value.

A. No.

Q. What analysis did you do of potential claims that could be asserted by ResCap against Ally?

MR. DONOVAN: Again, you can answer from the business perspective, but don't disclose any legal advice.

Can you reask your question? I just think it's getting into -- that kind of question is pretty in the sweet spot of legal advice.

MR. JURGENS: Well, I'm asking Mr. Carpenter what analysis he did of potential claims that could be asserted by ResCap against Ally.

A. The answer is I commissioned extensive legal analysis of all the claims that could be asserted against Ally by ResCap well in advance of ResCap's decision to file for bankruptcy.

Q. And did your counsel present you

M. Carpenter

with a complete -- sorry, strike that.

Did you ask any business people within Ally Financial to do an analysis of potential litigation risk exposure?

A. No.

MR. DONOVAN: And, again -- that's fine.

A. This was -- this was all done by outside counsel.

Q. Okay.

And what did you do to assess potential claims that third parties could assert against Ally?

A. Again, we commissioned a major and very thorough review by outside counsel of every conceivable exposure that we could have that would be derived from the actions of ResCap over many previous years.

And to give you a specific, let's take rep and warrant. Okay. It is very, very clear that the rep and warrant exposure is ResCap's. It is contractually ResCap's obligation; but, nevertheless, it's entirely appropriate for me, as the chief executive, to

ask the question, even though that is ResCap's obligation clearly by contract and their contract is with the investors, their contract is with the GSCs, is there any way that the parent would have liability for that exposure of ResCap's.

It's a completely legitimate question for me to ask and bears directly on the issue of piercing of the corporate veil that we talked about before, that I was pleased that the examiner found was not the case.

So I'll give you that as an example.

MS. MILLER: I'd like to mark as Carpenter Exhibit 1 a document Bates stamped Ally_0255144 through 162.

(A Discussion was Held off the Record.)

(Carpenter's Exhibit 1, Transcript of Conference Call dated November 2, 2011, Bates Nos. Ally_0255144 through 162, was marked for identification.)

BY MS. MILLER:

Q. Mr. Carpenter, I've marked as

M. Carpenter

Carpenter Exhibit 1 a final transcript from Thomson StreetEvents of a conference call, the Q3 2011 Ally Financial, Inc. earnings conference call from November 2nd, 2011 at 1:00 p.m.

Do you see that?

A. Sure.

Q. This is a document you've seen before?

A. I haven't seen this document before, no; but we do take transcripts of our calls.

Q. Mr. Carpenter, when did you first start considering a global settlement with ResCap?

MR. DONOVAN: Objection to the form. You can answer.

A. I don't know what that means.

Q. When did you first start settlement discussions with ResCap that would have included a broad release of all debtor and third-party claims?

A. Some time in the time frame when ResCap's board of directors was considering filing for bankruptcy.

M. Carpenter

Q. Do you recall approximately when that was?

A. That would be some time presumably -- well, I don't, you know, I didn't go to the ResCap board meetings, so I don't know exactly when. But I would have guessed it would have been in the early part of 2012. That would have been my guess.

Q. And by "early," is January probably a safe assumption?

A. I don't know. Early to me is anytime between January and April.

Q. Okay.

Well, I'll show you documents that can hopefully --

A. Sure.

Q. -- orient us in time.

Mr. Carpenter, if you would turn to the page in Carpenter Exhibit 1 with the Bates ending in 151.

A. Yes.

Q. Do you see there's a section that begins toward the top of the page that says, "Michael Carpenter, Ally Financial, Inc.'s

CEO," and then there's a lot of writing.

Do you have an understanding of what this is?

A. Yes. This is the -- without reading the whole document, I'm presuming this is a transcript of our earnings call.

Q. And is it correct that the comments under the heading, "Michael Carpenter, Ally Financial, Inc.'s CEO," are comments that you made on the earnings call?

A. Well, I haven't read them, okay, so I would like -- what I will, first of all, say is my experience in reading these things is they frequently make a lot of mistakes.

Q. Okay.

A. So, I mean, I'm happy to read it and then comment on anything in particular.

Q. Okay.

A. But I just caveat that they make a lot of mistakes.

Q. Okay.

So I'm going to ask you to read those portions of this transcript that you believe are comments that you made or that are

M. Carpenter

identified as comments that you made.

MR. DONOVAN: So you want him to read both pages, it appears, 151 and 152?

MS. MILLER: If he feels like he needs to review all of the comments he made to tell me if he thinks it's accurate or not, I'd like him to review all the comments that are identified as comments made by Michael Carpenter on the transcript.

A. (Document Review.)

Fine. Yes, okay.

Q. Mr. Carpenter, is it your understanding that the text under the heading, "Michael Carpenter, Ally Financial, Inc.'s CEO," are comments that you made during the investor -- during the November 2nd, 2011 investor call?

A. Generally speaking, yes. Not necessarily word for word, but generally speaking, yes.

Q. Okay.

And looking on the page with the Bates ending 151, starting about six

Plaintiff's Objection 33:14-22 Inadmissible hearsay (FRE 802)

paragraphs up from the bottom, there's a discussion about the AG, claims that could be brought by the AG and settlement with the AGs.

And you said at the very end in the last sentence of paragraph -- of the fifth paragraph from the bottom, "We see our exposure as a small fraction of that number, referring to the applied market share settlement number that had been bandied about adjusted for Ally's applied market share in the area of 1 billion to 1.5 billion" -- and, sorry, let me restate that.

A. Go ahead.

Q. Do you see that in discussing the potential settlement with the AG, you indicate that numbers have been thrown around in the marketplace of a $5 billion number which, based on Ally's market share, would have been a settlement in the area of 1 to $1.5 billion?

A. Yes.

MR. DONOVAN: Objection to form.

BY MS. MILLER:

Q. And it was your position on the call that Ally's exposure was a small fraction of

that number and that Ally simply would not settle for those kind of numbers; right?

A. You realize this is about robo-signing. It has nothing to do with this case at all; right?

Q. I understand.

A. Okay.

Q. And in the next paragraph you have a discussion of securities law claims. And, again, with respect to those you say that you're confident in the legal defenses related to the claims.

And then you say with respect to the FHFA claims, you see them as being tactical and completely without merit?

A. Yes.

Q. And on rep and warranty claims in the last paragraph on that page, and carrying over to the top of the page ending in 152, you say that "ResCap currently has 825 -- 29 million of reference for rep and warranties and we believe that's adequate based on the claims and issues."

Do you see that?

A. Yes.

Q. And then seven paragraphs down, right in the middle of the page, you say, "Finally, to be clear," and then you stress, "and this is very important, all of these contingent exposures we have been discussing would, if they emerge, be obligations of ResCap and its entity, which include GMAC Mortgage."

Then you state, "While Ally owns 100 percent of ResCap, ResCap has operated as a clearly separate legal entity."

Do you see that?

A. Yes.

Q. And why was that important to say on this call?

A. I think it, you know, it bears directly on the findings of the examiner's report, which is we essentially said that we ran ResCap very much as a separate company. It had its own board of directors, it had an operating agreement, filed its own S1 with the SEC, entered into its own contracts without the endorsement of the parent.

Plaintiff's Objection 36:3-37:12 Inadmissible hearsay (FRE 802)

M. Carpenter

And all of those things were evidence that the obligations of ResCap were not the obligations of the parent, as borne out by the examiner's report.

Q. And so you were saying that --

A. That's all I was saying there.

Q. So you were saying that Ally's exposure on these potential claims didn't exist because the claims were being asserted against ResCap, which is a separate legal entity; is that right?

MR. DONOVAN: Objection to the form.

You can answer.

A. I was simply saying that these, whatever the merits of these claims, and we thought many of them were weak, that those claims would be against ResCap, the legal entity, and did not necessarily transfer, did not, in our view at all, transfer to being obligations of the parent.

Plaintiff's Objection 37:15-21 Inadmissible hearsay (FRE 802)

Q. Were there any third-party claims that were being negotiated and settled as part of the global settlement in this case that you believe Ally had direct exposure for?

M. Carpenter

MR. DONOVAN: Again, Mr. Carpenter, you can answer to the extent it's not legal advice.

A. I have no idea how to answer that question. You'd have to give me and list of claims and say what about that one.

I can't -- I can't answer these things in sweeping generalities like that.

Q. So when you were sitting and negotiating or thinking about what Ally's position --

A. What time frame are we -- this is 2011.

Q. Right.

A. Right?

What time frame are you on?

Q. Let's start with January and February of 2012, when you first start having discussions with ResCap about a settlement that would include a broad release, including a broad third-party release.

A. Let's call it -- let's call it the spring of 2012. I don't want to be pinned down to even months, but go ahead, what was

M. Carpenter

the question?

Q. Can we include February in the spring?

A. Sure. January, February, March, April.

Some of us --

Q. The rosiest outlook for January and February.

A. Let's say the first four months of the year.

Q. Okay.

So can we call it -- all right. Q1 into Q2. Okay.

In the January to April 2012 time period when you're negotiating with ResCap, were you considering the value that a third party -- that a release from third-party claims had to Ally in connection with that settlement?

A. I think I testified to this already. We simply took the point of view that we're not entering into it. We are not entering into a negotiation unless it is understood by all parties that complete releases from the

debtors, from the estate, and from third parties, was a precondition to any negotiation.

And the answer to the ResCap board was, if you don't accept that as a precondition, then there is no negotiation. And then if I complete my logic, if there is no negotiation, there is no support agreement and there's no $4-1/2 billion from asset sales.

So, just to complete the story, without -- without a complete and total understanding on day one that we would get full releases from third party and the estate, then the estate would not have achieved a fraction of $4-1/2 billion of proceeds from asset sales.

It was a precondition, non-negotiable, and never at any time in the process ever reconsidered.

Q. How did you --

A. I don't know how to be more definitive. We can do this for hours if you want, but that is the simple answer.

Q. Okay.

A. All right?

Q. How did you decide -- how did Ally decide what amount to put on the table in its negotiation with ResCap in the spring of 2012?

A. Well, we started from the point of view that we actually did not have any obligation at all. And we entered into an arm's length negotiation with the independent members of the ResCap board of directors.

And the ResCap board of directors with whatever, you know, advice they had, took the position that there needed to be a meaningful financial contribution, in addition to all the support that we were going to provide. All right.

We had a very -- we had over a period of several weeks an intensive discussion. We certainly didn't proffer 350 -- $750 million. We weren't even close. And so that was -- it was simply a case of an arm's length negotiation ending up with a result that both sides, probably neither one was happy with, but we could live with.

Q. So was the --

A. I should point out something. All right?

ResCap already knew that there was no piercing of the veil and there was no fraudulent conveyance. They knew that. They knew that they didn't have much to work with.

By the way, I'm speculating. I never asked them. Okay.

Q. Did you -- do you know whether ResCap's advisors made presentations to your counsel about claims that they had that could be asserted by ResCap against Ally?

MR. DONOVAN: And that's "yes" or "no," Mike. Start there.

A. Yes.

Q. Okay.

And did you see any of the presentation materials?

A. Yes. It was a joke.

Q. And what makes you say it was a joke?

MR. DONOVAN: Again, it's your reaction, Mike, not legal counsel's.

M. Carpenter

A. Correct. Yes, that's true.

MR. DONOVAN: Although I may agree with you.

A. It was fantasy. It was in the wildest dreams, what kind of garbage could you conjure up.

Q. Would they have been better off sticking to the breach of contract claims?

A. What breach of contract claims are you talking about?

Q. The Glassner issue that the examiner identified.

A. I'm not -- I'm not -- I'm not going to comment on that.

Q. So how did you -- strike that.

Was the settlement -- were the settlement negotiations, from your perspective, just a question of, you know, seeing how much could be squeezed out of a lemon?

MR. DONOVAN: Objection to form and time frame.

A. I don't understand that form at all.

Who was the lemon?

M. Carpenter

Q. It would have been you in the analogy. Sorry.

MR. DONOVAN: And which time frame? Are you talking about leading up to this $750 million?

MS. MILLER: I'm still focusing on the spring of 2012 negotiation.

A. I can't -- I can't speak for what the ResCap board's motivation was. You know, I happen to think they are responsible people and they were trying to come up with something they thought was fair.

And, you know, we started out very far apart and we ended up where we ended up.

Q. So from your perspective was the $750 million number just a number for all of the value of the releases in Ally's mind without any consideration of the underlying claims?

A. I would describe it this way. I would say the combination of the value that we were providing in the support of the ResCap bankruptcy, which probably is a much bigger number than the 750, okay, plus the 750, was

a -- a value package that we were prepared to pay for peace in the near term.

Our expectation of that time is this would all have been over by December 2012. Okay? Our expectation going in, was we would get the full support of the debtor for the -- the settlement and a quick proposal of the plan going forward.

That didn't happen. So it was -- it was not some mechanical process of valuing X, Y and Z. It was a total package with a set of expectations on both sides, and I would say those expectations were met on the Ally side and were not met on the ResCap side.

Q. Moving forward now to the $2.1 billion settlement. I'm going to refer to that as it's been referred to for months in this case as the global settlement.

Will you understand what I'm referring to?

A. Uh-huh.

Q. Okay.

How did you decide on the $2.1 billion value to provide a settlement in the

JSN Objection 45:16-46:5 Irrelevant (FRE 401, 402), lack of foundation (FRE 602, 901, 903)

global settlement?

A. I would say I didn't decide on it. It was a result of a very, very, very difficult mediation process.

Q. And in the context of the mediation, did you consider the potential claims and the value of the claims that could be asserted against Ally?

A. I really don't think that was much of an issue at that point.

Let me answer the question a little differently.

When that negotiation began, the merits were really not a subject of conversation.

Q. And why not?

A. Because -- because Judge Peck was focused on trying to get a deal done. And the uncertainty associated with the examiner's report was the leverage that he had to bring both sides to the table. It's as simple as that.

Q. Who was holding you hostage?

MR. DONOVAN: Objection to form.

M. Carpenter

A. What do you mean by that?

Q. Well, if the global settlement payment is, and you said that you very well may have used the language hostage payment, and I could take out a document showing you that it's attributed to you --

A. I actually don't think I said that once we had reached a settlement. But I could -- it doesn't matter. Let's not argue about it. It doesn't matter.

MR. DONOVAN: I also think -- I'm just concerned you're getting into the mediation process. If you want to ask him why he entered, that's fine; but to the extent you're asking him why he did certain things from Judge Peck, I'm just getting concerned that we are getting into an area that is confidential precluded by the judge.

MS. MILLER: Well, I don't want to know -- I'm sensitive to that.

BY MS. MILLER:

Q. I'm certainly not asking you about discussions with Judge Peck or otherwise. But

M. Carpenter

to the extent that you're on the public record characterizing a payment as a hostage payment, I just want to know what your mindset was in saying it and who Ally felt it was being held hostage.

MR. DONOVAN: Can we see the document, because I'd like to see the time frame and everything.

MS. MILLER: Yes.

We'll come back to it after a break. I don't want to take time on the record right now.

BY MS. MILLER:

Q. Are you okay, you don't need a break?

A. Yes, I'm fine.

Q. Okay. So let's keep going.

Mr. Carpenter, did you insist on the settlement of the intra ResCap debtor, intercompany claims as part of the global settlement?

A. I don't even understand the question. I'm sorry.

Q. So do you understand that certain

Plaintiff's Objection 48:25-49:18 Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602)

ResCap debtors, that there are intercompany claims between certain ResCap debtors?

A. I do understand that, yes.

Q. And was a condition of Ally making a payment under the global settlement, the settlement of all of those intra ResCap intercompany claims?

A. I don't -- I wasn't part of that. I mean, I can't imagine how we could write a check unless there was an agreement among the various ResCap entities. I can't imagine how you do that. But I did not lay down that as a condition.

Q. So from your perspective, would Ally have been comfortable writing a check and then, you know, letting the kids fight over who gets what?

Plaintiff's Objection 49:15-18 Objection to form: vague and ambiguous

MR. DONOVAN: Objection to form. Can you ask a little --

JSN Objection 49:19-50:4 Irrelevant (FRE 401, 402), Inadmissible hearsay (FRE 802)

MS. MILLER: Sorry.

MR. DONOVAN: I'm just worried -- actually, I'm not sure even what we're talking about. I think I know it's a legal dispute. I'm not sure the way you

M. Carpenter

described it is what Mr. Carpenter is referring to; so, I'm worried that there's some confusion here.

MS. MILLER: Okay.

MR. DONOVAN: Because he was talking about ResCap entities. You're talking with inter-creditor claims, I believe. So that's why --

MS. MILLER: No.

MR. DONOVAN: Sorry. If you could just go ahead. I am worried his answer differed from your question.

BY MS. MILLER:

Q. Okay.

You know what I'm talking about, so I'm going to ask a more clear question so we can all be on the same page here.

A. Okay.

Q. Would Ally have been prepared to write a check to ResCap and then allow ResCap to figure out and the various ResCap subsidiaries fight about where the settlement payment should be allocated?

A. Well, it's a very hypothetical

Plaintiff's Objection 50:20-51:10 Irrelevant (FRE 401, 402)

question; right? Which, you know, I would, frankly, defer to counsel for an answer on.

But I would say -- I would put it in these terms. If we were writing a check and we knew we were getting everything we asked for, including all of the various releases that I just described, how the creditors divide up the spoils is a matter of indifference to me.

MS. MILLER: I'd like to mark as Carpenter Exhibit 2 a document Bates stamped Ally_0003585 through 3759.

(Carpenter's Exhibit 2, Set of Board Material of GMAC Financial Service, dated June 1, 2009, Bates Nos. Ally_0003585 through 3759, was marked for identification.)

BY MS. MILLER:

Q. I've marked as Carpenter Exhibit 2 a set of board materials of GMAC Financial Services from the Special Informational GMAC Board of Directors Meeting, dated on Monday, June 1, 2009. And you're listed as -- on the top of the page.

M. Carpenter

A. Yes.

Q. Mr. Carpenter, have you seen these documents before?

A. I mean, I'd have to look through the document to answer that, but it's not unfamiliar in terms of the kind of documents that were produced.

Q. And is this right around the -- is this document from right around the time that you joined the Ally board?

A. Yes.

Q. Sorry, just so the record is clear, was Ally Financial at this time known as GMAC Financial Services?

A. Yes.

Q. So these are board materials relating to what we've been referring to today as the Ally Financial board; right?

A. They would appear to be, yes.

Q. Okay.

Do you know whether this would have been your first board meeting?

A. I don't recall. We have 36 board meetings from the time I joined the board

M. Carpenter

until the time I took over as CEO.

So I wouldn't swear that this was the first.

Q. I think you got paid for each one; right?

A. I actually don't think we did.

Q. I think there was a chart somewhere that shows that you did.

But, Mr. Carpenter, when you joined the Ally board or -- sorry -- let me restate that.

When you -- after you joined the Ally board, did you have an understanding of whether ResCap was insolvent?

MR. DONOVAN: Objection to form.

A. The board was certainly not informed that ResCap was insolvent. Nobody had suggested that ResCap was insolvent.

Q. Do you recall considering filing ResCap for bankruptcy protection at the time that you joined the board?

A. What I recall -- the reason we had 36 board meetings is because ResCap and the mortgage business, in general, was a huge

problem for the company. It had absorbed a tremendous amount of capital. As you know, the government put $17 billion into the company. I think pretty much all of that went to support the mortgage business one way or another.

The company did not have access to the capital markets because the market wasn't comfortable with a mortgage business; and, so, for that and many other reasons, the board of directors was very, very concerned about what the future strategy should be for the mortgage business and ResCap, in particular.

And that was the topic of many of those board meetings. And we did, in fact, hire financial advisors to look at every conceivable alternative, and certainly bankruptcy was one of the alternatives that was evaluated in that time frame.

That is not what happened. What happened, when I took over as CEO, is with the help of the U.S. Government, we made a huge multi-billion-dollar infusion into ResCap to -- to allow it to be recapitalized and go

forward. But was it considered as an alternative, yes, it was.

Q. And did any of your advisors tell you whether -- sorry, let me make it clear so as not to draw an objection.

Did any of your financial advisors tell you whether ResCap was insolvent from a balance sheet perspective?

A. No, they did not.

Q. And do you know whether ResCap would have been able to pay its obligations as they came due if Ally did not continue to support and make capital infusions into ResCap in 2009?

MR. DONOVAN: I object to the form. It's a hypothetical.

But go ahead.

A. I don't remember what the financial projects were back then. I mean, I do remember, as I said, in the -- in December of '09, we wrote down the questionable mortgages in ResCap. We infused ResCap with additional capital to the tune of, I think $2-1/2 billion, something of that order of magnitude.

M. Carpenter

And we were comfortable when we did that, that the company had the wherewithal based on its business plan to go forward and to thrive.

Q. And in 2009, after you joined the board, did you understand that -- or, sorry.

Did you consider whether ResCap would be able to continue to pay its obligations as they came due without ResCap -- without Ally's support?

MR. DONOVAN: Objection. Asked and answered.

A. Yes. We were mostly focused on in '09 what are the strategic alternatives for ResCap and what direction do we go.

The question, there was no member of management, no member of the board, no member -- no advisor that I remember suggesting solvency issues.

Q. And was one of the alternatives that the board considered cutting off further support to ResCap and preparing for a ResCap bankruptcy filing?

A. It was one of half a dozen

M. Carpenter

alternatives that were considered --

Q. And on what --

A. -- but it was not implemented.

Q. Understood.

And on what basis would ResCap be filing for bankruptcy?

MR. DONOVAN: Again, two things, Mr. Carpenter. At that point you were the board member, but still to the extent the board got legal advice, that shouldn't be disclosed. To the extent --

A. The board obviously made a decision to support ResCap, to recapitalize it, and during the time I was on the board we had repeatedly put in cash and we had repeatedly forgiven debt to support ResCap's financial needs.

And the actions that were taken in December of '09 were in order of magnitude greater than the actions that had been taken previously. So what alternatives were considered were numerous. We looked at spinoffs, we looked at all kinds of things.

But, in the end, the board decided

to support the company and did so in a major, major way.

Q. And is it your testimony that you don't know whether ResCap would have been forced into bankruptcy if Ally -- if the Ally board had decided instead not to provide further financial support to ResCap?

MR. DONOVAN: Objection to form.

A. As I sit here now, I can't answer that question. I don't remember the financials.

Q. So you think that it's possible that ResCap could have continued as a going concern even without any financial support from Ally?

MR. DONOVAN: Objection to form.

A. It's possible, but I simply don't remember the analysis back then. You know, I have to keep saying: We looked at the strategic alternatives. We decided to commit to the business in -- with a huge amount of money. And we did that because the U.S -- because we were able to draw $3-1/2 billion from the U.S. Treasury.

It's no more complicated than that.

M. Carpenter

Q. And you did it --

A. Everything else is hypothetical.

Q. And you did it because you knew that if Ally didn't support ResCap, ResCap would be forced into bankruptcy?

A. Not at all. We did it because we thought that ResCap could -- ResCap and the mortgage business could be a good business, could earn money and could justify the shareholders's investment.

It wasn't for negative defensive reasons. We thought that was the best course of action for the shareholders. We were wrong, but that was the decision.

Q. Mr. Carpenter, do you understand that ResCap had total net worth covenants that it had to comply with?

A. Yes.

Q. And --

MR. DONOVAN: Can you just give time frames, because it changed over time, just as you go forward, the net worth covenants?

MS. MILLER: Okay.

M. Carpenter

BY MS. MILLER:

Q. I'm going to talk about the entire period from 2009 through the bankruptcy filing.

Do you understand that ResCap had total net worth covenants that it had to comply with?

A. Yes. But it differed at different times, and it was less restrictive as time went on.

Q. Okay.

And do you understand that the total net worth covenants that ResCap had to comply with throughout this period included total net worth covenants in financial, in third-party financing agreements?

MR. DONOVAN: Objection to form.

A. I don't recall that as I'm sitting here.

Q. Do you recall that ResCap had total net worth covenants in bank lending facilities?

A. The constraint that I recall is the one that we had with either Fannie or Freddie.

There may have been others, but that happens to be the one I remember.

Q. And if ResCap failed to satisfy the net worth covenant with Fannie or Freddie, do you know what the results would have been?

A. No. It would have been -- it would have been complicated because, in the end, Fannie and Freddie have the right to seize from ResCap the mortgage servicing rights, which are a substantial asset on the balance sheet of the company.

They have the right to do that. They don't have to prove anything to anybody. They have to -- they have the right to do that. And that, by the way, in the bankruptcy was one of the things that ResCap was most concerned about, which was that that if they did not get the support of Ally to continue to function as a going concern and meet the needs of the GSCs, that $1.1 billion of MSR value that the investors -- that the creditors benefited from would have not been available because the GSCs could have essentially taken the mortgage servicing rights away.

Plaintiff's Objection 61:4-62:5 Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

M. Carpenter

And so that -- whether they would have done in '09, '10, you know, I don't know, but that was always the concern, which was what would the reaction be.

Q. And what would the effect have been on the bank if --

A. On the bank?

Q. Can I just finish my question?

A. Yes. Sorry.

Q. What would the effect have been on Ally if the GSCs had pulled the servicing rights from ResCap?

MR. DONOVAN: And let's be clear. You're talking about the MSRs on ResCap's books, because there are different ones and that is where I think the confusion is.

A. You used the term "Ally Bank." You used the term "bank." So we have three entities we're talking about. We're talking about Ally Bank, we're talking about Ally Financial and ResCap.

The first and the third have an MSR asset; the second, the parent, does not.

M. Carpenter

Q. What would -- what would the effect have been on Ally and all of its non-debtor subsidiaries if the GSCs had pulled the mortgage servicing right from ResCap?

A. Ally and its non-debtor -- well, what would have happened is ResCap -- I mean, I suppose what would have happened, I'm speculating, all right, so what would have happened is the billion dollars of value that ResCap would have shown on its books would have gone to zero.

And in that scenario, I guess ResCap would have been bankrupt. And then the implication on the parent beyond a reduction in ResCap's net worth, nothing directly, but it would, obviously, indirectly it wouldn't have been good.

MS. MILLER: I'd like to mark as Carpenter Exhibit 3 a document Bates stamped Ally_0359385.

(A Discussion was Held off the Record.)

M. Carpenter

(Carpenter's Exhibit 3, E-Mail from Lara Hall to Michael Carpenter dated September 26, 2011, Bates No. Ally_0359385, was marked for identification.)

BY MS. MILLER:

Q. Mr. Carpenter, I've marked as Carpenter Exhibit 3 a document -- sorry, an e-mail from Lara Hall to you, copying a number of people, dated September 26, 2011, with the subject, "Request for Modification to BOD Resolution Re: ResCap's 9/30 TNW."

Do you see that?

A. Yes.

Q. Is this a document that you received?

A. Yes. Okay.

Q. Do you have an understanding of what TNW is?

A. I think I think they mean Total Net Worth.

Q. And in this e-mail is Ms. Hall recommending that Ally move the cap on what it will contribute to ResCap up from $250 million

to $1 billion?

A. Let me pause for a minute here and say, I don't recall this document. All right?

My just reading it, what I believe that it relates to is that we were approaching a settlement or ResCap was approaching a settlement with the Department of Justice and the Attorney General on the robo-signing settlement, which we talked about earlier on.

And that it was unclear to us what the amount of money is, or was, but that, given ResCap's at that time net worth of 316 million, it was likely that ResCap would fall below its net worth covenants, because the charge from the Department of Justice was going to be in the hundreds of millions of dollars.

And so, therefore, ResCap would have fallen below its net worth covenants, and something would have had to be done to fix it. And what I think Lara was trying to do here is to get ahead of it, is to essentially to say rather than find out we have negative net worth and we violated the covenants, let's fix

it ahead of time.

I remember the issue. I don't remember what we did about it.

Q. And Ms. Hall, in the second paragraph of this e-mail, says that "The primary reason why we recommend this path is because if ResCap were to breach its covenant as of 9/30, even if driven by a subsequent event, it is an immediate event of default with no cure period."

A. Right.

Q. And then she lists a number of things, including one, the five external bank facilities.

Do you see that?

A. Yes.

Q. Does that refresh your recollection that ResCap had total net worth requirements in its external bank facilities?

A. Yes.

Q. And the FNMA facility.

Do you see that?

A. Yes.

Q. Do you know what the FNMA --

A. The Fannie Mae.
Q. The Fannie Mae?
A. Yes.
Q. And so we discussed that. And then three with the GSCs, which I guess includes Fannie and Freddie?
A. Yes.
Q. Do you understand that a breach of the total net worth covenant would result in an immediate event of default with no cure period for ResCap?
A. Well, I didn't know the details of it, but that's what this memo says.
Q. Do you have any reason to believe this isn't true?
A. No.
Q. And then she explains that all of the banking parties will have the ability to accelerate and the GSCs will have the right to pull servicing?
A. Correct.
Q. And so we discussed the servicing. And what does it mean if the banking party has the ability to accelerate a bank facility?

Plaintiff's Objection 67:9-22 Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

A. It means they can call the loans and, obviously, if the company doesn't have enough cash on hand to pay the loans, they're in default.

Q. And then she says one sentence later, "It is also likely a disclosable event for Ally, given the size of lending facilities and the materiality overall."

A. Yes.

Q. Is it your understanding that if ResCap had an event of default on its five external bank facilities with Fannie and with Freddie, that ResCap -- that Ally would have to disclose that?

A. I wouldn't doubt it.

Q. And then it says, "In other words, we could be facing an immediate liquidity event."

Do you see that?

A. Yes.

Q. And do you what -- do you know who the "we" is?

MR. DONOVAN: Objection. Calls for speculation.

Plaintiff's Objection 68:6-16 Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

M. Carpenter

A. Whereabouts are you?

Q. The second to last sentence in the second paragraph. It says, "In other words, we could be facing an immediate liquidity event."

A. Well, I think, you know, I could speculate. I think what she's trying to do here is say, Ally has to step up to fix the net worth and liquidity problem that this event creates.

And that's what we did.

Q. Because it would have bad consequences for Ally?

A. Bad consequences for ResCap. It would have put ResCap out of business, immediately.

Q. And bad consequences for Ally?

A. Oh, absolutely.

Q. And in connection with ensuring that ResCap remained in compliance with its total net worth, did Ally occasionally forgive certain intercompany debt?

MR. DONOVAN: Objection to form.

MS. MILLER: Sorry. Let me restate

Plaintiff's Objection 69:3-19 Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

M. Carpenter

that.

BY MS. MILLER:

Q. Did Ally ever forgive intercompany debt that was owed to it by ResCap in order to ensure that ResCap would remain in compliance with its total net worth covenants?

A. It did, in, as I recall, though my memory is not perfect, it did so in 2009. It did not do so until 2011 after that, which I think relates to this.

And I don't remember how many other times, not that it was infrequent, let's put it that way, but it did happen.

Q. I don't know that that's just a realtime thing, but I just want to make sure that the record in the last question says did Ally ever forgive, as written. It's a real word, but it's makes no sense.

What does it mean to forgive a debt?

MR. DONOVAN: Objection to form.

A. You owe me $100. I tell you don't need to repay it.

Q. And if I never owed you $100, would you have to forgive my debt?

Plaintiff's Objection 70:20-25 Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

M. Carpenter

MR. DONOVAN: Objection to form. He's a fact witness. You can't ask hypotheticals.

A. If you didn't borrow $100 from me, I wouldn't have to -- you wouldn't have to repay me, no.

Q. So when the Ally board -- did the Ally board have to approve debt forgiveness?

A. Depending on the amount, the answer is yes.

Q. Let me clarify that.

Did the Ally board have to approve debt forgiveness between -- did the Ally board have to forgive -- I'm going to strike that.

Let's take a break because we have two minutes and I'll come back to it and hopefully be able to say a clear question.

THE VIDEOGRAPHER: The time is 3:36 p.m. We're going off the record.

(Recess taken from 3:36 p.m. to 3:57 p.m.)

THE VIDEOGRAPHER: The time is 3:57 p.m. We're back on the record, video No. 2.

Plaintiff's Objection 71:5-7 Irrelevant (FRE 401, 402), lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

M. Carpenter

BY MS. MILLER:

Q. Good afternoon, Mr. Carpenter.

MS. MILLER: I'd like to mark as Carpenter Exhibit 4 a document Bates stamped RCUCCJSM10615535 through 5547.

(Carpenter's Exhibit 4, Series of E-Mails, Bates Nos. RCUCCJSM10615535 through 5547, was marked for identification.)

MR. DONOVAN: Just for the record, it appears to be missing a page, at least Bates number wise.

MS. MILLER: Right. So I believe what it's missing is the identifier identifying that there's another -- that there's an attachment; but, yes, I see that.

BY MS. MILLER:

Q. Mr. Carpenter, I've marked as Carpenter Exhibit 4 an e-mail chain, but really I'd like you to focus on -- turn to the document after the blue slip sheet, which is RCUCCJSN10615538, which is titled, a document titled "Unanimous Consent to Action," and it's

dated December 30, 2009.

Do you see that?

A. Yes.

Q. Mr. Carpenter, do you recognize this document?

A. No.

Q. Looking at the page ending in 15542, do you recognize your signature on that page?

A. That's my signature.

Q. Do you understand that you signed this document in your capacity as a member of the board of directors?

A. Yes.

Q. Mr. Carpenter, did the Ally board have to approve debt forgiveness by Ally to ResCap in amounts greater than $50 million?

MR. DONOVAN: Objection to form.

Go ahead, Mr. Carpenter.

A. They had to approve any capital infusion in excess of 50 million, which I presume would include debt forgiveness.

Q. And was the same true with respect to debt forgiveness between ResCap and its subsidiaries?

A. I think debt forgiveness between ResCap and its subsidiaries was -- I don't know the answer to that.

I would imagine that it's the purview of the ResCap board, without the approval of the parent board, but I don't know that as a fact.

Q. Okay.

So looking at the page ending in 10615539, the very top "whereas" paragraph.

A. Right.

Q. It says, "Whereas under the reservation of authorities of the board, the board must approve GMAC's capital contribution to ResCap and ResCap's contribution to RFC, to the extent each contribution is $50 million or more."

A. Yes.

Q. I'm going to skip the parenthetical, but do you see that?

A. Yes.

Q. Do you understand that ResCap's contribution to RFC is relating to a debt forgiveness between ResCap and one of its

subsidiaries?

MR. DONOVAN: Objection to form.

A. I'm not arguing about it. I just don't remember it. I'm just reading it as if for the first time.

Q. Is that your understanding based on reading it?

A. It's not something I would have paid any attention to it, frankly.

Q. Do you recall whether, as a member of the Ally board, you periodically approved debt forgivenesses between ResCap and certain of its subsidiaries?

A. I don't remember that.

Q. Looking back at the page with the Bates ending 15538, toward the middle of the page, the second bullet states, reads, "Forgiveness of outstanding indebtedness of ResCap to GMAC under the following agreements, as may be amended from time to time, such that the aggregate amount of the indebtedness forgiven will be deemed paid in full and completely extinguished and ResCap will have no further obligation for the forgiven

M. Carpenter

indebtedness."

And it lists under the third dash, the loan agreement dated November 20, 2009, by and among RFC Asset Holdings II, LLC, and Passive Asset Transactions, LLC.

Sorry, my misreading. Strike the question.

Mr. Carpenter, when you consider the forgiveness of debt that ResCap owed to Ally, did you consider -- were you considering it from the perspective of -- strike that.

I tried to take a break.

Mr. Carpenter, if ResCap didn't owe Ally money under an intercompany debt, would Ally have had to forgive that debt?

MR. DONOVAN: Objection to form.

A. I don't understand the question. If ResCap didn't owe Ally money, then would Ally have not had to forgive the debt?

Q. Right.

A. I don't understand the question.

Q. So let me say it differently.

A. Okay.

Q. If Ally gave ResCap money as an

equity contribution, and ResCap was not repaying that money, would Ally have had to take any action to forgive an obligation of ResCap's?

MR. DONOVAN: Objection to form. Hypothetical.

A. I mean, I think the answer is very simple, which is in order to preserve an appropriate capital, you know, an appropriate capital level in ResCap, this is the recapitalization that I was describing at the end of '09, which had a whole series of aspects to it, one of which was writing down a whole bunch of loans in ResCap, contributing loans from Ally Bank as capital.

So I would say there are many different ways you can contribute capital. You can contribute equity. You can forgive debt. You can contribute mortgage loans, which we did here to the tune of several billion dollars. All of those things can be used and, you know, I rely on my financial people and my legal people to tell me which is the best solution at this particular point in

time.

But, you know, you had half a dozen different things you could do to accomplish the same objective.

Q. Did Ally have an expectation that ResCap would repay the debts that it were owed if they hadn't been forgiven?

A. Our -- our loans to ResCap were throughout this period heavily secured by assets, and there was every reason to believe there was adequate collateral to repay those loans.

Q. You don't recall ever considering and approving debt forgiveness between ResCap and one of its subsidiaries?

A. I don't recall that, no; but the phrase you read earlier on suggests that the board did have certain responsibilities in that regard. I just don't recall that as I'm sitting here.

Q. Do you know if the Ally board would have had to approve capital contributions that were not in the form of debt forgiveness?

A. They would have had to approve any

capital contribution above $50 million, to the best of my knowledge.

Q. Including capital contributions between ResCap and its affiliates?

A. I didn't say that. You asked me about from Ally to ResCap, and I answered you on Ally to ResCap.

What exactly was required for an inter-subsidiary transaction within ResCap or a transaction between ResCap and its subsidiaries, I don't have the expertise, sitting here now, to comment on.

Q. If the issue were presented to the board for approval, do you believe you would have been informed before making a decision on it?

MR. DONOVAN: Objection to form.

A. I would, obviously, as CEO, have been knowledgeable about all of the elements of a unanimous consent that was presented to the board of directors. But, you know, having said that, I rely on my internal counsel to get this stuff right. I don't know the legal entity structure of the company to that lowly

detail.

Q. Mr. Carpenter, when you were negotiating the settlement with ResCap, going back to the spring of 2012, did you consider the tax benefits that Ally would get as a result of any settlement payment made to ResCap?

A. I'm not aware there were any tax benefits. And I've heard lots about tax benefits since then, and I haven't found a tax person yet that tells me there is any legitimacy to that argument.

Q. So, do --

A. There are some creative minds.

Q. What do creative minds do?

A. What?

Q. What have creative minds been doing?

A. Imagine tax laws that don't exist.

Q. So is it your position that -- well -- sorry, strike that.

A. Let me be clear. In the $2.1 billion settlement, Ally does not expect to receive any tax benefits.

Q. What do you mean by in the $2.1

M. Carpenter

billion settlement?

A. We don't expect to receive any tax benefits.

Q. Does Ally expect to receive tax benefits as a result of ResCap's restructuring -- ResCap's bankruptcy and its contribution of $2.1 billion to ResCap?

A. Not to my knowledge. I've heard the allegation made, but my professionals tell me it's fantasy.

Q. I'd like to show you what's been previously marked as Aretakis 9.

THE VIDEOGRAPHER: The time is 4:12 p.m. We're going off the record.

(A Discussion was Held off the Record.)

THE VIDEOGRAPHER: The time is 4:13 p.m. We're back on the record.

BY MS. MILLER:

Q. Mr. Carpenter, I've handed you what's been marked as Aretakis Exhibit 9, which is the July 31, 2013 Form 8K of Ally Financial, Inc.

Do you see that?

A. Yes.

Q. Is this a document that you reviewed with counsel that refreshed your recollection?

A. I don't remember.

Q. Turning to the -- page 3 in the document?

A. Yes. I mean, I reviewed several of our SEC filings. I don't remember whether I reviewed this one or not.

Q. Looking at Note 4 or No. 4 on page 3.

A. Yes.

Q. It says, "Includes approximately $1.6 billion charge resulting from Ally's comprehensive settlement agreement in the ResCap Chapter 11 bankruptcy case."

A. Right.

Q. "This was partially offset by approximately $600 million in tax benefits related to the settlement charge on the sale of Ally's international business."

What's your understanding of what the tax benefits related to the settlement charge are?

Plaintiff's Objection 82:14-83:5
Lack of personal knowledge (FRE 602), lack of foundation (FRE 602, 901, 903), inadmissible lay opinion

M. Carpenter

A. I'm not a tax expert, and so, I'm not going to go into the details of that tax return. I can't do it sitting here. So I'm really not familiar with the details.

Q. But you don't challenge that there are tax benefits related to the settlement charge?

MR. DONOVAN: Well, objection. I think you're mixing terms here. So if he doesn't have a foundation, he's not the right witness for it.

A. I mean, it says here -- I can read what it says. That's all I know.

Q. And did you read --

A. You just separated out, by the way, settlement charges from sale of Ally's businesses.

MR. DONOVAN: And I think you're also -- it shows a net loss that it's a footnote to. So I'm not sure what the benefit is to lose 1 or $2 billion there, so...

MS. MILLER: Well, it's a billion dollars; right?

M. Carpenter

MR. DONOVAN: It's a loss.

MS. MILLER: Right. If you lose 2 and you only lose 1, that's a benefit of 1 because of the losses being offset -- we don't have to discuss tax issues right now.

MR. DONOVAN: I think the witness issue here is you have a foundational problem.

MS. MILLER: Okay. I'm going to ask you a question.

BY MS. MILLER:

Q. Mr. Carpenter, in your capacity as CEO of Ally, did you review Ally's public filings?

A. Yes.

Q. Did you review this 8K?

A. Yes.

Q. And if you -- would you confirm with all of the people who report to you and who are responsible for the various sections that the information that they've included is complete and accurate?

A. Yes.

Q. And you wouldn't sign off on an Ally public filing without doing that; right?

A. Correct.

Q. And so, to the best of your understanding, every statement in this public filing is true and complete; right?

A. Right.

Q. And -- so in connection with settlement negotiations, you never asked any -- sorry.

Did you have any discussions with any members of your staff about the net tax impact that ResCap restructuring and a settlement payment to ResCap would have for Ally?

A. None whatsoever.

Q. And after the examiner report came out, did you have any discussions with your tax advisors about the tax benefits identified by the examiner?

MR. DONOVAN: And, again, to the extent it's legal advice, you can't disclose that, Mr. Carpenter. But if it's business, you can. I just don't want you

to --

A. I mean, I had conversations with our financial people who basically explained to me why they thought there was absolutely no merit in that suggestion.

Q. Did you have an understanding that Ally will receive essentially a 35 percent increase -- 35 cents on the dollar increase in tax benefits for any additional dollar it contributes in settlement to --

JSN Objection 86:7-87:7 Inadmissible hearsay (FRE 802)

A. I think I just said to you that my tax people basically explained to me that there was not a tax benefit as a result of the settlement. I just explained that.

Q. What did your tax people tell you, other than that there wasn't a benefit about the tax effect of the settlement?

A. I don't remember the details. It's a long time ago.

Q. When did you have those discussions?

A. After the examiner's report came out. The first time I talked to them about taxes was when that report came out. And their response to me was it doesn't make any

sense.

Q. And did you have any subsequent discussions with them?

A. I didn't need to. They told me it didn't make any sense. That's all I needed to know.

Q. Who were your tax people who you spoke to after the examiner report came out?

A. Well, I talked to our chief financial officer. And he, in turn, spoke with Jim Aretakis and other folks in our Tax Department.

Q. And did you ever speak directly to Mr. Aretakis?

A. No.

MS. MILLER: I have no further questions. Thank you. Thank you very much.

MR. DONOVAN: Thank you very much. Off the record.

THE VIDEOGRAPHER: The time is

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CONTINUED ON THE NEXT PAGE TO INCLUDE JURAT.

M. Carpenter

4:19 p.m. We're going off the record.

(The deposition was concluded at 4:19 p.m.)

(The exhibits were retained by the court reporter to be attached to the transcript.)

_____

MICHAEL CARPENTER

Subscribed and sworn to before me this day of 2013.

_____

C E R T I F I C A T E

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

I, THOMAS A. FERNICOLA, Registered Reporter and Notary Public within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the proceedings held on November 12, 2013.

That I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of November, 2013.

_____

THOMAS A. FERNICOLA, RPR

M. Carpenter

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---------- EXHIBITS ----------

CARPENTER'S

| DESCRIPTION | PAGE | LINE |
|---|---|---|
| Exhibit 1 - Transcript of Conference Call dated November 2, 2011, Bates Nos. Ally_0255144 through 162, | 29 | 18 |
| Exhibit 2 - Set of Board Material of GMAC Financial Service, dated June 1, 2009, Bates Nos. Ally_0003585 through 3759, | 51 | 12 |
| Exhibit 3 - E-Mail from Lara Hall to Michael Carpenter dated September 26, 2011, Bates No. Ally_0359385, | 63 | 22 |
| Exhibit 4 - Series of E-Mails, Bates Nos. RCUCCJSM10615535 through 5547, | 72 | 3 |

M. Carpenter

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In Re: Residential Capital, LLC

Dep. Date: November 12, 2013

Deponent: MICHAEL CARPENTER

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page ____ Line ____ Reason _____

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MICHAEL CARPENTER

Subscribed and sworn to before me
this day of 2013.

_____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Chapter 11

RESIDENTIAL CAPITAL, LLC,
et al.,

Case No. 12-12020
(MG)

Debtors.

_____

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiffs' Counter-Designation
Orange Highlighting = Joint Designation

The Debtors' and Committee's counter-designations reflected herein are to be admitted, if at all, only upon admission of the JSNs' corresponding affirmative designations.

# VIDEOTAPED DEPOSITION OF ADAM GLASSNER

(Taken by UMB as Bank Trustee & Adhoc Group of JSM)

Charlotte, North Carolina

Wednesday, November 13, 2013

Reported in Stenotype by April Reid

Job #66947

ADAM GLASSNER

ANNOUNCEMENT PAGE

Wednesday, November 13, 2013

9:07 a.m.

201 East Trade Street

The Ritz-Carlton

Charlotte, NC

APPEARANCES

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On behalf of UMB as bank trustee
and the Adhoc Group of JSM
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BY: JACOB JOU, ESQUIRE

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On behalf of the deponent
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///

DECHERT
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(Via Telephone)

SEAN LOWTHER, Legal Video Specialist

* * * * *

ADAM GLASSNER

I N D E X


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* * * * *

ADAM GLASSNER

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* * * * *

ADAM GLASSNER

(THEREUPON, the following proceedings were had).

THE VIDEOGRAPHER: This is the beginning of tape number one in the deposition of Adam Glassner in the matter of Residential Capital, LLC, et al, Debtors, in the Court of the United States Bankruptcy Court, Southern District of New York, Case No. 12-12020 (MG).

This deposition is being held at the Ritz-Carlton at 201 East Trade Street in Charlotte, North Carolina. The date is November 13th, 2013. The time on the monitor is approximately 9:07 a.m.

My name is Sean Lowther, the Legal Video Specialist, and the court reporter is April Reid and we're representing TSG Reporting, Inc. headquartered at 747 Third Avenue, New York, New York.

Will counsel please introduce themselves starting with attorney Cohen, and who you're representing, after which the court reporter will swear in the witness.

MR. COHEN: David Cohen with Jacob Jou, Milbank, Tweed, Hardley & McClory on behalf of

ADAM GLASSNER

UMB as bank trustee and the Adhoc Group of JSM holders.

MR. ELBAUM: David Elbaum, Brune & Richard, for Mr. Glassner.

MR. BROWN: Judson Brown, Kirkland & Ellis, on behalf of Ally.

MR. SIMON: Norm Simon, Kramer Levin, on behalf of the committee.

MR. BAEHR: Robert Baehr, Morrison & Foerster, on behalf of the debtors.

MR. COHEN: Would the people on the phone please identify yourselves and the parties you represent.

MR. ADAMS: Oh. Jason Adams, Kelley Drye, on behalf of UNC Bank.

MR. STANISCI: Jared Stanisci from Cadwalder Wickersham & Taft, on behalf of MBNA.

MR. COHEN: Anyone else?

Dechert?

Are you still on?

MS. SCHIAPPACASSE: Yes, I'm still on.

MR. COHEN: Can you identify yourself for the record, please.

MS. SCHIAPPACASSE: This is Mikki

ADAM GLASSNER

Schiappacasse from Dechert on behalf of Bank of New York Mellon and Bank of New York Mellon Trust Company of North America.

Thereupon,

ADAM GLASSNER

was called for examination and after having been first duly sworn to tell the truth, was examined and testified as follows:

EXAMINATION

BY MR. COHEN:

Q. Good morning, Mr. Glassner.

A. Good morning.

Q. You understand that you're under oath?

A. I do.

Q. Have you been deposed before?

A. I have.

Q. How many times?

A. Approximately, four or five.

Q. And in what circumstances were you previously deposed?

A. A variety of cases involving mortgage-backed securities and personal -- personnel matters at previous employers.

Q. Did any of those depositions involve

your time either at Ally Financial, Ally Bank or ResCap?

A. No.

Q. Okay. Let's go over some ground rules that hopefully will speed us along this morning.

You see the reporter sitting between us, she's trying to take down a record of everything that's said here so it's very important that only one of us speak at a time. I'd ask you to let me finish my question before you begin answering and I will do my best to let you finish your answer before I begin my next question. Okay?

A. Yes.

Q. It's also very important that all of your answers be verbal. The record won't reflect a nod of the hat -- a nod of the head or a gesture of the hand; is that okay?

A. Yes.

Q. If any of my questions aren't clear to you, let me know, I will do my best to clarify that. Okay?

A. Yes.

Q. If you need to speak with your attorney at any time let me know and we'll do our best to

accommodate that. Okay?

A. Yes.

Q. And if you'd like to take a break at any time let me know and I'll do my best to accommodate that as well. Okay?

A. Yes.

Q. Are you represented by counsel here today?

A. I am.

Q. Who is your counsel?

A. David Elbaum.

Q. How did Mr. Elbaum come to be your counsel?

A. I selected him amongst several choices provided to me.

Q. Who provided you with those choices?

A. I believe it was Ally Financial.

Q. Were there lawyers from Ally Financial who provided you with those choices?

A. I don't specifically recall whom it came from.

Q. Did Ally Financial offer to represent you with their own lawyers?

MR. ELBAUM: Let me just caution the

Plaintiff's Objection 11:8-18 Irrelevant (FRE 401, 402)

witness not to discuss conversations he had with any lawyers for Ally Financial that might be covered by the attorney-client privilege.

THE WITNESS: I don't recall the specific circumstances in regard to the engagement of my counsel.

BY MR. COHEN:

Q. Okay. When did you engage Mr. Elbaum?

A. Approximately, 20 to 24 months ago.

Q. Were you interviewed by the examiner in this case?

A. Yes.

Q. Did you have legal representation in connection with your interview with the examiner?

A. Yes.

Q. Who was your counsel in connection with that interview?

A. David Elbaum.

Q. Were you interviewed by lawyers for ResCap in this case?

A. I do not specifically recall.

Q. You don't recall meeting with lawyers from the Morrison & Foerster law firm separate and apart from your meeting with the examiner?

Plaintiffs' Objection 12:9-19 Irrelevant (FRE 401, 402)

MR. BROWN: Objection to form.

THE WITNESS: I do not recall.

BY MR. COHEN:

Q. What did you do to prepare for this deposition?

A. I met with my attorneys and got a good night sleep.

Q. All right. When did you meet with your attorneys?

A. I believe it was Wednesday of last week.

Q. How long did you spend with your attorneys during that meeting?

A. Several hours.

Q. Can you be more specific?

A. Approximately, three hours.

Q. All right. Other than that meeting, did you do anything else to prepare for the deposition?

A. I did not.

Q. Did you meet with lawyers from ResCap?

A. I did not.

Q. Did you meet with lawyers from any of the Ally companies?

A. I did not.

Q. Did you have discussions with lawyers

from ResCap in connection with this deposition?

A. Not that I recall.

Q. Did you have discussions with any of the lawyers from the Ally Financial companies in connection with this deposition?

A. Not that I recall.

Q. Beginning with college, can you describe your educational background?

A. I received a BS/BA in finance from Miami University at Oxford, Ohio in May of 1996.

Q. Did you have any further college education other than your BS/BA?

A. That is the extent of my formal education.

Q. Okay. Beginning with your graduation from college, would you describe your employment history?

A. I worked for Carolina Advisors, Inc. in Cincinnati, Ohio from approximately July of 1996 through April of 1999.

Q. What was your position with Carolina Advisors?

A. I was an asset-backed and mortgage-backed securities investment analyst.

Plaintiff's Objection 14:8-17:12 Irrelevant (FRE 401, 402)

Q. During that entire period?

A. Correct.

Q. What were your responsibilities?

A. To analyze mortgage backs and asset-backed securities for investment purposes.

Q. Why did you leave Carolina Advisors in 1999?

A. I was offered a new opportunity to come work for NationsBank Montgomery Securities in Charlotte, North Carolina.

Q. What position were you offered with NationsBank Montgomery Securities?

A. An associate in their investment banking area focused on mortgage-backed securities.

Q. What were your responsibilities as an associate in their investment banking area?

A. Origination structuring and client management within the mortgage backed and mortgage origination sector.

Q. And how long did you hold that position?

A. I worked in the investment bank for -- at Bank of America -- well, it became Banc of America Securities for nine years, all in the mortgage finance area.

Q. So that would take you up to about 2008?
A. That's correct.
Q. And why did you leave NationsBank/Bank of America in 2008?
A. I moved from the investment bank to Bank of America's investment portfolio as part of the growth of the investment portfolio in mortgages.
Q. What position did you hold in the investment portfolio group?
A. Managing director of the retained loan portfolio.
Q. What were your responsibilities as the managing director of the retained loan portfolio?
A. I managed all the loans that were originated and held at Bank of America for investment purposes.
Q. What were your responsibilities in connection with managing all of the loans that were retained and held?
A. All aspects of the origination and acquisition, valuation and ultimate buy or hold decisions.
Q. You took that position in 2008?
A. That's correct.

Q. How long did you hold that position?

A. Approximately, nine months.

Q. Do you know what month in -- in 2008 or 2009 you left that position?

A. Would have been approximately March 2009.

Q. Why did you leave that position in March 2009?

A. I was extended an offer from Ally Bank to come manage the correspondent and warehouse division.

Q. Were you looking for a new job or did that job find you?

A. That job found me.

Q. And what were your responsibilities managing the correspondent and warehouse division of Ally Bank?

A. I was responsible for all client selection, product lending, pricing, origination and disposition of any of the activity associated with the correspondent vision along with the lending terms and client selection program for the warehouse division.

Q. When you say "client selection" what do

you mean?

A. Who we did business with.

Q. At that time was Ally Bank doing business with GMAC Mortgage?

A. Not in that capacity.

Q. In what capacity was Ally Bank doing business with GMAC Mortgage when you joined Ally Bank?

A. Ally Bank sold its origination activity to GMAC Mortgage who ultimately disposed of those loans in the capital markets either via sale or securitization.

Q. Did you have any responsibility for the pricing of those sales?

MR. ELBAUM: Objection to form.

THE WITNESS: At that point in time I did not.

BY MR. COHEN:

Q. Did there come a point in time where you had responsibility for the pricing of the sales of Ally Bank's loans to GMAC Mortgage?

MR. BROWN: Objection to form.

THE WITNESS: Indirectly in September I be -- I took over the Capital Markets Division

which was in GMAC Mortgage.

BY MR. COHEN:

Q. What do you mean when you say you "took over the Capital Markets Division which was in GMAC Mortgage"?

A. The capital markets division is a group that is responsible for the disposition of all the originating activity for Ally Financial's origination business at that time, in September the gentleman who was my manager and had run that division previously retired and I took his position.

Q. What was his name?

A. Tom Neery.

Q. So you were an employee of Ally Bank in September of 2009?

A. Yes.

Q. Were you also an employee of GMAC Mortgage in September of 2009?

A. No.

Q. Did you have managerial responsibility within GMAC Mortgage in September of 2009?

A. Yes.

Q. Did it strike you as odd that you had managerial responsibility in GMAC Mortgage

notwithstanding the fact that you were not an employee of GMAC Mortgage?

MR. ELBAUM: Objection to form.

THE WITNESS: It did not.

BY MR. COHEN:

Q. Why not?

A. It's a common structure within a bank holding company.

Q. What do you mean when you say "it's a common structure within a bank holding company"?

A. Within a bank holding company, where there are multiple subsidiaries, generally speaking it is very common for employees to be officers or have responsibilities of separate divisions.

Q. Okay. So when you took over the Capital Markets Division within GMAC Mortgage you were also -- you also had your responsibilities as managing the correspondent warehouse activities at Ally Bank, correct?

A. Can you rephrase the question?

Q. Certainly.

In September of 2009 when you took over the Capital Markets Division at GMAC Mortgage did you also continue to have responsibilities at Ally

Bank?

A. Yes.

Q. What were the responsibilities that you had at Ally Bank when you took over the Capital Markets Division at GMAC Mortgage?

A. The same that were given to me when I was hired in March or April of 2009.

Q. Okay. So in September 2009 you still had responsibility at Ally Bank for the pricing of mortgages when you were selling them, correct?

A. That's correct.

MR. BROWN: Objection to form.

BY MR. COHEN:

Q. And in September of 2009 when you took over the Capital Markets Division at GMAC Mortgage you had responsibility for pricing when they were buying mortgages, correct?

MR. BROWN: Objection to form.

THE WITNESS: No, that's not correct.

BY MR. COHEN:

Q. What were your responsibilities vis-a-vis mortgage purchases at GMAC Mortgage when you took over the Capital Markets Division in September 2009?

MR. BROWN: Objection to form; mischaracterizes his testimony.

THE WITNESS: The Capital Markets Division was responsible for disposing of assets that were originated for distribution into capital markets. I was responsible for managing that division on behalf of the company.

BY MR. COHEN:

Q. Where was GMAC Mortgage obtaining the assets that it was distributing to the capital markets?

A. In many cases, Ally Bank.

Q. Okay. Did you have any responsibility for obtaining assets at GMAC Mortgage that it would then distribute to the capital markets?

JSN Objection 22:15-23:10 Irrelevant (FRE 401, 402)

A. I don't understand the question.

Q. Well, you were responsible for selling GMAC Mortgage's assets into the capital markets, right?

A. Correct.

Q. Did you have any responsibility for obtaining assets on behalf of GMAC Mortgage that it could then distribute into the capital markets?

A. I did not.
Q. Who had that responsibility?
A. The relationship that -- the way that the GMAC Mortgage acquired assets was done in a variety of agreements between GMAC Mortgage and Ally Bank that pre-existed my arrival at Ally Bank.
Q. Okay. But who had responsibility for monitoring compliance with those agreements?
A. I don't know.
Q. How do you know that that was not something you were expected to do?
MR. ELBAUM: Objection; form.
THE WITNESS: I don't understand the question.
BY MR. COHEN:
Q. Well, you say that obtaining assets for GMAC Mortgage to then distribute into the capital markets was not one of your responsibilities, right?
A. That's correct.
Q. How do you know that?
A. I don't understand the question.
MR. ELBAUM: Same objection.
BY MR. COHEN:
Q. Why?

ADAM GLASSNER

MR. ELBAUM: He's told you what his responsibilities are/were at the time.

MR. COHEN: Okay. You can object to the form.

MR. ELBAUM: Okay.

MR. COHEN: You can't coach the witness in a speaking objection.

MR. ELBAUM: I am not coaching the witness.

MR. COHEN: This deposition is covered by the Federal Rules of Banking Procedure.

MR. ELBAUM: I am well aware of the rules.

MR. COHEN: Then follow them.

MR. ELBAUM: He's told you twice he doesn't understand the question.

MR. COHEN: That's not an objection.

MR. ELBAUM: You have asked him the same question.

MR. COHEN: That's not an objection, that's a speech. If you are going to make speeches we're going to be here for a very, very, very long time.

MR. ELBAUM: If he says he doesn't

understand the question you shouldn't just ask the same question, the same words.

MR. COHEN: I don't need your help in how to take a deposition.

MR. ELBAUM: Okay. Well, then I will just object.

MR. COHEN: Okay. Then just object. That's what you're allowed to do under the rules, period.

MR. ELBAUM: And I did and you didn't change a single word of it.

So pose a different question that will perhaps be clearer to the witness.

MR. COHEN: I don't need your help.

MR. ELBAUM: I am not offering you help.

MR. COHEN: You can object. You can object to the form.

You are very circumscribed.

MR. ELBAUM: I'm well aware of the federal rules.

MR. COHEN: We're going to be -- then -- then follow them.

MR. ELBAUM: I have been.

MR. COHEN: You have not.

MR. ELBAUM: I have been.

Go right ahead.

This is a third-party question.

Go, ask another question please.

BY MR. COHEN:

Q. Who explained your responsibilities to you when you became -- when you took your position in September of 2009 at GMAC Mortgage Capital Markets?

A. I don't specifically recall.

Q. Did somebody do that?

A. I do not recall a formal meeting describing my responsibilities.

Q. How did you come to understand what your responsibilities were?

A. I was familiar with the general activity that the Capital Markets Division had taken, I spent some time with my previous manager who was exiting on any open issues, and I asked questions of existing management and control partners to understand what was the expectations.

Q. What was your understanding of the general activities that the Capital Markets Division was undertaking when you took responsibility for

that group in September 2009?

A. The Capital Markets Division was responsible for distributing loans originated by the franchise for ultimate disposition into the capital markets, either through hold on sales or securitizations.

Q. You said you spent time with your predecessor and discussed open issues. What open issues did you discuss?

A. I do not recall --

Q. And --

A. -- any of the specifics.

Q. Do you recall generally what you discussed?

A. I do not.

Q. You said you spent time with your team to -- to discuss the issues in the group. Do you recall any of the specifics of that discussion?

A. I actually did not testify that I spent time with my team. I said I spent time with my manager, management of the company and the control partners.

Q. Okay. In connection with spending time with the management of the company and the control

partners, what did you discuss?

A. I don't specifically recall.

Q. Did there come a time when you left your positions at Ally Bank and GMAC Mortgage?

A. I don't think that's a complete question. I don't understand it.

Q. Are you still employed with Ally Bank?

A. I am not.

Q. Do you still have responsibilities for GMAC Mortgage?

A. I do not.

Q. When did you leave Ally Bank?

A. January 2012.

Q. Why did you leave Ally Bank in January of 2012?

A. To pursue a new opportunity with Fannie Mae.

Q. What was that opportunity?

A. It was SVP responsible for pricing.

Q. Do you still hold that position?

A. I do not.

Q. How long did you hold that position?

A. Till approximately May of 2013.

Q. Why did you leave that position in May

of 2013?

A. To pursue a new opportunity with Baby Loan servicing hedge fund originations.

Q. Do you still hold that position today?

A. I do.

Q. When you were with Fannie were you located in Washington, D.C.?

A. I commuted from Charlotte to D.C.

Q. From September 2009 till January 2012 when you left your position at Ally Bank did you have responsibility during that entire period for the Capital Markets Group at GMAC Mortgage?

A. No.

Q. When did you stop having responsibility for the Capital Markets Group at GMAC Mortgage?

A. Upon my departure in January of 2012.

Q. From September 2009 up to January 2012 did your responsibilities for managing the Capital Markets Group at GMAC Mortgage change?

A. No.

Q. You testified that you were interviewed by the examiner in this case?

A. Yes.

Q. When did that happen?

Plaintiff's Objection 29:22-31:24 Irrelevant (FRE 401, 402)

A. I don't specifically recall.
Q. Do you recall generally?
A. I actually do not recall generally.
Q. Do you remember how long that interview lasted?
A. A full day.
Q. What did you do to prepare for that interview?
A. I met with my attorneys and got a good night sleep.
Q. All right. When you say your attorneys, are you talking about your attorney here today?
A. And other associates with his firm, yes.
Q. Did you meet with any of the lawyers representing either Ally or ResCap to prepare for your interview with the examiner?
A. Yes.
Q. Who did you meet with from ResCap or Ally in preparation for your meeting with the examiner?
A. Ally's counsel represented here today.
Q. Mr. Brown?
A. That's correct.
Q. For what purpose did you meet with Mr.

Brown?

A. I don't understand the question.

Q. Why did you meet with Mr. Brown in preparation for your interview with the examiner?

A. He was present during my discussions with my counsel. I'm not exactly sure why he was present.

Q. You didn't ask him to be there?

A. I don't believe I did.

Q. Okay. And you're not sure why he was there?

A. I'm not a lawyer.

Q. I understand that, but -- but my question is, when you go to a meeting to prepare for the interview you had no understanding as to why Mr. Brown was there with you?

A. Much like I'm not sure why all the other people are in the room here today, I did not understand or did not ask why.

Q. Okay. Were you relying on him to provide you with legal advice during that preparation?

A. I was not.

Q. Are you familiar during your time at

Ally Bank and at GMAC Mortgage with -- with a program called the Brokering Consumer Loans to Bank?

MR. BROWN: Objection to form.

THE WITNESS: At a high level, yes.

BY MR. COHEN:

Q. What is your understanding at a high level of the brokering consumer loans to bank project?

A. It was a program put in place prior to my arrival, where the consumer direct division that is housed within GMAC Mortgage would broker loans originated directly from consumers to Ally Bank.

Q. Do you know what the purpose of that program was?

A. I do not know specifically, I did not set it up.

Q. Do you know generally what the purpose of that program was?

A. Generally, it was there so that GMAC Mortgage could broker loans to Ally Bank.

Q. Do you know what the business purpose of that program was?

MR. BROWN: Objection to form.

THE WITNESS: I do not.

JSN Objection 32:22-33:21 Irrelevant (FRE 401, 402)

ADAM GLASSNER

BY MR. COHEN:

Q. Do you know why there was a desire to have GMAC Mortgage broker loans to Ally Bank?

A. As a --

MR. ELBAUM: Objection to form.

You can answer.

THE WITNESS: As it was set up prior to my arrival and by parties that I was not involved with, I cannot answer that question.

BY MR. COHEN:

Q. So even though it was in place when you took over responsibility for the Capital Markets Group at GMAC Mortgage you had no understanding of why that program was put in place?

MR. BROWN: Objection to form.

MR. ELBAUM: Misstates the record.

THE WITNESS: That was not part of the capital markets activities. That was a consumer division activity which I was not responsible for.

BY MR. COHEN:

Q. In -- in your capacity at -- at Ally Bank did you have under -- any understanding as to why that program was put in place?

ADAM GLASSNER

MR. BROWN: Objection to form.

THE WITNESS: As I previously testified, it was set up prior to my arrival at Ally Bank by executives that were in charge of that area, not me.

BY MR. COHEN:

Q. I understand that, but even though the program was put in place before you got there once you got there did you have any understanding as to why that program had been put in place previously?

MR. BROWN: Objection to form; asked and answered.

THE WITNESS: I do not.

BY MR. COHEN:

Q. Do you have any understanding of what happened once the loans were brokered from GMAC Mortgage to Ally Bank, what Ally Bank then did with those loans?

A. Yes.

Q. What did Ally Bank do with those loans?

A. It held them for a period of time until they were sold to GMAC Mortgage which were then subsequently sold to the capital markets.

Q. Why would Ally Bank hold the loans

JSN Objection 34:25-36:3 Irrelevant (FRE 401, 402); incomplete question and answer

brokered by GMAC Mortgage and then just sell them back?

A. I don't understand the question.

Q. What was the business purpose of brokering loans to Ally Bank just to have them sell them back to GMAC Mortgage?

MR. BROWN: Objection to form; asked and answered.

THE WITNESS: As I previously testified, that relationship existed prior to my arrival at Ally Bank so I cannot tell you the business purpose for the reason that those people set that up.

BY MR. COHEN:

Q. In your capacity holding positions both at Ally Bank and GMAC Mortgage you had no understanding as to why that relationship was on going?

MR. BROWN: Objection.

MR. SIMON: Objection to form.

THE WITNESS: I had a high level understanding of the way that the relationship worked and operated. As I wasn't involved in the development of that or the documentation of

that, I don't know the business purpose for the reasons those people put that in place.

BY MR. COHEN:

Q. So while you have -- held positions at both Ally Bank and GMAC Mortgage you -- your -- you had no sense of why that relationship was ongoing?

MR. BROWN: Objection to form; asked and answered, mischaracterizes his testimony.

THE WITNESS: As I previously testified, that relationship predated my arrival. I reviewed the documentation to understand the agreements, but I was not involved in the development of the program or the documents so I cannot say why those people developed it and why it existed.

BY MR. COHEN:

Q. When you say you reviewed the documentation to understand the agreements what specifically did you do?

A. I reviewed the broker agreement and I spent time with the people who developed the program to understand how it was supposed to work.

Q. Which specific people are you referring to when you say you "spent time with the people who

developed the program"?

A. I believe it was Al Celini, Bob Groody and Mark Hales.

Q. Other than the broker agreement, were there other documents that you looked at?

A. Yes.

Q. What other documents did you look at?

A. There was a pipeline swap and an MSR swap that I also reviewed.

Q. Anything else?

A. Not that I recall.

Q. Did -- did you review a document titled the Master Mortgage Loan Purchase & Sale Agreement, MMP -- MMLPSA?

A. I have reviewed that document. I do not believe it happened at that time.

Q. Okay. Why did you talk to the people who developed the program?

A. I wanted to understood -- understand how the program worked.

Q. And what did you come to understand as to how the program worked?

A. That GMAC Mortgage brokered consumer-direct origination loans to Ally Bank, Ally

Bank sold those loans back to GMAC Mortgage and retained mortgage servicing rights for its own balance sheet, and GMAC Mortgage sold those loans to the capital markets.

Q. And in those discussions did you talk about the economics of that relationship?

A. I do not believe at that point we did.

Q. Did there come a point when you did have discussions about the economics of that relationship?

A. Yes.

Q. When did that happen?

A. I don't specifically recall. It happened on multiple occasions, as I tried to understand their aggregate relationship and the various agreements and swaps and how they interplayed with each other.

Q. When you say "multiple occasions" how many times are you talking about?

A. I don't specifically recall.

Q. Why did you want to understand the aggregate relationships and the various agreements and how they interplayed with each other?

A. It was to better understand the business

activities of Ally Bank and how the mortgage origination business impacted Ally Bank in its financials.

Q. Were you able to better understand the business activities of Ally Bank and how the mortgage origination business impacted Ally Bank as a result of these discussions?

A. Generically, yes.

Q. And what was that understanding that -- that you came to generically have?

A. I came to understand that GMAC Mortgage brokered loans to Ally Bank which were subsequently sold to the capital markets via GMAC Mortgage, the MSRs were covered under a total return swap where Ally Bank received a fixed -- or a floating payment in return for exchange of market value risk associated with those assets and any asset changes of the loans while they were held at Ally Bank were swapped to GMAC Mortgage.

Q. Did you come to have an understanding as to what GMAC Mortgage was expected to pay in this relationship when it acquired the loans back from Ally Bank?

A. During what period of time?

Q. During any period of time.
A. Yes.
Q. What was your understanding as to what GMAC Mortgage was required to pay Ally Bank when it acquired those mortgages back from Ally Bank?
A. It was my understanding that the agreements were written to cover cost basis.
Q. When you say "cost basis" what do you mean?
A. The cost that the loan or -- the cost of the loan to originate.
Q. How was that determined?
MR. BROWN: Objection; form.
THE WITNESS: I do not know.
BY MR. COHEN:
Q. You never asked?
A. I did ask.
Q. What were you told?
A. I never got a definitive answer prior to my departure.
Q. What kind of answers did you get if they weren't definitive?
A. That investigation was ongoing.
Q. What was being investigated?

A. I don't understand the question.
Q. Well, they told you an investigation was ongoing, what did you take that to mean?
A. That they were looking into it.
Q. How long had the relationship been in place when you left Ally Bank in January of 2012?
MR. BROWN: Objection to form.
THE WITNESS: I don't specifically recall.
BY MR. COHEN:
Q. Well, was it in place when you joined in 2009?
MR. BROWN: Objection to form.
THE WITNESS: As I previously testified, all of the agreements were in place prior to my arrival.
BY MR. COHEN:
Q. Okay. So it was at least two or three years, right?
A. It was prior to my arrival.
Q. And you were there for two or three years, right?
A. I started in approximately April of 2009 and left in January of 2012.

Plaintiffs' Objection 41:6-42:12 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

Q. Okay. So two-and-a-half years, right?
A. That sounds about right.
Q. Okay. So the program was in place for two-and-a-half years at least, right?
MR. ELBAUM: When he left? The time periods are confusing here.
MR. COHEN: Yes.
MR. ELBAUM: Okay.
THE WITNESS: It was in place prior to my arrival and I believe it was still in place when I left, yes.
BY MR. COHEN:
Q. And you were there two-and-a-half years, right?
MR. BROWN: Objection to form.
THE WITNESS: I started in approximately May of 2009 and left in January of 2012.
BY MR. COHEN:
Q. And you would agree that that's approximately two-and-a-half years, right?
MR. ELBAUM: I think that's been asked and answered.
THE WITNESS: I testified that I arrived at Ally Bank in approximately May of 2009.

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BY MR. COHEN:

Q. You don't --

A. And --

Q. -- know whether that's approximately two-and-a-half years?

You can't answer that question?

A. I don't know what "approximately" means.

MR. BROWN: He's already answered it.

MR. ELBAUM: It has been asked already.

BY MR. COHEN:

Q. You don't know what approximately means?

MR. ELBAUM: Objection; argumentative and abusive.

Why don't you ask a subsequent question. The calendar is what the calendar is.

THE WITNESS: As I previously testified, I arrived in May of 2009, if you would like to characterize that as approximately two-and-a-half years you are more than welcome to.

BY MR. COHEN:

Q. The last question I asked you was, your sworn testimony is you don't know what the word approximately means?

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A. I don't --

MR. ELBAUM: That's abusive.

THE WITNESS: I don't --

MR. ELBAUM: Just focus on the substance here.

MR. COHEN: You can object to the form.

MR. ELBAUM: I have.

MR. BROWN: Objection to form.

MR. COHEN: Thank you.

Would you read back my last question?

(THEREUPON, the above-referred to portion of the Record was read back by the Court Reporter).

THE WITNESS: I don't know if you believe -- if you and I have the same definition of what approximately means.

As I testified, I gave you my approximate arrival date and my approximate departure date, if you believe that is approximately two-and-a-half years that is your opinion.

I'd have to go back to my employment records to determine the exact date of my arrival and the exact date of my departure and

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then determine how many days and how many years that is.

BY MR. COHEN:

Q. Did it strike you as odd when you asked about what GMAC Mortgage was required to pay Ally Bank --

A. Uh-huh.

Q. -- to purchase the loans that it brokered that you weren't able to get a definitive answer on that?

MR. SIMON: Objection to form.

THE WITNESS: I had a high level understanding during my tenure of the way these agreements worked.

When I inquired in late 2009 about various activities going on, to understand how they were being -- being administered I went to the finance departments of both companies to inquire and have them investigate, their investigation was ongoing upon my departure in 2012.

BY MR. COHEN:

Q. So you initiated your inquiry as to how these agreements were being administered in late

2009?

A. I'm sorry. Late 2011.

Q. Okay.

A. I...

Q. You understood that there were contracts in place that govern these relationships, right?

A. As I previously testified, I reviewed several of those contracts post my discussions with the executives that drafted them.

Q. So the answer is yes, there were contracts in place?

A. Yes.

Q. Okay. Did it strike you as odd when you asked in late 2011 how these agreements were being administered that you weren't able to get a definitive answer?

MR. BROWN: Objection to form.

THE WITNESS: It did not.

BY MR. COHEN:

Q. Why not?

A. I did not have an in-depth understanding of the agreements. I went to the parties that -- to understand with questions, under question -- to understand questions that I had and they

investigated. I did not strike that as odd -- that did not strike as odd to me.

Q. What questions did you have?

A. It was my high level understanding of the agreements that certain economics would go to certain entities and when I saw a financial summary of both legal entities side-by-side at a high level it did not strike me to be congruent with my understanding of the agreements.

Q. What was your understanding of the agreements as to which economics would go to which party?

A. It was my understanding that GMAC Mortgage would get gain on sale and Ally Bank would earn points and fees and interest earned during the holding period.

Q. When you say "points and fees and interest earned during the holding period" what do you mean?

A. Points and fees paid by the consumer at the origination of the residential loan and the interest spread over the -- the interest earned over its cost of funds on the mortgage loan while it is held by Ally Bank.

Q. How did you come to have that understanding of the agreements?

A. It was explained to me by the executives that put the agreements in place.

Q. Did there come a time where you came to believe that the agreements were not being administered that way?

A. In late 2011 when I saw the financials of both entities next to each other, at a glance they did not appear to be incongruent with the high level understanding I had of the agreements.

Q. In what way were they not congruent with your high level understanding of the agreements?

A. It appeared that more of the economics involved with the origination activity were being kept at Ally Bank than I would have suspected with those agreements.

Q. Did you have an understanding of what aspects of the economics were being retained at Ally Bank that was inconsistent with your understanding of the agreements?

A. I did not.

Q. Did there come a time where you gained an understanding of that?

A. I did not.
Q. Who did you ask to clarify the administration of these agreements once you discovered that it was inconsistent with your understanding of the way the agreements were meant to operate?
A. I believe it was several people within Ally Bank's finance department along with ResCap or GMAC Mortgage's finance department.
Q. Okay. Let's start with ResCap. Who at ResCap did you raise the issue with?
A. I believe I had a conversation with Jim Whitlinger.
Q. What was Mr. Whitlinger's position within ResCap?
A. I believe at that point he was the CFO of ResCap.
Q. Did you raise the issue with anyone else at ResCap?
A. I believe I made Tom Morano aware -- who was CEO aware.
Q. You made Mr. Morano aware of what?
A. That at a high level the economic splits did not appear to be consistent with my

understanding of the agreements.

Q. How often did you interact with Mr. Morano in general?

A. Frequently.

Q. When you say "frequently" what do you mean?

A. Quite often.

Q. How many times a week?

A. Multiple.

Q. More than five?

A. I likely interacted with Mr. Morano, if averaged out over a month, more than one time a day.

Q. Okay. And how often did you interact with Mr. Whitlinger?

A. Frequently, but less so than Mr. Morano.

Q. All right. Who at Ally did you raise this issue with?

MR. BROWN: Objection to form.

Do you mean Ally Bank?

BY MR. COHEN:

Q. Who at any of the Ally-named entities, AFI, Ally Bank, any -- any entity that was called Ally did you raise the issue?

MR. BROWN: Objection to form.

Plaintiff's Objection 50:22-15 Objection to form: vague, ambiguous

THE WITNESS: I raised it to Jim Young who was the CFO.

BY MR. COHEN:

Q. Anyone else?

A. I believe I raised it to Ann Cummings who was the head auditor.

Q. Anyone else?

A. I'm sure there were other people within -- within Jim Young's organization, Joe Cortez and others that I can't specifically recall having conversations with.

Q. Why did you raise the issue with so many people?

MR. SIMON: Objection to form.

MR. BROWN: Objection.

THE WITNESS: It was inconsistent with my understanding of the agreements.

BY MR. COHEN:

Q. Why didn't you just find one person and say this is inconsistent, can you explain it?

Why didn't you do that?

A. I don't recall.

Q. Did you think it was a big issue?

MR. BROWN: Objection to form.

THE WITNESS: It had the potential implication given the size of the activity that had gone down -- that had taken place between the two entities to potentially have material intact -- impact to both entities.

BY MR. COHEN:

Q. When you say it could potentially have material impact to both entities what do you mean?

A. If the accounting of that -- of those agreements was done incorrectly it would not have been an insignificant amount of money to both entities as it relates to that activity.

Q. And if the accounting had been done incorrectly it would have meant -- start over.

If the accounting had been done consistent with your understanding of the way the agreements were meant to operate based on your conversations with the people who put the agreements in place it would have meant more money to ResCap and less money to Ally, right?

MR. BROWN: Objection.

MR. SIMON: Objection; form.

THE WITNESS: Yes.

BY MR. COHEN:

Plaintiff's Objection 52:14-24 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

Q. And it would have been a material amount, correct?

A. Yes.

Q. Do you have a sense of whether if the accounting had been done consistently with the way you understood the agreements to operate based on your conversations with the people who put the agreements in place it would have required Ally Financial to restate its financials?

MR. BROWN: Objection.

MR. SIMON: Objection to the form.

THE WITNESS: I'm not an accountant, but it was my uninformed and unprofessional opinion that the material -- the amount could be material enough that we would have to restate Ally financial -- Ally Bank's financial statements, yes.

BY MR. COHEN:

Q. When you talked to the four or five people that you raised this issue with, did you tell them that?

MR. BROWN: Objection to form.

THE WITNESS: I believe I did.

BY MR. COHEN:

Plaintiffs' Objection 53:5-18 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

Q. What reaction did you get?
A. I don't specifically recall.
Q. Do you generally recall?
A. I generally recall all of the parties engaging their staffs and other available resources to them to investigate the issue that I raised and come to a conclusion.
Q. Were you still employed at Ally Bank when they came to the conclusion?
A. I was not.
Q. Did you play any role in their investigation of the issue?
A. Previous to my departure I would have been involved in several conference calls to discuss the matter.
Q. What was discussed during those conference calls?
A. I don't specifically recall.
Q. Do you generally recall?
A. I generally recall discussing my understanding of the agreements and how the agreements were written and outside of that I do not.
Q. Were the people who put the agreements

in place, who explained the agreements to you which formed the basis of your understanding of the agreements, also part of those conference calls?

A. I believe they were all departed from the company by that point.

Q. Can you remind me specifically who those people were who put the agreements in place and explained them to you and gave you your understanding of the way the agreements were meant to operate?

MR. BROWN: Objection to form.

MR. SIMON: Objection to form.

THE WITNESS: Bob Groody, Al Celini, Mark Hales.

BY MR. COHEN:

Q. And they were all gone by the time you raised this issue?

A. I believe that is the case.

Q. In your mind, is there a possibility that you were confused as to what they told you about how the agreements were meant to operate?

A. I don't believe so.

Q. So you were pretty clear that they told you, these people who put the agreements in place,

Plaintiffs' Objection 55:7-15 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

Plaintiffs' Objection 55:24-56:7 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

that this is the way it was supposed to work?
MR. SIMON: Objection to form.
THE WITNESS: I did not come out of my meeting -- my meetings with them with any confusion of their interpretation of the way the agreements were supposed to work.
BY MR. COHEN:
Q. And, again, these were the people who put the agreements in place?
MR. SIMON: Objection to form.
BY MR. COHEN:
Q. You went to the source, right?
MR. SIMON: Objection to form.
MR. BROWN: Objection to form.
THE WITNESS: That is correct.
BY MR. COHEN:
Q. During these conference calls that -- that you participated in while you were still at the company as part of the investigation did anybody tell you that your understanding of the agreement was wrong?
A. I don't specifically recall that discussion.
Q. How about separately from the conference

Plaintiff's Objection 56:9-16 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

calls, did anybody come into your office or pull you aside and say that that's not what the agreements provide for?

A. I do not recall that happening.

Q. After you left the company did anybody call you and ask for your input as part of the company's investigation?

MR. BROWN: Objection to form.

THE WITNESS: Yes.

BY MR. COHEN:

Q. Who?

A. I believe I had a call with a general auditor and an outside audit firm that they engaged to do an investigation.

Q. When you say "general auditor" who do you mean?

A. I don't remember the name of the firm.

Oh. Sorry. Ann Cummings was the general auditor.

Q. And then there was an outside accounting firm that was also involved?

A. That's correct.

Q. And you don't recall which firm that was?

A. It was either KPMG or PWC, but...

Q. Okay. What did you discuss with Ms. Cummings as part of the investigation after you left the company?

A. Other than that call we have -- did not have any discussions.

Q. Okay. During that call. I'm sorry. During the call -- let me ask a complete question.

During the call with Ms. Cummings after you left the company what was discussed?

A. From what I recall, they wanted to understand my understanding of the agreements and why I raised the issue.

Q. What did you tell her?

A. I believe I told her that it was my understanding that GMAC Mortgage got the gain on sale, Ally Bank received interest spread during the period it was held on loans and points and fees paid in the consumer transaction, along with the market value risk associated with the pipeline which is loans held in the books for ultimate sale, and the MSR was swapped to GMAC Mortgage in return for a floating rate return based on LIBOR.

Q. And that's a conversation you had with

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Ms. Cummings after you left Ally Bank, right?

A. I believe that was during the interview as part of their investigation with their outside auditor.

Q. All right. And you had left the bank by that point in time, right?

A. That is correct.

Q. But hadn't you already told Ms. Cummings that in December of 2011 when you were still with the bank, when you raised the issue with her?

MR. BROWN: Objection to form.

THE WITNESS: As I previously testified, I raised this issue to multiple people of which Ann Cummings was one of them, yes.

BY MR. COHEN:

Q. So she was essentially asking you to explain what you had already told her?

A. The call involved her and outside -- an outside auditing firm. It was my interpretation that that team was trying to do an independent review and an independent investigation and this was in an effort to do that.

Q. Oh, okay. So it was one call with both her and the outside firm?

A. That is correct.

Q. All right. It wasn't a call with her and then a separate call with the outside firm?

A. No. That is correct.

Q. Okay. Other than that call with Ms. Cummings and the outside auditing firm, after you left Ally Bank did anyone else reach out to you as part of their investigation?

A. Not that I recall.

Q. Before Ally Bank and GMAC Mortgage reached a conclusion to their investigation as a result of their investigation did anybody run that conclusion by you?

A. I'm not aware of a conclusion being made prior to my departure at Ally Bank in January of 2012.

Q. Okay. How about after you left Ally Bank in January of 2012?

I believe your testimony was that when you left the investigation was ongoing, right?

A. That's correct.

Q. So after you left the bank did anybody call you and say this is what we think the conclusion is, what's your reaction to it?

A. No.

Q. Okay. So other than that one call with Ms. Cummings and the firm once you left the bank that was only -- your only involvement in this issue, right?

A. Outside of the bank -- the examiner's deposition, yes.

Q. Okay. Okay. Do you know whether as part of its investigation the bank went back to Mr. Groody, Mr. Celini and Mr. Hales to talk to them about their understanding of the agreements they put in place?

A. I believe I read within the examiner's report, which I was provided a copy of, at least some of those individuals having been interviewed, but I don't know if the bank had separate interviews or not.

Q. Okay. And did -- who provided you a copy of the examiner's report?

A. I believe it was my counsel.

Q. When were you provided a copy of the examiner's report?

A. Some time subsequent to its issuance.

Q. Was it over the summer?

A. I don't specifically recall, but I'm sure it was within several weeks of the examiner's report being finalized. I don't remember when that was finalized.

Q. All right. Did you read it?

A. Portions.

Q. You didn't read it cover-to-cover?

A. I did not.

Q. Did you search for your name in it?

A. Yes.

Q. Did you read the sections where you were referenced?

A. At a high level, yes.

Q. When you say "at a high level" what do you mean?

A. I didn't read it with the desire of attention to detail that I would a document that I wanted to have specific recollection or understanding of because it didn't -- I didn't believe it had any relevance to me.

Q. Was there anything that you read in the examiner's report where he made reference to you that -- that you disagreed with?

A. I don't specifically -- I don't believe

so.

Q. Okay. So where he recapped things that you told him during your interview in general he got it right; is that a fair assessment?

A. In general, I don't recall any material missummaries or misstatements in the portions that I reviewed.

Q. Okay. Would you agree that in your Ally Bank capacity you were responsible for warehouse and correspondent lending and also became the point of contact for Ally Bank's mortgage businesses with both the FDIC and the Utah Department of Financial Institutions?

A. Yes.

Q. Would you agree that in your capital markets function, and this is at ResCap or at GMAC Mortgage, your responsibilities included pricing for each of the bank and ResCap loan channels?

A. Yes.

Q. What were your responsibilities for pricing each of the bank and ResCap loan channels?

A. We established the -- both base pricing which was sourced from information available to the capital markets and the targeted mark -- origination

margin that would be achieved upon the sale of the asset.

Q. When you say "base pricing" what do you mean?

A. The price that the market values the asset at origination. Excuse me.

Q. I think you used the phrase origination margin?

A. Yes.

Q. What is that?

A. That is the expected profit margin, gross profit margin at origination on any one given loan that you expect to make when your originator purchased that loan.

Q. So you were responsible within GMAC Mortgage for a profit margin that it expected to make when it purchased the loan from Ally Bank?

MR. ELBAUM: Objection; form.

THE WITNESS: We set profit margins not at the legal entity level, but at the channel origination level, so correspondent wholesale division that Ally Bank also had, along with the consumer direct, would have had price expected origination margins set at the

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origination or acquisition of those loans. That was not done at a legal entity level, that was done by a channel perspective.

BY MR. COHEN:

Q. So from a channel perspective the profit margin was done on -- was targeted on a consolidated basis?

A. It was done in a channel-specific level. So correspondent would have had its own origination targeted margin by customer, by product, by coupon, consumer would have had its own origination by target margin by the same variables, and the wholesale would have had its own origination target margin at -- by those same variables.

Q. Okay. And on the consumer channel how was it determined how that profit margin would be divided as between Ally Bank and GMAC Mortgage?

MR. SIMON: Objection to form.

MR. BROWN: Objection to form.

THE WITNESS: That would have been done under finance's interpretation of the various agreements in place.

BY MR. COHEN:

Q. And those are the agreements we've been

Plaintiff's Objection 65:25-66:15 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

talking about this morning?

A. That is correct.

Q. And it was your understanding that the division of that profit on the consumer channel was being done incorrectly as of the time you left the company, right?

MR. BROWN: Objection to form.

THE WITNESS: At the time I left the company I had raised an issue that the financials as I saw them on a legal entity basis were inconsistent with my understanding of the agreements and that I asked the finance departments of both to investigate that and to ensure that it was accurate.

BY MR. COHEN:

Q. From the time that you raised the issue until your last day at the company, approximately how many weeks passed?

A. Somewhere between 10 and 16.

Q. And in that 10 and 16 weeks, to your understanding, neither ResCap nor Ally Bank were able to answer the question as to how the profits in the consumer loan channel were to be divided between those entities?

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MR. SIMON: Objection to form.

THE WITNESS: I was unaware at the point of my departure if they had come to a definitive answer in regard to the questions that I raised.

BY MR. COHEN:

Q. Did that strike you as odd?

MR. BROWN: Objection to form.

THE WITNESS: It did not.

BY MR. COHEN:

Q. Why not?

A. It's a fairly complex issue, involving a variety of legal documents that were drafted by people who were no longer at the company and administered by people that didn't draft them, I believe they were doing a thorough analysis and given the holiday periods that we covered here, including Thanksgiving and Christmas and New Year's, it didn't surprise me that upon my departure they had not come to a definitive conclusion.

Q. Do you agree that you resigned on January 3rd, 2012 but were asked to stay on until January 26th, 2012?

A. Yes.

Q. Do you have an understanding as to why you were asked to stay until January 26th, 2012?

A. Barbie Gaston, who was the president and CEO of Ally Bank, asked me to stay on for -- for an extended transition period and out of respect for her I obligated or I fulfilled her request.

Q. So the idea was to give someone time to come up-to-speed in your responsibilities?

A. That is correct.

Q. Okay.

MR. COHEN: Take about a five-minute break.

MR. BROWN: Sure.

MR. ELBAUM: Sure.

THE VIDEOGRAPHER: The time on the monitor is approximately 10:11 and this is the end of tape number one and we're off the record.

(Recess in Proceedings).

THE VIDEOGRAPHER: This is the beginning of tape number two in the deposition of Adam Glassner. The time on the monitor is approximately 10:31 a.m. and we're back on the record.

BY MR. COHEN:

Q. Mr. Glassner, before the break I believe you testified that it was your understanding of the way the profits for consumer mortgages were to be split between GMAC Mortgage and the bank was that GMAC Mortgage was to receive the gain on sale; is that correct?

A. That's correct.

Q. What do you mean by "gain on sale"?

A. It was my understanding that the gain associated with the sale of the loan into the capital markets over the acquired cost of the loan would go to GMAC Mortgage.

Q. How would the acquired cost of the loan be calculated?

A. The finance team would have been responsible for that.

Q. Do you have a general understanding of what went into that calculation?

A. Yes.

Q. Could you explain that, please?

A. It would include, in the case of a correspondent loan, the price paid for that residential loan and any associated costs that were

included in the accounting treatment of that asset and any consumer loan transaction or broker transaction, any direct costs associated with the origination of that loan.

Q. And when you say "direct costs" what do you mean?

A. Any costs that were specific to that transaction that you came out-of-pocket for which could include certain things like title and flood and other consumer-related activities.

Q. So those costs are actual cash expenditures?

A. I believe that's true, yes.

Q. Okay. And when you say "price paid for the loan," how would the price paid for the loan be determined?

A. It would be the price associated that Ally Bank in its correspondent division agreed to pay the seller of that loan at the point of trade.

Q. Okay. And that's an actual out-of-pocket as well?

A. That is correct.

Q. Okay. Was one of the concerns you raised when you talked to the people at ResCap and

Ally in December of 2011 that not only would -- was there the potential that the bank had overstated its earnings, were you also concerned that the bank, if it had overstated its earnings, also was -- reported -- reported inflating capital?

A. Yes, those would go hand-in-hand with each other. Yes.

Q. Why would they go hand-in-hand with each other?

A. If you have earnings that you decide to retain those retained earnings would go into the equity capital of your institution.

It's my understanding that in that case if you had earnings that were higher than should have been you would have also had higher capital and you would have reported that to your various regulators.

Q. At the time you raised these concerns in December of 2011 was capital an issue at Ally Bank?

MR. BROWN: Objection to form.

THE WITNESS: I don't completely understand the question.

BY MR. COHEN:

Q. In December of 2011 -- well, let's back

Plaintiffs' Objection 71:19-72:13 Irrelevant (FRE 401, 402), lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

up.

Was Ally Bank a recipient of TARP funds?

A. No.

Q. It did not receive any TARP funds?

A. Ally Bank did not receive TARP funds.

Q. Did AFI receive TARP funds?

A. Yes.

Q. Were certain of those TARP funds used to support the capital at Ally Bank?

MR. BROWN: Objection to form.

THE WITNESS: I do not believe so, but I do not know for certain.

BY MR. COHEN:

Q. Okay. If your interpretation of the contract, based on the understanding you obtained from the people who put the contract in place were correct, would that have had a material impact on the reported capital at Ally Bank?

MR. BROWN: Objection to form.

THE WITNESS: It was my opinion that the potential -- if it was being accounted for incorrectly that could happen, yes.

BY MR. COHEN:

Q. So it could have had a material impact

Plaintiffs' Objection 72:15-73:6 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

on reported capital of the bank?

A. Yes.

Q. And that's an issue that they would have had to take up with the regulators, correct?

A. Yes.

Q. Other than raising the issue with the people that you identified before the break in December of 2011, did you do any investigation of your concern yourself?

A. Yes.

Q. What did you do?

A. I re-read the various agreements, attempted to look at the financials on a historical basis and had accidentally come across a working document that had been created prior to my arrival and reviewed that.

Q. What was that working document, do you recall?

A. It was a hard copy of a PowerPoint presentation done some time prior to that that was in a folder by a person next to me who was throwing papers away.

Q. Who was the person next to you throwing papers away?

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A. I believe it was Martha Tate.

Q. Okay. Give me a second here. I think we have a document we can show you.

A. No problem.

MR. COHEN: Would you mark that as Glassner 1.

(THEREUPON, Glassner Exhibit 1 was marked for identification).

BY MR. COHEN:

Q. Mr. Glassner, the reporter has handed you a document which has been marked Glassner 1. It's titled Brokering Consumer Loans to Bank Project, (BCL2B), dated November 19th, 2008 and it has the Bates number EXAM 75395 through 75495. Would you take a moment to review this document.

A. Okay.

Q. Is Glassner Exhibit 1 the Brokering Consumer Loans to Bank Project PowerPoint the PowerPoint you were just testifying about?

A. I believe it is.

Q. And after reviewing this PowerPoint as part of your own investigation in December 2011 did you reach a conclusion as to whether this was consistent or inconsistent with your view of the

contract?

A. I believe this PowerPoint was consistent with my high level understanding of the various agreements and how they work, yes.

Q. And, to be clear, this is a PowerPoint that was created before you joined the bank, right?

A. That is correct.

Q. And at the time you joined the bank the contract was already in place, right?

A. That is correct.

Q. And at the time you joined the bank the people who put the contract in place explained to you their understanding of how the contract was supposed to work which was consistent with this PowerPoint, Glassner Exhibit 1, right?

A. That is correct.

Q. Okay. In January of 2012 when you were leaving the company did someone ask you to sign a Sarbanes-Oxley certification?

A. I was asked to sign a sub certification regarding the CFO's Sarbanes-Oxley statement for Ally Bank on a frequent basis and I believe that did happen as a request in November of 2011.

Q. What were you being asked to sub

certify?

A. That the business activities that I was responsible for within Ally Bank were correct.

Q. What do you mean "the business activities were correct"?

A. I don't remember the specific list of items that were in the sub certification provided to the CFO, but they were there to provide comfort to the CFO that the business activities that all of the business leaders were responsible for, that they were unaware of any errors.

Q. Did you sign that sub certification?

A. I did not.

Q. Why not?

A. I departed before it was due; I didn't feel appropriate given the open issue that I had raised that had not been resolved.

Q. Okay. When was it due?

A. I don't specifically recall, but it was due after my resignation date.

Q. When -- are you familiar with the term fair value accounting?

A. Yes.

Q. What is your understanding of what fair

value accounting is?

A. It's my basic understanding that fair value accounting attempts to carry assets at the fair market value associated with that asset.

Q. Are you familiar with the term lower of cost or market?

A. Yes.

Q. What is your understanding of lower of cost or market?

A. It would be the carrying value of an asset that would be held at the lesser of the costs associated with acquiring that asset or the current market value.

Q. At the time you left the bank in January of 2012 did you have a view as to whether the agreements called for the division of profits in the consumer loan channel to be allocated on the basis of fair value accounting?

MR. ELBAUM: Objection.

MR. BROWN: Objection to form.

THE WITNESS: It's my high level understanding that the agreements don't address the accounting of those instruments and simply address defined terms within the agreement.

Plaintiffs' Objection 77:15-78:17 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

ADAM GLASSNER

I do not recall a specific reference to the accounting treatment of the loans.

BY MR. COHEN:

Q. Is it your view that the -- the division of profits under the agreements could be something different than the way they were accounted for on the books and records of ResCap and Ally Bank?

MR. ELBAUM: Objection to form.

THE WITNESS: My high level understanding of the agreements, when I saw the division of profits between the two entities of the origination business caused me to inquire to our finance departments to investigate that because it was -- it appeared to be inconsistent with my high level understanding of those agreements.

BY MR. COHEN:

Q. And your high level understanding of those agreements came from your own review of the agreements and your conversations with the people who put those agreements in place, correct?

A. That is correct.

MR. BROWN: Objection to form.

THE WITNESS: That is correct.

Plaintiffs' Objection 78:19-23 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

ADAM GLASSNER

BY MR. COHEN:

Q. With respect to the mortgages that were brokered from GMAC Mortgage to Ally Bank, did the bank have hedge risk on those mortgages?

MR. BROWN: Objection to form.

THE WITNESS: It did not.

Plaintiffs' Objection 79:2-7 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

BY MR. COHEN:

Q. What do you understand hedge risk to be?

A. Hedge risk is associated with the value of an interest rate rock -- lock for a loan held for the ultimate disposition into capital markets that can be impacted by market changes or consumer behavior changes in those loans or interest rate locks.

Q. As between GMAC Mortgage and Ally Bank who bore the hedge risk?

A. It's my understanding that GMAC Mortgage bet -- bore that risk via the pipeline swap.

Q. Is it your understanding with respect to the mortgages that were brokered by GMAC Mortgage to Ally Bank that the bank had eligibility risk?

A. Can you state that again?

Q. Sure.

Is it your understanding that with

Plaintiffs' Objection 79:16-80:9 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

ADAM GLASSNER

respect to the mortgages that were brokered by GMAC Mortgage to Ally Bank that were subject to the agreements we've been talking about that the bank bore eligible -- eligibility risk?

MR. BROWN: Objection to form.

THE WITNESS: No, I don't -- I don't believe it's my understanding that the bank bore eligibility -- eligibility risk.

BY MR. COHEN:

Q. What is eligibility risk?

A. Eligibility risk would be loans that are originated that are subsequently deemed ineligible for sale or securitization to capital markets investors.

Q. With respect to the loans that were brokered by GMAC Mortgage to Ally Bank, who bore eligibility risk?

A. It was my understanding that that was GMAC Mortgage.

Q. With respect to the loans that were brokered by GMAC Mortgage to Ally Bank, is it your understanding that the bank bore default risk?

A. No.

Q. With respect to those loans who did bear

Plaintiffs' Objection 80:16-20 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

Plaintiffs' Objection 80:25-81:3 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901)

the default risk?

A. GMAC Mortgage.

Q. Did the fact that the bank didn't have hedge risk, eligibility risk or default risk impact your opinion on who should be obtaining as between Ally Bank and GMAC Mortgage the gain on sale for premium pricing income?

MR. BROWN: Objection.

MR. ELBAUM: Objection to form.

MR. BROWN: Objection to form.

THE WITNESS: Those factors were consistent with how I understood the agreements to work as provided to me upon my hire at the company and they fell consistent with what I understood the agreements executed.

BY MR. COHEN:

Q. When you say they "were consistent with how I understood the agreements to work" what do you mean?

A. It was my understanding that those risks were associated with the various aspects of the agreements that we've discussed previously covered which was transferred to GMAC Mortgage.

Q. And to what extent, if any, did that

Plaintiffs' Objection 81:4-16 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

Plaintiffs' Objection 81:25-82:7 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

ADAM GLASSNER

impact your opinion on who should be obtaining the gain on sale or premium pricing income?

MR. BROWN: Objection to form.

THE WITNESS: It was my understanding at a high level that the agreements laid out that GMAC Mortgage received the gain on sale.

BY MR. COHEN:

Q. During your time at Ally Bank and in the Capital Markets Group at GMAC Mortgage did you have any responsibility for overseeing compliance with Regulation W?

A. I did not.

Q. Do you know what Regulation W is?

A. I do.

Q. What is Regulation W?

A. It's a bank holding company law and it involves affiliated transactions within bank holding companies.

Q. And in general can you tell me what Regulation W provides for?

MR. BROWN: Objection to form.

THE WITNESS: In general, it provides the rules that affiliates may transact under and in certain circumstances where they cannot

Plaintiffs' Objection 82:20-83:21 Lack of personal knowledge/ speculative (FRE 602), lack of foundation (FRE 602, 901); impermissible lay opinion

transact.

BY MR. COHEN:

Q. Did you have a view as to whether your understanding of the brokering agreements that we've been talking about were compliant with Regulation W?

MR. ELBAUM: Objection to form.

THE WITNESS: It was my understanding from discussions with the people who were responsible for analysis of that that these agreements were consistent with Reg W and compliant.

BY MR. COHEN:

Q. Did you have your own view, given your roles above Ally Bank and GMAC Mortgage, as to whether your understanding of the agreement was fair?

MR. BROWN: Objection to form.

THE WITNESS: It was my opinion that -- as I understood the agreements, that they were fair.

BY MR. COHEN:

Q. Did you have an opinion as to whether -- once you discovered the way these agreements were being accounted for, did you have an opinion as to

whether that interpretation of the agreement was fair?

MR. ELBAUM: Objection.

MR. BROWN: Objection to form.

THE WITNESS: I don't specifically recall doing an assessment that if they were accounted for inconsistently with my understanding of that, if that was true, that if that was fair. I don't recall doing any specific analysis in that matter.

BY MR. COHEN:

Q. So you never formed an opinion in that matter?

A. I believe that's correct.

Q. Did you have a view as to whether the broker fees that Ally Bank was -- was paying to GMAC Mortgage were at or below market?

A. I don't specifically recall forming an opinion of that.

Q. During the time the -- I think you said it was 10 to 16 weeks when you first raised your concerns regarding the way the profits from the consumer loans were being divided as between GMAC Mortgage and Ally Bank, to the time you left, did

anybody show you any documents that would have supported the way the bank was accounting for these transactions?

MR. BROWN: Objection to form.

THE WITNESS: I do not recall any specific documentation that would have support either side of that so the only documents that I recall reviewing would have been the agreements and the PowerPoint labeled Exhibit 1 that had been provided to me.

BY MR. COHEN:

Q. And -- and you testified that the PowerPoint, Glassner Exhibit 1, was consistent with your understanding of the document?

MR. BROWN: Objection to form.

BY MR. COHEN:

Q. Of the agreements, correct?

A. That is correct.

Q. Did anybody show you any documents that was consistent with the interpretation that was being applied at the bank during that 10 to 16-week period?

MR. BROWN: Objection to form; asked and answered, vague.

ADAM GLASSNER

THE WITNESS: As I testified, I don't recall during that 10 to 16-week period any new documents being provided to me in regard to interpretation on either side.

BY MR. COHEN:

Q. Okay. During that 10 to 16-week period, did anybody who was responsible for putting the agreements in place come to you and say your understanding of the way these agreements are meant to operate is wrong, I put them in place and this is the way they're supposed to work?

MR. BROWN: Objection to form.

THE WITNESS: I do not recall that conver -- anything of that.

MR. COHEN: Okay. We'll pass the witness.

MR. BROWN: Could we take a short break?

MR. COHEN: Sure.

THE VIDEOGRAPHER: The time on the monitor is approximately 10:55 a.m. and we're off the record.

(Recess in Proceedings).

THE VIDEOGRAPHER: The time on the monitor is approximately 11:07 a.m. and we're

ADAM GLASSNER

back on the record.

EXAMINATION

BY MR. BROWN:

Q. Mr. Glassner, good morning. My name is Judson Brown, I'm an attorney with Kirkland & Ellis representing Ally in this matter.

I'm going to be asking you a few more questions. Okay?

A. Yes.

Q. Mr. Glassner, earlier today you testified that you were retained or that you retained Mr. Elbaum approximately 20 to 24 months ago. Do you recall that testimony?

A. I do recall stating approximately 20 to 24 months ago, yes.

Q. Now, Mr. Glassner, approximately 20 to 24 months ago you were still an employee of Ally Bank at that time, correct? In late 2011.

A. That's correct.

Q. Did you retain Mr. Elbaum while you were an employee of Ally Bank?

A. I did not.

Q. Do you recall approximately when you retained Mr. Elbaum?

A. It would have been some time after my departure at -- from Ally Bank, but I do not recall.

Q. Why is it that you retained Mr. Elbaum?

A. I believe it was in regard to the ResCap examiner's investigation.

Q. Mr. Glassner, you testified that you joined the bank in approximately March or April of 2009; is that correct?

A. That is correct.

Q. At the time that you joined Ally Bank what agreements were in place between Ally Bank and GMAC Mortgage?

MR. COHEN: Objection; vague and overbroad.

THE WITNESS: I am aware there were a whole bunch of agreements, I am aware of at least three.

BY MR. BROWN:

Q. What are those three?

A. A broker agreement, the HFS or pipeline swap, and the MSR swap.

Q. Mr. Cohen asked you about an MMLPSA. Do you recall that?

A. I do.

ADAM GLASSNER

Q. Was there an MMLPSA in place between the bank and GMAC Mortgage at the time you joined the bank?

A. I believe there was.

Q. Were you involved in negotiating the broker agreement, Mr. Glassner?

A. I do not believe I was.

Q. Were you involved in drafting the broker agreement?

A. I do not believe I was.

Q. Were you involved in negotiating the pipeline swap, Mr. Glassner?

A. I do not believe I was.

Q. Were you involved in drafting the terms of the pipeline swap?

A. I do not believe I was.

Q. Were you involved in negotiating the MSR swap?

A. Only to the extent of the request of the FDIC that we review the current pricing in context of concerns that they had raised on affiliate transactions.

Q. When was that?

A. Some time during the second half of my

tenure. I don't recall the specific dates.

Q. What was the specific issue that the FDIC raised?

A. The FDIC was concerned that the transaction was not at market or better and an extensive analysis was done and third parties were engaged to provide them comfort that we believe that it was.

Q. What do you mean by that, that the transaction was not at market or better?

A. For any affiliated -- it's my understanding within Reg W for any affiliated transactions to be compliant they need to be at market or better for the bank.

Q. So what was the FDIC's concern with respect to the MSR swap?

A. From what I recall, they were concerned that it was not compliant with Reg W in the sense that it was not at market or better.

Q. Meaning, the bank had below market terms?

A. Yes.

Q. By that do you mean that the bank was receiving a rate under the MSR swap that was below

market terms for an entity in the bank's position?

A. That was the FDIC's concerns.

Q. In other words, that GMAC Mortgage was paying a below market rate to the bank?

A. That is what the FDIC voiced in their concerns, yes.

Q. Other than being involved in the negotiations concerning the pricing under the MSR swap, were you involved in any other negotiations of the MSR swap?

A. I was not.

Q. Were you involved in drafting any language of the MSR swap?

A. I was not.

Q. Were you involved in negotiating the MMLPSA that was in place when you joined the bank?

A. I was not.

Q. Were you ever involved in negotiating an MMLPSA between the bank and GMAC Mortgage?

A. Not that I recall.

Q. Were you involved in drafting an MMLPSA that was -- strike that.

Were you ever involved in drafting the terms of an MMLPSA in place between the bank and

GMAC Mortgage?

A. Not that I recall.

Q. You do not know -- strike that.

Mr. Glassner, do you know based on firsthand knowledge the parties' intent with respect to the MMLPSA?

A. I had an operating understanding of the way the agreements were intended to work from the three previous parties that I've testified to.

Q. And who were those three parties?

A. Bob Groody, Al Celini and Mark Hales.

Q. You don't have an understanding of the intent of the parties based on your involvement in negotiating any of those agreements, correct?

MR. COHEN: Object to the form.

THE WITNESS: The only understanding I had was what they explained to me and I took away from is the -- the way -- what the agreements -- functionally each party was desired to have a result of.

BY MR. BROWN:

Q. Mr. Glassner, which agreement between Ally Bank and GMAC Mortgage sets or includes the terms that set the price GMAC Mortgage would pay to

ADAM GLASSNER

Ally Bank when it purchased a loan from Ally Bank?

MR. COHEN: Object to the form.

THE WITNESS: I don't -- do not recall which specific document that is referenced.

BY MR. BROWN:

Q. Do you recall which agreement that is referenced in?

A. I do not.

Q. So you're not offering an interpretation of that contract here today, are you?

A. I don't recall which agreement houses the various definitions from a -- from a operating perspective. I understood at a high level the way that the three agreements interacted in its totality along with the explanations provided to me by people who were involved with drafting them prior to my arrival.

Q. And those three agreements were the broker agreement, the pipeline swap and the MSR swap?

A. That's correct.

Q. And the agreements you discussed that were with Mr. Celini, Mr. Groody and Mr. Hales?

A. That's correct.

Q. Now, Mr. Glassner, you are not a lawyer, are you?

A. I am not.

Q. You are not an accountant also, are you?

A. I am also not an accountant.

Q. Are you familiar with FAS 91 accounting, Mr. Glassner?

A. At a very high level, yes.

Q. Would it be correct, Mr. Glassner, that you have no knowledge -- strike that.

What is your high level understanding of FAS 91?

A. It's a -- an announcement of accounting standards that applies to the way origination costs and loans are held on balance sheet.

Q. What do you mean by that?

A. It's a statement that describes from the Federal Accounting Standards Board, also know as FASB, that attempts to clarify the way from my understanding of loan origination expenses are treated into regards of the value of the loan and the way that that loan is carried on balance sheet.

Q. Do you know the details that FAS 91 sets forth concerning those accounting entries?

A. I do not.
Q. Other than that high level understanding, is it correct that your knowledge of FAS 91 is effectively zero?
A. Yes.
MR. COHEN: Object to the form.
BY MR. BROWN:
Q. Mr. Glassner, are you familiar with the typical revenues that an originator receives when originating a loan?
A. Yes.
Q. What are those?
A. Origination fees, points charged to the consumer, gain on sale and interest rate carry -- and interest rate carry.
Q. Points charged to the consumer, origination fees, interest rate carry and gain on sale; is that correct?
A. That is correct.
Q. What do you mean by "gain on sale" in that context?
A. The amount associated that recognized upon the sale of a loan that was either originated or purchased.

ADAM GLASSNER

Q. So I'm talking about the typical revenues of an originator right now, I want to understand what those typical revenues are so how -- what is the gain on sale that you're referring to in that context?

A. It would be the revenue associated with the sale of the loan upon sale.

Q. Or securitization?

A. Securitization is a form of a sale, yes.

Q. Okay. Are you familiar with origination-related income?

A. I don't understand the question.

Q. Okay. You're not familiar with origination-related income?

A. I don't understand what origination income means in the context of your question.

Q. Okay. Are you familiar with fee income?

A. I have an interpretation of what fee income is, yes.

Q. What's your interpretation of fee income?

A. Fee income would be income received as part of a transaction that is not at risk, it's paid as a fee.

Q. With respect to origination of mortgage loans what would that fee income include?

A. One potential example of a fee income might be an origination fee charged to a consumer.

Q. Would fee income include any other income?

A. It could include a variety of other income associated with the transaction.

Q. Such as what?

A. I think there's a pretty extensive list, but any fee charged to -- to a consumer that is more than the cost associated with that tran -- with that service would be considered as fee income.

Q. Okay. Can you give me some examples?

A. Origination fee, appraisal fee, title search, Fed Ex fee, doc prep fee, underwriting fee. And I am certain there are others.

Q. Okay. You just can't think of them now?

A. In a mortgage transaction you're allowed to charge fees associated with a whole variety of activities as long as they are disclosed.

Q. Are you also familiar with the typical expenses of an originator?

A. Yes.

Q. What are those?

A. Commission income, underwriting expenses, processing expenses, funding expenses, fixed overhead. And I am sure there are other expenses associated with that, but those would be the main ones.

Q. Do you understand when the broker arrangement between the bank and GMAC Mortgage was implemented?

MR. COHEN: Object to the form; vague.

BY MR. BROWN:

Q. Strike that.

Mr. Glassner, do you understand when GMAC Mortgage began brokering loans into the bank?

MR. COHEN: Object to the form.

THE WITNESS: The only thing I could say for certain, it was prior to my arrival at Ally Bank.

BY MR. BROWN:

Q. Do you know whether GMAC Mortgage ever originated and funded loans itself?

A. I believe it did.

Q. Okay. When GMAC Mortgage would originate and fund a loan who would bear the

expenses related to origination you just identified?

A. As I wasn't present at the company during that time of activity and wasn't responsible for it because I wasn't there I couldn't answer that definitively.

Q. After GMAC Mortgage began brokering loans to the bank which party bore the expenses related to originating loans?

A. It's my understanding on the loans that were brokered to the bank from -- by GMAC Mortgage GMAC Mortgage would have borne -- would have borne the expenses associated with origination of those loans.

Q. Who bore the underwriting expenses?

A. I believe it was GMAC Mortgage.

Q. And what's that understanding based on?

A. My high level understanding of the way that the consumer division was run out of ResCap.

Q. You discussed two different accounting methodologies earlier in your testimony, fair value and lower of cost or market. Do you remember that?

A. I do.

Q. I am going to ask you about another one. Are you familiar with hedge accounting?

ADAM GLASSNER

A. At a high level, yes.

Q. What's your understanding?

A. Hedge accounting would involve an asset that is on your books and the hedge associated with that and that the way the pricing changes and resulting accounting entries would result -- would occur on those two instruments on a combined basis.

Q. What do you mean by that?

A. Hedge accounting in my understanding treats the hedge associated with an asset and the change in value of that hedge and the change in value of that asset in a combined transaction to result a net result and there are certain accounting thresholds necessary for hedge accounting to be permitted.

Q. I want to take a minute and look at Glassner Exhibit 1. Do you have that, Mr. Glassner?

A. I do.

Q. This is the banker and consumer loans that you reviewed in late 2011; is that correct?

A. That is correct.

Q. Were you involved in preparing this presentation, Mr. Glassner?

A. I was not.

Q. Do you know who was?
A. I do not know.
Q. When was the first time you reviewed this presentation, Mr. Glassner?
A. Late 2011.
Q. The presentation is dated November 19th, 2008. Do you see that?
A. I do.
Q. Did you review this presentation on or around November 19th, 2008?
A. I was not employed by Ally Bank at that point.
Q. Do you know who did review this presentation on or around November 19th, 2008?
A. I do not.
Q. Do you know whether this presentation reflects the final terms of the agreement between Ally Bank and GMAC Mortgage with respect to the brokering project?
A. I do not.
Q. Let's turn to page 4, it's entitled Summary. Let me know when you're there.
A. I am there.
Q. At the top it says, "GMAC Mortgage

broker will have a brokering relationship with GMAC bank lender."

Do you see that?

A. I do.

Q. And there are certain points summarized below that. Do you see that?

A. I do.

Q. Are those items consistent with your high level understanding of the parties relationship?

A. Generally, yes.

Q. What do you mean "generally"?

A. It was my high level understanding that the underwriting expenses described in 4 and in 5 were borne by GMAC Mortgage.

Q. This document reflects otherwise; is that correct?

A. Bullet point 4 would appear to indicate that the underwriting expenses would be borne by GMAC Mortgage or by GMAC Bank, excuse me.

Q. With respect to the revenues received by GMAC Bank, is this document consistent with your high level understanding of those revenues?

A. It is.

Q. And that understanding is that Ally Bank would receive points, fees and net interest carry?

A. Along with the broker fee.

I'm sorry, would expense the broker fee, yes.

Q. So the revenues would be points, fees and net interest carry?

A. That is correct.

MR. BROWN: I don't have anything further at this time.

MR. SIMON: I don't have anything.

MR. COHEN: Anybody on the phone have questions?

I guess we're done.

THE VIDEOGRAPHER: That's the end of tape number two and the deposition of Adam Glassner. The time on the monitor is approximately 11:29 a.m. and we're off the record.

(THEREUPON, the videotaped deposition was concluded at 11:29 a.m.)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, April Reid, Court Reporter and Notary Public in and for the State of North Carolina, do hereby certify that there came before me on Wednesday, November 13, 2013, the person hereinfore named, who was by me duly sworn to testify to the turth and nothing but the truth of knowledge concerning the matters at controversy in this cause; that the witness was thereupon examined under oath, the examination reduced to typewriting under my direction, and the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in this action.

This, the 13th day of November, 2013.

_____

APRIL REID, Court Reporter

Notary Public #2003237014

J U R A T

I, , do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on ; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this ____ day of _____, 20 ,

at _____, .

_____

SIGNATURE OF WITNESS

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| In re: | ) Chapter 11 |
| RESIDENTIAL CAPITAL, LLC, et al., | ) Case No. 12-12020(MG) ) Jointly Administered |
| Debtors. | ) |
| RESIDENTIAL CAPITAL, LLC, et al., | ) |
| | ) Adversary Proceeding |
| Plaintiffs, | ) No. 13-01343(MG) |
| vs. | ) |
| 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, | ) |
| Defendants. | ) |

Yellow Highlighting = JSN Designation
Pink Highlighting = Plaintiffs' Counter-Designation
Orange Highlighting = Joint Designation

The Debtors and Committee object to the JSNs' use of the deposition of Mr. Kirpalani on the ground that this deposition may not be used under Bankruptcy Rule 7032. The Debtors' and Committee's counter-designations reflected herein are to be admitted, if at all, only upon admission of the JSNs' corresponding affirmative designations.

VIDEOTAPED DEPOSITION OF SUSHEEL KIRPALANI
New York, New York
Thursday, November 14, 2013

Reported by:
KRISTIN KOCH, RPR, RMR, CRR, CLR
JOB NO. 68030

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the estates of the Debtors, Plaintiff, vs. 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, Defendants. | Adversary Proceeding No. 13-01277(MG) |

November 14, 2013
4:08 p.m.

Videotaped Deposition of SUSHEEL KIRPALANI, held at the offices of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York, before Kristin Koch, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

A P P E A R A N C E S:

KRAMER LEVIN NAFTALIS & FRANKEL
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A P P E A R A N C E S: (Continued)

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A P P E A R A N C E S: (Continued)

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ALSO PRESENT:

CARLOS LOPEZ, Legal Video Specialist

(Kirpalani Exhibit 1, Declaration of Susheel Kirpalani, marked for identification.)

* * *

THE VIDEOGRAPHER: This is the start of the tape labeled number 1 of the videotaped deposition of Susheel Kirpalani in the matter of In Re: Residential Capital LLC.

This deposition is being held at 1177 Avenue of the Americas, New York, New York on November 14, 2013 at approximately 4:08 p.m.

My name is Carlos Lopez. I am the legal video specialist from TSG Reporting Inc. The court reporter is Kristin Koch in association with TSG Reporting.

Appearances are noted.

Will the court reporter please swear in the witness.

S U S H E E L K I R P A L A N I,

called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. STONE:

Q. Mr. Kirpalani, good afternoon. My name is Alan Stone. I am with Milbank Tweed. We are here on behalf of the Notes Trustee and Ad-Hoc Committee of Junior Secured Noteholders. We are here to take your deposition. We only have a couple hours, so I am going to dispense with the preliminaries and get right into it.

I am handing you what's been marked as Exhibit 1 for purposes of your deposition today.

MR. STONE: And for those on the phone, this is the Declaration of Susheel Kirpalani.

Q. Mr. Kirpalani, do you recognize this document?

A. Yes.

Q. What is it?

A. It's the declaration that I prepared and submitted on November 12th.

Q. Okay. And for what purpose did you submit this declaration?

A. I submitted it in support of

confirmation of ResCap's and the Creditors Committee of ResCap's Chapter 11 plan.

Q. Okay. Am I correct that this plan calls for a contribution of a certain amount of money by Ally?

A. Yes.

Q. And how much money is that?

A. $2.1 billion.

MR. WYNNE: We can't hear Mr. Kirpalani on the phone. I don't know if the mike is not working or what.

MR. STONE: You just need to keep your voice up. I think that will work.

THE WITNESS: Maybe I will try and talk more into the microphone.

MR. O'NEILL: Is that better, Rick?

MR. WYNNE: Yes. Thank you.

Q. Am I also correct that Ally was only willing to make that contribution if they could get a third-party release as a part of the plan?

A. You would have to ask Ally, but that's my understanding.

Q. I am just asking for your

understanding. Okay.

You represent certain private securities claimants?

A. Yes.

Q. Okay. And what type of claims did or do those private securities claimants have against ResCap and Ally?

A. What do you mean by what type of claim?

Q. What's the nature of those claims?

A. It depends. Some clients have claims for common law fraud, some clients have statutory claims for rescission, some clients have consumer protection statute-type claims, but I would say that they are all claims that parties misrepresented certain facts in connection with their purchase of certificates that were issued by various RMBS trusts.

Q. So you would agree with me that these claims generally involve the purchase or sale of securities?

A. Yes.

Q. From your clients' standpoint, they were unwilling to support the plan and the

third-party release unless they got an actual distribution in the bankruptcy; is that right?

A. Can you repeat or rephrase the question. I didn't quite get it.

Q. Sure. So from your clients' standpoint, they were willing to settle their securities claims against ResCap and Ally as long as they could get an actual general unsecured claim in the bankruptcy plan?

A. I'm not sure that to the clients the actual plumbing or mechanics were that important, but they certainly -- if they were being asked to give up a right of theirs to be paid something, they would want to get paid something.

(Mr. Mannal enters.)

Q. Let me ask it this way: Would your clients have been willing to settle had they been asked to take a subordinated claim?

MR. O'NEILL: Objection.

A. I think -- I think there are some missing parts of that question. The answer -- if that's the only -- if those are the things that I have to assume for purposes of the

question, would they settle in exchange for a subordinated claim against ResCap and nothing else, I would be pretty confident the answer would be no.

Q. Okay. What parts were missing from the question?

A. Well, I don't know -- when you are saying would they be willing to settle, who are they settling with? If in your hypothetical they were settling with a third-party and that third-party was providing enough money to them that they feel they were justly compensated for their losses, it's quite possible that they would have agreed to a different structure, but that was not -- that was never presented as an offer, but --

Q. Okay. Well, let me ask it this way then: Had the deal that was -- I'm sorry. Let me try again.

If ResCap and Ally had offered your clients precisely the same settlement that you arrived at now with the only exception being that they weren't getting a general unsecured claim, but instead they were going to get a

Plaintiffs' Objection 11:21-12:4 Lack of personal knowledge/ speculative (FRE 602)

subordinated claim, would they have settled?

MR. O'NEILL: Objection.

A. I have no idea.

MR. O'NEILL: Calls for speculation.

A. I have no idea.

Q. You have no idea. Okay.

(Mr. Eckstein enters.)

Q. In paragraph 14 of your declaration one of the statements that you declare is that "the settlement of Private Securities Claims set forth in the PSA and the Allocation Agreement was conducted at arm's length." What did you mean by that?

A. That the settlement of the Private Securities Claims was conducted at arm's length, what do I mean by that?

Q. Yes.

A. I mean that it was a negotiation that took place among parties that were not affiliated with each other, with robust energy and views for the various litigation risks that each side were taking, and that there was no collusion involved and that it was in good faith.

Q. Okay. How did the settlement come about?

MR. O'NEILL: I will caution the witness not to discuss the particulars of the mediation.

A. Can you be more specific?

Q. Well, your counsel mentioned there was a mediation. Is that right, there was a mediation of these claims?

A. Yes. That's talked about in my declaration. It's a matter of public knowledge.

Q. Right. Who was involved in the mediation?

A. Me.

Q. You were the only one?

A. No. There were about -- the Kramer Levin security guards would know better, but I think at some point there were over a hundred people.

Q. Who was represented at the -- which parties were represented at that mediation?

A. My clients.

Q. Okay. I understand that. And who

else?

A. The Debtors. They were -- they had representation there. Do you want me to just keep going?

Q. Yes.

A. The Creditors Committee had advisors here. Judge Peck was the mediator. He had two clerks with him. I know FGIC was here. I know MBIA was here. I know they had representatives. I know Junior Secured Noteholders, I believe are your clients, they had principals as well as professionals here. There were Senior Unsecured Noteholders that were here. FHFA was here through counsel. I don't believe the New Jersey Carpenters Class was here, except for maybe one piece of it, and maybe telephonically. I just don't remember. No, that's not true. They did have a bankruptcy counsel that was here in person for some time. I mentioned MBIA. I mentioned FGIC. The notes -- the RMBS trust had just an army of people here, and there was the named -- the class representative of a class action of borrowers, they were here. At least they had

representatives here. If you gave me a list of all of the major parties of interest in this case, I would venture to say that they were all here.

Q. Okay. Now, with respect to the resolution --

A. Oh, I'm sorry. Ally was here.

Q. With respect to the mediation or resolution of the Private Securities Claims, was there a separate portion of the mediation where there was a subgroup of parties that discussed those claims?

A. I'm not sure what you mean when you say was there a separate portion of the mediation.

Q. In other words, did Judge Peck get a subset of the various parties who were present for the mediation together to discuss the Private Securities Claims?

A. I don't think I should be disclosing how a mediator conducted his mediation, so I am not going to answer that.

Q. Okay. I am not asking for any substance or positions people took or anything

else. I am just asking about the procedure.

A. I understand, but that's kind of the -- that's a trick of the trade, that's a craft, and that's up to Judge Peck to decide if he wants to disclose how he goes about doing shuttle diplomacy or not doing shuttle diplomacy. You know, I wouldn't talk about the way I mediated the Dynegy case and I don't think I would like it if people talked about that either.

Q. Okay. Well, let me try it this way then. Did all of the major constituencies in this bankruptcy have input into the settlement of those Private Securities Claims?

A. I would -- I would think so. My understanding is that they had input.

Q. Did you or other representatives of Private Securities Claimants ever get in a room with Ally and ResCap and negotiate these -- the resolution of these claims?

MR. O'NEILL: Objection.

A. One room with Ally and ResCap?

Q. Uh-huh.

A. No.

Q. Did you ever get in a room with Ally?

A. Many times.

Q. Did you ever get in a room with ResCap?

A. Yes.

Q. You distinguished between -- in your declaration between Settling Private Securities Claimants and other Private Securities Claimants.

In the deal that ultimately was reached in the Plan Support Agreement are all of the Private Securities Claims being resolved?

A. I'm sorry. Can you -- you can have it read back, but I lost my train of thought in the middle of your question.

Q. Okay. No problem. Maybe I'll ask a simpler question.

What's the difference between the Settling Private Securities Claimants and the other Private Securities Claimants that you note in your declaration?

A. I think I know the answer. I just

want to look back to the plan term --

Q. Sure. Take your time.

A. -- because I don't want to mess up your record, so let me look.

Q. So the first paragraph you will see the Settling Private Securities Claimants.

A. Okay. So the Settling Private Securities Claimants are my clients. We were, for lack of a better word, the anchor tenants of the settlement that would later be rolled out to what I defined as the -- I think it's Additional Private Securities Claimants. So that's the way I would characterize us, is we were the anchors.

Q. And once you rolled out that settlement to the Additional Private Securities Claimants, did they agree to go along with the settlement?

A. It was a process.

Q. But ultimately they agreed?

A. Ultimately they agreed. I'm happy to say, ultimately I have unanimous accepting class of creditors in a situation that, frankly, I never thought it could be achieved.

Q. In paragraph 14, at least in the version of your declaration that I have, it says -- there is a clause, at least, and this is right before paragraph 15, that says: "Based on the uncertainty surrounding treatment and priority of more than $20 billion of claims against the Debtors' estates."

What does that $20 billion of claims refer to?

A. When you said at least the version you have, you gave me a copy of this exhibit, so --

Q. Yes. It should be the same as the one I have.

A. Okay. What is the $20 billion?

Q. Yes.

A. That is an estimate of the potential claims for losses suffered by creditors that are either the Settling Private Securities Claimants, the Additional Private Securities Claimants, or other holders of claims that assert similar theories.

Q. Okay. The amount of $235 million that represents the amount of the general

unsecured claim, in resolution of the Private Securities Claims does that also include the other claims -- does that correspond to the $20 billion worth of claims?

MR. O'NEILL: Object to form.

A. I just don't agree with the premise of your question that there is a $235 million general unsecured claim.

Q. Okay. Maybe I got it wrong. Maybe you can tell me what -- I guess I can be more precise about it as well.

Am I correct that in resolution of the Private Securities Claims there was agreement to set up a Private Securities fund of $235 million?

A. That's a projected amount, but subject to increase or decrease based on things beyond the Creditors' control, yes, 235 million was the projected amount to satisfy the claims of Private Securities Claimants.

Q. Okay. Now, when you told me what the $20 million -- or $20 billion worth of claims represents, you mentioned the Settling Private Securities Claimants, the Additional

Private Securities Claimants and then persons who held other similar claims.

A. I didn't say "other similar claims." I said other claims asserting similar theories of liability.

Q. Okay. Thanks for that correction.

Those persons who are asserting other claims with similar liability theories, are they going to be able to take from the PSC fund as well?

A. No.

Q. No. Okay.

So they are still left out there?

A. They are not left out there. They were resolved separately.

Q. Okay. If you look at paragraph 13, there are some numbers there relating to the aggregate estimated amounts for the Private Securities Claims against Ally and against the Debtors and AFI?

A. Right.

Q. Are those the estimated amounts of liability that the Private Securities Claimants would be seeking in their lawsuits?

A. Yes.

Q. So that totals, by my math, some $3.8 billion. Why did you settle for $235 million?

MR. O'NEILL: Objection.

A. Couldn't get 3.8.

Q. Why couldn't you get 3.8?

MR. O'NEILL: Caution the witness not to discuss anything that occurred in the mediation.

A. Because to get 3.8 somebody would have to pay me that and nobody was willing to pay that.

Q. Okay. Do you think that amount is fair?

MR. O'NEILL: 3.8?

MR. STONE: No. 235 million.

A. If I didn't think it was fair, I wouldn't have let my clients sign onto it, so yes, I do think it's fair.

Q. So it's fair to your clients?

A. I think it's fair to both sides.

Q. It's fair to both sides. Is it fair to all constituencies?

A. I think something is either fair or it's not fair. So it's fair.

Q. It's fair to everyone?

A. Yes.

Q. Okay. In determining whether $235 million is fair, did you account for the general litigation risk associated with those claims?

A. Yes.

Q. How did you do that?

A. Well, which litigation risk are you referring to?

Q. Well, I am putting aside any risk of subordination. I am just talking about the typical risk that you have in the types of claims that you brought.

A. Then the answer is yes.

Q. Okay. And how did you account for that?

A. How did I account for it?

Q. Yes.

A. $235 million is a fraction of the actual losses. The difference between the amount received and the amount of losses

represents a judgment about the risk of collection, that goes to why it's not 3.8 billion, as well as the risk of winning. I don't think there is any precise way to slice and dice between 235 million and your number, 3.8 billion, to know how much relates to the risk of collection, how much relates to the risk of potentially losing on the merits, but I think that clients and their representatives made a judgment that that was a fair resolution.

Q. Did you do any kind of risk analysis with respect to the litigation, a formal risk analysis?

A. I don't know what your formal risk analysis looks like. We certainly analyzed our clients' claims, if that's what you are asking.

Q. Okay. Let's talk about a simple one. You just simply take the maximum potential amount of recovery and apply some factor based on your assessment of the risk. Did you do that?

MR. O'NEILL: You are asking for his work product at this point.

Kirpalani

MR. STONE: Are you instructing him not to answer?

MR. O'NEILL: I mean, it's not my privilege, but you are asking for him to reveal his clients' privilege.

A. Can you read back or ask the question again. If it's a yes/no question, which I think you were asking me, I probably could answer it.

Q. Okay. Did you simply take the maximum potential amount of recovery and apply a factor based on your assessment of the risk?

A. No.

Q. Did you account -- in determining that the $235 million is fair, did you account for the risk that the claims could be subordinated?

A. When you say "the claims," can you be more precise? There are some claims that have absolutely zero risk of being subordinated, zero.

Q. Let's say then some claims could be subordinated. Did you take that into account?

MR. O'NEILL: Objection.

A. That some of those claims could be subject to a risk of subordination?

Q. Yes.

A. Yes.

Q. How did you take that into account?

MR. O'NEILL: Objection.

A. By making a judgment call that $235 million appropriately reflected the risks of collection and litigation and I would lump subordination into the litigation pillar.

Q. Okay. In determining that the $235 million is fair, did you take into account how money was to be distributed in the plan?

A. Did I take into account how money was to be distributed? I'm not sure I understand.

Q. Well, did you account for the interests of others, put it that way, other constituencies?

MR. O'NEILL: Objection.

A. Again, I still -- it's vague. I don't understand what you mean, did I account for the interests of others.

Q. Well, you agree with me that the

issue of 510(b) subordination is an issue that had been briefed before the court; is that right?

A. Yes, among others.

Q. Right. And it was in dispute?

A. Yes.

Q. And if your clients lost on that, some of their claims would have been subordinated?

A. Lost where? In the bankruptcy court or in the district court or the supreme court?

Q. Well, ultimately -- if they ultimately lost, there was a risk that they would be subordinated?

A. That some claims --

Q. Right.

A. -- of my clients would be subordinated if the Debtors were to have prevailed and gotten that order appealed all the way up? Yes, there is a risk.

Q. And if those claims had been subordinated, the likely outcome as to those claims is your clients would have gotten nothing at the end of the day?

A. If they would have been subordinated, subject to my earlier comment about it being a final order no longer subject to appeal, then yes, they wouldn't be receiving a distribution based on subordinated claims.

Q. And you agree with me that one of the benefits of settling for your clients was that those claims as to which there was a risk of subordination were now general unsecured claims -- well, let me correct that -- were now going to take from the PSC fund?

MR. O'NEILL: Objection. Object to form.

A. I would agree that it's a benefit to both sides to get that issue resolved.

Q. Okay. Is it a benefit to General Unsecured Creditors for your clients to get a distribution on claims as to which there was a risk of subordination?

A. I think so.

Q. Why is that?

A. Because if I would have won my summary judgment motion or trial, then my clients and others asserting similar legal

theories would have flooded the general unsecured claims base with $20 billion. That's the number we have talked about before.

Q. Essentially you are saying there was risk on both sides?

A. I'll take that bet any day. There was a lot more risk to the Estate than there was to us.

Q. Why do you say that?

A. Because I think our briefs were better and I think we would have prevailed. In fact, it was hard to convince my clients to settle, because they knew how strongly I believed in them.

Q. Okay. Now, would you agree with me that subordinated securities claims cannot be transformed into a general unsecured claim by agreement of the Debtor and the Securities Claimants?

MR. O'NEILL: Objection.

A. Explain what constitutes a subordinated securities claim.

Q. One where we -- you and I both agree that these are claims that need -- that should

be subordinated, they are securities claims that under 510(b) should be subordinated.

A. Whether we agree doesn't make any difference, so I don't think that's correct.

Q. Okay. Let's say that a court of law would find that under 510(b) they should be subordinated.

A. And has that decision become final and no longer subject to appeal?

Q. Sure.

A. And then what's the question?

Q. The question is would you agree with me that those claims couldn't be transformed into general unsecured claims by agreement of the Debtor and the Securities Claimants?

MR. O'NEILL: Objection.

A. Yeah, I would agree with that.

Q. What about a securities claim that has only a very small chance of surviving a challenge based on subordination?

MR. O'NEILL: I am going to object to all this on the grounds that it requires him to speculate and to give legal conclusions. I have a standing objection

to this line of questioning.

A. What was the question?

Q. So if you had a securities claim as to which there was almost no question that it would be subordinated under 510(b), could the Debtor and the Claimant on that security agree that it would be treated as a general unsecured claim?

A. Are we talking about some hypothetical case, not this case?

Q. Yes.

A. I'd say if it's in the range of reasonableness, then yes.

Q. If it's in the range of reasonableness yes what?

A. Yes, parties can settle unresolved issues if there is a small risk of litigation, a large risk of litigation, sure.

Q. Okay. In determining that the $235 million was fair, did you take into account the risk that an appeals court or the U.S. Supreme Court might not agree that securities claims as to which the 510(b) subordination issue is disputed can be settled?

MR. SHELLEY: I am going to object. We are getting into work product again.

A. What was the -- did I consider -- ask me the question again.

Q. Yes. In determining whether the $235 million is fair, did you take into account the risk that the Second Circuit or the U.S. Supreme Court might hold that securities claims as to which there is a dispute about whether they should be subordinated under the 510(b) can be settled?

A. I don't think I did, no. I'm not sure I understand why that would be the case, but I guess you will educate the court about why I'm wrong, but no, I don't think so.

Q. Okay. So your working assumption is that disputed claims can be settled and there is no reason to think that that would ever be overturned?

MR. O'NEILL: Objection.

A. Well, that's a different question, but -- are you asking me that question?

Q. Yes.

A. I think there are risks that

disputed claim settlements can be overturned in many different circumstances. So of course that could happen.

Q. Did you take that into account?

A. You asked me that already. Here in this context --

Q. In this context.

A. -- did I take into account that the 510(b) settlement that's inextricably intertwined with the global resolution of the Private Securities Claimants' claims, did I take into account whether an appeals court would say that could not be resolved by settlement? I answered that before. The answer is no, I didn't take that into account. I think -- I don't agree with the premise. I actually thought that an appeals court would applaud the result as opposed to potentially overturn it. It's unprecedented.

Q. Would you agree with me that a Debtor cannot pick out one or more members of a particular class and give them different consideration?

MR. O'NEILL: Objection. Calls for

a legal conclusion.

A. I'd prefer to stick to the facts of this case and that's the reason I'm here. I'm happy over a drink to talk about the law with you, but not -- I am not going to be deposed on my ability to be a lawyer.

Q. Okay. You are not going to answer the question?

A. No.

Q. Okay. If a court had ruled that your clients' claims were to be subordinated under 510(b), would your clients still be supportive of a third-party release for Ally?

MR. O'NEILL: Objection. Calls for speculation.

A. You say a court. You have to be more clear. If a court -- I hear that as the bankruptcy court. If Judge Glenn would have said the Debtors win on summary judgment and my clients' claims are subject to subordination, I have every belief in the world that I would have prevailed on appeal. So I don't know if they would have wanted to settle. Maybe they would have doubled down and said now we will

just go for blood and try to get a hundred cents on the dollar. I don't know.

Q. Okay. What if you appealed that claim as far as you could and the answer was not in favor of your clients, do you think they would be supportive of a third-party release for Ally?

MR. O'NEILL: Same objection.

A. I really -- again, it's leaving out issues that need to be included for that question to make sense to me. If that's all there is, then no, they wouldn't be releasing anybody. They wouldn't release the Debtor, they wouldn't release Ally. Why would they?

Q. Taking a look at paragraph 14 of your declaration, and I am focusing on the sentence that's sort of in the middle of the paragraph -- you don't have page numbers here, so I can't tell you what page it's -- yes, it's page 8, I guess.

It says: "The consensual resolution of billions of dollars of securities claims avoids the substantial time, expense and risks associated with litigating such claims, in

courts all over the country, and permits the expeditious completion of the Debtors' Chapter 11 cases."

So, first of all, the avoidance of substantial time, expense and risk associated with litigating such claims in courts all over the country, why is that beneficial to ResCap?

MR. O'NEILL: Objection.

A. It seems self-evident.

Q. Well, let me ask it this way: The -- at least in terms of the exposure as noted in paragraph 13 -- I'm sorry.

So anyway, part of the claims up to $1.4 billion are against Ally Securities.

Why would it benefit ResCap to avoid the substantial time, expense and risk associated with litigating those claims?

A. Well, the Debtors acknowledged very early in the case that claims against its parent would detract from management's time and energy needed to reorganize, so they actually sought an injunction to prevent those actions from going forward. So putting aside its own exposure, which I will come back to, I think

there is a high degree of distraction of time and attention that would be better used elsewhere, such as maximizing the value of their assets in figuring out a way to stop burning so much money in administrative expenses to come out of Chapter 11 and they wouldn't be focusing on those, they would be trying to defend themselves in these other actions, and that may not make sense to you, but what you don't -- may not know is that there is an overlap of claims against the debtors and Ally, so although in paragraph 13 I said $1.4 billion are asserted against Ally and $2.4 billion are asserted against the Debtors and Ally, the 1.4 is subsumed within the 2.4, so there is overlap. So I would assume that the Debtors want to defend 1.4 billion in claims the same that they want to defend the 2.4 billion in claims. They might try to do that in the bankruptcy court. Venue over that was going to be another hotly-contested issue. I know my clients felt very strongly about having their cases tried where they were commenced, and I think after Stern v. Marshall,

that they would have a good shot at getting that.

Q. Now, focusing on the second part of the sentence, it "permits the expeditious completion of the Debtors' Chapter 11 cases." How did it do that?

A. How did it permit the expeditious completion? I guess we will find out next week.

Q. What do you mean by that?

A. There is a confirmation hearing next week. I don't believe there would be a confirmation hearing next week if these claims were not resolved.

Q. Well, could the company have converted to Chapter 7 and done a liquidating plan?

A. Don't know.

MR. O'NEILL: Objection.

A. If you are asking me could legally, we will have that drink and we can talk about it. Never thought about it here.

Q. Okay. In the next sentence you say: "In addition, this settlement resolves

uncertain litigation over whether the Private Securities Claims may be subordinated under Bankruptcy Code section 510."

Had you lost that issue, do you still believe that a global resolution would have been difficult?

MR. SHELLEY: Objection to form.

MR. O'NEILL: Objection.

A. If I had lost that issue in the bankruptcy court?

Q. Uh-huh.

A. Yes, I think it still would have been very difficult.

Q. Why is that?

A. Because I would have appealed.

MR. STONE: Why don't we go off the record.

THE VIDEOGRAPHER: The time is 4:51 p.m. We are going off the record.

(Recess was taken from 4:51 to 4:53.)

THE VIDEOGRAPHER: The time is 4:53 p.m. We are back on the record.

BY MR. STONE:

Q. Just a couple more questions.

Kirpalani

Focusing on paragraph 13 of your declaration, looking at the second sentence, it says: "It is my understanding, based upon my review of publicly available information and discussions with representatives of the additional PS Claimants that the recovery rates represented by this settlement are generally consistent with other settlements of claims based on the purchase and sale of RMBS certificates, although the specific recovery rates for RMBS claims vary based on the particular characteristics of such claims, including, for example, whether the claims have survived a motion to dismiss, or whether the claims are based on statutes with less stringent elements of proof, such as state blue sky claims or claims under the Securities Act of 1933."

A. Uh-huh, yes.

Q. What did you look at specifically?

A. I had one of my associates pull together information of settlements that have been announced since the financial crisis and they fed me a bunch of that data when I was

going into this mediation, and obviously I read in the newspaper what these types of claims settle for in the class action context. Getting that type of data is very hard on the private litigation side, because almost all of them are subject to confidentiality agreements, which you probably know, but I was able to get some based on information that my firm maintained in confidence so I could advise my clients properly.

Q. Okay. With respect to the data that you were fed by your associate in connection with the mediation, do you still have that data?

A. I don't think so.

Q. Have you looked?

A. No, nobody asked me to look. I would note when I read Lucy Allen's expert report, all of the information that she did include there was consistent with what my understanding was from the work that my firm had done for me.

RQ MR. STONE: Okay. Well, I would ask you that you go back and look at your files

and see if you can find it.

And I'm sure you will take that under advisement.

MR. O'NEILL: Yes.

Q. With respect to discussions with representatives of the additional PS Claimants, who did you talk to?

A. I'm sorry. Ask the question again. You looked like you were reading and then I was looking to see what you were reading, but I'm not sure --

Q. Paragraph 13 again. Same sentence. It says "and discussions with representatives of the Additional PS Claimants" at the bottom of page 7.

A. Yes.

Q. Who did you speak to?

A. There were -- there are 17 other claimants in the -- what we call the AF 21, Ally Financial 21, and we represent 4. The other 17 all have different counsel. So I don't remember the names of them, but I was on calls with some of them, and then my team, combined bankruptcy and RMBS litigators, did a

lot of the discussions with them about the nature of their clients' claims.

MR. STONE: I don't have any further questions.

MR. O'NEILL: Nothing.

THE VIDEOGRAPHER: The time is 4:57 p.m. We are going off the record.

(Time noted: 4:57 p.m.)

_____

SUSHEEL KIRPALANI

Subscribed and sworn to before me this day of 20 .

_____

C E R T I F I C A T E

STATE OF NEW YORK )
) ss.:
COUNTY OF NASSAU )

I, KRISTIN KOCH, a Notary Public within and for the State of New York, do hereby certify:

That SUSHEEL KIRPALANI, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of November, 2013.

_____

KRISTIN KOCH, RPR, RMR, CRR, CLR

----------I N D E X----------


| WITNESS | EXAMINATION BY | PAGE |
|---|---|---|
| SUSHEEL KIRPALANI | MR. STONE | 7 |


----------EXHIBITS----------


| KIRPALANI | PAGE | LINE |
|---|---|---|
| Exhibit 1 | | |
| Declaration of Susheel Kirpalani..... 6 | 2 | |


REQUESTS: 41

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: In Re Residential Capital LLC

Dep. Date: November 14, 2013

Deponent: Susheel Kirpalani

CORRECTIONS:

| Pg. | Ln. | Now Reads | Should Read | Reason |
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_____

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS____DAY OF_____, 2013.

_____

(Notary Public) MY COMMISSION EXPIRES:_____