

**American Court Reporting
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IN THE CIRCUIT COURT	1	RHONDA S. HOOD, ESQUIRE		
FOR JEFFERSON COUNTY, ALABAMA	2	STIRLING & HOOD		
CASE NUMBER	3	2117 MAGNOLIA AVENUE S		
CV-2009-901113	4	SUITE 100		
U.S. BANK, N/A as trustee for	5	BIRMINGHAM, ALABAMA 35205		
that certain pooling and	6			
servicing agreement,	7			
Series #2007-EMX1, Pool #40896,	8			
Plaintiff,	9			
v.	10			
ERICA SUMPTER CONGRESS,	11			
Defendant.	12			
REPORTER'S OFFICIAL TRANSCRIPT	13			
Before: HONORABLE J. SCOTT VOWELL	14			
JEFFERSON COUNTY COURTHOUSE	15			
BIRMINGHAM, ALABAMA	16			
JUNE 1, 2010	17			
REPORTED BY:	18			
RHONDA W. HEAD, CCR	19			
and NOTARY PUBLIC	20			
	21			
	22			
	23			
	24			
	25			
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1 APPEARANCES	1	INDEX		
2 FOR THE PLAINTIFF:	2	WITNESS DX CX RDX RCX		
3 ROBERT RYAN DAUGHERTY, ESQUIRE	3	COLLEEN McCULLOUGH 42 74		
4 BARRY A. RAGSDALE, ESQUIRE	4	BILL HAUGHTON 82 124 160 189		
5 SHAUN RAMEY, ESQUIRE	5	CHASE GREENE 196 206		
6 SIROTE & PERMUTT, P.C.	6	THOMAS J. ADAMS 211 261 322 335		
7 2311 HIGHLAND AVENUE SOUTH	7	IRA MARK BLOOM 337 351 399 414		
8 BIRMINGHAM, ALABAMA 35205	8	428 432		
9 FOR THE DEFENDANT:	9	ERICA SUMTER CONGRESS 437 455 467		
10 KENNETH J. LAY, ESQUIRE	10	BILL HAUGHTON 478 491		
11 LEGAL SERVICES OF ALABAMA, INC.	11	495		
12 1820 7TH AVENUE NORTH	12			
13 BIRMINGHAM, ALABAMA 35203	13			
14 NICK WOOTEN, ESQUIRE	14			
15 1702 CATHERINE COURT, SUITE 2D	15			
16 AUBURN, ALABAMA 36831	16			
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20	20			
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1	EXHIBITS			1			
2	MARKED REC.			2	JUNE 1, 2010	9:15 a.m.	
3	PLAINTIFF'S EXHIBIT 1	63		3			
4	PLAINTIFF'S EXHIBIT 2	39	40	4	P R O C E E D I N G S		
5	PLAINTIFF'S EXHIBIT 3	128	129	5	* * * * *		
6	PLAINTIFF'S EXHIBIT 4	130	133	6	THE COURT: Are there any preliminary		
7	PLAINTIFF'S EXHIBIT 5	133	134	7	matters we need to talk about before we get		
8	PLAINTIFF'S EXHIBIT 6	133	134	8	started?		
9	PLAINTIFF'S EXHIBIT 7	133	134	9	MR. RAGSDALE: Yes, sir.		
10	PLAINTIFF'S EXHIBIT 8	133	134	10	THE COURT: Mr. Ragsdale?		
11	PLAINTIFF'S EXHIBIT 9	133	134	11	MR. RAGSDALE: Yes, Your Honor, may it		
12	PLAINTIFF'S EXHIBIT 10	74	75	12	please the Court, we -- obviously this case has		
13	PLAINTIFF'S EXHIBIT 11	74	76	13	been before you before and was tried before. You		
14	PLAINTIFF'S EXHIBIT 12	39	40	14	entered a scheduling order in this case as you are		
15	PLAINTIFF'S EXHIBIT 13	46	46	15	apt to do, which provides that the parties were to		
16	PLAINTIFF'S EXHIBIT 14	40	40	16	exchange witness and exhibit lists, which the		
17	PLAINTIFF'S EXHIBIT 15	146	148	17	parties did. It also provides that any objections		
18	PLAINTIFF'S EXHIBIT 16	150	153	18	to the admissibility or authenticity of those		
19	PLAINTIFF'S EXHIBIT 17	153	155	19	exhibits have to be raised within seven days.		
20	PLAINTIFF'S EXHIBIT 18	156	156	20	U.S. Bank filed objections. The defendant filed no		
21	PLAINTIFF'S EXHIBIT 19	272	276	21	objections.		
22	PLAINTIFF'S EXHIBIT 20	335	335	22	This morning when we start talking about		
23	PLAINTIFF'S EXHIBIT 21	437	437	23	exhibits, Mr. Wooten indicated that he has		
24	PLAINTIFF'S EXHIBIT 22	458	494	24	objections to the authenticity or admissibility of		
25	PLAINTIFF'S EXHIBIT 23	461	461	25	several of the exhibits which we listed and to		
Page 6				Page 8			
1	PLAINTIFF'S EXHIBIT 24	462	503	1	which no objections were interposed.		
2	PLAINTIFF'S EXHIBIT 25	463	503	2	We would like some indication from the Court		
3				3	whether or not the scheduling order, in fact,		
4	DEFENDANT'S EXHIBIT 1	68		4	requires those objections to be made before trial		
5	DEFENDANT'S EXHIBIT 2	177		5	or whether we're going to be forced to now bring		
6	DEFENDANT'S EXHIBIT 3	177		6	witnesses to try to authenticate documents that		
7	DEFENDANT'S EXHIBIT 4	200	210	7	were disclosed, made available, and no objections		
8	DEFENDANT'S EXHIBIT 5	200	210	8	were made.		
9	DEFENDANT'S EXHIBIT 6	202	210	9	THE COURT: What is the nature of the		
10	DEFENDANT'S EXHIBIT 7	243	244	10	documents?		
11	DEFENDANT'S EXHIBIT 8	234	234	11	MR. RAGSDALE: One of the ones that --		
12	DEFENDANT'S EXHIBIT 9	234	240	12	Ryan?		
13	DEFENDANT'S EXHIBIT 10 - 21	239	240	13	MR. DAUGHERTY: Your Honor, there are a		
14	DEFENDANT'S EXHIBIT 22	253	235	14	few documents. Some are the default letters that		
15	DEFENDANT'S EXHIBIT 23	339	339	15	were sent to the defendant prior to foreclosure by		
16	DEFENDANT'S EXHIBIT 24	452	455	16	the servicer of the loan. And the other document		
17	DEFENDANT'S EXHIBIT 25	483	503	17	is the payment history and collection notice which		
18	DEFENDANT'S EXHIBIT 26	485	503	18	Your Honor reviewed in the last case, and you		
19	DEFENDANT'S EXHIBIT 27	486	503	19	actually have a copy in the folder of exhibits that		
20	DEFENDANT'S EXHIBIT 28	488	503	20	you had with the court.		
21				21	There is also the question of a promissory		
22				22	note, the original promissory note that Ms.		
23				23	Congress signed for this loan.		
24				24	THE COURT: That's not in dispute, is it?		
25				25	MR. WOOTEN: Well, only to the extent,		

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1 Judge, that at the last trial the promissory note
2 was presented to Your Honor as endorsed in blank,
3 and at this trial they now have the endorsement
4 filled in to a party in the securitization. And
5 there's apparently a separate document which they
6 have styled as, what's called an allonge, which has
7 endorsements on it as well, which has never been
8 seen or heard before. Which, if Your Honor will
9 recall, during all the previous arguments in this
10 case, you've been told that even a thief can
11 enforce a blank endorsed promissory note. And then
12 when the expert testimony came in and said that the
13 plaintiff could not possibly own a blank endorsed
14 promissory note, nothing was said. The Court's
15 never been told that there was another note
16 somewhere else that had endorsements on it.
17 But literally last Thursday night, based on a
18 previously decided time to exchange documents, I
19 got documents from them which included the computer
20 records that we have a problem with as far as the
21 reliability, and we got this promissory note with
22 endorsements. So in effect, the Court has a new
23 promissory note today from the one that was
24 presented to you at the previous trial.
25 MR. LAY: And if I can also interpose.

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1 It's a little bit disingenuous of them to bring
2 this up now because the exhibit list that they did
3 was very vague. It listed possibilities, if you go
4 back and look. As soon as we were actually served
5 with the actual documents, a Motion to Strike was
6 filed, which you -- I was out of town last Thursday
7 or Friday, but was partly dealt with. So there are
8 objections in the case. They have known about the
9 objections all along.
10 And the exhibit list, if you go back and look,
11 for example, we had a trial before, they produced a
12 promissory note, and now at the last minute they
13 want to bring in a new promissory note with these
14 attached documents. And there was nothing listed
15 in their exhibit list which stated that they had
16 new documents. It was only after they actually
17 served the documents on us that we knew they were
18 going to do this, which was on last Thursday.
19 MR. RAGSDALE: May I respond?
20 THE COURT: Yes, sir.
21 MR. RAGSDALE: Virtually none of that is
22 true. The exhibit list that was filed on May 18th
23 pursuant to your order, lists as Exhibit Number 2,
24 note along with any endorsements or allonge.
25 THE COURT: Well, wouldn't they presume

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1 that's the note that you had offered at the
2 original trial?
3 MR. RAGSDALE: Not if they had done maybe
4 the first lick of discovery in this case upon which
5 they have not done. Never did a Request for
6 Production. Never did a Request for Admission.
7 The question of the endorsement of the other,
8 Judge, wasn't an issue in the first trial. There
9 was no challenge to any endorsement, no challenge
10 to whether or not it had been properly endorsed.
11 It was introduced by stipulation. The only
12 question that was addressed to it, frankly, came
13 from you where you asked Ms. Congress, is that your
14 signature? There was no issue about the
15 assignment. None. Never challenged until -- the
16 first time that there was a challenge to the
17 endorsement of the note came a day and a half or
18 two days before the hearing on their post trial
19 motions which was in March. In March. That's the
20 first time that there was ever an issue about that.
21 When that became an issue, we went and requested
22 from our client the original note, which includes
23 all the endorsements, because that was never
24 disputed in the first trial.
25 THE COURT: Well, do you have somebody

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1 here who can simply testify that's what these
2 documents are?
3 MR. RAGSDALE: We do.
4 THE COURT: All right. Well, let's do
5 that. I think to let it all in and then if you all
6 can show that some shenanigans were going on, I'll
7 consider that when I decide the case.
8 MR. RAGSDALE: Thank you, Judge.
9 MR. WOOTEN: That will be fine, Your
10 Honor.
11 THE COURT: All right. And is that true
12 on the default letters and the payment history as
13 well?
14 MR. WOOTEN: Well, Judge, the issue -- and
15 it's about to become very central to the case, is
16 the authenticity of the electronically stored
17 information. And the Court is aware that there are
18 lots of wonderful things you can do with a computer
19 and computer records. Now, I have no problem with
20 their witness saying, I recognize these documents
21 as being printed off our computer system. What I
22 don't believe their witness will be able to
23 establish is a necessary foundation to prove to the
24 Court that there is any reliability or guarantee
25 regarding the veracity of the contents of those

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1 printouts. So to the extent that he can recognize
2 the documents to be printed from their system,
3 that's what I consider authentication. Proving
4 reliability is a different issue, and that's the
5 problem that I have with the electronic documents.
6 MR. RAGSDALE: And that's the problem I
7 have with this Court entering an order that says
8 you've got to object before trial so that we're put
9 on notice that we've got to apparently bring a
10 computer expert from Dallas that says that's the
11 electronic data that's stored on there. It hasn't
12 been tampered with, it hasn't been changed. No
13 objection gets made to that, and then now he wants
14 to put us to the proof of trying to prove the
15 document is in fact accurate coming from the
16 computer. It's a demand letter. It's not like
17 it's a secret formula. It's a demand letter.
18 MR. WOOTEN: Again, Judge, the problem
19 with the software system employed is the software
20 system is capable of being manipulated at any given
21 point.
22 THE COURT: Well, I guess anything is.
23 MR. WOOTEN: Sure. And so I think it's
24 another one of those issues that as you hear the
25 cross-examination on those points or as you hear a

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1 voir dire on those issues, ultimately you make a
2 ruling at that point, and we're okay with
3 conducting it as a voir dire of their witness about
4 those issues.
5 THE COURT: Well, he doesn't want to have
6 to bring a computer man here from out of state to
7 say that these are our records. You're not going
8 to insist on that, are you?
9 MR. WOOTEN: No, sir. I mean, I'm certain
10 that the gentleman is going to say I recognize the
11 records as --
12 THE COURT: He's not going to say it if
13 he's not here.
14 MR. WOOTEN: But the witness is here
15 today.
16 THE COURT: I'm sorry?
17 MR. WOOTEN: The witness is here today.
18 I'm sure he's going to say I recognize these
19 documents are printed off our system.
20 MR. RAGSDALE: Oh, definitely.
21 MR. WOOTEN: And I guess the question will
22 become, does he understand -- is he able to testify
23 to the Court in a satisfactory way about how they
24 were produced and what they are so that the Court
25 is satisfied that they're reliable.

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1 THE COURT: Well, you can certainly
2 cross-examine him about that.
3 MR. WOOTEN: And that's the issue.
4 THE COURT: All right.
5 MR. WOOTEN: Okay.
6 THE COURT: All right. Any other pretrial
7 matters?
8 MR. WOOTEN: I think that's all, Your
9 Honor.
10 THE COURT: Okay. Does anybody invoke the
11 Rule?
12 MR. RAGSDALE: We do not.
13 MR. WOOTEN: We're fine.
14 THE COURT: All right. All right. Are
15 you ready? Would you all like to give a brief
16 opening statement? I think I know what the issues
17 are, but you're welcome to.
18 MR. RAGSDALE: You know how I feel about
19 the sound of my own voice.
20 THE COURT: I know. That's what I'm
21 afraid of.
22 MR. RAGSDALE: I will be brief.
23 Mr. Daugherty here may be a little longer. He's
24 going to give you the actual facts.
25 Judge, obviously this is a -- it may not appear

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1 to be, but it's a simple ejectment action in which
2 U.S. Bank, acting as trustee, having foreclosed on
3 Ms. Congress's --
4 THE COURT: Barry, hold on just a moment,
5 if you would.
6 MR. RAGSDALE: Sure.
7 (Off the record.)
8 THE COURT: All right. Go ahead. We'll
9 do it the old way.
10 MR. RAGSDALE: Okay. Fair enough. I'll
11 use small words.
12 THE COURT: Thank you.
13 MR. RAGSDALE: An ejectment action in
14 which the prima facie case of U.S. Bank is not in
15 dispute. Ms. Congress, as we sit here today, has
16 not made a mortgage payment in about two years to
17 anybody. In addition, both at the previous trial
18 and at this trial, there is a certified stipulated
19 copy of the foreclosure deed, a demand for
20 possession, and obviously Ms. Congress --
21 Is Ms. Congress here, by the way?
22 MR. WOOTEN: If she's not sitting out
23 there --
24 THE COURT: What?
25 MR. WOOTEN: She was on her way in

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1 earlier. I don't know if she's in the crowd yet or
2 not.
3 MR. RAGSDALE: Obviously Ms. Congress --
4 we would not be here in she was not refusing to
5 surrender possession of the property. So the prima
6 facie case that we are required to make under
7 Alabama law is not only established and stipulated
8 to based on the certified copies of the records, et
9 cetera. So what we then come to is what are the
10 defenses that Ms. Congress has raised?
11 In the previous proceedings she raised
12 questions about service of process. She raised
13 questions about whether she, in fact, received
14 notices, and also, questions about whether or not
15 she had been falsely told that there would be no
16 foreclosure. I don't know whether we're going to
17 have these issues. Again, this Court found those
18 matters to be lacking in the first trial.
19 We then faced post-trial motions which new
20 arguments got raised. And those arguments are
21 technical arguments that do not have anything to do
22 with -- obviously, whether Ms. Congress made her
23 mortgage payments or whether or not she in fact
24 entered into a mortgage with promise to make
25 payments. Those are all, as I said, not in

1 a party to the pooling and service agreement. Both
2 New York and Alabama law provide that you have to
3 be either a party or an intended third-party
4 beneficiary to rely upon contractual provisions, to
5 make claim for raised defenses. She does not,
6 frankly, have the standing to raise issues dealing
7 with the pooling and service agreement under both
8 New York and Alabama law.
9 I would say that this case is governed, Judge,
10 exclusively by Alabama law with one tiny exception
11 that the defendant's have raised. They contend
12 that the pooling and service agreement has a choice
13 of law provision, which it does, that says it will
14 be construed according to New York law. That is
15 the only place that New York law has any place, if,
16 in fact, the Court concludes that it will consider
17 the pooling and service agreement is somehow
18 restricting actions that are taken.
19 More importantly, Judge, they're wrong about
20 that. The note -- Ms. Congress's note was, in
21 fact, deposited and delivered to the trust by the
22 day required in the trust. And we know this,
23 interestingly enough, by evidence introduced and
24 will be introduced by the defendant. The pooling
25 and servicing agreement and its attachments

1 dispute.
2 What has been raised by Ms. Congress through
3 her counsel are arguments that seek to challenge
4 the foreclosure based on events that happened long
5 after Ms. Congress decided to take out this
6 mortgage and during the time that she was not
7 making payments. And those arguments fall into
8 essentially two categories. One argument that they
9 make is that the trust that U.S. Bank is acting as
10 trustee for, does not own the note that she signed.
11 And again, there is no dispute that she signed the
12 note and promised to pay. But the argument is that
13 the Trust Agreement, what you're going to have and
14 you've probably already seen and gone through, is
15 what's called a pooling and service agreement.
16 You've had part of it. You're probably going to
17 get all of it. It's a big monster document that
18 has a lot of attachments to it.
19 And their argument in that case is that it
20 requires that the note be deposited or delivered to
21 the trust by a date certain in 2007. And their
22 argument is that the note was not properly assigned
23 or delivered to the trust by that date.
24 Now, we respond to that in a number of forms.
25 One of which is that Ms. Congress obviously is not

1 expressly say that Ms. Congress's note was, in
2 fact, deposited and delivered by the date required
3 under the pooling and service agreement. That's
4 what it says.
5 In addition to that, they have challenged
6 whether or not it was properly assigned, whether
7 the note was properly assigned. And this is the
8 argument we just spoke about that got raised for
9 the first time in their supplement to their
10 post-trial motions in March. And when they raised
11 that issue, they filed an affidavit of a gentleman
12 and lawyer from New York, who I believe is here
13 today, who says, I was surprised to see that the
14 note doesn't have any assignments to the trust.
15 When we got that affidavit, we made sure and
16 tracked down the original note and we have the sure
17 enough original, Judge, the blue ink signed by
18 Ms. Congress, initialed by her, all of that. We
19 requested that from the secret depository where
20 those things are kept, I'm pretty sure in a
21 mountain in Montana. And we got the original. And
22 sure enough we satisfied Mr. Adams' surprise
23 because affixed to it is what's called an allonge
24 that has all of the assignments that he says should
25 have been on there, and they are all on there,

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1 including the final assignment which assigns it to
2 U.S. Bank Trust.

3 And again, there is evidence that is going to
4 be presented by the defendant that says it was
5 deposited in a timely fashion. So their objection
6 to the assignments, we believe, is satisfied by a
7 document that has been produced, which is the
8 assignment to the adjustable rate note. The
9 objection of the timing is satisfied by their own
10 evidence.

11 We would also, importantly, I think, point out
12 that it is not our burden in an ejectment action to
13 prove compliance with the pooling and servicing
14 agreement. It is not our burden to prove that the
15 trust provisions were expressly and specifically
16 complied with. It is their burden to prove that
17 they weren't. And we do not believe there will be
18 any evidence provided to you at this trial that the
19 provisions of the trust agreement, the pooling and
20 servicing agreement were not complied with, and
21 that is their burden. They make one argument to
22 try to satisfy that burden.

23 Before the foreclosure sale in this case, an
24 assignment of mortgage was filed with the probate
25 court. This will be introduced into evidence as

1 well. It was signed by my law partner, Colleen
2 McCullough, who is here today and will testify in
3 this case. And she signed it, by the way, in her
4 capacity as an assistant secretary and vice
5 president of a company called MERS. MERS
6 designated, through an agreement that's also in
7 evidence and attached and filed in the probate
8 court. MERS designated Ms. McCullough as someone
9 who could sign assignments of mortgage on their
10 behalf. There is an agreement, by which, I think,
11 three or four of my law partners have been
12 designated as authorized people to sign on behalf
13 of MERS. She signed that and filed it. Its sole
14 purpose, we believe the testimony is going to show,
15 is for the title insurance. It's to make sure that
16 any interest that MERS might have had -- and as you
17 may recall, this mortgage, when it was originally
18 signed by Ms. Congress, the mortgagee in that is
19 MERS. You may hear some testimony, you may have
20 already heard some testimony about MERS.

21 But once the foreclosure starts to proceed and
22 prior to foreclosure sale, it is common practice
23 for an assignment of mortgage to be executed which
24 transfers any interest that MERS might have to
25 U.S. Bank. And that is what this assignment of

1 mortgage does.

2 Now, the defendant is engaging in some clever
3 sophistry. In this note -- or excuse me -- in this
4 assignment of mortgage, the word "note" appears.
5 It says in here that the mortgage is assigned.
6 And, of course, we will point out that it's
7 entitled "assignment of mortgage." But in there it
8 makes reference to the fact that MERS is assigning
9 all of its interest. It assigns the mortgage, any
10 note and indebtedness together therewith.

11 The defendant's contend that that means that
12 the note was transferred in June of -- excuse me --
13 July of 2008. They are the only people in this
14 trial or in the world, that I know of, that make
15 that contention.

16 It is interesting, though, that that is the
17 classic straw man that you're going to hear. Their
18 argument is we argue that the note was transferred
19 in July of 2008. They then say, because you make
20 that argument, you lose because it can't be
21 transferred in July of 2008. The note has to be
22 deposited in 2007. The big problem with that is
23 we've never made the argument that this is the
24 assignment of the note. Never, not once.
25 Ms. McCullough is going to testify that this is a

1 form that is intended only for purposes of
2 certificate -- I mean, for title insurance. That's
3 the only function that it serves. It is not an
4 assignment. The testimony at the prior trial was
5 that the note would have been assigned long before
6 that. The testimony at this trial will be, the
7 note was assigned long before that. So as a
8 consequence, these technical defenses, which again,
9 have nothing to do with whether Ms. Congress is in
10 default. These technical defenses don't get them
11 to where they want to be. They don't satisfy their
12 burden to show that the foreclosure was somehow
13 wrongful. They don't satisfy their burden of
14 raising a defense to U.S. Bank's ability to
15 foreclose or to eject Ms. Congress in this case.

16 We believe that the evidence, when it is all
17 presented, will establish that U.S. Bank has
18 satisfied the prima facie requirements for an
19 ejectment proceeding and that they cannot carry
20 their burden of raising these affirmative defenses
21 for which they must stand responsible.

22 That's all I have to say unless Mr. Daugherty
23 wants to add something, which he probably does.

24 MR. DAUGHERTY: Your Honor, the only thing
25 I would add to that is that we plan to introduce,

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1 when we begin our case in chief, copies of the	1 fill holes in cases once the problem of ownership
2 certified documents, which Your Honor has already	2 is established.
3 seen and stipulated to exhibits to establish our	3 It's quite disingenuous, Your Honor, to come to
4 case in chief in this matter. We will not be	4 your court and say six months ago that we have a
5 introducing evidence at this time with regard to	5 true and correct copy of the promissory note --
6 their claims, their affirmative defenses, which	6 MR. RAGSDALE: Your Honor, I'm going to
7 they carry the burden to plead and to prove.	7 have to object to this. If he's talking about me,
8 They've misnamed it a wrongful foreclosure. A	8 I'd like for him to say it.
9 wrongful foreclosure under the law in the state of	9 MR. WOOTEN: No, sir.
10 Alabama is a foreclosure that's conducted for an	10 THE COURT: He's not talking about you.
11 improper purpose. At best they have alleged a	11 MR. WOOTEN: I'm not talking about Barry
12 defective foreclosure which attacks the element of	12 personally. I'm talking about the evidence in the
13 the ejection which is good title. We show legal	13 prior case.
14 title by the foreclosure deed. They're trying to	14 MR. RAGSDALE: Okay.
15 go behind that and attack it by alleging a	15 THE COURT: All right.
16 defective foreclosure.	16 MR. WOOTEN: The issue being that we come
17 And Your Honor, we'll introduce that evidence	17 to a prior trial that Barry was not even involved
18 immediately when we begin our case in chief.	18 in, I was not even involved in. But the Court's
19 THE COURT: Okay. Thank you.	19 given a promissory note and it says, this is a true
20 All right. Any response, Mr. Wooten?	20 and correct copy of the promissory note.
21 MR. WOOTEN: Thank you, Your Honor.	21 The testimony you're going to hear today is is
22 Appreciate your patience and your indulgence.	22 that if this trust had been the owner of this
23 THE COURT: Well, you've seen no evidence	23 promissory note and it had been through the
24 of that so far.	24 securitization process, that it would have been
25 MR. WOOTEN: Well, I have been pleased to	25 impossible for the Court to receive a different
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1 be in your court before, so I know that you	1 copy of the promissory note today. Impossible. No
2 sometimes suffer a fool to make a comment, so I	2 way.
3 appreciate that.	3 You're also going to hear a rebuttal witness to
4 Judge, there are two principles that you are	4 the allonge document who's going to tell the Court
5 going to hear repeatedly in this case from our side	5 that in the process of looking at the document for
6 of this room. One is that this trust has never	6 purposes of rebuttal, he was able to see that the
7 owned this loan. The second is is that this trust	7 signature on the allonge of one of the alleged
8 can never own this loan.	8 officers was digitally altered to fit in the space
9 When the issue of the allonge came up, I	9 on the allonge, and that the document is a complete
10 honestly can't tell the Court I was surprised.	10 digital fabrication, it can be done by any
11 I've been doing this for three years and every time	11 reasonable skilled computer person in a matter of
12 I have not had a defendant sworn twelve ways from	12 moments. In fact, I think you might hear him say
13 Sunday and put in spinning toehold about their	13 something to the effect of I can take the oldest
14 chain of title. It always changes. And in other	14 Microsoft art program that exist and make this
15 hearings before the Court we've had other	15 document in ten minutes.
16 affidavits entered about notes that were not	16 The problem, Your Honor, is not technical. The
17 endorsed and then suddenly notes appear with	17 problem is a problem with integrity of the
18 endorsements. Or we've had incomplete change of	18 structured finance markets of this country.
19 title, and suddenly allonges appear.	19 During the last century what we've had is a
20 The allonge will be a pretty central issue in	20 situation where lending has been out of control.
21 this case, Your Honor. You're going to hear some	21 And the parties to the lendings through the
22 testimony about these issues, and I think at the	22 securitization process have made incredible fees,
23 end of the day the Court's eyes are going to be	23 incredible profits, with a goal of removing their
24 opened about the degree and the severity of the	24 liability in origination by making themselves
25 after the fact production of documents to try to	25 remote down the line.

7 (Pages 25 to 28)

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1 So we file a three-hundred page trust document,
2 on average. This one is much smaller. And we say
3 they made all these transfers, and they occurred by
4 a date certain, and for that reason we are allowed
5 certain special tax treatments because we have
6 strictly complied with requirements that exist.
7 And you're going to hear Mr. Adams, he's going to
8 take the stand and he's going to tell Your Honor,
9 these aren't loosely entered into these agreements.
10 These are documents that were long in existence,
11 variations, starting in the late 80s when the REMIC
12 provisions were added to the IRS Tax Code, and that
13 each of these transfers are considered sales that
14 are basically sacrosanct. In other words,
15 ownership is absolute.
16 Now, you're also going to hear that the reason
17 that the necessity of having --
18 THE COURT: Excuse me a second.
19 MR. WOOTEN: Certainly.
20 (Off the record.)
21 THE COURT: All right. Go ahead,
22 Mr. Wooten.
23 MR. WOOTEN: I'm sorry, Your Honor. As I
24 was saying, this --
25 THE COURT: Each one of these is a sale

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1 you were saying?
2 MR. WOOTEN: Yes.
3 THE COURT: All right.
4 MR. WOOTEN: And there are going to be
5 some other interesting sidelights in this case that
6 you'll be able to glean because we have experts
7 here and because you actually have someone whose
8 company is a participant in this transaction.
9 Mr. Adams' employer at the time of this
10 transaction wrote bond insurance on this
11 transaction. So in addition to having industry
12 knowledge, he has firsthand knowledge. What you're
13 going to hear, the cutoff date of this trust is
14 February 1st, 2007. The closing date, the date the
15 drop dead date, if you will, by which the assets
16 must have been conveyed to the trust, March 12th,
17 2007.
18 What's interesting about this particular
19 transaction, Judge -- well, a couple of things.
20 One, there are seventeen series trust that involved
21 these parties. Seventeen. But this party,
22 Mortgage Lenders Network was in financial trouble
23 all through the end of 2006, they filed bankruptcy
24 in early 2007, February 5th, 2007. And what you're
25 going to hear is testimony that the representation

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1 is being made were that these parties, who had
2 provided financing to this originator were peeking
3 through the loans and securitizing what was left as
4 this company is going out.
5 And so the parties were saying, we have a
6 heightened sense that we've got to do everything
7 right because this party is in bankruptcy, or
8 nearly, and they file before this deal was
9 complete.
10 And so the parties were telling all the
11 counterparties to this agreement, credit, default,
12 swap, administrators, certificate insurers,
13 everyone else, we're doing everything right guys
14 because this company is in bankruptcy and if the
15 trustee comes in, they can do something called
16 substantive consolidation, where they suck all the
17 assets back out into the bankruptcy stuff.
18 So in this transaction in particular, they will
19 be dotting every "I" and crossing every "T." They
20 wouldn't let anything go because we've got to make
21 sure to make this bankruptcy remote because we
22 don't want these assets pulled back down here.
23 In the documents you will see that in these
24 series trust, the documents and the parties are
25 nearly identical except for the dates. And so you

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1 will see different trust names of these previous
2 players. A, B, C, and D were all the same. What
3 changes is the trust. What doesn't change is the
4 trustee. Because we've already addressed the issue
5 of allonge, let me just say this, Your Honor: The
6 last endorsement that they intend to rely on today
7 is U.S. Bank as trustee. It doesn't say U.S. Bank
8 as trustee for this trust.
9 You're going to hear testimony that says the
10 specificity required to convey to this trust is not
11 met by the documents they intend to offer. Even if
12 you consider as valid documents and admit them into
13 evidence in this case, they do not convey to this
14 trust. Never owned it. Never can own it.
15 Why do I keep saying "never can?" The last
16 time I tried this case, Judge, in Ohio on this
17 issue, I got to court that day, and we had
18 eliminated all these arguments. So my opposing
19 counsel in that case showed up that day with the
20 original promissory note endorsed in blank and
21 said --
22 MR. RAGSDALE: Judge, I assume we're going
23 to have evidence of this case in Ohio?
24 MR. WOOTEN: This is argument, Judge.
25 MR. RAGSDALE: Oh, I thought it was

8 (Pages 29 to 32)

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1 opening statement.
2 THE COURT: Go ahead. Overrule.
3 MR. WOOTEN: -- showed up with the
4 original promissory note. It said, endorsed in
5 blank. And the Court said, you need to tell me why
6 they can't show up with this blank endorsed note
7 and enforce it? So I have spent three years
8 litigating this issue and researching this issue.
9 And the reason, the answer to that question, why
10 can't they walk in the back door now having messed
11 up everything in the front door? Having set up a
12 bomb and blown up everything they were supposed to
13 do, why can we not walk in the back door and fix it
14 with just a blank endorsement? And that's an
15 argument you've heard. We've got a blank
16 endorsement. The reason being, if the trust does
17 not convey the asset by this date under the terms
18 of the trust, it cannot acquire any other assets,
19 period, paragraph. In an attempt to acquire the
20 asset after that point under New York law is a void
21 act.
22 One of the issues that we fought, Judge, is
23 this issue of our experts and their qualifications,
24 and I'm sure we'll have a battle when
25 Professor Bloom gets here. There have been several

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1 Motions to Strike Professor Bloom's testimony, Tom
2 Adams' testimony. And one of the issues have been
3 their status as experts. Professor Bloom's status
4 is an expert in foreign law. Mr. Adams has never
5 been offered as an expert of law. He's been
6 offered as an industry participant expert.
7 But with respect to Professor Bloom, they filed
8 another objection, to which we will argue later.
9 But when I went back and looked at that objection,
10 I asked somebody a lot smarter than me, and I found
11 a case, D.S. versus Chapman, which cited back to
12 the rules of procedure in some older cases which
13 said: If you put forward an issue of foreign law,
14 the best practice is to prove the issue of foreign
15 law by expert testimony.
16 So we will enter a memo into the record when we
17 argue that point during the trial, Judge. But we
18 expect to qualify Professor Bloom as an expert on
19 hypotheticals, but also as an expert on New York
20 law based on those cases.
21 When the evidence is over, Your Honor, what
22 you're going to be left the impression with is
23 there having been caught with their hand in the
24 cookie jar. Rather than fess up and take a slap on
25 the wrist, someone decided to make up a story and

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1 try to find one more way to get their hand out of
2 the cookie jar without getting a spanking.
3 What you ultimately choose to do with that
4 testimony and evidence is absolutely the Court's
5 province and it's a very difficult position for me
6 to be in. But the fact of the matter is that you
7 will be left with the inescapable conclusion that
8 and the documents they intend to offer as proof of
9 ownership could not possibly have been created
10 until after the objections were raised by our
11 experts.
12 And if that is the case, Your Honor, the
13 plaintiff is going to offer you evidence that has
14 proved extrinsically of an attempt to put fraud on
15 this Court. But the evidence that is admissible,
16 and the evidence the Court will consider, and the
17 evidence in the case will prove beyond all doubt,
18 not some doubt, all doubt, that this trust has
19 never owned this loan and can never own this loan.
20 Thank you.
21 THE COURT: All right. Thank you, sir.
22 MR. LAY: Judge, and before they give
23 their rebuttal over there, I want to say a couple
24 of things.
25 THE COURT: What?

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1 MR. LAY: Before they respond, can I say a
2 couple of things?
3 THE COURT: Yeah, but we're not going to
4 double team now from here on.
5 MR. LAY: Okay.
6 THE COURT: One lawyer to one witness.
7 MR. WOOTEN: Certainly.
8 THE COURT: Go ahead, Ken.
9 MR. LAY: Your Honor, the first thing I
10 wanted to say is it was raised before about the
11 previous trial, and if you go back and look at the
12 transcript, the issue of the assignment of the
13 mortgage and note was an issue. It was raised
14 before, it was raised during the trial, and it was
15 raised in the post-trial motion, as Mr. Ragsdale
16 said, but it was raised during the trial. It's
17 always been an issue in the case.
18 The second thing, Your Honor, is it's
19 interesting for them to talk about her not paying
20 the mortgage, and what have you, and they're trying
21 to make a big deal in the case. But I would want
22 Your Honor to also remember that the only person
23 that has a power -- because this is non judicial
24 foreclosure case -- the only person that has a
25 legal power of sale by a contract is the person

9 (Pages 33 to 36)

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1 listed in the mortgage. And the only way that
2 these folks get here is if they have the proper
3 assignment. And as my co-counsel stated, there's
4 lots of reasons why they don't. But if they do not
5 have a proper assignment in this case, then they
6 don't have the right to be here. So it's not like
7 they were there in the beginning. So I want to
8 make sure that that's clear to the Court. It's
9 only if they have a valid assignment do they have a
10 right in this state under statutory law to do a non
11 judicial foreclosure sale.

12 We have several cases that have come out of the
13 Court of Civil Appeals recently that talk about --
14 they want to talk about our standing to raise
15 issues. It also says in those recent cases that
16 they do not have standing to bring an ejectment
17 suit unless they have a valid foreclosure. And it
18 is a standing issue. And if they do not have
19 standing, then they're out the door first and
20 foremost.

21 So let's keep in mind that the reason that what
22 is so important in this case is the assignment of
23 the note and mortgage, is because that's the only
24 way they get here. They were not the initial party
25 in this case. So if they don't have the valid

1 assignment, then they have no right to be here.
2 And finally, Your Honor, as it's been stated
3 before, we've been served various copies throughout
4 this case of this note. And we will get to that.
5 But I also wanted to point out to the Court,
6 there's a long-standing tradition in Alabama and a
7 long line of cases that talk about if the mortgage
8 and assignment are not done or if they are split
9 off at some point, then the lien is defective.
10 It's not enforceable. So I'd like, as we go
11 through this case, to keep in mind when we're
12 talking about dates and what was transferred when,
13 and we've heard testimony, oh, documents were just
14 -- were introduced into the probate records just
15 for appearances sake or for title insurance or what
16 have you. Well, they are important, and they are
17 there for a reason, and that's because Alabama law
18 has always talked about the power of sale and who
19 has it and when it was assigned. And so as we go
20 through this, let's keep in mind that if the note
21 and the mortgage were somehow separated at some
22 point, that that may be an issue as well.

23 Thank you.
24 THE COURT: Thank you, sir. All right.
25 First witness for the plaintiff.

1 MR. DAUGHERTY: Your Honor, for our case
2 in chief, we would offer to admit a certified copy
3 of the mortgage. We're going to use the exhibits
4 from the last trial. This is going to be
5 Plaintiff's Exhibit Number 2.

6 (Whereupon, Plaintiff's Exhibit
7 Number 2 was marked for
8 identification.)

9 THE COURT: Number 2 is the mortgage.
10 All right.

11 MR. DAUGHERTY: Our second exhibit would
12 be the Foreclosure Deed, and it is also a certified
13 copy from probate records, and is also a stipulated
14 exhibit just as the mortgage was.

15 And this is Plaintiff's Exhibit Number 12.
16 (Whereupon, Plaintiff's Exhibit
17 Number 12 was marked for
18 identification.)

19 MR. LAY: Which one was that, Ryan?

20 MR. DAUGHERTY: It's the Foreclosure Deed.

21 THE COURT: The Foreclosure Deed.

22 MR. DAUGHERTY: Your Honor, the third
23 exhibit we would offer as Plaintiff's Exhibit
24 Number 14. It is the Demand for Possession. It is
25 a letter demanding possession of the property after

1 the foreclosure which was sent to Ms. Congress at
2 the address stated in the mortgage. And it is a
3 stipulated exhibit.

4 (Whereupon, Plaintiff's Exhibit
5 Number 14 was marked for
6 identification.)

7 (Whereupon, Plaintiff's Exhibit
8 Numbers 2, 12 and 14 were received
9 into evidence.)

10 MR. DAUGHERTY: Your Honor, under the
11 pertinent cases and Alabama Code 6-6-280, which is
12 the Alabama Ejectment Statute, Plaintiff that
13 claims legal title shows and has established all
14 that he needs to file a complaint. The Alabama
15 Supreme Court in Muller vs. Seeds, M-u-l-l-e-r,
16 it's a 2005 case, established the proper method of
17 resolving a statutory ejectment, and states that a
18 legal title is shown by the mortgage and
19 foreclosure deed, proof of the demand for and
20 refusal to deliver possession, all the necessary
21 elements of ejectment.

22 THE COURT: All right.

23 MR. DAUGHERTY: And, Your Honor, as long
24 as the defendant's stipulate that Ms. Congress
25 still occupies the property, we've established

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1 elements.
2 THE COURT: That's not in dispute, is it?
3 MR. WOOTEN: No. What's in dispute is, of
4 course, the ownership, with valid ownership.
5 THE COURT: Right. But she's in
6 possession?
7 MR. WOOTEN: That's correct.
8 THE COURT: All right.
9 MR. DAUGHERTY: Your Honor, the plaintiff
10 rests.
11 THE COURT: What do we have for the
12 defendant?
13 MR. WOOTEN: Your Honor, we would call
14 Bill Haughton, the representative of GMAC to be
15 disclosed as their witness today.
16 MR. RAGSDALE: You told us you were going
17 to call Colleen first, did you not?
18 MR. WOOTEN: Well, I'll call Colleen
19 first. That's fine.
20 MR. RAGSDALE: Since we got her here.
21 MR. WOOTEN: Sure. That's not a problem,
22 Judge.
23 THE COURT: All right. Come up, please.
24 COLLEEN McCULLOUGH,
25 having first been duly sworn, was examined and

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1 testified as follows:
2 THE COURT: C-o-l-l-e-e-n?
3 THE WITNESS: M-c-C-u-l-l-o-u-g-h.
4 THE COURT: Thank you, ma'am.
5 DIRECT EXAMINATION
6 BY MR. LAY:
7 Q You have stated your name already, correct?
8 A Correct.
9 Q And where are you employed?
10 A I'm an attorney with the law firm of Sirote &
11 Permutt.
12 Q And how long have you been there?
13 A Since --
14 MR. RAGSDALE: Could you speak up a
15 little?
16 THE WITNESS: Sorry.
17 THE COURT: Pull up that other mic. Touch
18 it and see if it's working.
19 THE WITNESS: Sorry.
20 THE COURT: Where did this other one come
21 from? Let's get this out of the way. I'll tell
22 you what, they need to be on y'all's tables. Let's
23 take two minutes.
24 Alex, if you will plug those in.
25 THE COURT: And you have worked at Sirote

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1 since when?
2 THE WITNESS: August of 2006.
3 THE COURT: Thank you.
4 Q (BY MR. LAY:) And what are your duties there?
5 A Well, I'm an attorney in the mortgage banking
6 department, so I handle mortgage foreclosures,
7 title insurance, debt disputes, a variety of things
8 that go into that department.
9 Q Okay. And are you familiar with this case?
10 A I am.
11 Q And what was your role for Sirote in this case?
12 If you can start from the beginning.
13 A Well, I was the attorney that handled the
14 foreclosure sale, meaning I received a referral and
15 I worked with several individuals, and we processed
16 the foreclosure. We sent notice of acceleration.
17 We sent advertisements to run in the newspaper, and
18 ultimately an auction at the courthouse and a
19 foreclosure sale.
20 Q Okay. In this particular case, is it true that
21 you were basically in charge of this particular
22 file from the moment that it was referred until
23 there was a foreclosure deed?
24 A Along with my team, yes. I was the attorney of
25 record.

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1 Q And can you tell us what you mean by "your
2 team" and how that works? Are you their supervisor
3 or --
4 A Well, we have managers within our firm to
5 manage our support staff. But, yes, I'm the
6 attorney that they report to.
7 Q Okay. So ultimately you are the attorney in
8 charge of the process?
9 A Correct.
10 Q And you were that person in this case?
11 A Correct.
12 Q Now, how did you get --
13 Well, let me back up. How does a foreclosure
14 case begin for you?
15 A Well, it depends on the client.
16 Q And who was the client in this particular case?
17 A It was referred by Homecomings Financial which
18 is now GMAC, LLC.
19 THE COURT: I didn't understand you.
20 A Homecomings Financial, now GMAC Mortgage.
21 Q Okay. And is that the client?
22 A It is a client of mine, yes.
23 Q And when you were referred this case by
24 Homecomings, what documents would you have been
25 sent?

11 (Pages 41 to 44)

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1 A I didn't look at the referral in this case
2 prior to today, so I'm not sure what was included
3 in the referral.
4 Q What about a typical?
5 A Each one is different. Typically we'll get
6 instructions from the client that, you know,
7 indicates the default. It provides the payoff
8 figure for the acceleration letter, as well as
9 usually a copy of the mortgage, and then the
10 instructions on the entity in which title is to be
11 vested. In other words, the true holder of the
12 note.
13 Q Okay. And do you know when the referral was
14 made in this case?
15 A I do not.
16 Q How long before a foreclosure sale is a
17 referral normally made?
18 A Well, you know, state law provides how many
19 times a publication has to run. I would say on
20 average forty-five days.
21 Q I'm going to show you --
22 MR. LAY: Judge, we also, from a previous
23 exhibit -- this was Plaintiff's Exhibit 13 in the
24 previous trial. There is a stipulation by the
25 parties that that be introduced again.

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1 THE COURT: All right. It's in as
2 Plaintiff's 13.
3 (Whereupon, Plaintiff's Exhibit
4 Number 13 was marked and received
5 into evidence.)
6 THE COURT: And what is it?
7 MR. LAY: It's the assignment of the
8 mortgage. It's filed with the Probate Court in
9 this case.
10 Q (BY MR. LAY:) Could you take a look at that
11 document that's been marked as 13? Tell the Court
12 what that is, please.
13 A It's the assignment of the mortgage that was
14 prepared by my office.
15 Q Okay. And does it have your name on the
16 document?
17 A It does.
18 Q Okay. And tell us about how you prepared that
19 document.
20 A Well, it was prepared by a member of my staff
21 for my signature.
22 Q So you don't personally prepare them?
23 A It's under my direction, my supervision.
24 Q So if someone brings you a stack of documents
25 and you review them and if they're appropriate you

1 would sign them; would that be a correct --
2 A Well, they're reviewed before they're given to
3 me, and then I do a final review, yes.
4 Q And what did that review include in this case?
5 A I don't remember signing this particular
6 document, so I couldn't tell you.
7 Q Well, what would your review normally entail?
8 A Well, I confirm that it's been reviewed. It's
9 gone through the normal practices and procedures
10 and they're reviewed by someone on my staff. And
11 then I will make sure that there's applicable Power
12 of Attorney, the correct Power of Attorney
13 attached. In this case, the agreement for signing
14 authority, and that the information is filled out
15 within the body of the document.
16 Q Okay. And I believe that particular document
17 is notarized; is that correct?
18 A That's correct.
19 Q And who notarized it for you? Is that somebody
20 on your staff?
21 A It is. Candace Rause.
22 Q And there are some attachments to that document
23 as well. If you will flip over. What is the first
24 attachment to Exhibit 13?
25 A It's an Agreement for Signing Authority between

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1 MERS, my client, Homecomings, and my law firm.
2 Q Okay. And tell the Court about that.
3 A Well, to describe it to a lay person, I would
4 say it's basically a Power of Attorney that allows
5 my firm to sign assignments out of Mortgage
6 Electronic Registration Systems, Inc.
7 Q Okay. And who gave you that authority?
8 A MERS and Homecomings.
9 Q And who signed off on it for those parties?
10 A It's not incredibly legible, but I believe
11 Sharon Horsecamp, Bill Haughton. I'm not sure.
12 I'm not familiar with him. And Bernie Smith at
13 Homecomings.
14 Q Okay. And is this a document that you use in
15 other cases, these assigning authority, as you
16 called it?
17 A I no longer use this particular signing
18 authority because Homecomings Financial is no
19 longer in existence.
20 Q Right. I understand.
21 A But, yes.
22 Q It's a form -- that's a form document that you
23 used?
24 A There is only one copy of this. No, it's not a
25 form document. The assignment is a form document.

12 (Pages 45 to 48)

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1 This agreement for signing authority is not.
2 Q But you have other agreements with other
3 companies that are similar?
4 A That's correct.
5 Q Tell us -- I'm going to show you what we've
6 marked Exhibit 2, which has been stipulated to.
7 MR. RAGSDALE: What is it?
8 MR. LAY: The mortgage.
9 Q Do you recognize that?
10 THE COURT: That's the mortgage? Yeah.
11 A I've seen it before, yes.
12 Q And in this case, the mortgage is between Erica
13 Congress and MERS; is that correct?
14 A MERS solely as nominee for Mortgage Lenders
15 Network, USA, Inc.
16 Q Okay. And is that why -- well, tell us how we
17 get from that point to the signing authority you
18 have? Why did you need signing authority in this
19 case?
20 A Well, when we pull the title records in the
21 probate office of Jefferson County, the mortgage
22 had not been assigned into the entity in which I
23 was instructed to vest title. For title insurance
24 purposes, an assignment of mortgage was therefore
25 prepared and placed of record.

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1 Q Okay. So your testimony to the Court as to
2 when you pulled the records for this case to do the
3 foreclosure, you could find no assignment in the
4 records?
5 A In the probate records of Jefferson County
6 there was no assignment.
7 Q And what did you do at that point?
8 Well, let me back up. Do you know when that
9 was?
10 A I do not.
11 Q Well, if we have a document where you did an
12 assignment dated -- could you go back to Exhibit
13 13?
14 A Yes, sir.
15 Q What is the date of that assignment?
16 A It's dated July 29th, 2008.
17 Q And does that help you with the time frame. I
18 mean, if you did the assignment on that date, when
19 would you have been looking in the records to find
20 the assignment?
21 A Jefferson County is a little bit behind in the
22 probate records. I couldn't tell you when that
23 date -- it probably would have been some day in
24 May. It's a guess. May of 2008.
25 Q So maybe a couple of months before you actually

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1 did the assignment?
2 A Is when the effective date would have been --
3 go through. We had likely received the title
4 report in July, and it would have been good through
5 a date in May.
6 Q Okay. And when you say you received the title
7 report, could you explain that?
8 A We utilized the title abstractors to review the
9 title, the probate records, and they provide us
10 copies of all the documents of record.
11 Q So you got a report stating there was a problem
12 with this case and that there was no assignment of
13 record?
14 A That's incorrect. No. They gave me a copy of
15 her mortgage. There were no applicable assignment
16 attached, at which point I made the decision that
17 an assignment was needed.
18 Q Well, you wouldn't have done an assignment if
19 you didn't feel it was necessary, would you?
20 A No. But you asked me if there was a report
21 that indicated there was a problem and that's not
22 the case.
23 Q Well, what does the report indicate?
24 A It indicates that there was a mortgage from
25 Erica Congress to MERS Economy for Mortgage Lenders

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1 Network U.S.A., Inc..
2 Q Okay. So it wasn't in the -- the records would
3 not reflect a proper -- that your client had the
4 proper authority to conduct a foreclosure?
5 MR. RAGSDALE: Object to the form.
6 THE COURT: There was no assignment.
7 Isn't that what you --
8 THE WITNESS: That's correct.
9 THE COURT: All right. Let's move on.
10 Q And what does the assignment that you prepared
11 say?
12 A It says that Mortgage Electronic Registration
13 Systems, Inc, does hereby transfer, assigns,
14 conveys onto U.S. Bank as trustee, all rights,
15 title, interest of the assigned order --
16 Q Okay.
17 A -- to that certain mortgage.
18 Q And it talks about assigning the mortgage and
19 the indebtedness thereon; is that correct?
20 A Yes. The note and the indebtedness secured,
21 yes.
22 Q And you, again say, that it was done on
23 July 26th, 2008?
24 A July 29th.
25 Q 29th. And when was that recorded in the

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1 probate record?
2 A August 20th, 2008.
3 Q All right. Now, and I also show you what we
4 have as Exhibit 12. Do you recognize that?
5 A I do. It's a foreclosure deed.
6 Q Did you prepare that or did a member of your
7 staff prepare that?
8 A It was prepared under my supervision.
9 Q And when was that done?
10 A I anticipate it was done on August 12th, 2008.
11 Q Okay. And when was it recorded?
12 A August 20th, 2008.
13 Q And was that recorded at the same time as the
14 assignment?
15 A The assignment was recorded a minute before.
16 Q Okay. So why would it have been done a minute
17 before?
18 A For title insurance purposes, the assignment
19 needed to be recorded before the foreclosure deed
20 to effectuate the chain of title.
21 Q Okay. So you did them the same day and you
22 handed them that document first, and then as soon
23 as it was stamped in you handed them a foreclosure
24 deed; is that accurate?
25 A No. I didn't hand them anything. They were

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1 not prepared the same date. We mailed them or sent
2 them with a runner.
3 Q Let me rephrase. I believe what I was asking
4 was, did you or a member of your staff file these
5 in on the same date?
6 A Correct.
7 Q And the assignment was dated a minute before?
8 A No. The assignment was dated July 29th, 2008.
9 Q I'm -- Ma'am --
10 MR. RAGSDALE: You have to ask the
11 question to get the right answer.
12 A It was recorded --
13 MR. LAY: Thank you, Barry. I don't need
14 your help.
15 THE COURT: All right. None of that. I
16 think I understand what's happening. Let's move
17 on.
18 MR. LAY: All right.
19 Q (BY MR. LAY:) What is the last page of the
20 document?
21 A It's a list of certifying officers from
22 Mortgage Electronic Registration Systems, Inc.
23 Excuse me.
24 Q Okay. And do you work for Mortgage Electronic
25 Registration Systems?

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1 A I do not.
2 Q Have you ever worked for them?
3 A No.
4 Q Do you currently have signing authority for
5 them?
6 A With respect to whom?
7 Q Any mortgages?
8 A I do.
9 Q So if I'm understanding correctly, you did the
10 assignment of the mortgage and the indebtedness
11 thereon in this case, and you also conducted the
12 foreclosure sale, and you also prepared the deed?
13 A Well, the assignment of mortgage was simply
14 that, an assignment of mortgage, not indebtedness.
15 But, yes, I prepared all of the documents in
16 question.
17 Q Does the document state that it was an
18 assignment of the indebtedness as well as the
19 assignment of the mortgage?
20 A It does. And it was intended to convey any
21 interest that MERS had in the property and the note
22 and mortgage. The mortgage itself. I'm sorry.
23 Not the note.
24 Q Now, why -- when was the indebtedness on this
25 mortgage transferred?

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1 A I'm not privy to that information right now.
2 Q And, in fact, at your deposition before, you
3 said you didn't know anything about that; is that
4 correct?
5 A I don't have that information. That's correct.
6 Q So the only information you have is that you
7 assigned the note and the indebtedness thereon and
8 the mortgage on July 29th, 2008?
9 A I signed the assignment of mortgage on that
10 date.
11 Q Did you sign a document stating that you were
12 assigning the mortgage as well as the indebtedness
13 thereon and the note?
14 A That's what this form document says. Correct.
15 Q And according to your testimony, you had the
16 authority to do that?
17 A I do, based on the agreement attached to the
18 assignment of mortgage.
19 Q And there's nothing in the document that
20 indicates any kind of previous assignment or
21 anything else or references anything else?
22 A Which document?
23 Q The assignment that you filed with the Probate
24 Court.
25 A No, because it's simply reflecting the probate

14 (Pages 53 to 56)

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1 record for that mortgagee of record which was MERS.
2 Q You also stated at your deposition, did you
3 not, that you had no information about the
4 securitization documents in this case?
5 A That's correct.
6 Q You've never seen them before?
7 A I haven't.
8 Q And when you stated earlier that -- about the
9 referral that you got, none of that was sent to
10 you?
11 MR. RAGSDALE: What's that?
12 Q Were any securitization documents sent to you
13 when the case was referred to you from your client?
14 A I've never received those before, so I don't
15 anticipate that I did in this case either.
16 Q And you don't recall there being an issue?
17 A No. You're talking about the time of the
18 foreclosure sale?
19 Q Right.
20 A No, not that I recall.
21 Q And did you make any inquiry to your client
22 about any of those issues?
23 MR. RAGSDALE: Objection, Your Honor. I
24 assume you're talking about prior to the
25 foreclosure?

1 A The information likely included with the
2 referral. It typically is.
3 Q Well, but I thought you just said earlier that
4 you didn't know anything about the securitization?
5 A You asked if I had seen the pooling and
6 servicing agreement. No, I haven't. I don't get
7 any information on that.
8 Q Well, how did you know that they might be
9 involved?
10 A Well, I just had their name, but I didn't have
11 any documentation to back up that pooling and
12 servicing agreement. I don't receive the, you
13 know, voluminous documents for each referral.
14 Q So who would have given you their name?
15 A Homecomings.
16 Q So Homecomings gave you their name and you had
17 nothing to support that, but you went forward with
18 it?
19 A I relied on my client's representation.
20 Q Well, you're stating that you rely on your
21 client's representations. But you also did an
22 assignment in this case which was notarized.
23 A Right.
24 Q But you didn't check to see if anything in the
25 assignment was accurate?

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1 MR. LAY: Yes.
2 A No. All attorneys rely on my client's
3 representation.
4 THE COURT: You what?
5 THE WITNESS: Rely on our client's
6 representation as to the correct --
7 Q And your client was Homecomings at the time?
8 A GMAC, Homecomings merged in the summer of 2008,
9 I believe, or maybe a little earlier 2008. So I
10 believe Homecomings, yes. It could have been GMAC
11 at the time the sale took place.
12 Q So either Homecomings or GMAC, whichever it was
13 at the time?
14 A Correct.
15 Q The servicer at the time that the referral was
16 sent over to you was actually the person that
17 Ms. Congress would have been dealing with would
18 have been Homecomings; is that correct?
19 A I believe so, yes.
20 Q And when did you know that U.S. Bank was a
21 party in this case?
22 A I took it that --
23 Q Or might be a party to this case?
24 A In the foreclosure?
25 Q Yes.

1 A The assignment was checked to be sure that it
2 accurately describes the mortgage and gave the
3 correct recording information, yes. The holder of
4 the note, U.S. Bank, NA as Trustee, was given to me
5 by my client. When I searched the probate records,
6 that was not the last appellee of record, and
7 therefore an assignment of mortgage was needed for
8 the probate records for purposes of conveying title
9 and obtaining title insurance post foreclosure,
10 yes.
11 Q So you've just relied on what they told you is
12 what you're saying?
13 A I did.
14 Q As the person -- and I understand what you're
15 saying, because of the attorney, and we do we rely
16 on our clients.
17 But my question is: Weren't you acting as a
18 different capacity when you made the assignment?
19 You were acting as an officer or assigning
20 authority of this organization.
21 A I have limited power of attorney, correct, and
22 I was acting pursuant to that corporate resolution
23 that allowed me the limited power of attorney to
24 execute the document.
25 Q Well, as that authority, don't you have certain

15 (Pages 57 to 60)

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1 obligations and responsibilities in that capacity?
2 A I have no reason to believe this information is
3 incorrect. I still have no reason to believe it's
4 incorrect. So it was true --
5 Q My question is --
6 A -- at the time --
7 Q Ms. McCullough, please. My question is, did
8 you have any obligations or responsibilities, not
9 as the lawyer, but as the signing authority to
10 check any of this out or to make sure it was
11 accurate or reliable?
12 A I did not receive any such instructions from
13 MERS, no.
14 Q Okay. What does the agreement state?
15 A The whole thing?
16 Q Yes.
17 A It says the purpose of the agreement is for
18 signing authority and it defines the rights and
19 obligations of the parties.
20 Q Rights and obligations. What are those?
21 A It doesn't define them. If you point me to the
22 -- I don't see a definition of the rights and
23 obligations. It says that all parties agree that
24 MERS is not responsible for the accuracy of any
25 information provided by member. And member is

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1 Homecomings to vendor, which is me. And that
2 problems between the two would be resolved between
3 the member and the vendor.
4 Q Who is the member and who is the vendor?
5 A Homecomings Financial was the member. The
6 vendor is Sirote & Permutt.
7 Q Do you have the power of attorney or authority
8 to prepare documents affecting title to real
9 estate?
10 A With respect to MERS?
11 Q Yes.
12 A I do in this instance, yes.
13 Q And what is that?
14 A It's the corporate resolution that was attached
15 to the assignment of mortgage recorded. It says,
16 Number 2, Paragraph 2 says I have the power to
17 execute any and all documents necessary to remove
18 MERS as titleholder of the property or non binders
19 of interest in the property.
20 Q What about for the other groups involved here
21 that we saw on the chart?
22 A I couldn't see the chart from where I was
23 sitting.
24 Q Well, how about for the person named originally
25 in the note?

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1 A From MERS, yes, I do have the power of
2 attorney.
3 Q No, for the note.
4 A Oh, the note. Sorry. I don't have a copy of
5 the note here, but I presume your referring to
6 Mortgage Lenders, which is part of the --
7 Q Yes, Mortgage Lenders Network, yes.
8 A Network. I don't have power of attorney for
9 them, no.
10 Q Let me mark this -- well --
11 MR. LAY: Judge, and this is originally
12 Plaintiff's Exhibit 1 from the previous trial.
13 We've stipulated to using it.
14 (Whereupon, Plaintiff's Exhibit
15 Number 1 was marked for
16 identification.)
17 THE COURT: All right. What is Exhibit 1?
18 MR. LAY: It's a true and certified copy
19 of an adjustable rate note.
20 THE COURT: All right.
21 MR. RAGSDALE: Judge?
22 THE COURT: Sir?
23 MR. RAGSDALE: We would object under Rule
24 106. That is an incomplete copy. And we're
25 entitled under Rule 106 to insist on the

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1 introduction of a complete copy, which is an
2 exhibit that was disclosed by the plaintiff and
3 that was stipulated to.
4 THE COURT: Well, I think he can go
5 through it in the order in which he has it.
6 Certainly that will come in. He has a right to
7 proceed in the order he thinks.
8 MR. LAY: I'm just telling you what it
9 says on the top.
10 THE COURT: All right.
11 Q (BY MR. LAY:) Go ahead. Do you recognize
12 that?
13 A I do.
14 Q Is that the note that you worked from in this
15 case?
16 A I don't recall looking at the original note.
17 Q Well -- and I don't want to get into the
18 original --
19 THE COURT: One at a time, folks.
20 Q All right.
21 A I'm sorry. I don't recall looking at a copy of
22 the note prior to the foreclosure sale. It's not
23 required under Alabama law.
24 Q Okay. So you didn't review the note?
25 A I don't recall. It's been several years.

16 (Pages 61 to 64)

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1 Q Well, is it your -- you sounded like it wasn't
2 your standard practice to do that.
3 A I don't always look at the note, no.
4 Q Then you don't know if you did in this case or
5 not?
6 A I don't know.
7 Q Okay. But you do recognize that the party
8 mentioned is the Mortgage Lenders Network?
9 A Correct.
10 Q And you don't have any signing authority or
11 have any authorization to prepare documents
12 investing real estate in their name?
13 A They're not my client. No, I don't.
14 Q What about EMAX?
15 A I'm not familiar with that, no.
16 Q RFC?
17 A Sorry. What was that?
18 Q RFC?
19 A I'm not familiar with them, no.
20 Q RAFC?
21 A I don't have power of attorney for them, no.
22 Q What about this U.S. Bank?
23 A No, I don't have power of attorney.
24 Q What about for the trust in this case?
25 A No. I didn't sign any documents for the trust.

1 servicer for this trust?
2 A I couldn't tell you for sure. I assumed that
3 they were the servicer. That U.S. Bank Trustee
4 is the servicer and Homecomings was the
5 servicer, but I couldn't say it with a hundred
6 percent accuracy.
7 Q But you don't -- you also don't have any
8 documentation or the resolution that we have there
9 that says that you can act on behalf of the trust
10 or U.S. Bank?
11 A I had a referral from GMAC or Homecomings who
12 was the servicer and the person whom payments were
13 being made.
14 Q Do you have anything showing that MERS has the
15 authority to act for the trust?
16 A No. The agreements between MERS and
17 Homecomings Financial.
18 Q Do you know if MERS was a member of the trust?
19 A I don't know.
20 Q Do you know if MERS has the right to act for
21 the trust?
22 A I do not know.
23 Q And again, I believe you stated that you did
24 not inquire into the veracity of any of the
25 documents in this case?

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1 Well, that's not true. That's supposed to be in
2 possession now under the trust name.
3 Q Do you understand that the trustee in this case
4 would have a distinct legal entity from the
5 individuals?
6 A Could you elaborate?
7 Q That the plaintiff named in this case is a
8 trust.
9 A Correct.
10 Q Right?
11 A That's correct.
12 Q Do you understand that as a trust that's
13 different from the other parties involved?
14 A When you say "other parties," are you referring
15 to MERS and Homecomings?
16 Q Like U.S. Bank and Homecomings.
17 A Oh, yes. Yes, I understand that.
18 Q And Homecomings is not the servicer for the
19 trust?
20 A They were at that time, yes. Yes, Homecomings
21 was the servicer of the note, the note and mortgage
22 on behalf of the trust. Of the trustee, I guess.
23 Yes.
24 Q Well, that's -- one of the questions is were
25 they the servicer for U.S. Bank or were they the

1 A I believe what I said was I didn't question
2 whether U.S. Bank, NA as Trustee was the holder of
3 the note. That's correct.
4 Q Well, but you also did not inquire into any of
5 the -- well, any of the documents. I believe you
6 said earlier you just relied on what they sent you
7 and what the client told you.
8 A And the probate records, correct.
9 Q Did you know that the original party to the
10 mortgage -- I mean, to the promissory note Mortgage
11 Lenders Network was in bankruptcy at the time you
12 were doing this?
13 A I did not. I learned at my deposition.
14 MR. LAY: Judge, may I have just a moment?
15 THE COURT: Yes, sir.
16 (Whereupon, Defendant's Exhibit
17 Number 1 was marked for
18 identification.)
19 Q I'm going to show you what's been marked as
20 Defendant's Exhibit 1, which is entitled a MERS
21 Procedural Manual. Have you ever seen this or a
22 copy thereof?
23 A This may be a copy of what you showed me at the
24 deposition, but otherwise, no I've not seen it.
25 Q Okay. And were you ever, when you were given

17 (Pages 65 to 68)

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1 the signing authority, were you ever given any
2 parameters or procedure manuals or what have you on
3 how you were supposed to --
4 A Well, the parameters are clearly outlined in
5 the corporate resolution. I did not receive a
6 procedure manual, no.
7 Q Could you read for us right here what the first
8 paragraph says?
9 MR. RAGSDALE: Objection, Your Honor. The
10 witness has never seen this document except when it
11 was shown at her deposition. If we're going to
12 have to authenticate everything, he needs to call
13 somebody to come authenticate that document because
14 she cannot.
15 MR. LAY: Judge, we're not offering it
16 into evidence. We're asking her to read.
17 MR. RAGSDALE: Read it into the record.
18 THE COURT: She's not --
19 MR. LAY: Well, it talks about the rights
20 of whether MERS, who was listed in the original
21 mortgage as the mortgage holder on how it can be
22 assigned.
23 THE COURT: Well, if she never has seen it
24 before, how can she testify about it?
25 MR. LAY: Okay.

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1 THE COURT: I sustain the objection. You
2 haven't offered the document, but I sustain the
3 objection to questioning her about it.
4 Q (BY MR. LAY:) Going back to Exhibit 13 for a
5 moment.
6 A Okay.
7 Q You stated earlier -- well, let me ask --
8 Exhibit 13 is a copy of the assignment that was
9 recorded in this case, that was prepared by you and
10 your office?
11 A That's correct.
12 Q And signed by you?
13 A Correct.
14 Q Why was it notarized?
15 A I think that the state laws requires that
16 documents be notarized. Sometimes it's missed, but
17 that's why it was notarized in order to record it.
18 Q And what did you intend to do by preparing this
19 document?
20 A I intended to effectuate a transfer of the
21 mortgage itself in the probate records for purpose
22 of the title insurance.
23 Q Okay. Did you intend to transfer the debt?
24 A No.
25 Q Why does it say that in there?

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1 A This is a form document that's used by my firm
2 and several other firms, and it's intended to
3 transfer any interest that may be held, sort of a
4 quick claim deed.
5 Q And it says you're transferring for the
6 above-described property and said mortgage together
7 with the note and the indebtedness secured by the
8 mortgage and all interest of the undersigned and to
9 the property described in said mortgage. Is that
10 correct?
11 MR. RAGSDALE: You're asking her did you
12 read it correctly?
13 MR. LAY: I'm asking her if that's what it
14 says?
15 A That is what it says.
16 Q If you didn't intend to transfer the
17 indebtedness or the note, why does it say that?
18 A I believe the purpose -- I didn't draft this
19 original document. I mean, I drafted this, the
20 document that's the form. I believe it's to be all
21 encompassing to insure that MERS doesn't hold any
22 interest in anything, note, mortgage, indebtedness.
23 THE COURT: So you say you treat it almost
24 as if it were a quick claim?
25 THE WITNESS: That's --

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1 THE COURT: Just in case somebody else had
2 any other interest and convey that as well?
3 THE WITNESS: That's correct.
4 Q And your office or yourself prepared this form?
5 A I'm not sure who prepared the original form.
6 My office did fill out the form, yes, all the parts
7 that are relevant to this particular mortgage.
8 Q Okay. And you could have used different
9 language, could you not, if that wasn't your intent
10 to convey the note and the indebtedness?
11 A We could have used different language, yes,
12 sir.
13 Q You could have referenced dates of previous
14 transfers, could you not?
15 A Not necessary for the probate records.
16 Q Could you not have used that if that was your
17 intent?
18 A We could have, yes.
19 Q And you see that it says what it says.
20 THE COURT: She agrees it says what it
21 says.
22 A Yes.
23 Q Okay. Did you -- you said that it does have a
24 notary on there. Who was the notary?
25 A Her name was Candace Rause at the time. It's

18 (Pages 69 to 72)

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1 Candice Day now.
2 Q And is she an employee of Sirote?
3 A She is.
4 Q And I believe you have said earlier that you
5 did not sign or date this in front of the notary;
6 is that correct?
7 A Sometimes I do. Sometimes I don't. I couldn't
8 tell you for sure in this particular instance. She
9 knows my signature though.
10 Q So you don't know if you, in this particular
11 case, whether you did or not?
12 A I don't know.
13 Q What is your policy on executing documents with
14 a notary in your office?
15 A I'm sorry?
16 Q What is your policy on -- I understand you said
17 you don't recall in this particular case, but what
18 is the policy on executing documents in front of a
19 notary or not?
20 A Well, they're certifying that that's my
21 signature. And Candace is familiar with my
22 signature. They will bring me the documents to
23 sign. Sometimes they'll stay and wait. But
24 perhaps, if I'm on the phone or in a meeting,
25 someone else will drop them off and I'll handle

1 Plaintiff's Exhibit 10 is a letter dated July 11th,
2 2008, which is, I think, commonly called the
3 Acceleration Letter.
4 THE COURT: All right.
5 MR. RAGSDALE: And Plaintiff's Exhibit 11
6 is the Affidavit of Publication in this case.
7 THE COURT: All right. Thank you.
8 Q (BY MR. RAGSDALE:) Let me ask you, if you
9 could, please tell me what Plaintiff's Exhibit 10
10 is.
11 A It's a copy of a notice of acceleration.
12 Q Okay. I'm sorry. Was that addressed to
13 Ms. Congress?
14 A It was.
15 Q And it is dated what date?
16 A July 11th, 2008.
17 MR. RAGSDALE: Your Honor, we would offer
18 Plaintiff's Exhibit 10.
19 THE COURT: It's in.
20 (Whereupon, Plaintiff's Exhibit
21 Number 10 was received into
22 evidence.)
23 Q And let me show you Plaintiff's Exhibit 11 and
24 ask you to tell me what that is.
25 A It's an affidavit of publication from Alabama

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1 them and give them back to the notary.
2 Q So it is safe to say that there are times when
3 you don't --
4 THE COURT: Don't what?
5 Q -- execute these documents in front of the
6 notary?
7 A That's correct.
8 MR. LAY: That's all at this time,
9 Your Honor.
10 THE COURT: All right. Any cross?
11 CROSS-EXAMINATION
12 BY MR. RAGSDALE:
13 Q Colleen, I'm Barry Ragsdale. We've met before,
14 I believe.
15 A We have.
16 Q Let me ask you to identify a couple of
17 documents if you don't mind. First is Plaintiff's
18 Exhibit 10 from the previous trial, which is kind
19 of a letter thing. And 11 is the Affidavit of
20 Publication, also from the previous trial.
21 (Whereupon, Plaintiff's Exhibit
22 Numbers 10 and 11 were previously
23 marked for identification.)
24 THE COURT: Tell me what they are.
25 MR. RAGSDALE: Sorry. Excuse me.

1 Messenger.
2 Q Okay. And is that document something you're
3 familiar with?
4 A Yes.
5 Q And would you normally receive that in the
6 normal course?
7 A We would, yes.
8 MR. RAGSDALE: Judge, we would offer
9 Plaintiff's Exhibit 11.
10 THE COURT: It's in.
11 (Whereupon, Plaintiff's Exhibit
12 Number 11 was received into
13 evidence.)
14 Q Colleen, if you would, find the assignment
15 mortgage that we've been talking about this
16 morning. Have you got that in front of you?
17 A I do.
18 Q Have you ever taken the position at any time
19 that this assignment of mortgage was the transfer
20 of the note to U.S. Bank?
21 A No.
22 Q To your knowledge has anybody on our side ever
23 taken the position that this document is the
24 transfer of note?
25 A Of the note, no.

19 (Pages 73 to 76)

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1 Q It is intended, is it not, to transfer whatever	1 A It does.
2 interest MERS has to U.S. Bank?	2 Q Is there anything about this that stands out
3 MR. LAY: Objection, Your Honor.	3 out of the ordinary?
4 THE COURT: Overrule.	4 A No, not -- no.
5 Q Correct?	5 Q When you signed the assignment of mortgage, did
6 A Correct.	6 you believe it to be accurate?
7 Q And if it purports to transfer things that MERS	7 A I did.
8 doesn't have, it doesn't transfer those things,	8 Q Do you still believe it's accurate?
9 right?	9 A I do.
10 A Correct.	10 Q Is there any dispute that you signed it?
11 Q What it is intended to do is to search --	11 A No. It's my signature.
12 MR. LAY: Objection again. Leading.	12 Q Now, the signing authority that you have from
13 THE COURT: On what basis?	13 MERS through Homecomings, and this three-party
14 MR. WOOTEN: He's leading.	14 agreement, is that anything out of the ordinary?
15 MR. LAY: Well, he's trying to tell her	15 A It's not.
16 what she intended to do.	16 Q You have signing authority on behalf of several
17 MR. RAGSDALE: I was under the impression	17 clients, don't you?
18 this is cross-examination.	18 A I do.
19 MR. LAY: It's their witness.	19 Q And in this case, do you have any doubt that
20 THE COURT: Can't he lead on the same	20 your signing an assignment of mortgage fell within
21 subject about your direct examination?	21 that signing authority?
22 MR. LAY: Well, if he would -- I think	22 A It was within the authority provided, yes.
23 there's a difference between leading, Your Honor,	23 MR. RAGSDALE: Thank you, Ms. McCullough.
24 and, you know, just pure out stating the answer.	24 THE COURT: Anything else?
25 THE COURT: Don't state the answers.	25 MR. WOOTEN: Just a moment, Your Honor. I
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1 MR. RAGSDALE: Okay. Can I lead?	1 want to make a motion to exclude the assignment of
2 THE COURT: Yes, sir.	2 mortgage at this time.
3 MR. RAGSDALE: Thank you.	3 THE COURT: Well, anymore questions of
4 Q (BY MR. RAGSDALE:) This assignment of mortgage	4 this witness?
5 is intended to transfer all interest that MERS	5 MR. WOOTEN: No, sir.
6 might have; is that right?	6 THE COURT: Thank you, Ms. McCullough.
7 A That's correct.	7 You may step down.
8 Q To your knowledge, do you know whether or not	8 MR. WOOTEN: I'd like to make an oral
9 MERS ever owned the note or held the note or	9 motion to exclude the assignment. If you would,
10 anything like that? Do you have any knowledge	10 hand the Judge the memo, please.
11 about that?	11 MR. RAGSDALE: Is this the document you
12 A I don't.	12 just introduced, the assignment of mortgage?
13 Q The sole purpose of this assignment of mortgage	13 MR. WOOTEN: No. This is a memo.
14 is for purposes of title insurance; is that not	14 MR. RAGSDALE: No, no. I'm saying the
15 correct?	15 document you're moving to exclude is the document
16 A That's correct.	16 you introduced in evidence?
17 Q It is not intended in any way, shape, or form	17 MR. WOOTEN: Yes. We're actually moving,
18 to transfer the note, is it?	18 Your Honor, that it be stricken from the probate
19 A It's not.	19 records in Jefferson County. And let me explain
20 Q Now, the process through which Mr. Lay took you	20 why. The testimony in the case is that
21 about how you get a referral of a mortgage or the	21 Ms. McCullough executed the assignment of mortgage
22 foreclosure and the process that you go through,	22 in the name of MERS under signing authority from
23 does it appear that this particular foreclosure was	23 MERS.
24 done in the normal and ordinary, customary practice	24 The law in Alabama is well settled that the
25 and the way that it's done by your office?	25 person has the right to assign interest in land as

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1 the owner of the indebtedness. All of the other
2 parties to this transaction, including the parties
3 that the plaintiff claims is the owner of this loan
4 are not authorized -- have not given Ms. McCullough
5 any authorization to transfer any interest in the
6 lien. By their own admission it is in the nature
7 of quick claim deed and they are not certifying
8 that it is accurate. They're also not certifying
9 that intends to transfer the indebtedness in this
10 case. That statement is contained under oath in
11 the form of a notary in the document and it's
12 admittedly untrue. Therefore, because the person
13 who executed the document had no authority to move
14 the lien interest under Alabama law, and because it
15 contains untruth, the document is due to be
16 stricken at this time, not only from this
17 proceeding, Your Honor, in considering the legal
18 chain of title, but also the Court could order the
19 document stricken from the records of Jefferson
20 County probate records. And that's how we so move
21 and this memo supports that.
22 THE COURT: Do you want to respond to
23 that?
24 MR. RAGSDALE: Just a couple of things,
25 Your Honor. I'm intrigued by the notion them

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1 introducing a document that was stipulate to both
2 in the prior trial and in this case, and then
3 arguing that somehow it's due to be stricken.
4 Secondly, I don't believe he has standing to
5 challenge an assignment of mortgage to which
6 Ms. Congress is not a party by any stretch of the
7 imagination.
8 Thirdly, it was good enough for and continues
9 to be good enough for the probate court to accept
10 it as an official record.
11 And lastly, I would suggest that to the extent
12 he's trying to argue that somehow this violates
13 Alabama law, we ought to have an opportunity to
14 respond to it before you go changing the probate
15 record.
16 THE COURT: All right. Well, I'm going to
17 hold the motion under advisement until I hear all
18 the evidence.
19 MR. WOOTEN: Yes, sir.
20 MR. RAGSDALE: Yes, sir.
21 THE COURT: All right. Let's take a
22 ten-minute break. Thank you.
23 (Short break.)
24 THE COURT: Next witness for the
25 defendant.

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1 MR. WOOTEN: Judge, we call Bill Houston.
2 BILL HAUGHTON,
3 having first been duly sworn, was examined and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. WOOTEN:
7 Q Mr. Haughton, how are you today?
8 A I'm fine. How are you?
9 Q I'm fine. Could you tell us your full name,
10 please, sir?
11 A William Cornish Haughton.
12 THE COURT: Would you spell it for the
13 court reporter.
14 THE WITNESS: H-a-u-g-h-t-o-n.
15 THE COURT: Thank you.
16 Q Mr. Haughton, you did not participate in the
17 last trial of this matter on behalf of your
18 employer, correct?
19 A I did not.
20 Q When is the first time that you became aware
21 that your employer had a loan with Erica Congress?
22 A In mid April.
23 THE COURT: Do you want to establish who
24 is employer is?
25 MR. WOOTEN: Yes, sir.

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1 Q Please tell us who your employer
2 A GMAC Mortgage.
3 Q When did you become employed with GMAC
4 Mortgage?
5 A Well, originally I was with Homecomings January
6 of 2004.
7 Q And just to clarify, you first became aware
8 that Ms. Congress had a loan with GMAC or
9 Homecomings in April of 2010?
10 A That's correct.
11 Q Where is your employment domicile, please, sir?
12 A Well, our main office is Fort Washington,
13 Pennsylvania.
14 Q Where are you, please, located?
15 A I'm in Dallas, Texas.
16 Q What is the Dallas, Texas facility?
17 A I'm sorry?
18 Q What is the Dallas, Texas facility, please,
19 sir?
20 A What do you mean by that?
21 Q Is there a special -- is that a division of
22 your employer or is that location responsible for
23 certain duties for your employer?
24 A In the Dallas office we handle an REO, real
25 estate owned and loss mitigation.

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1 Q Okay. And can you explain to us what loss
2 mitigation is, please, sir?
3 A Loss mitigation is the department that strives
4 to help homeowners keep their properties if they
5 can afford to do so, or assist in selling the
6 properties if they are not able to keep it due to
7 financial restraints.
8 Q And tell the Court what the REO department
9 does?
10 A REO is Real Estate Owned so that in the event
11 of a foreclosure and the bank is the high bidder of
12 the sale, then that property reverts to the bank
13 and they take care of selling the property.
14 Q Am I correct in saying that your employment
15 with GMAC has basically covered these two areas
16 throughout your entire employment with your
17 company?
18 A Not REO. I worked in loss mitigation.
19 Q So you have worked in one of the two areas your
20 entire career?
21 A That's correct.
22 Q You have never worked as a custodian of records
23 for GMAC?
24 A No.
25 Q You have never been responsible for the

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1 accuracy or completeness of any of GMAC's records?
2 A Well, our system of record is a record that I'm
3 responsible and I put notes in that system.
4 Q So personally as you were, you are responsible
5 to accurately input data into your company's
6 computer system?
7 A That's correct.
8 Q Other than your personal responsibility for
9 your personal data, do you have any responsibility
10 for your employer for any of the other data that is
11 entered into their system?
12 A No.
13 Q Are you part of any team or committee that is
14 responsible for the integrity of the data that is
15 input into your computer records of your employer?
16 A No.
17 Q Do you have any knowledge of the policies or
18 procedures which govern the input of that data into
19 your company's computer system?
20 A What data would you be speaking of?
21 Q Well, other than what you know about what
22 you're personally required to input as apart of
23 your job, do you have any knowledge of the
24 corporate policies and procedures regarding that?
25 A Yes. There's policies and procedures online in

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1 our manual, discuss what goes into a loan that's
2 inboarded into the system, or if you are talking to
3 a homeowner or a third party, the type of
4 information you should put into the system.
5 Q Do you have any of those policies and
6 procedures with you here today?
7 A No, I don't.
8 Q Could you verify under oath to the Court that
9 all the entries that are made into your company's
10 computer system are accurate and truthful?
11 A No, I didn't put all of them in the system.
12 Q Okay. Did you put any of the entries regarding
13 Ms. Congress's loan into the system?
14 A No.
15 Q You never had anything to do with her loan
16 whatsoever?
17 A No.
18 Q Prior to April of 2010, did you ever review any
19 documents regarding Ms. Congress's loan?
20 A No.
21 Q Do you have any firsthand knowledge of any of
22 these parties that are on this chart? And I'll
23 read them off to you.
24 A Okay.
25 Q Do you have my firsthand knowledge regarding

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1 Mortgage Lenders Network U.S.A.?
2 A Yes, I've heard of them.
3 Q Well, it's my understanding they originate
4 loans which, at some point your company,
5 Homecomings may have serviced or subserviced; is
6 that right?
7 A Yes.
8 Q What about EMAX Financial Group? Do you know
9 anything about that them?
10 A No.
11 Q Okay. Do you know where their place of
12 corporate residence is?
13 A No, I don't.
14 Q Residential Funding Company? I'm sure you're
15 familiar with that name, right?
16 A Yes.
17 Q Tell the Court how you're familiar with
18 Residential Funding Company.
19 A That's a subsidiary of GMAC.
20 Q Not GMAC Mortgage?
21 A No.
22 Q GMAC?
23 A Yes.
24 Q That's the big holding company that has lots of
25 corporations, right?

22 (Pages 85 to 88)

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1 A That's right.
2 Q You've never been employed by Residential
3 Funding, have you?
4 A No.
5 Q You're not employed by them today, are you?
6 A No.
7 Q Do you have any information regarding
8 Residential Funding Company's policies and
9 procedures?
10 A No.
11 Q Have you been briefed on those policies and
12 procedures in preparation to testify today?
13 A No.
14 Q What about Residential Asset Securities
15 Corporation?
16 A Yes, I'm familiar with them.
17 Q Is it because they also fall under the general
18 corporate umbrella of GMAC?
19 A Yes, it is.
20 Q But you've never been employed by them, have
21 you?
22 A No.
23 Q Do you have any knowledge of their corporate
24 policies and practices?
25 A No, I've never seen them.

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1 Q Have you ever been employed by the trust whose
2 name is Home Equity Asset-Backed Pass-Through
3 Certificate Series 2007-EMX1?
4 A No.
5 Q Have you ever been employed by U.S. Bank?
6 A No.
7 Q Do you have any knowledge of the corporate
8 policies and procedures regarding document custody
9 or retention?
10 A No.
11 Q Have you ever worked in document custody or
12 retention?
13 A No.
14 Q Do you have any knowledge of your employer's
15 document custody and retention policies?
16 A Yes, I do.
17 Q How did you gain that knowledge?
18 A Through six and a half years of being employed
19 by the company and knowing that our custodian is
20 located in Minneapolis.
21 Q Your custodian?
22 A Custodian for the documents that you asked me
23 for.
24 Q For GMAC Mortgage, correct?
25 A Yes.

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1 Q Do you have any idea where the document
2 custodian for Residential Funding Company is?
3 A No. I would imagine it's probably the same
4 one, but I'm not for sure.
5 Q You don't have any firsthand knowledge, do you?
6 A No.
7 Q What about Residential Asset Securities
8 Corporation?
9 A No, I don't know.
10 Q I'm assuming at some point if someone handed
11 you something that looks like this notebook maybe
12 and said, we want to talk to you about this, right.
13 MR. RAGSDALE: What is that?
14 MR. WOOTEN: This would be the Pooling and
15 Servicing Agreement for the Congress loan?
16 A Correct.
17 Q Have you flipped through this document?
18 A I have.
19 Q Were you able to identify all these parties who
20 allegedly are in the securitization process for
21 this loan?
22 A I don't recall seeing all their names in there,
23 no.
24 Q And that's because you didn't find them in this
25 document?

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1 A I didn't read every word of the document, so,
2 no, I don't know.
3 Q Noticeably conspicuous absent from your
4 description of your employment, I did not hear you
5 mention that you have any experience whatsoever
6 with securitization.
7 A That's correct.
8 Q Prior to April 2010, had you had any knowledge
9 of even that term?
10 A Oh, yes.
11 Q Because you know that your company Homecomings
12 now GMAC Mortgage, services loans which have been
13 sold in a secondary mortgage, right?
14 A Correct.
15 Q And securitization is a generic term,
16 basically, that encompasses the transfer of loans
17 from originators to the secondary mortgage, right?
18 A That's right.
19 Q Prior to April of 2010, had you ever actually
20 looked at the documents which involve a
21 securitization?
22 MR. RAGSDALE: Any securitization?
23 Q Any securitization.
24 A Yes, I've looked at them.
25 Q So you've looked at pooling and servicing

23 (Pages 89 to 92)

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1 agreements before?
2 A Yes.
3 Q At what point in time?
4 A Well, I couldn't tell you the exact date, but
5 since I've been employed by GMAC I have.
6 Q How many have you looked at?
7 A I have probably looked at four or five.
8 Q Four or five. Well, do you mind, sir, what was
9 the purpose of that inquiry? Why did you look at
10 those documents?
11 A One was to gain knowledge about them, and I
12 have testified in other cases as well.
13 Q Okay. Are you someone who testifies frequently
14 for your company?
15 A Not frequently, no.
16 Q Do you know when the last time you gave
17 testimony for your employer was?
18 A It was about five weeks ago.
19 Q Do you remember how many times you have given
20 testimony this year for your employer?
21 A That was the only other time other than today.
22 Q And what was the date of that previous
23 testimony?
24 A It was -- I think it was April 29th.
25 Q Do you remember what court that was in?

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1 A It was -- no, I don't remember the name of the
2 court, but it was in Long Island, New York.
3 Q And is that the only testimony that you have
4 given for your employer in this calendar year?
5 A Yes, it is.
6 Q Are you sure?
7 A Yes.
8 Q You know, I'm just curious, have you might have
9 possibly been in Dallas, Texas on February 2nd,
10 2010?
11 A That was -- I wasn't testifying. That was a --
12 I think that was a deposition.
13 Q Is a deposition testimony, sir?
14 A Yes. I did forget about that one. I did do
15 that one in Dallas.
16 Q What did that matter involve?
17 A It's a matter regarding foreclosure. It's a
18 bankruptcy account.
19 Q Do you remember who the lawyer was that took
20 your deposition?
21 A No. I know his name starts with a "B" but I
22 don't remember his last name.
23 Q Bartholow maybe?
24 A That's correct.
25 Q Bartholow, B-a-r-t-h-o-l-o-w?

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1 A That's correct.
2 Q Do you recall explaining your qualifications as
3 an employee of your employer during that
4 deposition?
5 A I'm sure I did.
6 Q Do you know if you told Mr. Bartholow that you
7 were a custodian or had familiarity with the
8 company's custodial records?
9 A I don't recall saying that for sure, no.
10 Q Is it fair to say that that case was about a
11 wrongful foreclosure also, or allegations of a
12 wrongful foreclosure?
13 A I believe so, yes.
14 Q A few moments ago the local attorney who
15 conducted this foreclosure for your employer was on
16 the stand and she testified that she was instructed
17 to vest title in the name of this trust.
18 Do you have any familiarity with when the title
19 should have vested in this trust under the
20 securitization of documents?
21 A No, I don't.
22 Q Do you have any way to dispute that the closing
23 date of March 12th, '07 was the date when the trust
24 should have vested title in this loan?
25 A I know that's the date of the documents.

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1 Q Do you have any firsthand knowledge,
2 Mr. Haughton, about how Residential Funding would
3 have conducted its affairs in this securitization?
4 A No.
5 Q And you have not been employed by Residential
6 Funding?
7 A No.
8 Q Did you notice in the securitization documents
9 that Residential Funding Company is the actual
10 master servicer for this trust?
11 A That is correct.
12 Q Do you know a young man named a Mr. Houle,
13 H-o-u-l-e, Jason Houle who came here and testified
14 previously?
15 A I do.
16 Q Have you reviewed his testimony as the
17 corporate representative of GMAC?
18 A Yes.
19 Q So when he told the Court that Homecomings was
20 the servicer for this trust that was inaccurate,
21 was it not?
22 A They're the subservicer.
23 Q Right. And as the subservicer, Homecomings
24 does not even have a contractual relationship to
25 this trust, does it?

24 (Pages 93 to 96)

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1 A I don't believe so, no.
2 Q The contract is with Residential Funding,
3 correct?
4 A Correct.
5 Q Do you have any idea why you were selected to
6 come here today?
7 A No. I have knowledge of how our operations
8 work. I have knowledge of loss mitigation.
9 Q So that would be like if they wanted to show
10 you their notes and say we were talking to
11 Ms. Congress about not foreclosing, you would have
12 personal knowledge of how that process is supposed
13 to work, right?
14 A That's right.
15 Q But you wouldn't know anything about anybody
16 who made any entry in those records, would you?
17 A I'm sorry. I didn't follow your question.
18 Q Well, as to loss mitigation, are all the
19 employees involved in loss mitigation based in
20 Dallas?
21 A Nearly all of them are.
22 Q Okay. Do you know them all?
23 A No.
24 Q Would you have any firsthand knowledge that you
25 could testify for the Court under oath that all the

1 Q Okay. Do you have a supervisor or network
2 administrator, password authorization on that
3 system?
4 A We do.
5 Q Do you have that?
6 A Do I have what?
7 Q A supervisor or a network administrator
8 authorization on your computer system?
9 A No. If your password expires or something, you
10 call into the GMAC help desk to get it reset.
11 Q Right. Do you know who has control of or
12 maintains control of the user names or passwords
13 for your employer?
14 A Our IT department.
15 Q Okay. Do you know if they have any procedures
16 in place to verify that no one has accessed any
17 records under someone else's name or password?
18 A No.
19 Q Are you familiar with the policies and
20 procedures your company has to audit the integrity
21 of the data in which they store electronically?
22 A As far as verbiage that's put into our account
23 or for the passwords?
24 Q All of it.
25 A In essence -- let me hear your question again.

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1 entries that were made in those records are
2 truthful and accurate?
3 A No, I couldn't say that.
4 Q Wouldn't swear to what the other employees did
5 or what, would you?
6 A No.
7 Q Could you swear to the Court that the records
8 that they would offer, had those notes have not
9 been altered since the time they were put into your
10 system?
11 A They cannot be altered.
12 Q Cannot be altered. And how do you know that?
13 A That's the system of record that we use and you
14 cannot go back and change the records.
15 Q What is the system of record that you use?
16 A It's called Mortgage Serve.
17 Q Okay.
18 THE COURT: Mortgage Serve?
19 THE WITNESS: Serve.
20 Q Mortgage Serve. And who provides that software
21 for your company?
22 A Mortgage Serve.
23 Q Okay. And where are they out of? Where are
24 they based at?
25 A I'm not sure.

1 Q Sure. Do you have any firsthand knowledge of
2 the procedures your company has in place to insure
3 that the data they store electronically is accurate
4 and reliable?
5 A No.
6 Q So as to notes which might have generated as
7 printouts from that data, you really only can tell
8 Your Honor that you recognize them as being printed
9 off your system, correct?
10 A That's true.
11 Q But as to the veracity of any entry, you could
12 not swear to it, could you?
13 A No.
14 Q Do you know if a network administrator or
15 anyone else has the ability to alter the data which
16 an individual user, such as yourself, enters?
17 A No, I've never heard that they have that
18 ability.
19 Q Do you know of any employee in your department
20 or within your knowledge has ever been disciplined
21 or fired for accessing a computer under someone
22 else's name or password?
23 A No.
24 Q Do you have any knowledge about whether that's
25 ever occurred?

25 (Pages 97 to 100)

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1 A I have never heard of anybody sharing their
2 password.
3 Q Okay.
4 A We have -- we take online classes for security
5 every year and that's one of the main points they
6 make is never share your passwords with anyone.
7 Q Do you know that that does not ever happen
8 within your employer structure?
9 A No, I don't know that.
10 Q And you have no way to tell the Court that that
11 doesn't happen?
12 A No.
13 Q We talked about the fact earlier that you are
14 not a custodian of any of this electronically
15 stored information.
16 A I don't maintain it on a daily basis. I have
17 access to the information.
18 Q Okay. If the plaintiff were to offer notes on
19 loss mitigation or notes on foreclosure, that would
20 not be a complete copy of all the notes which are
21 maintained in your computer system, would it?
22 A I'm sorry. You have to ask the question again.
23 They're printed out of our system. That's all the
24 records of our system, all the notes.
25 Q But your system is segregated by departments

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1 also, right?
2 A Not the general, where you put in notes, no.
3 Q So if you printed off the notes field for the
4 Erica Congress loan, your testimony is is that it
5 would include notes from customer service; is that
6 correct?
7 A That's correct.
8 Q Cashiering?
9 A If they put any notes in, yes.
10 Q Bankruptcy?
11 A Yes.
12 Q Foreclosure?
13 A Yes.
14 Q Loss mitigation?
15 A Yes.
16 Q REO?
17 A No, they use their own system.
18 Q Okay. What system is REO?
19 A REO uses a system called REO Trends.
20 Q Okay. So it's --
21 THE COURT REPORTER: Repeat that.
22 A It's also called Equator.
23 Q So if notes were offered and you saw no entries
24 from customer service, would you believe it's a
25 complete copy of the notes?

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1 MR. RAGSDALE: If we offered?
2 MR. WOOTEN: I said -- hypothetically, if
3 they were offered.
4 MR. RAGSDALE: Okay.
5 A It would depend upon if she ever called in --
6 the homeowner ever called in and talked to customer
7 service.
8 Q Okay. What about if you had notes offered and
9 they didn't mention the foreclosure department?
10 That would seem odd, wouldn't it?
11 A If it's been through foreclosure, there would
12 be different types of notes regarding the progress
13 of the foreclosure process.
14 Q And, in fact, notes which you would offer from
15 your servicing software would not contain all the
16 information regarding your foreclosure process,
17 would it?
18 A No, not necessarily.
19 Q Right. There is another system that you manage
20 foreclosures on, right?
21 A I don't work in foreclosure, so I don't use the
22 system.
23 Q So you have no knowledge about whether there is
24 a separate platform called LPS Desktop?
25 A There is.

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1 Q Oh, you do have knowledge of that?
2 A Yes.
3 Q Is it used by the foreclosure department?
4 A Yes.
5 Q Do you know anything about it?
6 A You can communicate back and forth with our
7 attorneys that are handling the foreclosures.
8 Q And is it your understanding that at least some
9 information comes over from the foreclosure site,
10 the desktop, back to the notes field?
11 A Yes.
12 Q Okay. Do you know if it is complete
13 information?
14 A It's the information that can transfer over
15 from LPS.
16 Q Do you have any idea if it is all the
17 information?
18 A No, I don't think it would be all it.
19 Q And, again, you don't work in foreclosure,
20 right?
21 A Correct.
22 Q So you would not have become involved in this
23 loan in the normal course of affairs until it
24 became what your employer considered an REO
25 Property?

26 (Pages 101 to 104)

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1 A No, because I work in loss mitigation. So if a
2 homeowner is in eminent default, if they have an
3 issue in their life and they're going to default in
4 the future, it could come into loss mitigation. Or
5 if they do default, become past due, then it could
6 come into loss mitigation.
7 Q With respect to anything that was done from the
8 time of the loan origination up until April of 2010
9 on this loan, you have no firsthand knowledge
10 whether any action was taken in this case, right?
11 A Well, I know there were actions taken because
12 we have a loan in our books.
13 MR. DAUGHERTY: Objection.
14 Q The question -- the question, sir, is prior to
15 April of 2010, you have no firsthand knowledge of
16 anything that was done with respect to
17 Ms. Congress's loan?
18 A No.
19 MR. DAUGHERTY: Objection, Your Honor, on
20 this basis of firsthand knowledge, if he has -- I
21 mean, he's reviewed the business records of the
22 corporation and has testified extensively to that.
23 THE COURT: I overrule the objection.
24 Q (BY MR. WOOTEN:) Is it your testimony that
25 there are no employees in loss mitigation other

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1 than employees of your company in Dallas, Texas?
2 A No. We have some loss mitigation in our
3 Fort Washington, Pennsylvania office.
4 Q Do you have any idea how many there are?
5 A No, I don't.
6 Q Do you have any idea how many employees your
7 company has in Dallas, Texas?
8 A We have roughly between seven hundred and seven
9 hundred and fifty.
10 Q So, if I were to pull out the securitization
11 documents and start flipping through them with you,
12 you really couldn't do anything but read what was
13 in the documents, right?
14 A Correct.
15 Q So you couldn't testify that anything the
16 document said occurred ever occurred, right?
17 A What's in the documents is what I could read.
18 Q And you have no idea whether anything that is
19 recited in the documents ever actually took place,
20 do you?
21 A No.
22 MR. WOOTEN: Approach, Your Honor?
23 THE COURT: Yes.
24 Q Do you have the exhibits in front of you? Let
25 me -- we talked about the mortgage. That's fine.

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1 Let's talk about this promissory note right here,
2 Plaintiff's Exhibit 1.
3 A All right.
4 Q Am I correct in saying that the only reason
5 that Homecomings is involved in this case is
6 because they have a contractual agreement with
7 Residential Funding Company, LLC?
8 A Yes. Yes, to be the servicer.
9 Q And you are not a custodian for Residential
10 Funding Company, LLC?
11 A In my everyday course of work, no, I am not
12 custodian of the original documents.
13 Q So if somebody, say, you might need to say
14 you're a custodian of records for purposes of
15 testifying today --
16 A I do review the documents, but I'm not a
17 custodian on a daily basis of the original
18 documents, no.
19 Q So if I were to look you up on one of those
20 social networking sites like Link, Facebook or
21 something like that, it wouldn't say, I'm a
22 custodian of records for Residential Funding
23 Company, LLC, right?
24 A No, it would not.
25 Q And it wouldn't say I'm a custodian of records

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1 for Homecomings, right?
2 A Correct.
3 Q It might say I work in REO or loss mitigation
4 for GMAC Mortgage, right?
5 A I work only in loss mitigation, not REO.
6 Q When did that come into being?
7 A What?
8 Q When did you become responsible only for loss
9 mitigation?
10 A I have not worked in REO before. I worked in
11 first lien, loss mitigation, and then I moved into
12 being a portfolio manager for bankruptcy and legal
13 loss mitigation.
14 Q What was the last thing you said you were?
15 A Portfolio.
16 THE COURT: Tell me what I'm supposed to
17 be learning from this.
18 MR. WOOTEN: Your Honor, what I'm
19 establishing is that my witness does not have any
20 firsthand knowledge of any of the documents that
21 are relevant to this transaction or any documents
22 which they intend to offer, other than being
23 brought here to say, I recognize this document. He
24 doesn't have any firsthand knowledge of how any of
25 this came into being or how these documents got

27 (Pages 105 to 108)

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1 into this case. He's just been brought here,
2 basically to parrot questions he's been spoon fed.
3 THE COURT: Well, I haven't heard him
4 asked any questions yet. I mean, what is this sort
5 of preemptive cross-examination?
6 MR. RAGSDALE: You call a witness in order
7 to decimate him.
8 MR. WOOTEN: Well, Your Honor, we assume
9 they would put the witness on themselves to
10 authenticate the documents.
11 THE COURT: Well, let's don't try it that
12 way. If you've got anything the defendant have
13 about proving their case for Ms. Congress --
14 MR. WOOTEN: Yes, Your Honor.
15 THE COURT: All right. Let's move to it.
16 Q (BY MR. WOOTEN:) The promissory note that's in
17 front of you that was previously offered in this
18 case, it contains no endorsement to any party, does
19 it?
20 MR. DAUGHERTY: Your Honor, again, those
21 are our objections. Again, under Rule 106 repletes
22 that document. Just for record.
23 THE COURT: Okay. Overrule.
24 A I'm sorry. Can you ask the question again?
25 Q Yes. The document in front of you, Plaintiff's

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1 Exhibit 1, is a promissory note, correct?
2 A Correct.
3 Q And it says a true and accurate copy, correct?
4 A Correct.
5 Q And that's stamped on top of the document,
6 right, on the front page?
7 A True and certified copy.
8 Q Okay. And it does not have any endorsements on
9 that document except one blank endorsement, right?
10 A That's correct.
11 Q You would not have had access to the documents
12 which were part of this trust until after you
13 signed a contractual agreement to act as a
14 subservicer, right.
15 A That is correct.
16 Q So you have not had access to whatever
17 documents were available to the trust as proof of
18 ownership until after the trust had been created?
19 A Correct.
20 Q So you would have only been able to get that
21 copy of that document through your capacity as a
22 subservicer for this trust, right?
23 A We have a copy from the previous servicer or
24 the originator.
25 Q Okay.

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1 A This came in the credit file.
2 Q In the credit file.
3 Will you look across the top page of the
4 document that is offered as Exhibit 1. It is --
5 appears to be a fax line, right?
6 A It does.
7 Q And it comes from GMAC Mortgage, correct?
8 A Correct.
9 Q And your testimony to the Court is that you
10 have been informed that you received that document
11 from the credit file of Ms. Congress?
12 MR. DAUGHERTY: Objection to his
13 mischaracterization of his testimony.
14 THE COURT: He asked him if that was
15 right. He can answer it.
16 MR. DAUGHERTY: Well, Judge, he said that
17 he had been informed. I'm objecting to the
18 informed part.
19 THE COURT: Overrule the objection. Ask
20 your question.
21 Q You have no firsthand knowledge where that
22 document came from, do you?
23 A I know that we get credit files on every loan
24 that we service. That's the initial file that
25 comes across. That's from loan boarding, gives the

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1 pertinent documents.
2 Q And how did you know that?
3 A Because that's common knowledge on our company
4 We have to receive something in order to board that
5 loan into our system and to take over the servicing
6 of that loan.
7 Q And then the servicing to you would transfer as
8 a result of the creation of this trust, right?
9 A Correct.
10 Q So, if the documents, the trust documents say
11 that the loan file is complete by the date this
12 trust is created, why would you have not gotten the
13 trust file to onboard into your service system?
14 A Because we get the file to board onto our
15 system that comes from the previous servicer, not
16 from the trust.
17 Q Okay. Do you know who the previous servicer
18 was in the case?
19 A Well, the loan was originated in late 2006, and
20 it was originated by Mortgage Lenders Network. So
21 it could have been that this came from them.
22 Q You would agree with me that the fax line on
23 Exhibit 1 indicates that it was faxed after the
24 date of the foreclosure?
25 A Yes, that's true.

28 (Pages 109 to 112)

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1 Q Are you familiar with the term custodial file
2 as it relates to securitization?
3 A Yes.
4 Q Do you know what that term means as it relates
5 to this securitization?
6 A Well, it's the file of the -- it's the file of
7 the records of the loans in that securitization.
8 Q Okay.
9 A Giving the information on those loans.
10 Q Would it also include a copy of the promissory
11 note?
12 A Most likely. I believe it does. I'm not for
13 sure about that.
14 Q Do you know who would have been in possession
15 of the custodial files for the Congress loan?
16 A Our custodian of records.
17 Q Who would that be?
18 A It's not one person individually. Wells Fargo
19 is the custodian that holds our documents for us.
20 Q How do you get those records from Wells Fargo?
21 A We make a request through our document request
22 service.
23 Q Okay. And who is that?
24 A It's different people in the department.
25 Q And do you know whether or not the

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1 relationships you have by contract with this
2 securitization dictate how you obtain those
3 records?
4 A No, I don't know that.
5 Q By September 29th of 2008, was there any reason
6 you're aware of that you would not have been able
7 to access the custodial file under the subservicing
8 agreement for the Congress loan?
9 A No.
10 Q Is it your testimony that the credit file is a
11 different file than the custodial file?
12 A Well, the credit file is copies of the
13 documents and pages that go on top of the documents
14 to show when they were received, and just the
15 background of that account, specific account.
16 Q Okay. And your testimony is is that you
17 believe Homecomings had that information but did
18 not have the custodial file from the trust?
19 A No, that's not my testimony.
20 Q Have you reviewed the securitization documents
21 to see if they mention the credit file or accessing
22 credit file as the records of this trust?
23 A No, I have not.
24 Q Have you asked anyone if the credit file is
25 part of the records of this trust?

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1 A No.
2 Q Let me ask you, sir, if you would, would you
3 look at the Assignment of Mortgage, just dated --
4 Exhibit 13. Sir, you're familiar with the term
5 grantee?
6 A Yes.
7 Q And does that mean the person who receives the
8 assignment in this case?
9 A Yes.
10 Q And who is the entity who received the
11 assignment in this case?
12 A U.S. Bank, NA as Trustee for that certain
13 Pooling and Servicing Agreement, Series Number
14 2007-EMX1, Pool Number 40896.
15 Q Is Pool Number 40896 or 40986, is that in the
16 name of this trust?
17 A No. It's not up there on that board.
18 Q Does the name of this trust mention pooling and
19 servicing agreement?
20 A No.
21 MR. DAUGHERTY: Again, Your Honor --
22 Q Do you know --
23 MR. DAUGHERTY: -- he was looking at the
24 board, I believe.
25 THE COURT: Sir?

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1 MR. DAUGHERTY: I just want the record to
2 reflect that he was showing the witness the board,
3 not an actual document.
4 THE COURT: Yes.
5 MR. DAUGHERTY: Okay.
6 Q Do you know the name of the trust under the
7 agreement?
8 A No, not by memorization.
9 Q Sir?
10 A Not by memorization.
11 Q Would you look at that as part in preparing to
12 testify?
13 A Look at what?
14 Q The name of the trust?
15 A I am sure I did see it, but I didn't memorize
16 it.
17 Q I show you a document which was part of the SEC
18 filings for this securitization trust.
19 MR. DAUGHERTY: Your Honor, may we know
20 what that document is?
21 MR. WOOTEN: That is -- it's in Tab 4 in
22 the notebook. It's in 8(k).
23 MR. DAUGHERTY: Which notebook?
24 MR. WOOTEN: The one that we gave y'all
25 two copies of.

29 (Pages 113 to 116)

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1 THE COURT: You can come up and look at	1 the mortgage interest was transferred by Exhibit 13
2 it.	2 to the plaintiff?
3 MR. WOOTEN: Do you want an extra one?	3 A It was transferred to this U.S. Bank as
4 We've got an extra copy.	4 trustee.
5 THE COURT: Just show him what you're	5 Q And I want to also show you the Affidavit of
6 asking him.	6 Publication. Is the Affidavit of Publication -- I
7 MR. DAUGHERTY: Did not receive --	7 believe the name is right over in here.
8 MR. RAGSDALE: I didn't get a notebook.	8 A Yes.
9 MR. WOOTEN: That's the 8(k).	9 Q Is it the same name that the mortgage
10 Q Does that appear to be an 8(k) filed with the	10 assignment was taken in?
11 SEC on April -- or March 27th, 2007?	11 A Let's see. Yes. It's the same as on the
12 A Yes, it does.	12 assignment of mortgage.
13 Q And does it give a name of the trust?	13 Q Let me show you Plaintiff's Exhibit 10 which is
14 A It says "Residential Asset Securities	14 an acceleration letter prepared by your attorneys.
15 Corporation on behalf of RFC Series 2007-EMX1	15 A Correct.
16 Trust."	16 Q Is the name in Plaintiff's Exhibit 10 identical
17 Q Does that name give a mention of pooling and	17 to the name in Plaintiff's Exhibit 11 and
18 servicing agreement?	18 Plaintiff's Exhibit 13?
19 A No, it doesn't.	19 A Yes, it is.
20 Q Does it mention a pool number?	20 Q Is that statement also true for Plaintiff's
21 A No, it doesn't.	21 Exhibit 14, which is a Demand for Possessions?
22 Q Is that name different than the name on the	22 A Yes, it's the same.
23 mortgage assignment?	23 Q Does Plaintiff's Exhibit 12, which is the
24 A Yes, it is.	24 Foreclosure Deed, does it also contain the same
25 Q With respect to the previous trial, how do you	25 name that the mortgage assignment is in?
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1 pronounce Mr. Houle's name?	1 A Yes, it does.
2 A Houle.	2 Q Each of those documents have a different name
3 Q Houle?	3 than the name of the trust according to the SEC
4 A Yes.	4 records, correct?
5 Q H-o-u-l-e?	5 A Yes.
6 A That's correct.	6 Q Do you know if there is a mortgage
7 Q I believe Mr. Houle testified that that	7 securitization trust that has the name that all
8 mortgage assignment was the assignment that vested	8 those documents are in?
9 the mortgage interest in the trust.	9 A I'm sorry. Would you repeat that one?
10 MR. DAUGHERTY: Your Honor, at this time	10 Q Sure. All of the documents that your attorneys
11 we would move to admit the trial testimony from the	11 have presented as proof that this plaintiff, Home
12 last trial.	12 Equity Asset-Backed Pass-Through Certificates,
13 THE COURT: Well, let's wait. Go ahead.	13 Series 2007-EMX1, all the documents presented as
14 MR. DAUGHERTY: Well, if he's going to be	14 proof that that plaintiff is an owner of this loan
15 testifying about what Mr. Houle testified to, I	15 and the owner of this property by foreclosure, all
16 think it's in the record --	16 of these documents have a name other than the name
17 THE COURT: Well, this is his examination	17 of this trust, right?
18 of the witness. Let him do it the way he goes	18 A That is right.
19 forward. Go ahead.	19 Q No document vest title in this trust that you
20 Q Is it your understanding --	20 have introduced in this case; is that correct?
21 THE COURT: Do you know what he testified	21 MR. DAUGHERTY: Judge, I'm a little
22 to at the last trial?	22 ambiguous about what he's introduced in the case.
23 THE WITNESS: I read the -- I read the --	23 If we could verify that.
24 THE COURT: All right.	24 MR. WOOTEN: The exhibits that are offered
25 Q (BY MR. WOOTEN:) And was the testimony that	25 into evidence and admitted already.

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1 MR. DAUGHERTY: Thank you.
2 A That's true.
3 Q When you put a promissory note that is Exhibit
4 1 beside Exhibit 13, and you read those two
5 documents together, would a reasonable person be
6 led to believe that the mortgage assignment
7 memorializes a single transfer of indebtedness
8 which appears in the form of a blank endorsement on
9 Exhibit 1?
10 A It appears to, yes.
11 Q And on that document, there is no evidence of
12 any transfers of this promissory note other than
13 one single blank endorsement?
14 A That's true.
15 Q And you cannot testify to this Court about any
16 other purported transfers of this promissory note,
17 can you?
18 A I can with the -- with the adjustable rate that
19 has the other assignments on it.
20 Q And when you say "the other assignments," are
21 you referring to a document called an allonge which
22 is a separate document from the promissory note?
23 A It's attached to the adjustable rate note.
24 Q And how is it attached?
25 A It's in the same rubber banded together folder

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1 when it came from our document vault.
2 Q How is the allonge attached to the promissory
3 note? Is it because it is in the same folder?
4 A I'm not sure. I'd have to look at it.
5 Q And that would be part of the collateral file
6 from the securitization file?
7 A That would be apart of the original document
8 file.
9 Q The original document file. And is that
10 different than the credit file?
11 A It is.
12 Q Would that be the file that should have been
13 transferred to this trust?
14 A I don't know what you mean when you say
15 "transferred to the trust." Physically
16 transferred?
17 Q Yes, sir.
18 A No. The transfer doesn't physically maintain
19 those documents.
20 Q Who physically maintains those documents?
21 A The custodian of records for GMAC.
22 Q And when you say "the custodian of records for
23 GMAC," who is that?
24 A Wells Fargo.
25 Q Okay. And so I just want to be clear. You're

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1 talking about the custodian of records for GMAC?
2 A GMAC Mortgage. GMAC is the ultimate umbrella
3 company of all the various companies that we have.
4 Q So again, your testimony is you got these
5 documents from GMAC's custodian?
6 A No. I might have misspoke. GMAC Mortgage, we
7 maintain a relationship with Wells Fargo as the
8 holder of the original documents for us, in a vault
9 in Minneapolis.
10 Q Would that be why documents have bar codes on
11 them?
12 A Yes, I believe so.
13 Q What are those bar codes supposed to tell us?
14 A I believe they go with -- they enjoy the
15 documents together so you know that they go
16 together.
17 Q Do they tell us anything else about the
18 documents? What trust they're in? Who owns it?
19 Anything like that?
20 A I don't believe so.
21 Q Do you have any information about that?
22 A No.
23 Q Have you ever examined bar codes on any of the
24 documents in this case?
25 A Not really examined them, no.

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1 MR. WOOTEN: I'm going to tender the
2 witness subject to recross.
3 THE COURT: Do you want to cross him now?
4 MR. DAUGHERTY: Yes, sir, that will be
5 fine.
6 THE COURT: All right.
7 CROSS-EXAMINATION
8 BY MR. DAUGHERTY:
9 Q Good morning.
10 A Morning.
11 Q Opposing counsel spoke with you a good bit
12 about what your duties have been since you worked
13 for GMAC. I also -- I just want to talk to you a
14 little bit about what GMAC's relationship is to
15 U.S. Bank in this case.
16 A Okay.
17 Q Could you tell me a little bit about that?
18 A We are the servicer on behalf of U.S. Bank.
19 Q And as the servicer for U.S. Bank, does GMAC
20 and its family of companies have -- or does GMAC
21 have power of attorney for U.S. Bank --
22 MR. WOOTEN: Objection, Your Honor, to the
23 extent if they intend to have this witness testify
24 about power of attorney, the law requires them to
25 have a copy of the power of attorney for him to be

31 (Pages 121 to 124)

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1 able to authenticate both that he had a power of	1 on your system are kept with GMAC Mortgage, those
2 attorney and the contents of that document. We	2 are kept in the normal and the ordinary course of
3 have a memo that we would like to offer the Court	3 GMAC Mortgage's business?
4 on that issue.	4 A It is.
5 THE COURT: You say he can't ask him a	5 Q And its policy at all times to input true and
6 question about whether he has power of attorney?	6 accurate information into those records; is that
7 MR. WOOTEN: Well, Your Honor, he's	7 correct?
8 established he knows nothing about what was going	8 MR. WOOTEN: Objection, Your Honor. He
9 on -- records of funding, so --	9 just testified he cannot establish the veracity of
10 THE COURT: Overrule. So. Lets move on.	10 any entries of those records. I also asked him
11 Q (BY MR. DAUGHERTY:) Mr. Haughton, do you have	11 about the policy and procedures. He didn't testify
12 power of attorney for U.S. Bank? Does GMAC have	12 about that.
13 power of attorney for U.S. Bank?	13 THE COURT: All right. Overrule.
14 A Yes, we do.	14 Q Is it the policy to input true and accurate
15 Q And is there subservicing agreements between	15 information into the records at all times for GMAC
16 GMAC, LLC --	16 Mortgage?
17 MR. WOOTEN: Objection. Again, Your	17 A Most definitely.
18 Honor, this is the best evidence rule. He's	18 Q And are you familiar with the loan in the
19 offering testimony about a document which has not	19 present case and have you reviewed Ms. Congress's
20 been offered into evidence, both the power of	20 records?
21 attorney and the subservicing agreement.	21 A Yes, I have.
22 THE COURT: Overrule.	22 Q Is the account number for Ms. Congress's loan,
23 Q Now, does GMAC have subservicing agreements	23 -- well, let me show you Plaintiff's Exhibit Number
24 with those companies that service the loans?	24 3. This is payment history.
25 A Yes.	25 (Whereupon, Plaintiff's Exhibit
Page 126	Page 128
1 Q And do you know what some of those companies	1 Number 3 was marked for
2 are such as GMAC Mortgage?	2 identification.)
3 A Correct.	3 MR. WOOTEN: Your Honor, we reserve our
4 Q And that's who you work for?	4 objection to that document based on the earlier
5 A That's right.	5 testimony, the fact he's testified that he can't
6 Q And in your duties with GMAC Mortgage, you had	6 authenticate those documents, he can't testify to
7 access to those books and records as you testified	7 the veracity or accuracy.
8 earlier, right?	8 THE COURT: All right.
9 A I do.	9 Q Mr. Haughton, do you recognize that document?
10 Q And you review those when necessary to become	10 A I do.
11 familiar with the files?	11 Q Have you reviewed it in preparation for this
12 A That's correct.	12 case?
13 Q And you understand that there's a difference	13 A Yes, I have.
14 between the custodian of records as defined in this	14 Q And is that document the payment history for
15 Pooling and Servicing Agreement that opposing	15 Ms. Congress's mortgage loan?
16 counsel is speaking of and actually being a	16 A Yes, it is.
17 custodian of the records of a company?	17 Q And is that document a document of GMAC
18 MR. WOOTEN: Objection, Your Honor. He	18 Mortgage, LLC?
19 established through his testimony he was not a	19 A Yes, it is.
20 custodian for his employer.	20 Q Is that document also kept in the normal and
21 MR. DAUGHERTY: Your Honor --	21 ordinary course of GMAC Mortgage, LLC's business?
22 MR. WOOTEN: He testified explicitly to	22 A Yes, it is.
23 that.	23 MR. DAUGHERTY: Your Honor, we'd move to
24 THE COURT: Overrule.	24 admit Plaintiff's 3.
25 Q And the records that you have that are imaged	25 MR. WOOTEN: And we would object, the same

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1 reasons, Your Honor.
2 THE COURT: All right. Overrule.
3 MR. DAUGHERTY: Document admitted?
4 THE COURT: Yes.
5 MR. DAUGHERTY: Thank you, Judge.
6 (Whereupon, Plaintiff's Exhibit
7 Number 3 was received into
8 evidence.)
9 Q Mr. Haughton, is Ms. Congress's loan number on
10 that payment history?
11 A It is.
12 Q And what is that loan number?
13 A It is 7655540227.
14 MR. DAUGHERTY: Your Honor, I'm going to
15 give you a copy of the payment history, if that's
16 okay.
17 THE COURT: Yes, sir.
18 MR. DAUGHERTY: It will help you follow
19 along. It's the same one you used last time.
20 THE COURT: All right.
21 MR. DAUGHERTY: Gentlemen, I presume you
22 have a copy.
23 MR. LAY: If you have an extra one. No,
24 wait. I have it. I've got it. Let me make sure
25 that's the correct one.

1 identification.)
2 MR. WOOTEN: We reserve our objection to
3 those documents. Same grounds.
4 THE COURT: All right. Overrule.
5 Q Mr. Haughton, do you recognize that document?
6 A I do.
7 Q What is that document?
8 A It is a breach letter.
9 Q What does the breach letter mean?
10 A It's a courtesy letter sent to a homeowner
11 telling them that they're in default at this time
12 and how much they need to pay to bring their
13 account current.
14 Q Mr. Haughton, are you familiar with the
15 mortgage entered into in this case by Ms. Congress
16 which is Plaintiff's Exhibit Number 2?
17 A Yes, I am.
18 Q And does that letter -- does that letter comply
19 -- and you can look at the mortgage in Paragraph 22
20 if you want, but does that letter comply with the
21 provisions in Paragraph 22 of the mortgage with
22 regard to what needs to be contained in a default
23 letter?
24 A Yes, it does.
25 Q Thank you. Now, Mr. Haughton, that breach

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1 Q Mr. Haughton, when did GMAC -- can you tell by
2 looking at that document when GMAC started
3 servicing Ms. Congress's loan?
4 A Yes, I can. February 7th, 2007.
5 Q In looking at the payment history and notes,
6 can you tell the first time that Ms. Congress would
7 have gone into default on the loan?
8 A There is a record here dated February 20th,
9 2007, and a promise to pay via a speed draft.
10 Q And what does that mean to you?
11 A She was past due probably for the February 1st
12 payment. And the speed draft is a service you can
13 use to where the funds are taken out of your
14 account and you pay a fee for it.
15 Q And does the payment history indicate at any
16 point whenever Ms. Congress was sent a default
17 letter in May of 2007? I think it would help if
18 you turned to Page 4 of the payment history.
19 A Yes. On May 8th there is a note: Breach Erica
20 S. Congress. Indicates a breach letter was mailed.
21 Q Mr. Haughton, I'm going to show you what's been
22 marked in the previous trial of this case as
23 Plaintiff's Exhibit Number 4.
24 (Whereupon, Plaintiff's Exhibit
25 Number 4 was marked for

1 letter that you have in your hand, the copy, is
2 that an electronically imaged copy that GMAC
3 Mortgage, LLC had in its system?
4 A It is.
5 THE COURT: And what is the exhibit number
6 of the breach letter?
7 THE WITNESS: Four.
8 THE COURT: Thank you. Go ahead.
9 Q Mr. Haughton, is that a true and correct copy
10 of the currently imaged document that's in GMAC
11 Mortgage's, LLC system?
12 A Yes, it is.
13 Q And would GMAC have any reason to keep the
14 actual document that was mailed to Ms. Congress?
15 A No, we would not. We service two and a half
16 million loans, and we're not able to keep a file on
17 every -- a hard file on every loan.
18 Q You see a jumble of letters at the top of that
19 document. What is that?
20 A That comes out of the system called ExNet where
21 these are housed.
22 Q Is it an electronic header that shows what the
23 document is or the header of the document when it's
24 mailed?
25 A Yes, it does.

33 (Pages 129 to 132)

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1 Q And once again, is that a business record that
2 is kept and ordinarily maintained in the course of
3 GMAC's business?
4 A Yes, it is.
5 MR. DAUGHERTY: Your Honor, we would move
6 to admit that document.
7 MR. WOOTEN: Same objection.
8 THE COURT: Overrule.
9 (Whereupon, Plaintiff's Exhibit
10 Number 4 was received into
11 evidence.)
12 Q I am going to attempt to short circuit for the
13 Court, for the parties. And Mr. Haughton, I have
14 five more default letters that are all the same.
15 I'm going to ask Mr. Haughton to review those and
16 then we're going to move to admit each one of them.
17 MR. WOOTEN: And Judge, we preserve out
18 objection.
19 THE COURT: Yes, sir. So noted.
20 MR. DAUGHERTY: This will be Exhibits 5
21 through 9.
22 MR. LAY: What numbers are these?
23 MR. DAUGHERTY: 5 through 9.
24 (Whereupon, Plaintiff's Exhibit
25 Numbers 5 through 9 were marked for

1 A This is dated June 27th, 2007.
2 Q Do you see a contemporaneous entry in the
3 payment history and call notes for that particular
4 breach?
5 MR. DAUGHERTY: For the Court, Page 7 of
6 the payment history.
7 A Oh, yes. I'm sorry. I can see it.
8 Q What date is that on?
9 A June 28th, 2007.
10 Q And what date is the loan due for at that time?
11 A The loan is due for --
12 Q Is it the next column over from the breach
13 letter date?
14 A Yes, it is. It's due for April 1st, 2007.
15 Q And Ms. Congress defaulted again in November of
16 2007, didn't she?
17 A That is correct.
18 Q And that would be reflected in the payment
19 history on Page 16.
20 A Yes. A breach letter was sent on November 5th,
21 2007.
22 Q And pursuant to that default is another breach
23 letter sent which would be Plaintiff's Exhibit
24 Number 6?
25 A Yes.

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1 identification.)
2 A These are all default letters.
3 Q Are they all default letters for Ms. Congress's
4 loan?
5 A Yes, they are.
6 Q And were all of these records also on the ExNet
7 system and are they also business records of GMAC?
8 MR. WOOTEN: Objection, again, Your Honor,
9 the same basis.
10 THE COURT: Overrule.
11 A Yes, they are.
12 Q These are kept and are ordinarily maintained in
13 the course of the business?
14 A Yes, they are.
15 MR. DAUGHERTY: Your Honor, we move to
16 admit 5 through 9.
17 THE COURT: Admitted offer Defendant's
18 objection.
19 MR. DAUGHERTY: Thank you, Your Honor.
20 (Whereupon, Plaintiff's Exhibit
21 Numbers 5 through 9 were received
22 into evidence.)
23 Q Bill, I would like for you to look at
24 Plaintiff's Exhibit 5, which is the next default
25 letter. And what date is that letter?

1 Q And at that time was Ms. Congress put on a
2 repayment plan? Was that loss mitigation option
3 offered to her at that point?
4 A Yes, it had been before as well.
5 Q And where did you see that in the notes?
6 A On 11-19-2007. On November 19th, it says repay
7 plan set up.
8 Q And so was that GMAC trying to help
9 Ms. Congress to keep her home?
10 A Yes, it was.
11 Q Is that something that you normally do in a
12 situation such as this?
13 A Yes.
14 Q Is it in your interest to try to help the
15 borrower keep their home by employing these
16 options?
17 A Most definitely. The last thing we want to do
18 is foreclose on the property.
19 Q Now, was she able to make those payments or
20 she's in another default again?
21 A She did not make those payments.
22 Q When was the next default letter sent in
23 December of 2007?
24 A It was sent on December 24th, 2007.
25 Q Is that also reflected in the notes?

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1 A Yes, it is.
2 Q Now, the notes reflect that in March
3 Ms. Congress was able to actually cure her loan and
4 GMAC allowed her to do that. And on Page 23, I
5 believe, of the notes you will see that a couple of
6 payments were made. And then on Page 24, does it
7 say that Ms. Congress kept her promise to pay
8 there?
9 A Yes, it does.
10 Q But then did she pay in April of 2008, and was
11 another breach letter sent at that time?
12 A I believe she did pay but the check was not
13 honored at the bank.
14 Q And if you look at Page 27 of the payment
15 history, does that reflect that yet another breach
16 letter was sent to Ms. Congress?
17 A Yes, it was.
18 Q And was that in May of 2008?
19 A It was May 6th, 2008.
20 Q And is Plaintiff's Exhibit Number 9 a breach
21 letter that was sent to Ms. Congress in May of
22 2008?
23 A Yes, it is.
24 Q And do you know if that was -- if that was the
25 breach letter that immediately preceded the

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1 foreclosure?
2 A I believe it was.
3 Q Now, in the payment notes it reflects on Page
4 28, there's an entry on 5-13 that says, "options to
5 avoid foreclosure."
6 A Yes.
7 Q What does that mean?
8 A There are still options available to the
9 homeowner if they want to retain their home.
10 Q I also would like to have you look at Pages 24,
11 from about midway down the page, to Page 27 of the
12 notes. I see several entries there where there are
13 no words but there are times and then a simple
14 notation that says, "left message." In other
15 words, no notes, there are no notes made of the
16 call. What do those indications mean?
17 A Okay. This is from an automatic dialer trying
18 to reach the homeowner so we can talk to them about
19 loss mitigation options, see what their intentions
20 are with the property, if they have the ability to
21 maintain their home. If there is no answer, then
22 the message is left.
23 Q And from pages 24 to 27 in the notes, does it
24 appear that anybody was ever able to get in touch
25 with Ms. Congress?

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1 A No.
2 Q Does it appear that they tried?
3 A Yes. Multiple times.
4 Q It appears from the notes that in May and June
5 of 2008 on pages 29 and 30, that another repayment
6 plan was set up. Do you recall that?
7 You can look at the document and let us know.
8 A Yes, it was, in June.
9 Q Where is that in the payment history,
10 Mr. Haughton?
11 A It's at the top of Page 30, June 2nd, 2008,
12 repay plan set up.
13 Q And on the next page does it say whenever that
14 plan was canceled?
15 A Yes. On June 16th it says repay plan canceled.
16 Q Was there a reason for that that appears right
17 below that entry?
18 A It was non sufficient funds.
19 Q Does that mean that the check bounced?
20 A Yes, it does.
21 Q Moving on through the payment history, on Page
22 33 on June 24th, 2008, does the payment history
23 reflect that Ms. Congress's loan was approved for
24 foreclosure?
25 A Yes, it does. It says, "Foreclosure referral.

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1 Review complete."
2 Q When a borrower contacts the company for loss
3 mitigation, what is the policy whenever the loss
4 mitigation representative is talking to the
5 borrower regarding foreclosure?
6 A The foreclosure will continue until such time
7 that an agreement is reached between both parties
8 and a signed document is received or a repay plan
9 or modification document and down payment, if
10 that's applicable to that solution.
11 Q Is the borrower ever told that the foreclosure
12 process would stop while loss mitigation is
13 proceeding?
14 A No, they are not.
15 Q Is it incumbent upon the borrower to follow up
16 and take actions to help protect their interest in
17 their home?
18 A Yes, it is.
19 Q Is there anything you can do to force the
20 borrower to participate in that process?
21 A No.
22 Q Do you find that frequently?
23 A We do.
24 Q Okay. Mr. Haughton, at the time that
25 Ms. Congress was referred for foreclosure on

35 (Pages 137 to 140)

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1 Page 33 of the notes, can you tell how far behind
2 she was at that point?
3 A Currently due for the March, April, May and
4 June payments.
5 Q And so once it was approved foreclosure would
6 be filed within the court -- foreclosure to a law
7 firm to foreclose on the debt, on the mortgage?
8 A Yes, it would.
9 Q And the last thing that I want to draw your
10 attention to for right now is some entries in the
11 notes regarding a call that was placed to you.
12 On Page --
13 MR. WOOTEN: Objection, Your Honor,
14 characterizing a call to him. But I need to make
15 sure we're clear that he's not talking about
16 personal knowledge.
17 THE COURT: All right.
18 MR. DAUGHERTY: I'll fully agree, Your
19 Honor, that I'm talking about a call to the
20 company.
21 THE COURT: Yes, sir.
22 MR. DAUGHERTY: Thank you.
23 Q On Page 35 there was a conversation on July
24 14th, 2008. Can you tell from the notes what that
25 conversation consisted of?

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1 A Yes.
2 MR. LAY: Could we have the date again?
3 MR. DAUGHERTY: July 14th, 2008.
4 THE COURT: Page 35.
5 A It says, TTB1, means talk to Borrower 1. Advised
6 that she has to have an income and a down payment
7 to set up a plan. Will start working in 30 days.
8 Was advised to contact us with the information.
9 Advised of foreclosure process. No sale date.
10 Q You said that TTB1 means talk to Borrower 1?
11 A That's correct.
12 Q And you see the next entry below that is sale
13 schedule. Would that have been after or before
14 this conversation that that note was inputted?
15 A That was after.
16 Q And do you still have the acceleration up
17 there, Mr. Haughton?
18 A I believe so. I do.
19 Q Now, was that acceleration letter -- does it
20 give the date of the foreclosure, when it's
21 scheduled?
22 A Yes, it does. It was scheduled for August
23 12th, 2008.
24 Q And what date is that letter dated?
25 A It's July 11th, 2008.

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1 Q Was -- can you tell from looking at the notes
2 if any further information was provided for
3 Ms. Congress regarding loss mitigation after the
4 July 14th call?
5 A There were no other conversations with the
6 homeowners.
7 Q By looking at the entry on July 14th, whose
8 duty was it to follow up to submit information?
9 MR. LAY: Objection.
10 THE COURT: Overrule.
11 A The notes state that it says, advised to
12 contact us with this information. It was regarding
13 her status of employment.
14 Q And was the default ever cured or another loss
15 mitigation plan ever entered into?
16 A No, it was not.
17 Q Was the property foreclosed on?
18 A It was.
19 Q And do you know if that foreclosure was sold to
20 the trustee of the trust?
21 A It was. They were the high bidder at the sale.
22 Q Mr. Wooten, my opposing counsel, spent a good
23 bit of time with you talking about the electronic
24 systems. And I just wanted to clarify one point.
25 You stated that once the customer service

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1 representative puts in a note that they cannot
2 alter it?
3 A That is correct. Nobody can alter it.
4 Q Mr. Haughton, you also testified that you
5 received documents from Wells Fargo who is the
6 custodian for the trust?
7 A That's correct.
8 Q And what were those documents?
9 MR. WOOTEN: Objection. Your Honor, he
10 testified that he did not receive documents from
11 trust. He received documents from GMAC's
12 custodian.
13 THE COURT: That's what he said. That's
14 Wells Fargo, Mr. Wooten.
15 MR. WOOTEN: Okay. The custodian for the
16 trust filed into the status from GMAC Mortgage's
17 custodian. They have distinct records.
18 THE COURT: All right.
19 Q Did they send those to you, Mr. Haughton?
20 A They did.
21 Q And did you get those in the last couple of
22 weeks?
23 A I did.
24 Q Did you review the original collateral file for
25 this loan?

36 (Pages 141 to 144)

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1 A Yes, I did.
2 Q And did it have the original note in it?
3 MR. WOOTEN: Objection to the extent that
4 he's offering other documents, Your Honor. The
5 best evidence is the actual document. He's talking
6 about the collateral file. He's talking about
7 where it came from and where it went. We need to
8 see those documents.
9 THE COURT: Well, I agree we need to see
10 the documents, but I overrule the objection to the
11 question.
12 Q Did you review the file, Mr. Haughton?
13 A I did.
14 Q And do you know who you received that file from
15 individually?
16 A Individually it came from -- I mean, I don't
17 know who sent it to us from Minneapolis.
18 Q Right. But someone in your office received it
19 through FedEx, right?
20 A Yes, Chantell Fain, who is a paralegal in our
21 legal department in Dallas.
22 Q And she directly gave it to you?
23 A She did.
24 Q And that was the first time that you looked
25 through it was when she gave it to you?

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1 A That's correct.
2 Q And then you gave it back to her?
3 A I did.
4 Q And she sent it directly to us?
5 A That's correct.
6 THE COURT: What's her name?
7 THE WITNESS: Chantell Fain,
8 C-h-a-n-t-e-l-l, Fain, F-a-i-n.
9 MR. LAY: We would like to see the
10 document.
11 MR. DAUGHERTY: Sure.
12 (Whereupon, Plaintiff's Exhibit
13 Number 15 was marked for
14 identification.)
15 Q Mr. Haughton, I'm giving you what I have marked
16 as Plaintiff's Exhibit 15.
17 MR. LAY: Your Honor, may we please see
18 the documents before the witness?
19 MR. DAUGHERTY: I'm working on it, Ken.
20 Q Mr. Haughton, do you recognize that document
21 which I have just handed you marked Plaintiff's
22 Exhibit Number 15?
23 A Yes, I do.
24 Q And does that document appear to be a true and
25 correct copy of the document that was in the

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1 original collateral file that you reviewed after
2 receiving it from Wells Fargo?
3 A Yes.
4 MR. WOOTEN: Objection, Your Honor.
5 That's still not the original note. If it's in the
6 collateral file, it should have the original note.
7 THE COURT: He said it was a copy of it.
8 MR. DAUGHERTY: I'm asking about a copy,
9 Judge.
10 Q And so that is a copy of the original note that
11 you reviewed?
12 A Yes, it is.
13 Q And attached to the back page of that copy, is
14 there an allonge?
15 A There is.
16 Q And it bears two separate endorsements, doesn't
17 it?
18 A It does.
19 Q And when you reviewed the collateral file, how
20 was the note and where was the allonge when you
21 reviewed it to receive it?
22 A They were side-by-side in the file together.
23 Q But there was the note and it was rubber banded
24 and there were some items that were in the file
25 with it?

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1 A Yes.
2 Q And so the allonge was in the file?
3 A Yes.
4 Q But it wasn't actually stapled to that?
5 A No.
6 MR. DAUGHERTY: I just want to represent
7 to the Court that that Exhibit Number 15 has been
8 stapled together for the benefit of not losing the
9 pages, and Mr. Haughton's testimony talks.
10 THE COURT: All right.
11 Q Now, Mr. Haughton, do you understand it to be
12 Wells Fargo duty to keep those documents in the
13 normal and ordinary course of their business for
14 you to receive in your role as servicer?
15 A Yes, it is.
16 MR. DAUGHERTY: Your Honor, we will move
17 at this time to admit a copy of the original note
18 that Mr. Haughton has testified to.
19 MR. WOOTEN: Your Honor, we would object
20 to, at least we need the right to inspect the
21 collateral file and their file --
22 THE COURT: Is the original file here?
23 All right. You will have that. Overrule the
24 objection based on their representation.
25 (Whereupon, Plaintiff's Exhibit

37 (Pages 145 to 148)

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1 Number 15 was received into
2 evidence.)
3 Q Mr. Haughton, Mr. Wooten also spent a good deal
4 of time with you discussing various permutations of
5 the names of the trust.
6 A That's correct.
7 Q And what I want to ask you is, do you have any
8 doubt in your mind whatsoever that the trust that
9 foreclosed on this property and the trust that is
10 prosecuting the lawsuit are the same that is
11 covered in the documents that Mr. Wooten showed
12 you?
13 A I have no doubt.
14 Q And isn't the actual party that does the
15 foreclosure the trustee?
16 A Yes.
17 Q So that would be you U.S. Bank?
18 A That's correct.
19 Q Now, Mr. Wooten also showed you a copy of
20 Plaintiff's Exhibit Number 1 which is up there on
21 your witness stand. If you could, please, pull
22 that out to refer to it.
23 Q Now, you testified earlier that that is a
24 document out of GMAC's credit file; is that
25 correct?

1 guys.
2 THE COURT: Are you going to be awhile
3 longer?
4 MR. DAUGHERTY: I don't think too much
5 longer, Judge. It just depends on the objections.
6 MR. WOOTEN: Your Honor, I suggest we may
7 can look at the collateral file during the break
8 and then come back and do recross after the lunch
9 break.
10 THE COURT: All right. We'll go on and
11 take --
12 MR. RAGSDALE: Let's stop now.
13 THE COURT: All right. Let's be back at
14 1:15 by that clock.
15 (Lunch recess.)
16 THE COURT: Back on the record.
17 CROSS-EXAMINATION CONTINUED
18 BY MR. DAUGHERTY:
19 Q Mr. Haughton, before we broke for lunch we were
20 discussing the issue that opposing counsel raised
21 regarding Plaintiff's Exhibit Number 1 which is a
22 copy of the note. And I had just showed
23 defendant's counsel Plaintiff's Exhibit Number 16,
24 which I'm also handing to you at this time.
25 A Okay.

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1 A That is correct.
2 Q And once again, is it apart of GMAC's normal
3 and ordinary course of business for them to receive
4 this credit file from the original servicer and
5 then upload it into your system to maintain it as a
6 business record?
7 A That is correct.
8 Q And in that document package that you received,
9 does that include the origination document such as
10 the appraisal, the original note and things of that
11 nature?
12 A It does.
13 Q And would it also include a copy of the note as
14 it was executed at the closing table or as
15 maintained by the original servicer?
16 A Yes, it would.
17 Q Have you had a chance to review your credit
18 file in this case?
19 A Yes, I have.
20 (Whereupon, Plaintiff's Exhibit
21 Number 16 was marked for
22 identification.)
23 Q I show you what I have marked as Plaintiff's
24 Exhibit Number 16.
25 MR. DAUGHERTY: I have a copy for you

1 Q Do you know what that document is and have you
2 seen it before?
3 A Yes, I have.
4 Q What is that document, please?
5 A It's an asset cover sheet that comes with the
6 credit file.
7 THE COURT: And that's 16.
8 MR. DAUGHERTY: It's 16, Your Honor.
9 THE COURT: Thank you. Tell me again what
10 it is.
11 THE WITNESS: It's an asset cover sheet
12 from the buyer with the documents to tell you who
13 the custodian is and what the original servicer was
14 and the address of the property.
15 Q Is it dated at the bottom?
16 A It is dated.
17 Q What is the date on that?
18 A October 7, 2006 at 2:43 in the afternoon.
19 Q And Bill, did you see that document in your
20 credit file when you reviewed it?
21 A Yes, I did.
22 Q And that credit file, those are consistent with
23 the other documents we've discussed, copies that
24 GMAC Mortgage keeps in the normal and ordinary
25 course of its business?

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1 A They are.
2 Q And they preserve those in their system
3 pursuant to the document retention policies?
4 A Yes.
5 Q And then you reviewed them in connection with
6 this loan?
7 A That's correct.
8 MR. DAUGHERTY: Your Honor, we would move
9 to admit that document.
10 THE COURT: It's admitted, Plaintiff's 16.
11 (Whereupon, Plaintiff's Exhibit
12 Number 16 was received into
13 evidence.)
14 (Whereupon, Plaintiff's Exhibit
15 Number 17 was marked for
16 identification.)
17 Q I'm going to show you what's been marked as
18 Plaintiff's Exhibit Number 17. Let me show you
19 Plaintiff's Exhibit Number 17. Do you recognize
20 that document?
21 A Yes, I do.
22 Q And is that document similar in most respects
23 to Plaintiff's Exhibit Number 1?
24 A Yes, it is.
25 Q And is there one difference in between those

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1 documents on the top of the page?
2 A Yes, there's not a fax across the top of
3 Exhibit Number 17.
4 Q Do you know where Exhibit Number 17 came from?
5 A This would have come from the credit file.
6 Q And where would GMAC, where would they have
7 received that document from?
8 A From Mortgage Lenders Network.
9 Q Is that what's indicated on that asset cover
10 sheet?
11 A Yes, it is.
12 Q And Mr. Haughton, is -- in the credit file, did
13 the note that you saw that you're holding,
14 Plaintiff's Exhibit Number 17, did it come
15 sequentially soon after that asset cover sheet?
16 A Yes, it did.
17 Q I want to refer you back to the payment
18 history. And if you could, please, tell the Court
19 the Exhibit Number of that.
20 A Exhibit Number 3.
21 Q Does that document also have a fax stamp at the
22 top of it?
23 A It does.
24 Q Is the date the same as the date on Plaintiff's
25 Exhibit Number 1 or from the same entity?

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1 A It is from the same date, about twenty minutes
2 apart, and from the same fax number.
3 Q Do you understand that documents were faxed
4 from GMAC to GMAC's counsel in this case for use in
5 the earlier trial and in the earlier case?
6 A Yes, I do.
7 Q Now, that document, Plaintiff's Exhibit Number
8 1, and also Number 17, say that, on the top, "true
9 and certified copy." Is that the way that that
10 document exist in the file that you received from
11 Mortgage Lenders Network?
12 A Yes, it did.
13 Q And would it have been that company that put
14 the true and certified copy at the top?
15 A Yes, it would.
16 MR. DAUGHERTY: Your Honor, I would also
17 move to admit Plaintiff's 17.
18 THE COURT: It's admitted.
19 MR. DAUGHERTY: Thank you.
20 (Whereupon, Plaintiff's Exhibit
21 Number 17 was received into
22 evidence.)
23 Q Mr. Haughton, I'm going to hand to you that
24 package. What is that package of documents I've
25 just given you there?

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1 A This is the original documents on this loan.
2 Q And are those documents we discussed earlier
3 that you received from Wells Fargo?
4 A Yes, they are.
5 Q And it's your understanding that Wells Fargo is
6 the custodian of record for the file documents for
7 this trust?
8 A That's correct.
9 Q And that is where you received these documents
10 from?
11 A That is right.
12 (Whereupon, Plaintiff's Exhibit
13 Number 18 was marked and received
14 into evidence.)
15 MR. DAUGHERTY: Your Honor, I'm going to
16 mark as a stipulated exhibit Plaintiff's Exhibit
17 18. And this is copies of everything that was in
18 the collateral file that Mr. Haughton is holding,
19 and I'm going to hand that to him. Then I'm going
20 to offer to the Court for inspection the original
21 note and the allonge.
22 THE COURT: All right. Have you all
23 looked now -- I don't want to hear later they left
24 something out.
25 MR. WOOTEN: We've seen everything in the

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1 file.
2 THE COURT: All right.
3 MR. DAUGHERTY: Judge, if I could --
4 THE COURT: All right. Do you want to
5 come up here and see what he's showing me?
6 All right. Let the record show that I am
7 examining the original documents.
8 MR. WOOTEN: I just told co-counsel and
9 Your Honor that defendant is satisfied that the
10 copy presented to the witness is an identical copy
11 of the collateral file.
12 Q (BY MR. DAUGHERTY:) Mr. Houghton, the copy of
13 that has been introduced as Plaintiff's Exhibit
14 Number --
15 A 18.
16 Q -- 18, that's an accurate and correct copy of
17 what you received from Wells Fargo?
18 A Yes, it is.
19 Q And an accurate and correct copy of what's in
20 the collateral file?
21 A Yes, it is.
22 Q I want you to turn specifically to the last
23 page of that document. Is that the allonge?
24 A Yes, it is.
25 Q Do you see where there are endorsements on

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1 there?
2 A Yes.
3 Q Did you physically stamp either of those
4 endorsements on that document?
5 A No, I did not.
6 Q Are you aware that anyone in your office
7 physically stamped those endorsements on that
8 document?
9 A No, I am not.
10 Q Is that the way you received it?
11 A Yes, it is.
12 Q Did you fabricate any portion of that file?
13 A Absolutely I did not.
14 Q Did anyone in your office fabricate any portion
15 of that file?
16 A No.
17 Q Do you have any reason to think that Wells
18 Fargo did it before they sent it to you?
19 MR. LAY: Objection, Your Honor.
20 THE COURT: Overrule.
21 A I'm sorry. Can you reask the question?
22 Q Do you have any reason to think that Wells
23 Fargo may have before they sent it to you?
24 A No, I do not.
25 Q Mr. Houghton, is it the course of business at

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1 GMAC to offer loss mitigation to borrowers even
2 after foreclosure?
3 A It is in some cases, yes.
4 Q Within the last few weeks, did you extend an
5 offer to Ms. Congress to apply for loss mitigation?
6 A We did by sending a workout package to be
7 filled out.
8 Q Have you received any documents back in
9 response?
10 A No, we have not.
11 Q Before I finish, if you could look briefly at
12 the payment history again. And again, tell the
13 Court when GMAC began servicing the loan. And I
14 want to make it clear on the record that when I say
15 "GMAC" at that time would it have been Homecomings
16 A It would have been Homecomings.
17 Q Thank you. And what date did they start
18 servicing the loan?
19 A It was boarded in in the system on February
20 7th, 2007.
21 Q And does that predate the creation date of this
22 trust to your knowledge?
23 A Yes, it does.
24 THE COURT: February 7, 2007?
25 THE WITNESS: Yes, sir.

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1 THE COURT: Thank you.
2 MR. DAUGHERTY: Your Honor, we pass the
3 witness at this time.
4 THE COURT: All right.
5 REDIRECT EXAMINATION
6 BY MR. WOOTEN:
7 Q Mr. Houghton, so now we've -- I think we've
8 heard the explanation of why we have two different
9 promissory notes in the case. We had an original
10 copy and now we've got one that's got some
11 endorsements, right?
12 A Right.
13 Q And you testified earlier that Wells Fargo, who
14 is also the custodian for GMAC Mortgage, correct?
15 A Correct.
16 Q You testified that that is where you received
17 these documents from, correct?
18 A The original documents, yes.
19 Q Okay. Do you know if there is any required
20 form to request documents from the trustee for this
21 trust?
22 A From the trustee?
23 Q For this trust.
24 A No, I don't know.
25 Q In examining the collateral file, did you see

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1 any evidence that a request had been made to the
2 trustee for this trust for the collateral file?
3 A No.
4 Q Did you personally make the request for the
5 original documents?
6 A No, I didn't. Our legal department did.
7 Q And the collateral file does not contain the
8 form the request was made on, correct?
9 A No, it wouldn't be in the file.
10 Q Okay. With respect to the pooling and
11 servicing agreement for this trust, let me show you
12 Page 93 of 117 and call your attention specifically
13 to Exhibit G.
14 A Okay.
15 Q Does that document indicate that is a request
16 for release of documents for pooling and servicing
17 agreement.
18 THE COURT: Does it say what? Repeat
19 that, please.
20 Q Does it indicate that it is a request for
21 release of documents from the trustee for this
22 trust?
23 MR. DAUGHERTY: Take your time and read
24 through it if you need to.
25 A It says it's a request for the release of the

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1 mortgage loan file described below.
2 Q Does it have a place to put in the pooling and
3 servicing agreement date?
4 A It does.
5 Q The series date?
6 A Yes.
7 Q The account number?
8 A Well, it says, series number. I don't think it
9 has a series date.
10 Q Well, I'm sorry. The series number?
11 A Yes.
12 Q The account number?
13 A Yes.
14 Q A pool number?
15 A Correct.
16 Q A loan number?
17 A Yes.
18 Q A MIN?
19 A What's that?
20 Q M-I-N, MIN. What's a MIN number?
21 A I'm not sure what that is.
22 Q Are you familiar with MERS?
23 A Yes.
24 Q Do you know if MIN might stand for Mortgage
25 Identification Number on the MERS system?

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1 A It could. I don't look at the MERS system.
2 Q And in the documents that you reviewed in
3 Ms. Congress's file, did you see any document like
4 this requesting a release of documents from a
5 trustee?
6 A No, I didn't.
7 Q Do you know what the trustee's responsibilities
8 are to segregate and maintain their assets under
9 this agreement?
10 A What do you mean by that, to segregate and
11 maintain their assets?
12 Q Do you know what the trustees responsibilities
13 are under this agreement to have this trust assets
14 segregated and marshalled and maintained so that
15 they are identifiable?
16 A Yes.
17 Q Okay. You're familiar with those requirements?
18 A Well, generally, I am. The certain loans in
19 this pool have to be maintained just in this pool
20 of loans.
21 Q Okay. And with respect to that, if you would,
22 please, sir, flip back to Page 89 of that document.
23 Do you see the document listed as Exhibit 1?
24 A Yes, I do.
25 Q Does that say that that is a custodian's

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1 certification?
2 A It's titled: The Form of Custodian Initial
3 Certification.
4 Q Okay. And does that document indicate that the
5 custodian has, in this certification, is certifying
6 they received a custodial file which contains the
7 original mortgage note or a lost note affidavit?
8 A Yes, it does.
9 Q Did you see a document like that in this
10 collateral file?
11 A No, I did not.
12 Q Have you seen a document like that in
13 association with Ms. Congress's loan?
14 A No.
15 Q In reviewing the collateral file, do you see
16 any document that indicates in the collateral file
17 that there is a specific trust named?
18 A I don't believe so.
19 Q Okay. Looking at the endorsements on the
20 allonge, in reviewing the endorsements on the
21 allonge, please point out any evidence on the
22 allonge that indicates what trust is the owner of
23 this loan?
24 A It does not point that out. It does not
25 evidence that on the allonge.

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1 Q Okay. So if we assume that the allonge is a
2 valid document and it's considered as part of the
3 evidence, does the allonge convey in the trust who
4 is the plaintiff in this case?
5 A It -- well, the last one is paid to the order
6 of U.S. Bank National Association as Trustee.
7 Q You mentioned very early on that you have no
8 familiarity with securitization at all; is that
9 right?
10 A No, I didn't say that. I am familiar with
11 securitization. I don't know a lot of the
12 specifics about securitization.
13 Q Have you ever heard of the term "series trust?"
14 A Yes.
15 Q Tell the Court what you know about the
16 definition of a series trust.
17 A I don't know the definition of it. I've simply
18 heard that term.
19 Q Do you know if the series trust might be one of
20 several in sequence that involve the same parties
21 but create separate pools?
22 A No, I don't know that.
23 Q Is there anything about the allonge that
24 identifies a specific trust?
25 A No.

1 your testimony, wasn't it?
2 A Regarding what?
3 Q As in LPS Desktop who manages your
4 foreclosures, right?
5 A That's a system used to -- for our foreclosure
6 attorneys to converse back and forth with our
7 foreclosure department.
8 Q And that document says desktop.
9 A It does.
10 Q And it says new document.
11 A It says new doc type sheets.
12 Q Desktop new document, last document in the
13 custodial file; is that fair?
14 A Yes.
15 Q And it certainly isn't part of the note that
16 was signed by Ms. Congress, is it?
17 A No, it wasn't.
18 Q Do you have any experience with purchasing or
19 making rubber stamps?
20 A No.
21 Q Would it be hard to get a rubber stamp made
22 that has the name EMAX Financial Group, LLC on it?
23 MR. DAUGHERTY: Objection, Your Honor, it
24 calls for speculation with regard to a stamp made.
25 THE COURT: Overrule.

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1 Q It just says U.S. Bank as trustee?
2 A U.S. Bank National Association as Trustee.
3 Q If you will open the collateral file that we
4 just marked. I'll show this document to you.
5 MR. WOOTEN: I am referring, Your Honor,
6 to next to last page of the collateral file.
7 Q I apologize for standing right here beside you.
8 A That's all right.
9 Q But I wanted to call out to your attention the
10 byline. And let's just, first of all, talk about
11 what this page is.
12 That is a bar code label to identify documents
13 being scanned to a collateral file; is that right?
14 A I believe so, yes.
15 Q Or delivered; is that right?
16 A Right.
17 Q And what does it say is being delivered?
18 A An allonge.
19 Q Can you please read across the bottom of the
20 document where the document identification
21 information is? Please read this portion right
22 here where it says "desktop."
23 A It says: Desktop back slash new doc type
24 sheets back slash N-A-L-G doc doc.
25 Q Desktop. That's a term we heard early on in

1 A No, it wouldn't be hard.
2 Q Take a moment and look at the stamp on the
3 allonge because it is a stamped, right?
4 A Which one?
5 Q EMAX Financial. Which stamp? That's a good
6 question. The EMAX Financial Group stamp.
7 A Do you mean the signature or the -- without
8 recourse pay to the order of?
9 Q You mean the stamped signature?
10 A Uh-huh.
11 Q Which stamped signature?
12 A I didn't say there's a stamped signature. I'm
13 asking what you're referring to as the stamp.
14 Q EMAX Financial Group, LLC?
15 A Okay.
16 Q Flip back to earlier in the collateral file
17 where the endorsement is now filled in with a stamp
18 to EMAX Financial Group, LLC.
19 A I'm sorry. Where do you want me to flip to?
20 Q Flip back to the early part of the collateral
21 file, the last page of the note where there used to
22 be a blank endorsement. Take a look at the fill
23 in, EMAX Financial Group, LLC. That's also a
24 stamp, right?
25 A It appears to be. It's printed.

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1 Q Okay. Is there anything about that collateral
2 file that you can say would indicate that no one
3 could go in and stamp EMAX Financial Group into
4 that blank endorsement?
5 A I'm sorry. I'm not following your question.
6 Say it again.
7 Q Well, let's just say yesterday this had a blank
8 endorsement. Nothing about your custodial file
9 would give us any information as to who's requested
10 it? When? Who's had access to it? When?
11 Correct?
12 A There are records kept with the custodian of
13 who's requested the forms, but I don't know that
14 they're kept in the file.
15 Q Uh-huh. And my question is: There is nothing
16 in the documents you've given us that we could rely
17 on to say that no one has had access to the
18 original promissory note to stamp in the name EMAX
19 Financial Group, LLC in the last few weeks or days?
20 A No.
21 Q Compare the stamp on the note to the stamp on
22 the allonge, please, sir.
23 Can you tell whether EMAX Financial Group is
24 stamped on the allonge?
25 A Well, I mean, it's printed. It says, "Without

1 other words, the only name that we can tell is the
2 trustee's name and nothing else, right?
3 A Right.
4 Q And you have no knowledge of what the industry
5 standards and customs and practices were with
6 respect to the endorsement of a promissory note in
7 the securitization process, do you?
8 A No, I guess not. No.
9 Q Do you have any knowledge of when it was proper
10 or not to use an allonge to attempt to endorse a
11 promissory note?
12 A It used to be that you would have to fill out
13 the entire promissory note and then you could move
14 and have an allonge.
15 Q Right. And isn't it true that you used to also
16 tax the allonge in such a manner that it couldn't
17 be pulled away from the promissory note or
18 detached?
19 MR. RAGSDALE: Is he asking for a legal
20 conclusion?
21 MR. WOOTEN: I'm asking his --
22 THE COURT: He's asking about the way he
23 used to handle it.
24 MR. RAGSDALE: Okay.
25 A Used to handle it when?

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1 recourse, pay to the order of." And then It says,
2 "Residential Funding Company, LLC, EMAX Financial
3 Group, LLC by John Hasbrook. (sic.)
4 Q Let's talk about Mr. Hasbrook's signature. Do
5 you know Mr. Hasbrook?
6 A No, I don't.
7 Q Do you work with him?
8 A No.
9 Q Have you ever seen his signature before?
10 A No.
11 Q Can you tell from that document if his
12 signature has been added to that document
13 digitally?
14 A No.
15 Q Can you tell if that signature was stamped onto
16 that document?
17 A No.
18 Q You are certain that the right trust is
19 foreclosing, right?
20 A Yes, I have every belief that it is.
21 Q So nothing about those endorsements can give
22 any of us in this room any certainty of the trust
23 that is the owner of that loan, right?
24 A That's correct.
25 Q It's completely confiscated or a morphis? In

1 Q You said you used to use an endorsement and
2 allonge only after all the spacing on the note had
3 been filled in, right?
4 A Right.
5 Q And that's not just front. That's back also,
6 right?
7 A I believe so.
8 Q So if they got to the point of using an
9 allonge, is it not true, sir, that usually the
10 allonge was attached in such a way it couldn't be
11 separated from the note?
12 A I don't know. It would depend on the
13 individual handling the document.
14 Q Do you know what the industry standards were
15 for the use of that type of document?
16 A No.
17 Q And certainly you don't know anything about
18 legal rules for use of that type of document?
19 A No.
20 Q Let me show you another one of these SEC
21 documents and see if this loan number looks
22 familiar to you. Can you look at -- let's see --
23 this document right here, this asset cover sheet.
24 Is that the ID Number 10625616?
25 A It is.

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1 Q Is that the same one right here in this SEC
2 filing?
3 A Yes, it is.
4 Q And does this says 9-1-06?
5 A It does.
6 Q And that would be before this document is dated
7 10-7-06, right?
8 A Before this cover sheet is dated.
9 Q The cover sheet, right.
10 You understand this is like a print off in the
11 SEC schedule of loans?
12 A Yes, I do.
13 Q Is this another page -- normally these pages
14 would be beside each other, right?
15 A Right.
16 Q And this is another page. It says 10625616
17 also?
18 A Correct.
19 Q Look at the page, one more page. And does this
20 also say 10625616?
21 A It does.
22 Q And I think that is all the pages that were
23 associated with this loan profile.
24 What is the name of the trust where that loan
25 number shows up, please, sir?

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1 MR. DAUGHERTY: To the extent you know.
2 I'm not sure if he's asking him to read it, Judge.
3 I'm just unclear about the question, so I will
4 object to that extent.
5 THE COURT: Overrule.
6 Q What does that say right here? It says RASC
7 Series 2006. Series 2006, right?
8 A Right.
9 Q And what does that last part of that name?
10 A EMX9 Trust.
11 Q Series 2006-EMX9 Trust; is that right?
12 A Correct.
13 Q And that's not the name of the plaintiff in
14 this lawsuit, right?
15 A No.
16 Q This is a different trust, right?
17 A It is a different name.
18 Q One of a series, right?
19 A Right.
20 Q And is this another document for that same
21 2006-EMX9 Trust dated January 2nd of '07. And this
22 is Exhibit 99.1 the distribution statement which is
23 referring to this list of loans, right?
24 A Yes.
25 Q Okay. And this says the issuing entity is RASC

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1 Series 2006-EMX9 Trust. Right?
2 A Yes.
3 Q And we agree that all the foreclosure documents
4 in this case do not name the plaintiff in this
5 case, right?
6 A Right.
7 Q But this trust documents show Ms. Congress's
8 loan to be in a different trust than the plaintiff
9 in this case?
10 A If those pages at the back go with the front
11 pages, yes.
12 Q Sure. Well, let's check that so we can be
13 certain because I thought you might ask that
14 question.
15 Across the heading at the top of this page,
16 does it also say RASC Series 2006-EMX9 Trust
17 free-writing prospectus which is FWP?
18 A Yes, it does.
19 Q And does it say that that is on 10-23 of '06?
20 A Yes.
21 Q And the other page that has her number, does it
22 also say these same trust name?
23 MR. DAUGHERTY: Your Honor, I'm going to
24 object to any further use of this document until we
25 establish some kind of foundation or exhibit. I

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1 was letting him read from it for a period of time.
2 I'm going to go ahead and object to his further use
3 of it because there has been absolutely no
4 foundation for that document in this case.
5 MR. WOOTEN: Judge --
6 THE COURT: What is the document?
7 MR. WOOTEN: The document is an officially
8 filed document with the federal government to the
9 Securities and Exchange Commission that's contained
10 in the data base that they maintain.
11 MR. DAUGHERTY: So he says.
12 THE COURT: Is the witness coming down?
13 MR. WOOTEN: Yes, sir.
14 THE COURT: Then on the representation, I
15 overrule the objection.
16 Q Okay. Now --
17 THE COURT: I mean, I don't want this
18 witness to have to stay here and go on for weeks
19 and be called back after the document is admitted.
20 MR. DAUGHERTY: I agree, Judge.
21 THE COURT: All right.
22 Q Now --
23 MR. WOOTEN: And Judge, we've not marked
24 this document. We want to mark it at this time and
25 offer it as SEC filings from this particular trust.

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1 MR. DAUGHERTY: And we would object to
2 that, Your Honor, until such time as he wants to
3 move to admit it.
4 THE COURT: All right. All three of these
5 are being marked for identification. What's your
6 number?
7 MR. WOOTEN: It will be 2, Your Honor.
8 THE COURT: Defendant's 2.
9 MR. WOOTEN: We'll also authenticate it
10 with the experts as well. And I'm just going to
11 mark the inside of the binder on the first page, so
12 it will stick to something. The outside is
13 laminated.
14 (Whereupon, Defendant's Exhibit
15 Number 2 was marked for
16 identification.)
17 Q Do you know how many trusts are in the series
18 that includes the plaintiff who is named in this
19 case?
20 A No, I don't.
21 MR. WOOTEN: I'm also going to mark this
22 for identification, Your Honor. Judge, for
23 purposes of identification and cross-examination,
24 I'll mark this as 3.
25 (Whereupon, Defendant's Exhibit

1 identification of a list of Series Trusts.
2 THE COURT: Well, he wouldn't know
3 anything about that.
4 MR. WOOTEN: Just as far as the number
5 that's shown by that chart.
6 THE COURT: Overrule.
7 Q (BY MR. WOOTEN:) In looking at this, are there
8 seventeen distinct trusts which are listed as
9 series trusts which are numbered by using the SEC
10 file number for Residential Asset Securities
11 Corporation, and then, again, with a dash 01 and go
12 through dash 17?
13 A Yes, there are.
14 Q And you know nothing about the contents of
15 those files, right?
16 A No, I don't.
17 Q Do you have any idea how many of these trusts
18 have the same parties from right here to right here
19 (indicating), from Mortgage Lenders Network,
20 EMAX Financial, Residential Funding, and
21 Residential Asset Securities Corporation?
22 A No, I don't.
23 Q Do you have any idea how many of those trusts
24 could hold the Congress note based on the timing of
25 her loan?

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1 Number 3 was marked for
2 identification.)
3 THE COURT: All right. Defendant's 3.
4 What is it?
5 MR. WOOTEN: This is a search of the SEC
6 document filings by the SEC file number for
7 Residential Asset Securities Corporation, which is
8 333131209.
9 MR. DAUGHERTY: Your Honor, we're going to
10 object to at least --
11 MR. WOOTEN: It's for identification and
12 we will authenticate it further on.
13 Q Let me represent to you, Mr. Haughton, that
14 that is the result of the search that I did on the
15 SEC file number for Residential Asset Securities
16 Corporation who is listed as the depositor of the
17 plaintiff in this case, correct?
18 MR. DAUGHERTY: Your Honor, I believe I'm
19 going to go ahead and put my objection on record to
20 a document that Mr. Wooten searched for and is
21 providing to the witness who is not here to testify
22 to other SEC filings?
23 THE COURT: What are you going to ask him
24 about it?
25 MR. WOOTEN: I'm just showing him an

1 A No.
2 Q Do you have any explanation as to why an
3 allonge that was allegedly part of a securitization
4 that took place by March 12th of '07 is the last
5 document in your collateral file as opposed to
6 being part of the collateral file that includes the
7 note?
8 A No, I don't.
9 Q Because they're separated by scan sheets which
10 show when they went into the system allegedly,
11 right?
12 A Correct.
13 Q So, when the note was sent to the collateral
14 file, a cover sheet with a bar code, that indicated
15 what documents went to the collateral file, right?
16 A That's right.
17 Q And the allonge clearly was the last document?
18 A The last document in the file.
19 Q After the title policies, after the mortgages,
20 the last thing, right?
21 A Yes.
22 Q And the footer identifying the scan sheet says
23 "desktop slash new document." Do you want me to
24 show it to you?
25 A It did.

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1 THE COURT: Here's the copy.
2 Q And LPS Desktop is the software platform your
3 company uses with the attorneys to manage the
4 foreclosure?
5 A Did you say is it LPS Desktop?
6 Q LPS Desktop is the software platform your
7 company uses to manage foreclosure process with its
8 attorneys?
9 A Yes, sir.
10 Q Does it make sense to you, Mr. Haughton, that
11 if the allonge was done as apart of the
12 securitization that it would have been with the
13 promissory note?
14 A Not in all cases because it was assigned to
15 different entities.
16 Q Well, wouldn't -- if this process had been
17 completed prior to delivering to your trustee,
18 would not the allonges, if they were done, be there
19 when the note got there? Wouldn't those steps have
20 already taken place, sir?
21 A Yes. But that's why there's MERS.
22 Q MERS has nothing to do with promissory note,
23 does it?
24 A No. They're the --
25 Q Mortgagee of record?

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1 A Right.
2 Q Right. They don't have anything to do with the
3 note, right?
4 A Correct.
5 Q So if the note traveled through the
6 securitization process and made it to this trustee,
7 the allonge created these steps would have made it
8 with the note, would it have not?
9 MR. RAGSDALE: I'm sorry. Could you
10 repeat the question?
11 MR. WOOTEN: Could you read it back?
12 (Requested portion of record read.)
13 A Not if there was a need for that allonge at
14 that point.
15 Q Okay. So if the securitization documents
16 require an endorsement between this party from
17 Mortgage Lenders Network to EMAX Financial, from
18 EMAX Financial to Residential Funding who then
19 endorsed the trust, and that's what the document
20 said was required, that would have been done prior
21 to March 12th of '07 when the note was delivered to
22 the trust, right?
23 A If that was what it stated.
24 Q Right. One last question about the allonge --
25 well, two. You mentioned that the collateral file

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1 was delivered first to a paralegal, right?
2 A I'm sorry. To a what?
3 Q To a paralegal?
4 A Oh, yes.
5 Q What was her name?
6 A Chantell Fain.
7 Q Chantell Fain. She doesn't have anything
8 competitively to do with the foreclosure for your
9 company, does she?
10 A No, she does not.
11 Q She doesn't have to do anything with employment
12 with LPS, does she?
13 A With what?
14 Q She's not also employed by LPS, is she?
15 A No.
16 Q She's not on-site of LPS?
17 A No.
18 Q You know what an on-site is, right?
19 A Yes.
20 Q That's somebody from LPS at your facility?
21 A Right.
22 Q Looking at these kinds of problems, right?
23 A Yes.
24 Q Yes. Do you know what your paralegal did with
25 the file between the time she got it and it got to

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1 you?
2 A She received it from FedEx and she brought it
3 to me.
4 Q Do you know what the time frame was for that
5 process to take place?
6 A She brought it to me the same day she received
7 it.
8 Q How much time lapsed?
9 A I don't know.
10 Q Do you know if your company has preprinted
11 forms that have allonge information on it?
12 A That says allonge at the top or it says what?
13 Q Yeah. Let me ask you: Does this look an awful
14 lot like the allonge that --
15 MR. DAUGHERTY: I'm going to object to
16 using that exhibit until we look at it first.
17 THE COURT: All right. Let him look at
18 it.
19 MR. WOOTEN: I can give him an extra one
20 too.
21 MR. DAUGHERTY: That's fine.
22 MR. WOOTEN: I've got a few.
23 THE COURT: All right. Go ahead.
24 Q Does this allonge look an awful lot like the
25 allonge that's in your collateral file?

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1 A Yes, it does.
2 Q Does it even have the bar coding on it?
3 THE COURT: The what? The bar what?
4 Q The bar coding.
5 A This one you just gave me does.
6 Q The only difference between this one and the
7 one that's in your collateral file, stamps, right?
8 A And a signature.
9 Q A signature?
10 A Well, John Hasbrook and Judy Faber.
11 Q Stamps and a signature. Is it your testimony
12 that you believe that the signature of John
13 Hasbrook is an original written signature?
14 A I don't know. I have a copy, so I don't know.
15 Q Okay. Fair enough. I mean, is that your
16 impression that it was signed by John Hasbrook?
17 A I'd have to look at it.
18 Q And what's conspicuous is the signatures on the
19 document in your collateral file, all those people
20 are employed right here, right, Residential Funding
21 Company, LLC?
22 A Judy Faber signed for Residential Funding
23 Company, LLC.
24 Q And what does Mr. Hasbrook say in his document?
25 What does it say under his signature?

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1 A Assistant Vice President, Residential Funding
2 Company, LLC as attorney in fact for EMAX Financial
3 Group, LLC.
4 Q So you had a vice president of RFC, the party
5 in the middle of this, signing as attorney in fact
6 for the party prior to this?
7 A Correct.
8 Q On the last document to enter the collateral
9 file?
10 A Correct.
11 Q Which seems pretty accurately reproduced right
12 here, right?
13 MR. RAGSDALE: What's that?
14 Q With the exception of signatures, stamps?
15 A Yes.
16 Q Do you have any idea of the complexity of the
17 technology involved in stamps that go on this?
18 A No, not really.
19 Q Do you have any idea about how quickly you can
20 get your hands on stamps with this information
21 that's on your collateral file?
22 A No.
23 Q Do you even know whether the contents of that
24 file are digital images drag and dropped onto this
25 document?

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1 A No.
2 Q Anything about your bar coding unique or
3 special on this document?
4 A Which document?
5 Q The allonge?
6 A The blank one?
7 Q Or the one in your collateral file?
8 A No.
9 MR. WOOTEN: Your Honor, I want to do this
10 for the benefit of the Court. It's a bar code
11 scanner on this phone. The two documents, the bar
12 code on --
13 MR. DAUGHERTY: Your Honor, I guess I'm
14 going to have to object to the demonstrative
15 evidence and the lack of foundation that it's a
16 working bar code scanner.
17 THE COURT: Well, you can cross-examine
18 him for it.
19 MR. DAUGHERTY: I don't have a bar code
20 scanner.
21 MS. HOOD: Do you want to borrow one?
22 MR. WOOTEN: There we go.
23 Q Now, does that bar code read out to the loan
24 number on the allonge?
25 A It says, found and play text 10625616.

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1 Q Does that agree with the loan ID Number beside
2 the bar code?
3 A Yes, it does.
4 Q And that's on the bar code for the blank one,
5 right?
6 A Correct.
7 Q That's the one I handed you. Flip it back to
8 the one on your documents. Does that also indicate
9 the same information as on the blank allonge?
10 A Yes, it does.
11 Q And that's the loan number, right?
12 A Right.
13 Q Nothing else?
14 A No.
15 Q It doesn't indicate a trust number or a pool
16 number or anything like that?
17 A No.
18 Q I obviously have not had any access to your
19 computer system, have I?
20 A Not that I know of.
21 Q But from looking at the blank document, other
22 than stamps and signatures, it has everything that
23 the document in your collateral file has, right?
24 A Right.
25 MR. WOOTEN: Tender the witness.

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1 THE COURT: All right. Any further cross?
2 MR. DAUGHERTY: Yes, Judge. I'll try to
3 be brief.
4 RE-CROSS-EXAMINATION
5 BY MR. DAUGHERTY:
6 Q You have a copy of the collateral file still
7 with you there?
8 A I do.
9 Q Have you ever used a computer before,
10 Mr. Haughton?
11 A Yes, I have.
12 Q Are you familiar with a document ID?
13 A Yes, I am.
14 Q Is that stamped on the bottom of the document?
15 A Yes.
16 Q Are you familiar with the C Drive of what your
17 computer is?
18 A Yes, I am.
19 Q Are you familiar with the fact that you have a
20 desktop folder in your C Drive?
21 A Yes.
22 Q Are you familiar with the fact that whenever
23 you create a document you can put that file
24 location in the footer of the document?
25 A Yes, I am.

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1 Q Would it look a lot like the footer of that
2 document?
3 A It would.
4 Q And I want to ask you --
5 MR. DAUGHERTY: This is actually not a
6 complete copy, Judge, and I'm going to have to have
7 this redone of this collateral file because it cut
8 off the very top of this scan sheet, I just
9 noticed. So I'm going to go back to the original
10 and use it for purposes.
11 MR. RAGSDALE: We'll check and confirm it
12 before printing --
13 MR. WOOTEN: Which one are we talking
14 about? Show me.
15 MR. DAUGHERTY: All right.
16 Q Now, whenever you look at this document, that
17 has the desktop folder of the C Drive on it in
18 document and settings, right?
19 A Yes, it does.
20 Q And it's a doc doc, which means it's a word
21 document.
22 A Yes.
23 Q And at the top does it have a date on it?
24 A It does.
25 Q What does that date say?

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1 A 8-29-2007.
2 Q 2007?
3 A 2007.
4 Q I want to go backwards through the file at this
5 point.
6 A Okay.
7 Q Here we run across another scan sheet. And the
8 footer of that document is a little bit different.
9 What does it look like it's off of?
10 A It's from the F Drive. It says GMAC Mortgage
11 back slash GMAC M master forms back slash new doc
12 type sheets.
13 Q Does that one also have a date on it?
14 A Yes, it does. It's 8-29-07 as well.
15 Q And I'm going to skip up to the scanner sheet
16 for the title policy and ask you to take a look at
17 that one and talk about the document footer on that
18 one.
19 A It's C colon back slash documents and settings
20 back slash scan 05 back slash desktop back slash
21 new doc type sheets back slash TPOL doc doc.
22 Q And does that scan sheet have a date on it?
23 A It does. 8-29-07.
24 Q Okay. And I'm going to show you this next one
25 which is the cover sheet for the mortgage. Does it

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1 also have a footer on it? You don't have to read
2 the whole thing. Just tell me what drive it's from
3 and what folder on the computer?
4 A C desktop new doc type sheets.
5 Q Does it have a date on it?
6 A It does. 8-29-07.
7 Q All right. Please flip to the document behind
8 that scan sheet and tell me what it is.
9 A It's the mortgage.
10 Q Is it the original mortgage with Ms. Congress's
11 blue ink signature on it?
12 A Her initials and her signature on the last
13 page.
14 Q Okay. Thank you.
15 MR. DAUGHERTY: Judge, do you want to see
16 any of that?
17 THE COURT: No.
18 MR. DAUGHERTY: Do you have the PSA that
19 you let him read from earlier?
20 MR. WOOTEN: We've got copies of it, yeah.
21 The PSA, they're all the same.
22 Q (BY MR. DAUGHERTY:) Mr. Wooten had you read
23 from this earlier, from this Exhibit 4, the PSA
24 which is a form of Request for Release. What are
25 the reasons that it gives for that document

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1 request?
2 A Starting right here?
3 Q Yes.
4 A We certify -- I'm sorry. "We hereby certify
5 that all amounts received or to be received in
6 connection with such payments which are required to
7 be deposited have been or will be so deposited as
8 provided in the pooling and servicing agreement."
9 Q And so -- and then the reasons for document
10 request. What are those two possible reasons?
11 A Mortgage loan repaid in full. Mortgage loan
12 repurchased.
13 Q Now, then, Mr. Wooten was trying to imply that
14 no request was ever made for that collateral file
15 pursuant to this exhibit. And has Ms. Congress's
16 loan been paid off?
17 A No.
18 Q Has it been repurchased?
19 A No.
20 Q Has it been foreclosed?
21 A Yes, it has.
22 Q Mr. Haughton, it's been implied that
23 Ms. Fain got this collateral file, took it to her
24 office, pulled out her big box of rubber stamps,
25 stamped the document, gave it to you, which you

1 absolutely unsure at this point what his testimony
2 is going to be. I've never heard his name before
3 in my life.
4 MR. WOOTEN: Judge, Mr. Greene's testimony
5 is going to be that of a lay witness with respect
6 to rebuttal regarding the allonge document.
7 THE COURT: Well, why wasn't his name
8 given to the another side?
9 MR. WOOTEN: Well, because yesterday, Your
10 Honor, when we were looking at the allonge
11 document, trying to figure out what was on the
12 stamps, we took it to a local Staples store to see
13 if it could digitally recreated, and that's where
14 Mr. Greene works. And he has testimony about the
15 contents of the allonge document that are fact
16 testimony in relation to the document they produced
17 dealing with digital images.
18 THE COURT: Well, if you all want, I will
19 postpone this testimony and give you time to depose
20 him this evening.
21 MR. RAGSDALE: I would love to hear what
22 he has to say.
23 THE COURT: All right. Go ahead. Let's
24 get him under oath.
25 CHASE GREENE,

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1 gave it back to her and then sent it to us. Is
2 that what happened?
3 A Absolutely not.
4 Q Is that something you have ever done or would
5 ever see in your practice?
6 A Never.
7 MR. DAUGHERTY: Your Honor, pass the
8 witness again.
9 THE COURT: All right. Any other
10 questions? Let's make it brief. We've heard about
11 enough from this gentleman.
12 MR. WOOTEN: Judge, I'm going to let the
13 witness step down.
14 THE COURT: Sir?
15 MR. WOOTEN: I'm going to let the witness
16 step down.
17 THE COURT: All right. Thank you, sir.
18 THE WITNESS: Thank you.
19 THE COURT: All right. Next.
20 MR. WOOTEN: Your Honor, we would call
21 Chase Greene.
22 THE COURT: All right.
23 MR. DAUGHERTY: Your Honor, we reserve an
24 objection on the record that Mr. Green was not an
25 identified witness in the witness list, and we're

1 having been first duly sworn, was examined and
2 testified as follow:
3 DIRECT EXAMINATION
4 BY MR. WOOTEN:
5 Q Chase, yesterday --
6 THE COURT: State your name, please, sir.
7 THE WITNESS: Chase Greene.
8 THE COURT: C-h-a-s-e?
9 THE WITNESS: Yes.
10 THE COURT: Greene?
11 THE WITNESS: With and "e" on the end of
12 it.
13 THE COURT: With an "e." All right.
14 Thank you.
15 Q (BY MR. WOOTEN:) Tell us where you're
16 employed, Chase?
17 A Staples.
18 Q Okay. Where at?
19 A In the copy center.
20 Q Okay. And which Staple store?
21 A The one, 1204, located in Birmingham, Alabama.
22 THE COURT: Which Staples?
23 THE WITNESS: The one in Birmingham,
24 Alabama. It's 1204 Edwards Lake Road.
25 Q Is that over kind of toward the Trussville

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1 area?
2 A It's on the border of Trussville and
3 Birmingham.
4 Q Okay. And yesterday, did you happen to come in
5 contact with my co-counsel, Mr. Grimsley --
6 A Yes, I did.
7 Q -- in the course of your employment?
8 A Uh-huh.
9 Q Did he present you with a document to look at
10 to see if the images on document could be
11 reproduced?
12 A Yes.
13 Q Okay. Let me show you a copy of --
14 MR. WOOTEN: Did y'all take the collateral
15 file down?
16 MR. RAGSDALE: We've got a copy of it.
17 MR. WOOTEN: That's not the --
18 MR. DAUGHERTY: We can use it for now.
19 Q Okay. The document that you saw yesterday,
20 Chase, was it the document that we just heard
21 testimony from Mr. Haughton about the allonge to
22 the promissory note in this case?
23 A Yes, it is. It's exactly the same document.
24 Q Did you undertake an analysis of that document
25 by running it through some of your computers there

1 A The height was diminished.
2 Q The height was diminished?
3 A Yeah.
4 Q Is there an industry term for that?
5 A It's resizing.
6 Q Okay. And was there any alteration to the
7 signature other than collapsing the size of the
8 signature down?
9 A That's about it because the width from side to
10 side looks about accurate, right on the signature.
11 Q Did you, then -- after commenting about that
12 signature, did you then print off enlarged copies
13 of that signature to show Mr. Grimsley?
14 A Yes, I did.
15 Q Are these the documents that you printed off to
16 show Mr. Grimsley the issues with the signature?
17 A Yes. I was showing him that it was a digital
18 image, it happens when you digitalize an image from
19 scanning it.
20 Q And so from viewing the document, were you able
21 to tell that the signature was a digitalized
22 signature which had been added to the document?
23 A Yes, sir.
24 Q Okay. For identification purposes, will you
25 tell me which is the signature that was diminished

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1 at Staples?
2 A I did.
3 Q Okay. And what could you tell about that
4 document when you ran it through your system to see
5 if the images could be reproduced?
6 A It was fairly easy to reproduce.
7 Q Okay. And tell us, if you could, what in
8 particular jumped out at you when you looked at
9 this document based on your experience with digital
10 images?
11 A There was a signature by a John Hasbrook.
12 Q What was the issue? Why did it jump out at
13 you?
14 A Normally when we do signature stamps there's a
15 proportional quality that comes with it for it to
16 be a valid. And this one was shrunk this way,
17 whereas a normal signature would have a certain
18 height to it. And this was made to either fit in a
19 PDF box or a stamp.
20 Q Okay. And you indicated when you were
21 testifying, you made your hands come together as if
22 you were indicating it was a crushing down of the
23 signature?
24 A Yeah, the height was diminished.
25 Q I'm sorry. What was the term?

1 of these two documents? Can you point of the two
2 which one was pressed down?
3 A This is the one right here (indicating), that
4 was the original.
5 Q Okay.
6 A And the other one was the one I reproduced to
7 show them what it should look like.
8 Q All right. So let me, for purposes of
9 identification, I'm going to mark the one that you
10 indicated that you copied or scanned --
11 A Uh-huh.
12 Q -- as Defendant's Exhibit 4. Have I marked the
13 correct reproduction?
14 (Whereupon, Defendant's Exhibit
15 Number 4 was marked for
16 identification.)
17 A Yes.
18 Q And for our purposes of identification, I'm
19 going to mark the one that you reproduced, which is
20 Defendant's Exhibit 5.
21 (Whereupon, Plaintiff's Exhibit
22 Number 5 was marked for
23 identification.)
24 A Yes.
25 Q And is it your testimony that from your

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1 experience dealing with digital images, that the
2 image had been altered to fit in the space on the
3 document?
4 A Yes.
5 Q Looking at the document and the exhibit, which
6 is the allonge, which the plaintiff is relying on,
7 what is important about the location of that
8 signature?
9 A What stood out to me was the fact that it
10 looked like a field when there's obviously plenty
11 of room for it to be signed.
12 Q Okay. And when you say "a field," and you
13 mentioned like a PDF document?
14 A Yeah.
15 Q Explain that to the Court.
16 A PDF document is basically like a word file that
17 is used by Adobe software, which is Adobe Acrobat.
18 What you can do is you can create personal forms
19 with that software. And when you have a form like
20 that, it's a field, which is basically just a
21 little box, and it has certain constraints where
22 you have to fit. So if the image was scanned or
23 stamped, it would have to be resized. And it may
24 auto resize it in order to fit in that box.
25 Q Okay. So in other words, a digital image had

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1 to be altered to fill the space on that document?
2 A Right.
3 Q And that is the space where the signature is to
4 make an endorsement for Mr. Hasbrook to the next
5 party in the chain, right?
6 A Right.
7 Q Did you also analyse the signature on the stamp
8 from Ms. Favor?
9 A Yes, I did.
10 Q Is this the reproduction that you made of that
11 document?
12 A Yes, sir.
13 Q Why did you blow up that document, Chase? What
14 was significant about that document to you?
15 A I wanted to show Mr. Grimsley that the entire
16 portion of it looked like a stamp to me because the
17 way we make stamps. There's an actual dipping in
18 the stamp where the ink flow goes, and the first
19 portion to wear out is the center because it is
20 u-shaped when you make the stamp. And what
21 appeared to be wrong with this is the entire center
22 portion was bowed out so it looked like an entire
23 stamp of a signature and the original text.
24 Q I'm going to mark this as Defendant's Exhibit
25 6.

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1 (Whereupon, Defendant's Exhibit
2 Number 6 was marked for
3 identification.)
4 Q And it's your testimony to the Court, Chase,
5 that you produced these documents as you were
6 explaining the problems that you saw with the
7 digitalized images that were on this document?
8 A Yes, it is.
9 Q Okay. Could you tell from what you looked at
10 whether that file -- whether those digitalized
11 images had been added by stamp or by dragging and
12 dropping a separate image onto the document?
13 MR. RAGSDALE: Objection. I've indulged
14 as much as I can, but this gentleman is not an
15 expert on document production. There has not been
16 a foundation laid for any of this as to what he
17 might speculate how this document was created. I
18 don't think he's qualified as an expert. I've not
19 been to this particular Staples, but I don't
20 believe that they train people there on document
21 authentication, verification of handwriting
22 analysis, document verification, any of the things
23 that might qualify you for it.
24 I've got a fourteen year old who is pretty good
25 with Microsoft, but I wouldn't put him on the stand

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1 as an expert.
2 MR. WOOTEN: Well, I haven't offered him
3 as an expert, Judge.
4 MR. RAGSDALE: Well, you just asked him
5 for his expert opinion, didn't you?
6 MR. WOOTEN: No, I didn't. I asked him in
7 his opinion --
8 THE COURT: Well, that's an expert
9 opinion. I don't think a lay person can answer
10 that.
11 MR. WOOTEN: Well --
12 THE COURT: I'm going to overrule the
13 objection. You can cross-examine him. Go ahead.
14 MR. WOOTEN: Okay.
15 Q Well, I'm not offering you as an expert,
16 Chase, but I am --
17 THE COURT: Just ask him the question.
18 Q How many digital images do you come in contact
19 with on a daily basis in your employment there?
20 A Several.
21 Q Several. And are you familiar with the ways
22 that these images can be altered and changed and
23 manipulated?
24 A Yes. I do it myself personally as a graphic
25 designer.

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1 Q Okay. And so that would be a distorted view
2 just for purposes of creating a different effect or
3 look in graphic design?
4 A Definitely.
5 Q Okay. The form itself, the allonge form, what
6 can you tell the Court about the text that was
7 added to the allonge form that you could identify
8 when you scanned it into that computer system there
9 where you work?
10 A What about it specifically?
11 Q Well, are there different sections in that
12 document as far as text?
13 A Yes. The thing that struck me was everything
14 looked to be added after the fact with the plain
15 text being preprinted.
16 Q Okay. Could you identify the font in plain
17 text?
18 A The font is actual Aerial.
19 Q Okay.
20 A Do you know what size the font is?
21 A It looks to be an eleven point or a twelve
22 point font.
23 Q Okay. And is that a common font --
24 A Yes, it is. Very common.
25 Q -- in computing?

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1 How long would it take to generate the form
2 with that information on it digitally?
3 A Probably five to ten minutes max.
4 Q Okay.
5 MR. WOOTEN: Tender the witness.
6 THE COURT: All right.
7 CROSS-EXAMINATION
8 BY MR. RAGSDALE:
9 Q Do you mind if I call you Chase?
10 A Not at all.
11 Q We haven't ever met before, have we?
12 A No, sir.
13 Q I don't think I've ever been in that Staples.
14 A No, sir.
15 Q How long have you worked at Staples?
16 A Five years.
17 Q And what did you do before that?
18 A Nothing. It was actually my first job.
19 Q Okay. And tell me how far you have gotten in
20 school.
21 A I actually did two years at Jeff State.
22 Q And do you have an AA Degree from Jeff State?
23 A No, sir.
24 Q And have you had any special training on
25 document verification, any classes or training

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1 about that other than your five years at Staples?
2 A No, sir.
3 Q Have you ever forged or fabricated a document?
4 A I have the ability, but no.
5 Q You wouldn't do that, would you?
6 A It's against company policy to do something
7 like that.
8 Q It might even be against the law, right?
9 A Yes, of course.
10 Q Now, have you looked at the original of this
11 document, the allonge?
12 A Is that it?
13 Q Yes. No?
14 A No, I haven't.
15 MR. RAGSDALE: Is it all right if I
16 separate it long enough to show it to him?
17 They do not trust me with this.
18 THE COURT: Just don't leave the
19 courtroom.
20 MR. RAGSDALE: I'm going to tell you that
21 right now.
22 Q Here is the, what we purport to be the original
23 of that document. You can tell, can't you, that
24 the thing says "Residential Funding Company."
25 That's a stamp, isn't it?

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1 A Yes, sir.
2 Q No doubt.
3 A Without a doubt.
4 Q You don't even have to work at Staples to see
5 that's a stamp?
6 A No.
7 Q And this right here, that's a stamp too, isn't
8 it?
9 A Definitely.
10 Q Okay. And then this signature right here that
11 I can't read at all, what we think is John
12 Hasbrook, that's the one you say is digitally done,
13 right?
14 A That's what I believe it to be, digital, yes.
15 Q Okay. Do you know if there's anything wrong
16 with a digital signature?
17 A It can be faked easily.
18 Q Oh.
19 A You can pull it off anybody's check. You can
20 pull it off --
21 Q And just stick it on there, right?
22 A You can pull it off a petition.
23 Q You don't, of course, have any knowledge about
24 whether or not GMAC fabricated this document, do
25 you?

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1 A No factual knowledge.
2 Q None at all.
3 A Just my personal opinion.
4 Q Your personal opinion is that they fabricated
5 this document?
6 A Yes, because I easily could reproduce that with
7 anybody's signature.
8 Q Well, let me ask you this: Do you know about
9 the internet?
10 A Yes.
11 Q Can you pull documents off the internet and
12 claim them to be something that they're not?
13 A Yes.
14 Q So just something that comes off the internet
15 may have a heading on it that says it's a
16 particular document. It could be anything?
17 A Yes.
18 Q People are talented at fabricating that stuff,
19 aren't they?
20 A That's right.
21 Q We're going to keep an eye open for that stuff.
22 Let me ask you this: You don't understand the
23 UCC, do you? You don't know whether or not, for
24 example, a digital signature satisfies the
25 requirements for the Uniform Commercial Code in

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1 Alabama?
2 A No, sir.
3 Q That's not within your training and purview?
4 A Right.
5 MR. RAGSDALE: Judge, we would move to
6 strike Mr. Greene's testimony in its entirety.
7 THE COURT: Motion denied.
8 MR. WOOTEN: Judge, we would offer 4, 5,
9 and 6 Defendant's, which he's testified to with his
10 reproduction --
11 MR. RAGSDALE: We would object to all
12 those documents
13 THE COURT: They're admitted over
14 objection.
15 (Whereupon, Plaintiff's Exhibit
16 Numbers 4, 5, and 6 were received
17 into evidence.)
18 MR. WOOTEN: Thank you Chase for being
19 here.
20 THE COURT: All right. Next.
21 MR. WOOTEN: We would call Tom Adams, Your
22 Honor.
23 THE COURT: All right. Does anybody need
24 a break?
25 MR. RAGSDALE: Can we have five minutes.

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1 THE COURT: Five minutes. Sorry.
2 THE WITNESS: That's all right.
3 THE COURT: All right. Five minutes.
4 (Short recess.)
5 THE COURT: Come up, please, sir.
6 THOMAS J. ADAMS,
7 having been first duly sworn, was examined and
8 testified as follows:
9 DIRECT EXAMINATION
10 BY MR. WOOTEN:
11 Q Tom, will you please tell the Court your full
12 name.
13 A Thomas J. Adams.
14 Q And Tom, how are you presently employed?
15 A I work as an attorney at Paykin, Krieg & Adams
16 and as an independent consultant.
17 THE COURT: Give me the name of the firm
18 again.
19 THE WITNESS: Paykin, P-a-y-k-i-n, Krieg,
20 K-r-i-e-g and Adams.
21 MR. WOOTEN: And Judge, we would note that
22 we previously submitted in the pleadings a copy of
23 the Mr. Adams CV during the previous half of day
24 that the Court's aware of.
25 THE COURT: All right. You want to offer

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1 it again.
2 Q We have. Tom, prior to working for Paykin,
3 Krieg & Adams, how were you employed?
4 A I worked for Financial Guaranty Insurance
5 Company.
6 Q Financial Guaranty Insurance Company. When
7 were you employed with them, please, sir?
8 A December of 2003 through January 2008.
9 Q All right. And tell the Court what you did
10 when you worked for Financial Guaranty Insurance
11 Company?
12 A I was the senior managing director responsible
13 for structured finance, which included a variety of
14 assets and mortgage backed securities.
15 Q All right. And during your day-to-day
16 employment in that position, are you familiar with
17 the industry custom, standards, and practices which
18 were prevalent in the industry during that period
19 of time involving structured finance?
20 A Structured finance, yes.
21 Q And does that also include securitization?
22 A Yes, it does.
23 Q Does it also include mortgage backed
24 securitization like we've been talking about today?
25 A Yes, it does.

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1 Q Do you have some personal familiarity with this
2 particular trust from your employment?
3 A As it turns out, I do. Yes. That was one of a
4 number of transactions that we participated in.
5 Q And what was your company's participation in
6 this transaction?
7 A We acted as the insurer of the senior
8 certificates in the transaction.
9 Q Okay. And when you say you acted as the
10 insurer, what did that entail from your company?
11 Were they a financial risk by the position that you
12 took?
13 A Yes, we took the credit risk of those
14 certificates which were protected by certain
15 aspects of the structure. So effectively with the
16 benefit of some structural protections, we took the
17 credit risk of the mortgage loans.
18 Q And that's why we look at these SEC filings on
19 these deals. They're voluminous, right? They set
20 out these terms of these agreements and set forth
21 who's the parties and who's taking what risk and
22 who has what responsibilities, that sort of thing?
23 A That is correct.
24 Q Okay. And as to documents that are filed with
25 the SEC, the participants file those documents

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1 under oath; is that correct?
2 A That's my understanding.
3 Q And are they subject to criminal prosecution if
4 they misrepresent the terms of those documents?
5 A I believe that's the case. I can't say with
6 certainty.
7 Q Possibly civil liability also?
8 A Yes.
9 Q Before you went to work for FGIC, I think y'all
10 refer to it as "figic;" is that right?
11 A That's right.
12 Q And that's Financial Guaranty. Before you
13 worked for them, who was your employer?
14 A Prior to FGIC, I worked for Ambac Insurance
15 Corporation.
16 Q And was Ambac, in your employment there, were
17 you also involved in structured finance?
18 A Yes, I was. It's essentially a competitor or a
19 peer of FGIC.
20 Q Okay. And were you doing the same type of work
21 for them?
22 A The same type work? Somewhat more narrow at
23 Ambac.
24 Q And did you also have the opportunity to be
25 employed with Moody's?

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1 A Yes, prior to Ambac.
2 Q What type of work did you do for Moody's?
3 A I worked in the mortgage backed securities
4 department for a number of years as well as
5 sometime in other structured finance department.
6 Q And how many -- do you recall how long you
7 worked at Moody's?
8 A About four-and-a-half years.
9 Q And prior to your employment at Moody's, where
10 were you employed?
11 A I worked at a law firm in New York called
12 Thacher, Proffitt & Wood.
13 Q Thacher, Proffitt & Wood, what type of work did
14 you do there as an attorney?
15 A I worked in their mortgage finance group. We
16 worked on mortgage mitigated transactions, home
17 trades, and mortgage backed securities and
18 securitization.
19 Q In looking at your CV, it says you were there
20 from '89 until '92; is that correct?
21 A Yes, sir.
22 Q Are you familiar with the IRS Tax Code limits
23 dealing with real estate mortgage investment
24 conduits?
25 A Yes, I am.

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1 Q Do you recall when those amendments to the tax
2 code were made?
3 A 1986, I believe.
4 Q And in 1989 through 1992, when you were at that
5 Thacher, Proffitt & Wood, were you personally
6 involved in structuring pooling and servicing
7 agreements for these types of transactions?
8 A Yes.
9 Q Okay. And were they designed to be in
10 compliance with the IRS Tax Code dealing with real
11 estate mortgage investment conduits?
12 A Yes. The REMIC transactions were designed to
13 be in compliance. There were also non REMIC
14 transactions.
15 Q And because of the nomenclature, when you say
16 "REMIC," it's an abbreviation, R-E-M-I-C dealing
17 with the real estate --
18 A Yes.
19 Q --- that section of the Code; is that right?
20 A That's right.
21 Q Once you left Thacher, Proffitt & Wood and went
22 to work for Moody's, did you spend basically the
23 rest of your career until you left Financial
24 Guarantee as a participant in structured finance
25 rather than an attorney?

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1 A Yes. I worked for three years as an attorney
2 at Thacher, Proffitt & Wood, and then I was
3 employed on the business side of our industry at
4 Moody's, Ambac, and FGIC.
5 Q Over the last year and a half, two years since
6 you left FGIC, have you done some work as a
7 consultant or an expert?
8 A Yes. I have worked with a number of different
9 entities providing advice and information regarding
10 mortgage backed securities and more broad
11 securitization.
12 Q And over the course of your career in this
13 field, do you have an opinion about how many
14 finance deals you have reviewed and taken part in?
15 A Over the course of my career?
16 Q Yes.
17 A North of three hundred.
18 Q Those were ones that your career played some
19 active involvement in, right?
20 A That's correct.
21 Q And is it fair to say that with respect to
22 mortgage backed securitization, they follow a
23 similar pattern. Each deal is unique, but they
24 have a same basic pattern or structure?
25 A Yes, within -- mortgage transactions follow a

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1 basic pattern.
2 Q And is that because of the desire to obtain the
3 benefits of creating a REMIC structure so that the
4 holy entity trust has passed through taxation
5 treatments?
6 A Yes, that is one of the reasons.
7 Q One of the reasons.
8 A Yes.
9 Q The other being bankruptcy remoteness?
10 A That's another. And marketability.
11 Q Okay.
12 A If they are familiar in form they are more
13 marketable.
14 Q Okay. And you have an understanding from your
15 participation in these deals about what the
16 industry standards, customs, and practices were
17 during the period of time that you were an active
18 participant, correct?
19 A Yes.
20 Q And during the period of time with respect to
21 the securitization of Ms. Congress's loan, you were
22 familiar with requirements for this securitization
23 based on the circumstances in this particular
24 series of trust, right?
25 A Yes.

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1 Q What were the -- some of the unique things that
2 were going on with this particular securitization
3 with respect to the market in general in this
4 period of time?
5 A That was the first quarter of 2007. There were
6 already at that point problems appearing in the
7 securitization market, problems with certain
8 lenders and the issuers that they worked with with
9 respect to their own financial liability. So there
10 were a number of relatively well-known cases in the
11 industry where the company was struggling at that
12 time, including Mortgage Lenders Network.
13 Q Okay. Mortgage Lenders Network at or around
14 the time of this securitization, were they at or
15 near bankruptcy?
16 A They had been struggling financially for a
17 number of months at the time of that transaction.
18 MR. RAMEY: I didn't hear you? What was
19 the time frame, what transaction? PSA or --
20 MR. WOOTEN: The PSA date, the cutoff date
21 is February 1. Mortgage Lenders Network's
22 bankruptcy was February 5th.
23 THE COURT: He's saying there were
24 problems in early 2007.
25 THE WITNESS: That's right.

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1 Q And was the industry aware that there were
2 issues with Mortgage Lenders Network prior to early
3 2007?
4 A I can't recall the exact month, but I believe
5 that they were struggling in late 2006.
6 Q Okay.
7 A As well as 2007.
8 Q And was Residential Funding Company, they're
9 mentioned in this chart, but they're also in
10 documents for this deal, correct?
11 A Yes.
12 Q Okay. Was Residential Funding Company also a
13 lender to Mortgage Lenders Network?
14 A That is my understanding.
15 Q And with respect to this particular
16 transaction, are there disclosures in the SEC
17 filings about the fact of Mortgage Lenders
18 Network's Chapter 11 filing in February of '07?
19 A Are there disclosures in which SEC filing?
20 Q Yes. With respect to the prospectus in this
21 case, do you remember if there are disclosures
22 whether or not this loan was -- this company,
23 Mortgage Lenders Network already filed bankruptcy?
24 A I don't recall exactly.
25 Q But it was within the window of time when that

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1 deal was being done, the cutoff date, right?
2 A It was certainly assumed to be a risk at the
3 time that the deal was done.
4 Q With respect to the participants in these
5 series trust during this period of time, do you
6 have any firsthand knowledge about whether the
7 participants were critically watching these parties
8 and making sure that they were doing things
9 appropriately to protect themselves against
10 a possible bankruptcy filing? Was that an industry
11 concern?
12 A Yes. Generally in the marketplace there were
13 concerns about issuers -- lenders, such as Mortgage
14 Lenders Network, being much more greatly exposed to
15 extreme financial stress. And so I believe that
16 Mortgage Lenders was one of those entities of a
17 relatively decent size list of companies.
18 Q Tom, I'm going to show you a notebook that
19 we've previously prepared. And actually, I believe
20 you have a copy up in front of you. Just flip over
21 to the beginning that document.
22 Let me ask you, if you will -- let me see if
23 this one has got. This one has got the cover
24 sheet. Swap that one with you.
25 MR. RAGSDALE: Do we have a copy of that?

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1 MR. WOOTEN: Yeah, I've given y'all like
2 two. I'll give you another one if you want it.
3 MR. RAGSDALE: Was it in that nice white
4 notebook?
5 MR. WOOTEN: Y'all keep calling it a
6 notebook, but here's another copy.
7 MR. RAGSDALE: Thank you.
8 MR. WOOTEN: No problem.
9 Q With respect to --
10 THE COURT: Do you need another one?
11 Y'all gave me two.
12 MR. WOOTEN: I have a couple, Your Honor.
13 THE COURT: All right.
14 MR. WOOTEN: We were afraid of running
15 out. We're trying to kill some trees.
16 Q With respect to the notebook, which I've handed
17 you, Tom, does that notebook contain the pooling
18 and servicing agreement as well as the assignment
19 and assumption agreement that -- and the AK filing
20 with respect to the plaintiff in this case?
21 A It appears that it does.
22 Q Okay. And are you able to, from your
23 familiarity with reviewing SEC filings, reviewing
24 documents that are placed online with the SEC, are
25 you able to look at those documents and recognize

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1 them as copies of the SEC filings for this
2 particular plaintiff trust?
3 A Yes, they look like documents that are
4 available on the SEC website in the filing form.
5 Q All right. Now, with respect to the chart
6 we've been referring to all day, does this chart
7 adequately reflect the parties that were involved
8 in the securitization for this trust based on your
9 review of the SEC documents?
10 A Yes, it does.
11 Q An do you know if there was an affiliation
12 between EMAX and Mortgage Lenders Network?
13 A It is my understanding that there was one.
14 Q Okay. And can you explain to the Court what
15 your understanding of their relationship was?
16 A I believe that Mortgage Lenders Network was the
17 U.S. domicile lending entity that was a subsidiary
18 of the Virgin Islands domicile EMAX, either a
19 parent or a sister corporation.
20 Q Now, Tom, when I asked you to originally look
21 at the evidence in this case regarding the
22 promissory note that was presented to the Court at
23 the previous trial, you -- I believe that document
24 may be up there also. I believe it's labeled
25 Exhibit 1.

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1 THE COURT: Before we move on, run that by
2 me again about what EMAX is.
3 MR. WOOTEN: EMAX and Mortgage Lenders
4 Network have an affiliation, they have some common
5 ownership. EMAX is a Virgin Island's corporation.
6 MLN is Connecticut. The exact affiliation is --
7 Q Did you say EMAX was --
8 A I believe EMAX is either the parent or a sister
9 corporation of Mortgage Lenders Network. I'm not
10 exactly sure of the exact appropriate --
11 THE COURT: All right.
12 Q Let's see. Here's a copy of the note. It is
13 marked as Plaintiff's Exhibit 1 today, which is the
14 note which was presented during the previous trial;
15 is that correct, or does it appear to be correct?
16 A Yes, it appears to be correct.
17 Q And is that the document that was sent to you
18 for review to see if you believed it complied with
19 the requirements of the securitization documents?
20 A Yes, it is.
21 MR. RAMEY: Your Honor, I object to
22 the exhibit. It calls for a legal conclusion.
23 THE COURT: Overrule.
24 Q Now, tell the Court the problems that you
25 originally had with that particular document, with

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1 the endorsement that was presented on that
2 particular document?
3 A Well, this note is endorsed in blank by
4 Mortgage Lenders Network, pay to the order of blank
5 without recourse. And based on my review of the
6 pooling and servicing agreement, it was my
7 understanding that the document was supposed to be
8 endorsed into the trust showing the chain of note
9 ownership through the endorsements along the way.
10 Q Would your expectation in the market have been
11 that the endorsement on the promissory note would
12 have been on the promissory note?
13 A Yes.
14 Q And would that have been the industry standard,
15 custom and practice?
16 A Yes.
17 Q And is there a clearly adequate space on
18 Exhibit 1 for the endorsements that occur on the
19 allonge that we've been discussing?
20 A It does appear to have space.
21 Q And that's on the face of the document. That
22 doesn't count space on the back of the document,
23 right?
24 A Right.
25 Q And you have been around this market a long

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1 time, your whole professional career basically,
2 right?
3 A Yes.
4 Q And has it been the custom and practice in the
5 industry to put these endorsements somewhere on the
6 actual promissory note throughout your entire
7 career?
8 A That's always the way I've seen it.
9 Q Okay. And you're not saying to the Court that
10 someone can't use an allonge in some fashion or in
11 some way, but there are industry standards about
12 that as well, right?
13 A There are.
14 Q Okay. And with respect to -- and you've been
15 here through the whole trial and you heard the
16 testimony of GMAC about the endorsements and how we
17 got two notes and that sort of thing, correct?
18 A Yes, sir.
19 Q With respect to the assertion that the loan was
20 securitized and then the servicer got a copy of
21 the note from the credit file, would that have been
22 outside of the -- your expectations as an industry
23 participant of the documents they would have had
24 access to?
25 A Yes. I would expect that the servicer or the

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1 master servicer would have begun participating in
2 the transaction upon the creation of the trust.
3 Q And so your expectation would have been that
4 whatever operative documents a subservicer was
5 working on would have been whatever documents the
6 trust acquired ownership of?
7 A That would be my expectation, yes.
8 Q When we reviewed the collateral file, the
9 original collateral file together at the lunch
10 break, right?
11 A Yes, sir.
12 Q When you reviewed the collateral file, was the
13 promissory note at the front of the collateral
14 file?
15 A Yes, it was the first.
16 Q The first entry?
17 A Yeah.
18 Q And if the allonges had occurred during the
19 securitization process, would your expectation have
20 been that the allonges would have been apart of the
21 scans that went into the note?
22 A Yes, my expectation is that the allonge would
23 be attached to the note.
24 Q Okay. And when you say, "attached," this
25 allonge is not in any way affixed to the promissory

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1 note so that it's apart of that document, right?
2 A It's not.
3 Q Would it have been your expectation that if
4 there was a necessity of an allonge that it would
5 have been affixed to the note such that it could
6 not have been separated in this securitization
7 process?
8 A Based on my understanding of what was typical
9 in practice, that would have been my expectation.
10 Q And if the promissory note had all the
11 necessary endorsements during the securitization
12 process, is it your opinion that the previous
13 promissory note could have been offered into
14 evidence as a blank endorsement?
15 A The Plaintiff's Exhibit 1, I'm not sure how
16 that note would have come into possession, no.
17 Q Okay. So your testimony is is that had all
18 these steps taken place prior to the cutoff date
19 and the closing date as contemplated in the
20 agreements, that there would have been no way for a
21 blank endorsed note to come before the Court in the
22 previous trial?
23 A That's right.
24 Q Does the position of the allonge in the
25 collateral file indicate anything to you based on

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1 your industry experience?
2 A It's -- well, initially I would say it's
3 confusing that they are separate. It would suggest
4 to me an opportunity for a problem or confusion,
5 not definitive though.
6 THE COURT: Say that again.
7 A It suggest an opportunity for confusion or for
8 a problem, although not definitively.
9 Q All right. So what you're saying is is that
10 the way it was structured in the collateral file,
11 the last document in, does that give you any
12 information about when that document was created?
13 A It suggests that it would have showed up in
14 that custodial file after things, such as, the
15 title policy.
16 Q Okay. And also the collateral file has a scan
17 sheet that says the allonge was loaded into the
18 collateral file as a single new document into the
19 file, right? If you want to flip over to --
20 A I'm not sure I observed that.
21 Q There is the collateral file. So I guess my
22 question, Tom, is does the bar code scan indicates
23 that the only document added to the collateral file
24 is the allonge, correct?
25 A At this time, yeah.

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1 Q Right. And the testimony earlier was that it
2 was the last document into the collateral file,
3 right?
4 A It's the last document in the collateral file,
5 yes.
6 Q Okay. Now, series trust, Tom, explain to the
7 Court the issues or potential issues with series
8 trust where you have the same participants in a
9 series of transactions.
10 A Yes. Many of the participants in these
11 transactions, including these, would issue a
12 variety of mortgage backed transactions over the
13 course of a year or a quarter designated with
14 similar terms but a different series number and
15 different dates and amounts, basically. So
16 Mortgage Lenders Network or EMAX had a series of
17 transactions that were designated as related to
18 them with other parties, typically with an EMX
19 designation. Residential Funding Corporation or
20 RASC had, you know, about more than a dozen
21 transactions over the course of 2006 and 2007
22 associated with them.
23 Q Okay. Let me show this document, Tom, and ask
24 you if you recognize that document as a pooling and
25 servicing agreement and a prospectus from one of

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1 the trust in this series.
2 A Yes.
3 MR. RAGSDALE: Do we have a copy of this?
4 MR. WOOTEN: Y'all can look at it if you
5 want to.
6 THE COURT: All right. Let them see it
7 before handled.
8 MR. WOOTEN: Okay. Judge, there's a box
9 on there. There are like ten different trusts that
10 have these date issues at all in this series. And
11 until we had the allonge, we had no need for this
12 evidence. So we have to demonstrate the number of
13 trust that these parties are party to where the
14 dates would make --
15 THE COURT: I just asked you to let them
16 see the document.
17 MR. WOOTEN: I'm sorry.
18 Q Tom, I reached in the box and pulled out the
19 first one I grabbed my hands on.
20 Do you recognize those documents to be SEC
21 filings from one of the other series trust?
22 A Yes. It looks like an SEC filing for a pooling
23 and servicing agreement.
24 Q And is that one -- what's the name of that
25 trust?

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1 A RASC Series 2006-EMX7 Trust.
2 Q If you flip back to the tabs on the back of the
3 document back there. There's some information
4 that's highlighted. The Court can see the parties
5 involved.
6 Are the parties, in the document that you're
7 holding, the same as the parties for the
8 plaintiff's in this case, up to the trust name?
9 A The issuing entity is different because that's
10 the series number.
11 Q So the trust name is different?
12 A But the depositor is Residential Asset
13 Securities Corporation, the master servicer and
14 sponsor is Residential Funding Corporation, and the
15 originator and subservicer is Mortgage Lenders
16 Network, U.S.A., Inc. And the trustee is U.S. Bank
17 National Association.
18 Q All right. So U.S. Bank is the same,
19 Residential Asset, Residential Funding, and
20 Mortgage Lenders Network.
21 A Yes.
22 Q Is EMAX mentioned there?
23 A I don't see a reference to EMAX.
24 Q Does it mention mortgage loan seller rather
25 than a specific seller on the next page?

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1 A Yes. On the subsequent page of the document,
2 Page -- is that right? Page 11 of 143? Yes. Page
3 11, I believe that's on the exhibit.
4 Q Right.
5 A It says EMAX Financial Group, LLC, seller of
6 mortgage loans. And it shows a chart that
7 designate the sale of mortgage loans to Residential
8 Funding Corporation.
9 Q Is it also, Tom, one of the same series of
10 trusts that include the plaintiff in this case?
11 A I'm sorry. Could you ask?
12 Q Is this trust also one of the same series of
13 trusts that includes the plaintiff in this case?
14 In other words, does this also fall within the
15 series?
16 A It includes the trustee, U.S. Bank National
17 Association.
18 Q Okay.
19 A Technically not exactly the same as the
20 plaintiff in this case. It's trustee for a
21 different trust.
22 Q And I guess I didn't ask the question real
23 well. But this is one of the series of twelve or
24 thirteen trusts we're talking about, right?
25 A This appears to be, yes, another series with

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1 the same parties including collateral.
2 Q So there's nothing really different than a
3 unique trust name, but other than that --
4 A Yes.
5 Q -- nothing really changed as far as the parties
6 involved?
7 A That's right. The same basic structure.
8 Q I'm going to mark this for identification
9 purposes as Exhibit 8.
10 (Whereupon, Defendant's Exhibit
11 Number 8 was marked for
12 identification.)
13 MR. WOOTEN: And Judge, we would offer
14 that as the SEC documents for that series trust.
15 THE COURT: All right. It's Defendant's
16 Exhibit 8.
17 (Whereupon, Defendant's Exhibit
18 Number 8 was received into evidence.)
19 (Whereupon, Defendant's Exhibit
20 Number 9 was marked for
21 identification.)
22 Q I'm going to also mark as Exhibit 9 another one
23 of these trust documents from the series and ask
24 you to identify the name of that trust.
25 MR. RAGSDALE: These aren't complete SEC

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1 filings?
2 MR. WOOTEN: That is the prospectus and
3 the pooling and servicing agreement --
4 MR. RAGSDALE: Without attachments?
5 MR. WOOTEN: Yeah, without all the --
6 what's filed on record with the SEC.
7 MR. RAGSDALE: It doesn't have the
8 mortgage loan schedule or anything like that?
9 MR. WOOTEN: Okay.
10 A RASC Series 2006-EMX9 Trust.
11 Q Okay. Now, that's another in the series,
12 right?
13 A Yes.
14 Q We earlier marked Exhibit 2, and Mr. Houghton
15 found a mortgage loan schedule that said that
16 Ms. Congress's loan was in the EMX9 trust; is that
17 right?
18 A Yes.
19 Q The documents contained in Exhibit 2 would have
20 been other SEC filings related to the trust that we
21 identified in Exhibit 9, right?
22 A That's what it says, yes.
23 Q So it would have been EMX9 trust in the series?
24 A Yes, it's identified with the same series name.
25 MR. RAGSDALE: Have you offered that?

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1 MR. WOOTEN: I'm about to offer it.
2 Q Do you recognize the documents in Exhibit 2 as
3 being SEC filings related to that trust?
4 A Yes. It's indicated as a 10-d filing.
5 Q Okay. Tom, if EMX1 was the owner of
6 Ms. Congress's loan, would you expect to see her
7 loan number appear in EMX9?
8 A No. I would not expect to see it in the trust
9 that is separate from the trust that's indicated in
10 EMX1, 2007-EMX1.
11 Q Okay. Then your affidavit that we filed
12 earlier in the case, one thing you said was that
13 you expect to see as part of the industry standard
14 and practices, specific endorsements to the
15 trustee, right?
16 A Yes.
17 Q When you say, "specific endorsements," do you
18 consider endorsed to the order of U.S. Bank as
19 trustee a specific endorsement?
20 A No. That seems a bit vague and creates an
21 opportunity for confusion.
22 (Whereupon, Defendant's Exhibit
23 Number 10 was marked for
24 identification.)
25 Q Okay. Let me show you Defendant's Exhibit 10

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1 which is another series trust that's EMX8; is that
2 right?

3 A Yes. RASC Series 2006-EMX8 Trust.

4 Q And again, all the parties and the plaintiff
5 are present -- the Plaintiff trust are present in
6 that trust as well, right?

7 A It appears to have the same parties.

8 MR. RAMEY: I object just to the extent as
9 far as "all the parties." I know some of these
10 have different servicers and whatnot. I know
11 servicers aren't parties to this agreement.

12 THE COURT: Why do I need to know all
13 these other trusts other than the one that
14 Ms. Congress's loan is in --

15 MR. WOOTEN: Well, Your Honor, we're
16 trying to establish that this Plaintiff is not on
17 this loan that we spoke about in our opening
18 statement. And what we're establishing is that
19 there are a dozen other trusts, that based on the
20 endorsements on the note could own Ms. Congress's
21 loan and nothing else. In addition to the fact
22 that we have a trust that has filings that says
23 that it does belong to it. I mean, I'll be glad to
24 represent to the Court that that's what these
25 documents that we're offering them --

1 the date of Ms. Congress's loan?

2 A Yes. The ones we've discussed so far were
3 trusts that closed after the origination of
4 Ms. Congress's loan.

5 Q All right. And that's the ones we've talked
6 about so far, right?

7 A (Witness nodding head).

8 Q Now, even some trusts that might have closed
9 right up against her loan date might have taken her
10 loan in the ninety-day window allowable in the tax
11 code to take a funding period, right?

12 A Yes. Transactions at the time sometimes have a
13 prefunding period, so they could close and then add
14 loans to them after the fact.

15 Q So just based on the dates and the documents
16 that we've identified, and the endorsements that
17 are present in the case, you couldn't look at those
18 endorsements and say which of any of these trusts
19 own that loan?

20 A That's correct.

21 Q Let me ask you this, Tom: Let's see. We've
22 marked up to 21.

23 (Whereupon, Defendant's Exhibit
24 Numbers 10 through 21 were marked for
25 identification.)

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1 THE COURT: Let's offer all of them at
2 once. We don't need to go through this.

3 MR. WOOTEN: And, Judge, I'll mark these.
4 As a matter of fact, I'll let my co-counsel mark
5 these so we can move on.

6 THE COURT: All right. Those are all
7 admitted.

8 MR. WOOTEN: We'll put the numbers on
9 those and we'll get those admitted.

10 Q Tom, based on the endorsements on the allonge
11 that we've been talking all day, if that -- if
12 those endorsements had been present when we
13 originally looked at the documents in this case,
14 would it have satisfied, in your opinion, the
15 standard to convey that promissory note to the
16 plaintiff in this case?

17 A It would have satisfied the standard to convey
18 it to the trustee. But had I been looking at that
19 note at the time of closing it would have -- I
20 would have had a question as to whether it was
21 specifically transferred to this trust.

22 Q Now, we marked in all of these exhibits and all
23 of these trusts with these same issues, with the
24 same trustee. In all these trusts, the timing
25 would fit for conveyance to any of these trusts by

1 MR. WOOTEN: Your Honor, we would move to
2 admit --

3 THE COURT: They're in.

4 MR. WOOTEN: Up to 21.

5 THE COURT: Yes, sir
6 (Whereupon, Defendant's Exhibit
7 Numbers 9 through 21 were received
8 into evidence.)

9 MR. RAMEY: Can you tell us what the first
10 number was?

11 MR. GRIMSLEY: Eleven.

12 MR. RAMEY: Eleven.

13 THE COURT: Well, we already had 9 and 10.

14 MR. GRIMSLEY: It's 11 to 21.

15 MR. RAGSDALE: Eight.

16 MR. LAY: Eight.

17 THE COURT: Yeah.

18 THE WITNESS: Eight, looks like the first
19 one. 2006-EMX8.

20 THE COURT: All right. So we'll start
21 with 8 and it goes through 21.

22 MR. WOOTEN: Yes, sir.

23 THE COURT: Those are all admitted.

24 Q (BY MR. WOOTEN:) With respect to the
25 foreclosure documents which were offered earlier

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1 today, let's begin by talking about the mortgage	1 Q Do you know if they pertaining -- doing
2 assignment that we've been discussing in the case.	2 business as names of the trust?
3 It's Document 13.	3 A They may. I'm not sure.
4 If the parties to the plaintiff's	4 Q Have you seen any of that so far? Have you
5 securitization had complied with the statements	5 seen any name other than the name you just told the
6 about what took place, and there was a necessity	6 Court?
7 for an assignment of mortgage to the trust, would	7 A With the SEC filings? No, I have not.
8 you expect to see a MERS assignment to the trust in	8 Q With respect to the name that was used in
9 June of 2008?	9 Exhibit 13, is that the same name that is in the
10 A No.	10 documents that have been identified as 10, 11, 12,
11 Q Would you expect to see it prepared by the	11 and 14?
12 foreclosure attorney?	12 A 10 and 12. That's 14. And 14 as well.
13 A No.	13 Q Okay. So --
14 Q Would the industry standard have been	14 A It doesn't appear to be in 11.
15 different?	15 Q 11 may be an aside. Fine print.
16 A Yes.	16 A Too small for me.
17 Q And what would that standard have been?	17 Q So from the exhibits you can read, the names
18 A The standard would have been for it to be	18 are the same?
19 assigned to the trust at or prior to closing of the	19 A Yes.
20 trust.	20 (Whereupon, Defendant's Exhibit
21 Q Okay. So what you're saying is is if there was	21 Number 7 was marked for
22 the necessity for an assignment, it should have	22 identification.)
23 been dated prior to the closing date?	23 Q Let me show you what I marked earlier as
24 A Yes.	24 Exhibit 7, but I've yet to offer, which is your CV.
25 Q And it should have been executed by someone	25 Would you flip through that right quick and see if
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1 involved in this securitization transaction?	1 it is a correct and an accurate copy of your CV?
2 A That would have been my expectation.	2 A Yes.
3 Q And then it would have only needed to have been	3 MR. WOOTEN: Judge, we would offer 7. I
4 filed as a result of default on Ms. Congress's	4 previously moved to offer it.
5 loan, right?	5 THE COURT: All right. It's admitted.
6 A That's right.	6 (Whereupon, Defendant's Exhibit
7 Q So your -- you don't even have an issue with	7 Number 7 was received into
8 the fact that there's a MERS assignment. Your	8 evidence.)
9 issue is with who made the assignment and the	9 Q Tom, have you been asked to testify or act as
10 timing of it, right?	10 an expert by any governmental agencies who are
11 A Yes.	11 addressing the financial crisis that the market has
12 Q The name that is conveyed to the trust that's	12 experienced in 2007, 2008?
13 named as the grantee in that assignment. Do you	13 A No, I haven't been asked to testify.
14 see that information?	14 Q Have you acted as a consultant to parties as an
15 A Yes.	15 expert in the issues of securitization?
16 Q Okay. Is that the name of the plaintiff in the	16 A Yes, I do.
17 case?	17 Q Tell the Court without, of course, divulging
18 A The name indicated as U.S. Bank, NA as Trustee	18 anything confidential, but in the general areas
19 for that Certain Pooling and Servicing Agreement	19 that you have previously been qualified to testify
20 Series Number 2007-EMX1 Pool Number 40896. And my	20 as an expert or retained as an expert on.
21 understanding is what the name of the trust is RASC	21 MR. RAGSDALE: Testified as an expert or
22 Series 2007-EMX1 Trust.	22 retained as an expert?
23 Q Okay. Do you know if any of the SEC filings	23 Q Sure.
24 contain alias names for the trust?	24 A Yes. I participated in another dispute that
25 A No, I don't.	25 was an arbitration, which the parties, the nature

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1 of which have been ordered to remain confidential.
2 But my role was as an expert on customs and
3 practices in the mortgage market at the time of the
4 transaction and dispute.
5 Q Okay. And over the course of your career, were
6 you always familiar with the applicable custom,
7 standards and practices in the industry dealing
8 with mortgage backed securitization?
9 A Yes.
10 MR. WOOTEN: Judge, we would ask to have
11 Mr. Adams certified as an expert in this matter
12 based on the testimony.
13 THE COURT: Well, I thought that's what
14 we've been talking about.
15 MR. WOOTEN: Okay.
16 Q Tom, with respect to your ultimate opinion in
17 this case regarding the ownership of the promissory
18 note by this particular plaintiff trust, you have
19 previously stated in an affidavit in your opinion
20 that the blank endorsed note was not sufficient
21 evidence, that the trust on the loan, and in your
22 opinion it did not own the loan; is that right?
23 A That's right.
24 Q Even if the Court were to consider the allonge,
25 promissory note in this case, and you considered

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1 that as additional evidence, the testimony you have
2 heard today and the documents you've reviewed, is
3 your ultimate opinion as to whether this trust on
4 this loan changed?
5 A Based on my review of that allonge the
6 ownership of the note has changed compared to the
7 note that I looked at at the time that I prepared
8 my affidavit. But there is nothing that would
9 allow me to be certain that this trust was the
10 owner of that note.
11 Q And that is today in 2010.
12 Now, if the trust had owned the loan according
13 to the terms of the agreement in 2007, you would
14 have expected to have seen already evidence that
15 that had taken place and there had been a
16 conveyance to this trust before we got here today,
17 right?
18 A Yes. I would have considered that important at
19 the time the trust was created.
20 Q With respect to the documents that you have
21 seen today, including the other trust that has the
22 loan file -- the loan number in it, if you were
23 reviewing the other exhibit for the EMX9 Trust and
24 you saw that loan number in it, based on your
25 experience in the industry, custom, standards, and

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1 practices, would you believe that the loan was
2 owned by EMX9 Trust?
3 A On the schedule for the 2006-EMX9 Trust, that
4 indicates that loan number would be an indication
5 that that loan was in the trust.
6 Q And when you take the sum of the testimony
7 today and the documents that you have reviewed, is
8 it still your opinion that the plaintiff does not
9 own this loan?
10 A Yes. It's my opinion that there's uncertainty
11 as to who owns that loan based on the endorsement
12 on the allonge. And in addition, the fact that the
13 loan ID is identified in another trust, would give
14 me cause for concern that that note belonged to the
15 2007-EMX1 Trust, which is the exact reason why I
16 would look for a chain of title and specificity in
17 the chain of title to clear up the risk or the
18 possibility that the loan had been sold more than
19 one time.
20 Q And would you have expected reasonable industry
21 participants given circumstances with Mortgage
22 Lenders Network and the market, in general, to have
23 exercised for reasonable care standard to insure
24 that their assets were conveyed to the appropriate
25 trust in a manner that was identifiable because of

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1 those issues?
2 A Yes.
3 Q If the allonges were prepared since your
4 original affidavit was entered in this case, would
5 that be an effective conveyance to the trust, if
6 that were the case?
7 A If the allonges were prepared contemporaneously
8 with 2010 events, no I would consider that to be
9 after the fact creation of the trust.
10 Q Okay. And is it your understanding that once
11 the -- once the closing date passes that the trust
12 is no longer able to acquire any assets; is that
13 right?
14 A With certain limited exceptions, the trust is
15 supposed to be closed as of the startup date of the
16 trust.
17 Q Is that because of the terms of the trust
18 instrument and the law which is incorporated into
19 those trust agreements?
20 A Yes. The REMIC rules, the tax rules for this
21 type of trust had specific requirements. The
22 document had specific requirements, and industry
23 practice would have favored that type of practice
24 because of issues and concerns about multiple sales
25 of collateral.

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1 Q If you were considering the original Exhibit 1
2 that was offered to the Court with the blank
3 endorsement, would you have an opinion about
4 whether there's any indication -- is there anything
5 about that document that indicates to you that
6 possibility of the note being sold more than one
7 time?
8 A Well, it's a barren document, I guess is the
9 way I would interpret that. It's endorsed in
10 blank, so, yes, it could have been transferred from
11 party to party as such.
12 Q Let me call your attention to Page 62 of the
13 pooling and servicing agreement for the plaintiff
14 trust.
15 MR. RAMEY: And Nick, can you give us the
16 -- also when you reference, give us the sections?
17 MR. WOOTEN: Yes.
18 MR. RAMEY: Give us the section.
19 MR. WOOTEN: Yeah. Page 62 is the very
20 first paragraph.
21 MR. RAMEY: "D?" Oh, I'm sorry. 62.
22 MR. WOOTEN: Page 62.
23 MR. RAMEY: "D."
24 MR. WOOTEN: I apologize, Shaun. I think
25 at some point I gave y'all a highlighted copy of

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1 the notebook.
2 MR. RAMEY: 62 D?
3 MR. WOOTEN: Yeah, it's the very top
4 paragraph of the trust instrument.
5 Q And does that paragraph expressly state that
6 the trust will not acquire any assets after the
7 certificates are issued?
8 A That's how I would read that paragraph. The
9 trustee shall not accept any contribution of assets
10 to the trust unless they've received a, basically,
11 an opinion of counsel saying that they may.
12 Q All right. And let's talk about those
13 provisions, Tom.
14 That provision isn't to help Ms. Congress get a
15 free house, is it?
16 A No.
17 Q That provision is designed to protect the
18 investors in the agreement, right?
19 A Yes. That's the way I would interpret it, that
20 that's there to protect the certificate holders as
21 well as the certificate insurers, which is my
22 company.
23 Q And, of course, you've been gone from your
24 company for a while, so you ain't got a dog in that
25 fight about what they've done here?

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1 A No. I have no current affiliation with them.
2 Q Okay. So with respect to the ultimate issue of
3 why they closed these things down, tell the Court
4 what you know about servicers rights to access cash
5 flow on foreclosed loans. Or did I ask a good
6 question?
7 A Yes. When a loan is -- a loan within the
8 securitization trust is delinquent, the servicer is
9 required to advance to the benefit of the trust and
10 the certificate holders delinquent payment of
11 interest upon foreclosure, and then liquidation of
12 the property from the loan. The servicer gets
13 reimbursed for those advances of delinquent
14 interest from proceeds of the property as well as
15 for legal fees and closing costs and other related
16 expenses in the liquidation of the loan.
17 Q And can those dollar amounts in those instances
18 be substantial?
19 A Yes. They typically are quite substantial.
20 Q And so if a servicer cause documents to appear
21 that a trust on the loan can foreclosure the
22 process, based on the face of those documents,
23 would they be able to submit -- would they be able
24 to try to access the cash flows for that particular
25 trust?

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1 A I'm sorry?
2 Q I probably didn't ask that very cleanly.
3 If, in the course of the foreclosure process,
4 the title is made to appear to be in the name of
5 the trust when the foreclosure is completed, could
6 the servicer then be able to try to access the cash
7 flow of the trust based on documents saying that it
8 was foreclosed as an asset of the trust?
9 A I believe in certain transactions there was a
10 mechanism for shared access to the collateral
11 account so that -- to deal with the issues of
12 timing and expenses. So the expense of one
13 foreclosure could be paid for with the payments of
14 another loan and then reimbursed subsequently.
15 Q Do you have any idea who might be able to
16 monitor that type of conduct by a servicer in
17 presenting those types of claims to the trustee for
18 accessing the custodial account for those payments?
19 A Access that type of potential sharing among
20 accounts, the trustee would have some degree of
21 monitoring oversight and potentially if there was a
22 lender for the advancing obligations, they might
23 have an oversight of that as well.
24 Q Going back to the allonge for just a moment.
25 MR. WOOTEN: I'm sorry. I need to mark

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1 this document. We need to mark it. I'm going to
2 mark the notebook that has those securitization
3 documents in it inside as 22. And offer it, Your
4 Honor.
5 (Whereupon, Defendant's Exhibit
6 Number 22 was marked for
7 identification.)
8 THE COURT: Is that your trial notebook?
9 MR. WOOTEN: This is the pooling and
10 servicing agreements, securitization agreements.
11 THE COURT: Does it have any charts in it?
12 Is that what you gave me last week?
13 MR. WOOTEN: Yes, sir.
14 THE COURT: Do y'all have any objection to
15 it?
16 MR. DAUGHERTY: I think, yes.
17 MR. WOOTEN: They can pull the charts out.
18 THE COURT: When we take a break y'all
19 look at it.
20 MR. DAUGHERTY: I'll look at it again.
21 We'll figure it out.
22 MR. WOOTEN: The main thing I want to do
23 is get the securitization documents from this into
24 evidence.
25 We'll sit that one to the side.

1 THE WITNESS: Yes, I believe so.
2 MR. WOOTEN: Let me check just a couple of
3 things. I may tender, Your Honor. I want to make
4 sure. I'll look at my checklist.
5 THE COURT: While he's doing that,
6 Mr. Adams, let me ask you a question: Your
7 ultimate opinion is that you think that we cannot
8 be certain that this plaintiff is entitled to the
9 -- that it's the holder of the note and mortgage,
10 or did you tell me that in your professional
11 judgment you don't think it is? Which?
12 THE WITNESS: The trustee -- based on the
13 allonge, the trustee would be indicated as the
14 holder of the note. But there is no way of knowing
15 which trust they are holding nor based on that
16 note.
17 THE COURT: All right. Thank you. I
18 wanted to make sure I had that right.
19 THE WITNESS: I gave you a third version
20 of those two.
21 THE COURT: That's all right.
22 Q (BY MR. WOOTEN:) But based on the appearance
23 and the order that we've seen these documents, Tom,
24 and based on your experience in the industry, does
25 it appear to you that the allonge came up sometime

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1 Q (BY MR. WOOTEN:) On the allonge, Tom, that was
2 in the case which was in the collateral file. Have
3 you got it?
4 A It's the exhibit I'm looking at?
5 Q Yeah. It's also attached. It's stapled to the
6 copy 15 that they offer, which is the first time
7 it's been physically attached, a copy of the
8 promissory note, right?
9 A Yes, it is. Yes.
10 Q Okay.
11 MR. RAMEY: Just to clarify, do you want
12 to point out that the allonge was rubber banded as
13 far as the attachment issue.
14 THE COURT: Yes, I'm aware of that.
15 Q (BY MR. WOOTEN:) The documents assertion that
16 -- in the document itself, the execution of it
17 means it's permanently affixed to the promissory
18 note. Would that comply with industry standards,
19 customs and practices for attachment?
20 THE COURT: Haven't we been through this
21 already?
22 MR. WOOTEN: I'm sorry, Your Honor.
23 THE COURT: I thought that he has
24 testified that he thought it would not. Didn't
25 you?

1 after your testimony came in this case, these
2 issues were raised.
3 THE COURT: Well, I -- do you object to
4 that?
5 MR. RAGSDALE: He does. He objects to it.
6 THE COURT: I sustain.
7 Q (BY MR. WOOTEN:) Is there anything, Tom, that
8 leads you to change your opinion expressed in your
9 initial affidavit that this particular trust does
10 not own this loan?
11 A As far as the conclusion, no, there's nothing
12 that would lead me to change my conclusion that I
13 can't know for certain that this -- there is no way
14 for me to know that this trust owns this note.
15 THE COURT: See that's what I thought you
16 said before. There is no way you can know for
17 certain. I don't think that's the burden of proof,
18 but you might want to pursue that.
19 MR. WOOTEN: Sure.
20 Q Well, what we were talking about earlier is
21 that with respect to the number of trusts
22 identified that could be the holder, where all
23 these parties are the same except for the trust
24 name, there are fifteen or so different trusts we
25 identified, tabbed, and marked documents on. We

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1 also saw EMX1 Trust that said -- that they said
2 owned the loan, which they would say is the
3 plaintiff for a while now in this case.
4 The earlier evidence that you saw when you
5 entered your initial opinion was there was no
6 endorsement to the trust at or before the closing
7 date, right?
8 A That's right.
9 THE COURT: Because we just had the blank
10 note?
11 MR. WOOTEN: Right.
12 Q (BY MR. WOOTEN:) In your experience in the
13 industry, you would not have expected to see a
14 blank endorsed promissory note that had allonges
15 presented to the Court in 2009 if the parties had
16 securitized this loan to this trust, right?
17 A That's right.
18 Q And so even if the Court were to be inclined to
19 say U.S. Bank as trustee endorsement was
20 sufficient, there's no evidence that that occurred
21 until after your affidavit came into the case,
22 right?
23 A There is no evidence, no.
24 Q And based on the contents of the collateral
25 file, if the allonges had been done in accordance

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1 with the securitization process, the allonge, in
2 your expectation would have been part of the note
3 that was scanned into the collateral file when the
4 collateral file was created, correct?
5 A That's right.
6 Q So if this securitization had taken place,
7 there would have been no way to present a blank
8 endorsed promissory note at the last trial,
9 correct?
10 A That would be my understanding. That's right.
11 Q And then with respect to Mr. Haughton's
12 testimony that they received the collateral file
13 from Wells Fargo who is GMAC's custodian. Well,
14 are you familiar with custodial arrangements where
15 an entity like Wells Fargo serves as custodian for
16 the trust, but also serves as custodian for
17 servicers and originators, right?
18 A Yes.
19 Q So was it significant to you when he said he
20 received his documents from his document custodian,
21 did that communicate to you that he was receiving
22 these documents from GMAC's document custodian or
23 from the trust?
24 A From his description, it sounded like it was
25 coming from GMAC's custodian.

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1 Q And there is nothing in the collateral file to
2 indicate that the file was released from the
3 trustee for the trust, right?
4 A That's right.
5 Q So if the loan were conveyed to this trust,
6 somewhere in these documents there should have been
7 evidence that says that the loan is in the name of
8 this trust, right?
9 A That would be my expectation, yes.
10 Q And the reason you say you're uncertain --
11 you're not saying that you're uncertain that this
12 trust doesn't own this loan. You're saying you're
13 uncertain who the owner is among all the possible
14 parties?
15 A It's clear that the trustee has, based on the
16 allonge, has had the note transferred to them based
17 on the allonge. But it is unclear what that means.
18 That could -- any number of parties could or any
19 number of trusts could actually own that note.
20 Q And so the requirements, a specific endorsement
21 to this trust in the way that you identify as an
22 asset of this trust has not been met, right?
23 A That's right. That's exactly why I would
24 expect to see a specific endorsement to the trust.
25 Q So when you said you were saying you weren't

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1 sure who owned it, what you're saying is that any
2 of those trusts we identified marked cumulatively,
3 based on the allonge, could be the owner of it?
4 A That's right. Any of the other parties could
5 be the owner as well. And the suggestion of the
6 loan number appeared in a different trust, would
7 give me significant concern that the note may have
8 possibly have been sold more than one time.
9 Q So have you been involved in an industry
10 situation where a note sold more than one time?
11 A Yes, I have.
12 Q Do you know anything about the priority of
13 ownership of a note when it's sold more than one
14 time?
15 A In my experience, documentation has existed
16 that would make that fairly confusing or it would
17 indicate that they both appear to have priority of
18 ownership.
19 MR. RAGSDALE: I'm sorry. What was that
20 answer? They both --
21 A I have seen situations where the documentation
22 would appear to indicate that both, more than one
23 entity had priority of ownership.
24 Q So with respect to showing a conveyance to this
25 trust, nothing you have seen says there's a

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1 conveyance to the plaintiff in this case, right?
2 A The plaintiff U.S. Trustee as in trust or as
3 the trustee for RASC 2007-EMX1.
4 Q Okay. So is it your opinion, then, based on
5 that that this trust is not the owner of this loan?
6 A Yes, that's my opinion.
7 Q Okay.
8 MR. WOOTEN: We would tender the witness.
9 THE COURT: All right. You want to take
10 five minutes?
11 MR. RAGSDALE: Please.
12 THE COURT: All right. Five minutes.
13 (Short recess.)
14 THE COURT: All right.
15 CROSS-EXAMINATION.
16 BY MR. RAMEY:
17 Q Good afternoon, Mr. Adams.
18 A Afternoon.
19 Q My name is Shaun Ramey. I don't think you and
20 I have ever met before. I have a few questions for
21 you.
22 First of all, the name of the insurance company
23 you worked for, was it FCIG?
24 A I worked for two insurance companies. One was
25 Ambac Insurance.

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1 Q And the other?
2 A The other was Financial Guaranty Insurance
3 Company.
4 Q And that's the one that had -- that company had
5 some involvement with this pool?
6 A Yes, by coincidence.
7 Q With respect to that company having some
8 involvement with this pool, did you personally have
9 any involvement?
10 A The transaction was done in my group, yes.
11 Q Okay. In your group. How big is your group?
12 A It had about five people in it, in the mortgage
13 area.
14 Q In the mortgage area. So you supervised those
15 folks?
16 A Yes. I supervised. It was a small group. I
17 was actively involved in many aspects of that
18 transaction.
19 Q All right. And with respect to your testimony
20 here today, you've been retained by Ms. Congress,
21 correct, or her attorneys?
22 A Yes.
23 Q You haven't been -- you haven't been retained
24 by Mortgage Lenders Network in this case?
25 A No, I have not.

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1 Q Or the bankruptcy trustee, if there is one for
2 that bankruptcy?
3 A No.
4 Q Or EMAX, or Residential Funding, Residential
5 Asset, the trust of the trustee, you haven't been
6 retained by any of those?
7 A No, I have not.
8 Q You haven't been retained by any certificate
9 holders in this case, have you?
10 A No.
11 Q Or any certificate insurers?
12 A No. The certificate insurer --
13 Q Correct.
14 A -- FGIC, to my knowledge.
15 Q Correct. You haven't been retained by them to
16 give testimony in this case?
17 A No, I am not affiliated with them in any way
18 any longer.
19 Q Okay. And you haven't been retained by any of
20 swap counter parties or anything?
21 A No.
22 Q With respect to this -- we've spent time a lot
23 of time talking about this pooling and servicing
24 agreement. Ms. Congress isn't a party to that
25 contract is she?

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1 A No, she's not.
2 Q In fact, the parties to that, if I understand,
3 are the depositor, which is -- is that that
4 Residential Asset Securities Corp?
5 A I believe so.
6 Q Okay. And you're welcome to look on the -- is
7 that -- which exhibit is that there?
8 A I have different ones here.
9 MR. WOOTEN: This is the securitization
10 documents for those.
11 Q Let me make sure I've got you on the right one.
12 So Residential Asset Corporation is the depositor
13 and they're a party to the contract, right?
14 A Yes, sir.
15 Q Aren't they?
16 A Yes.
17 Q And Residential Funding Company is a party to
18 the contract with Master Servicer?
19 A Residential Lending Company, LLC.
20 Q And the trustee, they're a party to the
21 contract?
22 A Yes.
23 Q There are no other explicit parties to the
24 contract, are there?
25 A No other signatories to this.

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1 Q No other signatories, okay.
2 Now, Ms. Congress, she's not a third-party
3 beneficiary to the contract either, is she?
4 A No.
5 Q In fact, the pooling and servicing agreement,
6 you may need to look in there specifically, but you
7 may know from your general experience, there are
8 certain parties who tend to be beneficiaries, like
9 the certificate holders, right?
10 A Yes, and the certificate insurer.
11 Q Okay. And she's none of those. So she's not a
12 party to the contract and she's not a third-party
13 beneficiary to the contract, is she?
14 A That's right.
15 Q In fact, none of the mortgagors are parties to
16 the pooling and servicing contract, are they?
17 A Yes. None of the borrowers are parties to the
18 pooling and servicing agreement.
19 Q None of the borrowers. In fact, I think you
20 may have testified to this earlier, but the primary
21 purpose of this pooling and servicing agreement is
22 to protect the certificate holders, right?
23 A It's to create a trust that creates
24 certificates that investors purchase.
25 Q Okay. And by the way, I forgot about this:

1 Ms. Congress's promissory note.
2 A I believe I said that there is nothing -- there
3 is no evidence that this trust was the owner of
4 this note.
5 Q There is no evidence that -- so it's your
6 testimony that there's no evidence that this trust
7 owns her note?
8 A That's right.
9 Q Now, we spoke a lot about owner, and I just
10 want to make sure I'm clear about this. You're not
11 giving any opinion today as to whether or not the
12 plaintiff could be the holder of a promissory note,
13 are you?
14 A Physical holder or are you talking about a --
15 define legal contract or --
16 Q Let's back up. Can the trust be a physical
17 holder of her promissory note?
18 A They could be. The trust could be through a
19 custodian.
20 Q I mean, are you giving any opinion that the
21 trust can't be a holder of her note under the
22 Uniform Commercial Code, Alabama's version?
23 A No.
24 Q That's why -- I just want to make sure. You're
25 talking about ownership issues, not holder issues;

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1 With respect to your testimony today, are you being
2 paid for your testimony here today?
3 A I am.
4 Q How much are you being paid?
5 A My rate is six hundred dollars an hour.
6 Q Do you have any idea how many hours you've put
7 into this?
8 A I don't. I can find out.
9 Q I appreciate it. Is it more than a hundred
10 hours?
11 A No.
12 Q Less than fifty?
13 A Yes.
14 Q Less than twenty?
15 A Yes. I believe it's less than twenty as well.
16 Q Okay. Now, I think I heard some of your
17 opinion today, and you spoke a lot about you
18 weren't sure if the trust was the owner of this
19 note; is that right?
20 A I spoke a lot about -- I'm sorry. I'm not
21 following the question.
22 Q I'm sorry. Let me back up.
23 During your testimony, part of your testimony
24 was that you weren't sure if the trust, this
25 current trust, the plaintiff, is the owner of

1 is that fair to say?
2 A Yes, sir.
3 Q Okay.
4 THE COURT: Would there be any difference
5 as far as standing?
6 MR. RAMEY: No. I mean -- well, there
7 would be no difference with respect to her standing
8 the challenge of the transaction. I do believe
9 that we can enforce the obligation of any holder
10 under Alabama's UCC to enforce --
11 THE COURT: Whether you're the holder or
12 owner?
13 MR. RAMEY: Correct. As will be set forth
14 in our briefs. It's completely irrelevant, the
15 ownership issue.
16 THE COURT: All right.
17 Q (BY MR. RAMEY:) You have a copy of the pooling
18 and servicing agreement we've talked about.
19 A I do.
20 Q Is this Defendant's Exhibit 1?
21 MR. WOOTEN: I believe we've marked that
22 as 2.
23 MR. RAMEY: As 2.
24 MR. WOOTEN: No, it was 22. Flip to the
25 front page right inside the front cover.

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1 THE COURT: It's inside.
2 A 22.
3 Q And I should have done this earlier. Let me
4 just make sure. You've got 22 there?
5 A That says 22.
6 Q Okay. This appears to have a pooling and
7 servicing agreement, an assignment and assumption
8 agreement. And there's two documents. Looks like
9 under Tabs 2 and 3, and the 8(k) on Tab 4. Okay?
10 A Yes, sir.
11 Q I'm going to refer to section symbols. If you
12 can't follow that section symbol, just let me know
13 and I'll try to get you another copy of it.
14 A Okay.
15 Q One thing I didn't notice there is the
16 mortgage loan schedule for this trust. The
17 plaintiff's trust is not attached to that document,
18 is it?
19 A Does not appear to be.
20 Q In forming your opinion today, did you ever go
21 and look at the actual mortgage loan schedule with
22 respect to plaintiff's trust?
23 A I don't believe so. I don't believe that that
24 was a document that I reviewed and it's not here.
25 Q Okay. Do you know -- well, let me back this

1 MR. RAMEY: For this pool, yes.
2 MR. WOOTEN: Is it redacted in any way?
3 MR. RAMEY: No. You can take a look and
4 see it.
5 THE COURT: Is this just this one trust?
6 MR. RAMEY: This is just this one trust.
7 The trust we claim is the plaintiff in this case.
8 THE COURT: Yeah.
9 MR. WOOTEN: And this is in the same
10 format as the other one that you have a loan number
11 repeating here every certain number of pages
12 because it's a spreadsheet, right?
13 MR. RAMEY: Exactly.
14 MR. WOOTEN: So that's why it's nine
15 hundred and seventeen pages, right?
16 MR. RAMEY: Exactly.
17 MR. WOOTEN: Okay.
18 MR. RAMEY: And Your Honor, I'll take your
19 advice on this. This is one of the exhibits to the
20 pooling and servicing agreement that's previously
21 been entered as Defendant's Exhibit 22, and the
22 completion document should be considered part of
23 it. And I'm happy to enter it as a separate
24 exhibit.
25 THE COURT: Let's call it 22-A.

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1 up. If that's the case, have you gone and looked
2 to see if her loan is even listed in the mortgage
3 loan schedule with this trust?
4 A I have seen it on a listing of a document. I'm
5 not sure which document it was.
6 Q Okay. And I don't want to be painful about
7 this, but I'm going to go ahead and get the
8 mortgage loan schedule, because I think it would be
9 important to determine, first of all, whether her
10 name is actually listed in the original mortgage
11 loans. Would you agree with me?
12 A Sure.
13 Q I mean, doesn't the original mortgage loan
14 schedule list the loans that are supposed to be in
15 the trust?
16 A It does.
17 Q I mean, that's the purpose of it. I'm going to
18 try to par this down, but this is the nine hundred
19 and seventeen page mortgage loan schedule that goes
20 -- that's filed with the SEC and goes with the
21 pooling and servicing agreement. Do you have any
22 disagreement about this?
23 MR. WOOTEN: Are you representing that
24 that is the full and complete loan schedule for
25 this pooling and servicing agreement?

1 MR. RAMEY: 22-A?
2 THE COURT: Does that suit you?
3 MR. RAMEY: That's our exhibit there,
4 Number 19.
5 THE COURT: We'll mark it 19.
6 (Whereupon, Plaintiff's Exhibit
7 Number 19 was marked for
8 identification.)
9 Q (BY MR. RAMEY:) And I'll show you this. Have
10 you ever seen a mortgage loan schedule like this
11 before?
12 A I've seen hundreds of mortgage loan schedules
13 in electronic form.
14 Q An electronic form. Does this look any
15 different than some of the typical mortgage loan
16 schedules you've looked at?
17 A No, it does not.
18 Q Okay. As I understand it, and you can flip
19 through and take a look at it. But, for example,
20 there are no names in here, are there? There was
21 no debtor, mortgagor, or borrower names at all, are
22 there?
23 A I don't see any.
24 Q Okay. But there is relevant information on
25 these, including looking here on first page, it has

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1 a loan number, it has the gross interest rate, RFC
2 net interest rate, first payment date, maturity
3 date, original amount, and principal balance.
4 Would those be categories you would typically see
5 in a mortgage loan schedule?
6 A Yes.
7 Q And you probably also see additional
8 information as well. And I'll show you an example
9 of that.
10 Starting here on Page 41 of the document. You
11 see there is a break and we have different
12 information, don't we?
13 A Yes.
14 Q We have loan number again, but we have
15 principal and interest amount, RFC, LTV
16 information, paid to date, pay type. I can't tell
17 what that is. Loan -- loan purp and home
18 improvement IMV. Take that out.
19 And that's typical information you would see in
20 some of these mortgage schedules?
21 A Yes.
22 Q And there's additional information typically in
23 these mortgage loan schedules as well, the max
24 interest rate, min interest rate and arm loan, for
25 example?

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1 A Yes.
2 MR. RAMEY: Let me ask you this,
3 Mr. Wooten.
4 (Off the record.)
5 MR. WOOTEN: Judge, basically the issue is
6 is that we're aware that the mortgage loan schedule
7 -- and for this EMX1 says that the loan, the same
8 loan number is in that loan schedule. And that's
9 the reason I have offered the Court a nine hundred
10 page exhibit in one of these affidavits.
11 THE COURT: That's pretty important, isn't
12 it?
13 MR. WOOTEN: Well, but it's in two
14 different trusts. It's in '06, the EMX9, and it's
15 in '07, the EMX1. So what --
16 THE COURT: I thought he had testified to
17 that.
18 MR. LAY: Yes.
19 MR. WOOTEN: So what we're trying to
20 stipulate to save time is to say that the loan, the
21 information appears in the loan schedule for two
22 different trusts. Is that right?
23 MR. RAGSDALE: That's not true.
24 MR. RAMEY: I'm going to take some issue
25 with the other trust in that.

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1 MR. WOOTEN: Sure.
2 MR. RAMEY: With respect --
3 THE COURT: So you're just trying to get
4 him to stipulate that in this trust, the one with
5 which we are concerned with lists Ms. Congress's
6 loan?
7 MR. RAMEY: Correct. Loan number,
8 interest rate, maturity date, date of loan.
9 THE COURT: Okay. And you stipulate to
10 that?
11 MR. WOOTEN: It's the same information
12 that's in the '06-EMX9.
13 THE COURT: All right. But that's another
14 issue.
15 MR. WOOTEN: Yes, sir.
16 THE COURT: All right. So it's stipulated
17 without me reading nine hundred pages that
18 Ms. Congress's loan is included in this trust of
19 which we're concerned today.
20 MR. WOOTEN: On the schedule, the mortgage
21 loan schedule.
22 THE COURT: On the schedule, yeah, on the
23 mortgage loan schedule.
24 MR. WOOTEN: Right. I think we entered
25 that into evidence already.

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1 MR. RAMEY: I think we entered that as
2 evidence already.
3 THE COURT: 19 is admitted if it wasn't
4 before.
5 (Whereupon, Plaintiff's Exhibit
6 Number 19 was received into
7 evidence.)
8 Q And in preparing to give your opinion, you had
9 reviewed the actual pooling and servicing
10 agreement, the representations and warranties set
11 forth by the various parties in that agreement,
12 right?
13 A Yes, sir.
14 Q And, for example, various parties to the
15 agreement state -- give various representations of
16 warranties?
17 A Yes.
18 Q Okay. For example, the depositor, they're the
19 ones who put the loans into the trust; is that
20 correct?
21 A Yes.
22 Q And when you reviewed the pooling and servicing
23 agreement, the depositor here represented that they
24 had put all the loans in the mortgage loan schedule
25 into the trust, correct?

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1 A Yes.
2 Q Likewise, the trustee, they're the ones who
3 received it, right? They give representation about
4 receiving it?
5 A Yes. They have an acceptance.
6 Q Okay. And when you reviewed the pooling and
7 servicing agreement, they represented that they had
8 received all the loans, the mortgage loan schedule,
9 including Ms. Congress's loan?
10 A They represent that they accept subject to the
11 terms of the pooling and servicing agreement, yeah.
12 Q But they stated that they received the mortgage
13 loans and the mortgage loan schedule, correct?
14 A Yes. Is there a provision?
15 Q Yeah, we can go to specific provisions. That's
16 fine.
17 A I'm not -- the specific wording of that.
18 Q That's fine. That's fine. See the pages I'm
19 flipping by it's because we got past that whole
20 agreed upon stipulation.
21 Specifically, we can start first with -- look
22 at Section 2.01 which talks about the conveyance of
23 mortgage loans. And I'm backing up a little bit
24 because we were talking about the trustee. But
25 this backs it up to the depositor issues. 2.01(A),

1 conveyed all the things that were in the mortgage
2 loan including Ms. Congress's loan to the trust?
3 A Yes.
4 Q Okay. 2.01(B) right below that, do you see
5 that?
6 A Yes.
7 Q It says, in connection with such assignment and
8 contemporaneously with the delivery of this
9 agreement except as set forth in Section 2.01(C)
10 allowing subject to Section 2.01(D) below, the
11 depositors hereby, open paren, one, does hereby,
12 open paren, one, with respect to each of the
13 mortgage loans deliver to master servicer or an
14 affiliate of master servicer each of the documents
15 or instruments described in clause little two i
16 below. Do you see that?
17 A Yes.
18 Q Did I read that correctly?
19 A Yes.
20 Q Okay. So is it from your experience in the
21 industry, does that mean the depositor saying they
22 conveyed all the underlying documents that went
23 with these mortgage loans that were in the mortgage
24 loan schedule, including Ms. Congress's loan?
25 A "The depositor does hereby deliver to the

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1 tell me if I'm reading this incorrect.
2 "The depositor concurrent with the execution and
3 delivery -- "
4 THE COURT: What is this from, Shaun?
5 MR. RAMEY: This is from the current
6 pooling and servicing agreement.
7 THE COURT: Okay.
8 MR. RAMEY: That is Section 2.01 --
9 MR. LAY: Page 31 of our notebook that you
10 have.
11 MR. RAMEY: Thank you. My pages are all
12 going to be one page difference.
13 Q 2.01 is entitled, Conveyance of Mortgage Loan.
14 Do you see that section, Mr. Adams?
15 A I do.
16 Q Okay. 2.01(A) says: The depositor
17 concurrently with the execution and delivery
18 hereof, does hereby assign to the trustee and
19 respect to the trust fund without recourse all the
20 right, title, and interest of the depositor and
21 into, open paren, little i one, close paren,
22 mortgage loans." Correct?
23 A Yes.
24 Q Okay. So is it your understanding that the
25 depositor when they signed this document said they

1 master servicer." So master servicer is not --
2 I'm sorry. What was your question? The master
3 servicer is the servicer.
4 Q I'm sorry the master servicer is what?
5 A Is the master servicer, then. The answer to
6 your question about ownership or position.
7 Q I guess the question was -- and it may have not
8 been a good question.
9 That representation is that in connection with
10 signing this document, they've transferred the
11 various documents of the master custodian with
12 respect to the mortgage loans -- sorry. The master
13 servicer.
14 A Yes. Yes, that's right.
15 Q Okay. Great.
16 Let's look at -- I want to skip a few sections
17 down to Section 2.03 entitled, Representation of
18 Warranties and Covenants of the Master Servicer and
19 the Depositor. It may be Page 31, maybe, of
20 y'all's copy, maybe 33. It's 32 of mine.
21 A Did you say 2.03 you said?
22 Q Yes, sir.
23 A Okay.
24 Q Specifically, I want to go to all the way, flip
25 to letter B. B as in boy. And as I understand it,

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1 here it says: The depositor hereby represents and
2 warrants to the trustee for the benefit of the
3 certificate holders and the certificate insurer,
4 that as of the closing date of otherwise described
5 below, as to the date so specified, immediately
6 prior to the conveyance of the mortgage loan, the
7 trustee, the depositor had good title to and was
8 the sole owner --
9 THE COURT: Slow down, Shaun.
10 MR. RAMEY: Sorry. -- was the sole owner
11 of each mortgage loan free and clear of any pledge,
12 lien, encumbrance or security interest.
13 Is that another one of the representations that
14 the depositor would have made by executing this
15 document?
16 A Yes.
17 Q And getting us back to where we were, if you
18 would skip back to the Section 2.02, entitled
19 Acceptance by Trustee. And I think this is in
20 section you wanted to double-check.
21 It says the trustee acknowledges receipt or
22 with respect to mortgage loan subject to a
23 custodial agreement and based solely upon a receipt
24 or certification executed by the custodian, receive
25 it in respect to custodian -- appointed agent of

1 The pooling and servicing agreement, the
2 parties to that document, the depositor said that
3 they have given -- that they have transferred the
4 mortgage loans by the closing date; is that
5 correct?
6 A Yes.
7 Q And the trustee acknowledge that they had
8 received it by the closing date; is that correct?
9 A Yes.
10 Q And Ms. Congress's loan is listed as one of
11 those -- is listed as one of those loans in the
12 mortgage loan schedule which is filed with the SEC?
13 A Yes.
14 Q Okay. Is it your contention that that's no
15 evidence that the trust actually owns the note in
16 question?
17 A It is my contention that the documentation used
18 to convey the note does not provide evidence that
19 it belongs to this trust.
20 Q I guess to put it another way, you would like
21 to go beyond just the representations and the
22 warranties put in the publicly filed Document C,
23 the actual transfers; is that right?
24 A Well, included among the steps to demonstrate
25 these provisions and the other paragraphs of the

1 the trustee, close paren, of the documents referred
2 to in Section 2.01(B) little i above, except that
3 for the purposes of such acknowledgement, only a
4 mortgage note may be endorsed in blank and an
5 assignment of mortgage may be in blank and declares
6 that it as custodian as its agents holds and will
7 hold such documents and the other documents
8 constitute part of the custodial file delivered to
9 it or the custodian as its agent and trust for the
10 use and benefit of all present and future
11 certificate holders and the certificate insurer.
12 The trustee or custodian, the custodian being so
13 obligated under the custodial agreement, agrees for
14 the benefits of certificate holders. (As read.)
15 MR. RAMEY: I was originally born up
16 north, and I apologize for that.
17 THE COURT: You haven't seen trouble until
18 you get Rhonda mad at you. Slow down.
19 Q (BY MR. RAMEY:) So is it my understanding that
20 the trustee is given a representation that they
21 have accepted the documents regarding mortgage
22 loans from the depositor by signing this document?
23 A Yes.
24 Q So just to re -- sorry -- just to recap. I
25 want to make sure I understand.

1 sections that you were referring to, describe the
2 steps that are supposed to be taken with the
3 assignment and the note.
4 Q All right. So you want to see the specific
5 steps, not just the representations that the steps
6 have been complied with?
7 A And which the trustees saying that they
8 complied with. Yes.
9 THE COURT: Say that again.
10 A In which the trustee issues a certification
11 saying that they complied with the steps.
12 Q Okay. I want to talk a little bit about -- do
13 you have, I think it's Defendant's Exhibit 2 up
14 here. Let's see. Okay. Defendant's Exhibit 2.
15 Do you remember talking about this earlier during
16 your direct examination, this exhibit? I'll let
17 you take a look at it again.
18 A Yes.
19 Q Okay. As my understanding was you said that
20 this document related to a different pooling and
21 servicing agreement?
22 A Yes.
23 Q And that you found some evidence that
24 Ms. Congress's loan was also listed in this pooling
25 and servicing agreement?

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1 A Yes.
2 Q Does this one predate?
3 A Yes, it does.
4 Q So this predates the one we're talking about on
5 the board there?
6 A Yes.
7 Q Okay. I'm going to direct your attention,
8 first of all, to Tab 2 the first page, where it
9 says: File pursuant to Rule 433 SEC file number,
10 and then it has an SEC file number after that.
11 A Yes.
12 Q This says: Free writing prospectus,
13 preliminary pooling information, right?
14 A Yes.
15 Q And it says, Residential Funding Company,
16 Master Servicer and Sponsor.
17 Is it your contention that this is the actual
18 pooling and servicing agreement even though it says
19 it's a preliminary pooling and servicing agreement?
20 A No.
21 Q Is it your contention that there be a pooling
22 and servicing agreement issued after this one, the
23 preliminary one?
24 A I'm sorry. Can I see that again?
25 Q Yes. And I guess my concern is the word

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1 "preliminary."
2 THE COURT: What is the name of that
3 trust?
4 MR. RAMEY: This one says the Home Equity
5 Mortgage Asset-Backed Pass-Through Certificate,
6 Series 2006-EMX9 Certificates.
7 Q Is that the name of this trust? Did I say that
8 right?
9 A Yes. RASC Series 2006-EMX9 Trust.
10 Q Okay. RASC is R-A-S-C, Series 2006-EMX9 Trust.
11 THE COURT: Okay.
12 Q So is this the final pooling and servicing
13 agreement there would be for this?
14 A No. This is a free writing prospectus. It's
15 not a pooling and servicing agreement.
16 Q So this it not a pooling and servicing
17 agreement we're looking at at Tab 2?
18 A Right.
19 Q Okay.
20 A It's a disclosure document.
21 MR. WOOTEN: Shaun, do you want me to pull
22 out the stack down there?
23 MR. RAMEY: Pardon?
24 MR. WOOTEN: Do you want me to pull the
25 trust agreement out of the stacks. There are

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1 fifteen or so --
2 MR. RAGSDALE: Do you have the original
3 copy of the mortgage schedule for that?
4 MR. WOOTEN: The free writing prospectus
5 is filed after the pooling and servicing agreement.
6 MR. RAMEY: Okay.
7 MR. WOOTEN: Read it.
8 Q (BY MR. RAMEY:) Let me ask you this, sir: Is
9 the free writing prospectus filed after the pooling
10 and servicing agreements were finalized?
11 A I believe that might depend on -- depends on
12 circumstances. So I'm not sure.
13 Q Okay. The reference to Ms. Congress's loan, it
14 was in this loan pool information here, right?
15 A Yes, sir.
16 Q So the reference we were talking about earlier
17 about Ms. Congress's loan was in the preliminary
18 PSA prospectus; is that correct?
19 A The free writing prospectus that has the word
20 preliminary in it. There's no reference in this
21 document to the pooling and servicing agreement,
22 this free writing prospectus.
23 Q And I want to make sure I understand. The
24 reference to Ms. Congress's loan is from this
25 prospectus?

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1 A Yes.
2 Q That you have referenced earlier?
3 A Right.
4 Q And your time in the industry, does it
5 sometimes happen that a loan might be originally
6 contemplated to go into a particular trust, but for
7 some reason may not make it in that trust and go
8 into a subsequent trust?
9 A I have seen that happen, yes.
10 Q That has happened?
11 A Yes.
12 Q Is it possible that that happened in this case,
13 assuming her name wasn't in the prospectus.
14 A It's possible.
15 Q After all, the trust we're talking about today
16 is after this date, isn't it?
17 A That's right.
18 Q Okay.
19 MR. RAMEY: Did y'all want to point out
20 the particular -- was it Number 9?
21 MR. WOOTEN: That's good with us.
22 MR. RAMEY: Okay.
23 MR. WOOTEN: One of the ones up there,
24 Tom, that is bound.
25 MR. RAMEY: This one may be.

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1 MR. GRIMSLEY: It should be EMX9.
2 Q I want to be fair and make sure I've got this
3 right. I'm showing you Defendant's Exhibit 9,
4 which is an RASC Series, 2006-EMX9 Trust.
5 A Yes.
6 Q Is that the same trust?
7 A That we were just talking about for the
8 prospectus.
9 Q Okay. So this would have been the finalized
10 pooling and servicing agreement after that
11 document?
12 A Yes.
13 Q Is there any mortgage loan schedule in this
14 document identifying Ms. Congress's loan?
15 A Not attached to this, no.
16 Q Attached to this, okay.
17 THE COURT: Where is it?
18 A It is filed electronically, the mortgage loan
19 schedule, simultaneous with this in the document.
20 MR. WOOTEN: Judge, if we need to
21 supplement that, we can. That goes back to the
22 issue of a nine hundred page mortgage loan schedule
23 because it's printing off four sheets on a
24 spreadsheet out.
25 THE COURT: Well, if she's listed on this

1 A 10-23-06.
2 Q Okay. Sorry about that. And Defendant's
3 Exhibit 9, we were just talking about, is the
4 actual PSA. On the cover page, does that have a
5 date as well?
6 A 11-13-06.
7 Q Okay. So that PSA was after the prospectus,
8 correct?
9 A Yes.
10 Q Let's talk a little bit about the note itself.
11 Do you have a copy? Two notes. Are they all up
12 here? Okay.
13 A Yeah, not one.
14 Q Can I see that one? Thank you very much, sir.
15 A Which note? It is the one in blank? This is
16 the one with allonge.
17 Q Thank you very much. Okay. When you gave your
18 -- when you gave your opinion -- you gave an
19 affidavit originally in this case, didn't you?
20 A Yes, that's correct.
21 Q Was that in -- was that -- do you recall when
22 that was, about when that was?
23 A A few weeks ago. April.
24 Q When you had given your opinion, you had just
25 -- the copy of the note you had seen was this, what

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1 particular trust, I need to know it.
2 MR. WOOTEN: Well, that's the purpose of
3 introducing the free writing prospectus, which
4 shows that she was --
5 THE COURT: Well, the prospectus is not
6 the final defining document.
7 MR. WOOTEN: Well, that's true, Your
8 Honor. That's one of the reasons, like I told you
9 we'll --
10 THE COURT: Well, did you have a document,
11 a final document which lists Ms. Congress's loan in
12 a trust other than the one which we're concerned?
13 MR. WOOTEN: I have not pulled the final
14 mortgage loan schedule for that EMX9 Trust.
15 THE COURT: Didn't you testify that she is
16 listed or that she's listed on the preliminary --
17 THE WITNESS: She's listed on the free
18 writing prospectus which was Exhibit 2.
19 MR. LAY: We'll get it.
20 MR. RAMEY: And just to clarify, this is,
21 once again, the free writing prospectus,
22 Defendant's Exhibit 2.
23 Q (BY MR. RAMEY:) And I'm turning to the second
24 tab, which does have a date on it. Can you tell us
25 what the date is there?

1 we're showing as Plaintiff's Exhibit 1, this
2 adjustable rate note which ends with an endorsement
3 in blank by Mortgage Lenders Network; is that
4 correct?
5 A Yes.
6 Q And when you gave your opinion, one of your
7 problems was that you would expected per the PSA
8 that this note would have had interim endorsements,
9 right?
10 A Yes, sir.
11 Q And that it would end with a specific
12 endorsement as well?
13 A Yes.
14 Q Okay. We talked a lot about -- I'm going to
15 show you Exhibit 5 to see if you have it as well.
16 This is Plaintiff's Exhibit 5 is the adjustable
17 rate note which contains the allonge on the back as
18 well as the filled-in endorsements here?
19 A Yes.
20 Q First of the all with respect to Plaintiff's
21 Exhibit 1, when you had done your investigation or
22 gave your original opinion, you had never seen the
23 original of any note, had you?
24 A No. Copies.
25 Q Had you ever asked to see the original note?

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1 A No.
2 Q Now, with respect to the note, Exhibit 1 there
3 that has the blank endorsement, you said, I guess
4 per this PSA you would expect it to end with a
5 specific endorsement; is that correct?
6 A Are you referring to my affidavit?
7 Q Yes.
8 A I don't recall the exact wording that I said in
9 the affidavit, but, yes, I believe that is what I
10 said in the affidavit.
11 Q Your point was that the note was going to have
12 to be specifically endorsed to a person at the end?
13 A According to the terms of the pooling and
14 servicing agreement.
15 Q Not a company or an entity per the terms of the
16 pooling and servicing agreement?
17 A Right.
18 Q Okay. Not necessarily per industry standards
19 though?
20 A No, under the terms of the pooling and
21 servicing agreement.
22 Q Because as far as the industry goes, there are
23 lots of pooling and servicing agreements that
24 typically have endorsements in blank, but that's
25 the way the note is negotiated, right?

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1 A That's correct. There are variations.
2 Q And when we speak, by the way, about your
3 industry background, we're talking about based on
4 what you know from the industry from where you've
5 been. For example, you have represented or you
6 worked at a certificate insurance; is that my
7 understanding?
8 A Yes.
9 Q And you worked on some of these securitizations
10 in private practice?
11 A Or beyond, yes.
12 Q But you never, for example, worked at a
13 trustee?
14 A No.
15 Q Or worked at a servicer?
16 A No.
17 Q Master or subservicer?
18 A I never was employed by those companies.
19 Q Or a document custodian?
20 A Right.
21 Q So when you speak about your opinion from an
22 industry standard, you're talking about from your
23 experience in the industry working in private
24 practice and also working for certificate insureds?
25 A And rating agency.

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1 Q Rating agency too. I apologize.
2 Now, as far as -- let me go back to -- let's
3 look at both of them first of all.
4 As far as the difference between Plaintiff's
5 Exhibit 1 and 15, they're both signed by
6 Ms. Congress, right?
7 A Yes.
8 Q It's the same signature, in fact, isn't it?
9 And that may be an unfair question because I know
10 you're not a handwriting expert.
11 A It appears to be the same.
12 Q And the terms of the note are all the same,
13 aren't they?
14 A They appear to be the same.
15 Q I mean, the same interest rate, the same
16 principal due date?
17 A Yes.
18 Q The difference being that the Plaintiff's
19 Exhibit 1 has an endorsement in blank, where the
20 other one has that endorsement filled in plus an
21 allonge; is that fair to say?
22 A Yes.
23 Q Now, as far as the actual endorsements, you
24 said one of your concerns was when you looked at
25 Plaintiff's Exhibit 1 when you had not reviewed the

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1 original of the note was it didn't have interrim
2 endorsements because you had expected certain
3 people in the chain in here to endorse it?
4 A That's right.
5 Q Assuming the allonge there is a valid allonge,
6 does that satisfy your concern as far as any in
7 between endorsements?
8 A The allonge does pick up the interrim steps of
9 transfer.
10 Q Okay. And as far as the final step, doesn't
11 that satisfy your concern that it was specifically
12 endorsed at the end of the day to U.S. Bank as
13 trustee?
14 A Yes, specific to the trustee U.S. Bank.
15 Q Okay. Which it's supposed to end specifically
16 endorsed to U.S. Bank as trustee, isn't it?
17 A For a trust, was my understanding.
18 Q Now, what do you mean when you say, "for a
19 trust?" That it should actually continue that out
20 in the endorsement?
21 A It should reference a specific trust.
22 Q On the endorsement itself?
23 A Yes.
24 Q Okay. And where did you get that understanding
25 from?

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1 A My understanding is that that would be
2 indicated as a -- under the pooling and servicing
3 agreement.
4 Q For the pooling and servicing agreement?
5 A Uh-huh.
6 Q Because as you said, in some of the other
7 pooling and servicing agreements, lots of times an
8 endorsement in blank is acceptable?
9 A Correct.
10 Q Do you have the -- I'm going to go back just a
11 few times -- the pooling and servicing agreement we
12 were talking about there? Let me get it again.
13 Yes, the notebook.
14 Can you turn to Section 2.01? Let me know when
15 you get there. I'm doing the same thing.
16 A Yep, I'm there.
17 Q You're there. 2.01 is that section entitled
18 Conveyance of Mortgage Loans, correct?
19 A Yes.
20 Q In section little b there, it talks about in
21 connection with such assignment and
22 contemporaneously with the delivery of this
23 agreement except as set forth in 2.01 see below
24 subject to Section 2.01(d) below, the depositor
25 does hereby, open paren, one, with respect to each

1 note is supposed to be payable to U.S. Bank as
2 trustee?
3 A Yes, that's right.
4 Q It doesn't say anything about you U.S. Bank as
5 trustee for the certain trust?
6 A Yes, that's right.
7 Q Thank you. So assuming the allonge we are
8 talking about there -- I keep forgetting my
9 numbers?
10 A Fifteen.
11 Q Fifteen. Thank you very much.
12 Fifteen, that specific endorsement, then, at
13 the end of the day to U.S. Bank trustee, complied
14 with the terms of the pooling and servicing
15 agreement, doesn't it?
16 A Yes.
17 Q Now, just for argument sake, does this PSA
18 contemplate situations if the trustee hadn't
19 received a note endorsed in blank or do you know?
20 A I'm not certain. Could you --
21 Q That maybe wasn't a good question.
22 A Yeah. Can we refer to the --
23 Q Sure. Sure. Sure.
24 A Yes.
25 Q Do you have Section 2.01 of the PSA handy

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1 loan deliver to master servicer and if failure to
2 master servicer, each of the document instruments
3 described in clause two below.
4 Do you see that?
5 A Yes.
6 Q Now below that there's some little Roman
7 numerals. Specifically, I want to look at Number
8 1.
9 A Yep, I see it.
10 Q Are these little Roman numerals the directions
11 or the steps on how it's to be transferred, telling
12 you exactly what you're supposed to do?
13 A Yes. It's the different items in the custodial
14 file.
15 Q Okay.
16 A The original file.
17 Q And I want to pay attention to little i, one
18 little i, I guess?
19 A Yes.
20 Q The original mortgage note endorsed without
21 recourse to the order of the trustee.
22 A Yes, that's what it says.
23 Q And showing unbroken chain of endorsements. So
24 doesn't that mean for the pooling and servicing
25 agreements specific endorsement at the end of the

1 again?
2 A Yes.
3 MR. WOOTEN: Page 32, fourth paragraph.
4 Q Specifically, I want to look at Subsection C,
5 little c. Let me know when you get to the
6 subsection little c.
7 THE COURT: The page number?
8 MR. WOOTEN: On page 32, fourth paragraph
9 under Subsection C.
10 THE COURT: All right.
11 Q Let me know when you get to C?
12 A Yeah, C.
13 Q Three paragraphs down, one full paragraph of C,
14 two, three. Do you see where it says: If the
15 depositor delivers? Do you see that language?
16 A Yes.
17 Q It says: If the depositor delivers to the
18 trustee or custodian any mortgage note or
19 assignment of mortgage in blank, the depositor
20 shall or shall call the custodians to complete the
21 endorsement of the mortgage note and the assignment
22 of mortgage in the name of the trustee in
23 conjunction with the interrim certification issued
24 by the custodian. That's contemplated in Section
25 2.02.

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1 A Yes, sir.
2 Q So the PSA does provide a mechanism for filling
3 in a blank endorsement should a blank endorsement
4 be delivered to the trust?
5 A Yes. Yes. In connection with the initial
6 certification.
7 Q I understand.
8 With respect to Plaintiff's Exhibit 15, the
9 note with allonge, I want to make sure we're clear
10 about this. Are you giving any opinion that that's
11 a forged or manufactured document?
12 A No, I am not giving an opinion on that.
13 Q You talked a little bit about the tax
14 consequences of -- or the tax treatment of these
15 pools. What is it called? REMIC?
16 A REMIC. R-E-M-I-C.
17 Q R-E-M-I-C. And you will have to help me out
18 here because I'm not a tax guy. It's probably
19 pretty obvious. But is it my understanding from
20 your testimony that the trust can't accept any new
21 assets after a certain date because that could
22 cause the trust to suffer some kind of taxable
23 liability?
24 A Yes, that's right.
25 Q Okay. So that's the reason why you have a

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1 concern that loan can't go in beyond the closing
2 date because that would jeopardize the tax
3 treatment?
4 A That's right.
5 Q Okay. Do you know if the pooling and servicing
6 agreement has any provision for bringing in things
7 after the fact?
8 A There are certain exceptions.
9 Q What would one of those exceptions be?
10 A I mentioned earlier, after the closing date
11 there are certain transactions that have provided
12 for prefunding periods. That means for ninety days
13 following the closing date additional loans can be
14 added to the trust. The period is limited to
15 ninety days.
16 In addition, there's typically a provision for
17 a qualified substitute mortgage.
18 Q Okay. I think you said something, maybe I read
19 this in your affidavit, or otherwise, it's
20 something about an opinion of counsel?
21 A Yes.
22 Q Is an opinion of counsel always required in
23 order to acquire assets, loans after the closing
24 date?
25 A I don't believe it's required for all of those

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1 circumstances that I just described. I don't think
2 it's required, but I'm not for sure on that one,
3 but typically it is required for most other
4 changes to the trust.
5 Q Okay. The idea being that counsel would give
6 an opinion that by accepting this loan it would not
7 suffer tax consequences?
8 A That's right.
9 Q Okay. Do you know if there's any provisions
10 that if an entity transferring it to the trust can
11 indemnify the trust for any tax liability in lieu
12 of an opinion of counsel?
13 A I'm not sure. That may be the case.
14 Q Okay. Have you ever had any experience with
15 that, with the indemnity issues like that?
16 A No. I don't recall anybody being willing to
17 take the tax consequence themselves.
18 Q Okay.
19 A Most people want an opinion.
20 Q Pardon?
21 A Most people would want an opinion.
22 Q Most people would want an opinion?
23 A Yes.
24 Q And, for example, assuming, just for sake of
25 argument, that Ms. Congress's loan was not put into

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1 the trust until after the closing date, you don't
2 know if any entities offered to provide any
3 indemnification or anything like that with respect
4 to any potential tax consequences?
5 A That's right.
6 Q And you don't know whether or not the IRS or
7 anyone has ever said if her loan was, in fact,
8 acquired after the date, whether or not they're
9 claiming that this was a taxable event?
10 A The IRS, no, I haven't heard that from them.
11 Q I want to direct your attention to 10.01(F).
12 In my copy it's about Page 65. Yours should be a
13 page or two off.
14 THE COURT: Page 66 in here.
15 Q Page 66. Just let me know when you get to it.
16 It's called REMIC Provisions.
17 A Uh-huh.
18 Q And this is going to be a -- it's going to be a
19 tough one. Specifically Section F.
20 MR. RAMEY: Do y'all mind if I show him
21 the highlighted portions in the middle of the
22 sentence?
23 MR. WOOTEN: The whole paragraph is
24 highlighted in mine.
25 MR. RAMEY: Okay.

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1 Q I just want to direct your attention a little
2 quicker. First, focusing on Section (f)
3 specifically, you see the little f there?
4 A Uh-huh.
5 Q And we're focusing -- that is one very long
6 paragraph, so we're focusing towards the middle of
7 this paragraph right here with "wherever." And can
8 you read that out loud?
9 A "Wherever in this agreement the contemplated
10 action may not be taken because of the timing of
11 such action might result in the imposition of a tax
12 in the trust fund, or may only be taken pursuant to
13 the opinion of counsel that such action would not
14 impose a tax on the trust fund. Such action being
15 nonetheless be taken provided the indemnity given
16 in the preceding sentence with respect to any taxes
17 that might have been imposed on the trust fund have
18 been given, and that all other preconditions to the
19 taking of such action have been satisfied."
20 (As read.)
21 Q So, if I understand, the PSA provides that you
22 can transfer a loan after the closing date so long
23 as you agree to certain additional provisions like
24 indemnity?
25 A Frankly, I would have to sit down and think

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1 about that sentence for a little bit longer to
2 really know what that is saying.
3 Q Okay. We talked a little bit about whether or
4 not two trusts may possibly own Ms. Congress's
5 loan, Mr. Adams. I'm sorry, Mr. Adams. I'll let
6 you finish reading that.
7 That's all right. Go ahead.
8 A I'm a little unclear what that sentence is
9 referring to since it refers back to an
10 indemnification reference in a prior sentence which
11 is most of the page.
12 Q Most of the page.
13 Okay. It's a pretty long page, isn't it?
14 A It's a long paragraph.
15 Q It's a long paragraph.
16 Is it fair to say that as we sit here now you
17 really couldn't say one way or the other as far as
18 the indemnity issue, whether you could put a loan
19 into the date after indemnity because you haven't
20 fully reviewed that paragraph?
21 That was a horrible question, by the way.
22 A No. I mean, the prior sentence is talking
23 about an adverse REMIC events. So again, it's --
24 Q Okay.
25 A I believe that's what I was referring to. If

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1 certain parties agreed in this agreement that they
2 could indemnify under certain circumstances, it's
3 possible.
4 Q Okay. So it is --
5 A But still, somebody taking the tax consequence
6 or the tax liability.
7 Q Right. If someone is willing to take the tax
8 consequence or liability, you can actually put
9 loans into the trust.
10 A But it's not -- it is possible.
11 Q It's possible. Okay.
12 I hate to beat a dead horse. I want to talk
13 about this one more time. The collateral file --
14 and I'll show you the original collateral file.
15 A Yes.
16 Q We talked about some of these scanned image
17 pages, I believe. Do you remember this?
18 A Yes.
19 Q And I just wanted to make sure we have this
20 clear. This first one here says, notes included,
21 correct?
22 A Uh-huh.
23 Q And it has a copy date up here of 8-29-07?
24 A Okay. I haven't seen that before. Okay.
25 Q And that's why I wasn't sure if we had gone

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1 through this. So that's 8-29-07. And behind that
2 is a copy of the note with the endorsements. This
3 one has the blank endorsement, EMAX, right? The
4 next one is a, says MTGR document. It too has an
5 8-29-07 date, right?
6 A Yes.
7 Q And behind that looks like the mortgage. Looks
8 like it's got a sticker from Probate, doesn't it?
9 A Uh-huh.
10 Q And the next one after that we have TPOL
11 documents included type of policy. And that has a
12 date up here, once again of 8-29-07?
13 A Yes.
14 Q And after that it looks like we have what
15 appears to be a title closing. We then have one
16 here that says MTGU documents included. Once
17 again, and it says security instrument, mortgage
18 and recording. And it has a date up here, once
19 again of 8-29-07, right?
20 A Yes.
21 Q And it looks like another copy of the mortgage.
22 And then this one says, SIRO or security instrument
23 rider. And it has a date up here of 8-29-07?
24 A Yes.
25 Q And there is an adjustable rate rider.

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1 A Yes.
2 Q And the next one says, NALG documents included
3 allonge. And it too has the 8-29-07 date, right?
4 A Yes.
5 Q So all the scanned pages in here, including the
6 actual note and the allonge all have the same scan
7 date, right?
8 A Yes.
9 Q I want to go back one more time. We were
10 talking about this Exhibit 2, Defendant's Exhibit
11 2, that other pool that we previously identified
12 the prospectus as to whether or not it could
13 include Ms. Congress's loan.
14 A Yes.
15 Q Do you remember this?
16 A Yes.
17 Q And specifically, I want to focus on behind
18 here on Page -- we have this second tab. I want to
19 go one, two -- I want to go three pages, okay?
20 Right above before the actual mortgage loan pool
21 here. Do you see the mortgage loan pool?
22 A Uh-huh.
23 Q It has the loan number and all those terms.
24 Here, and correct me if I'm wrong, and I know it
25 cuts off here at the end, so, please, bear with me.

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1 It says: Mortgage pool information in this free
2 writing prospectus was derived from a preliminary
3 -- and all I have is P there -- not representative
4 of the mortgage loans that will comprise the final
5 mortgage loan pool, period. I'm guessing that's
6 preliminary. P-r-e-l-i, and then it cuts off.
7 -- represents only a portion of the final mortgage
8 loan pool and mortgage loans that are included in
9 the -- and it starts with a P. That may or may not
10 beef pool. -- may be moved from the final mortgage
11 loan pool, period. Was expected that the
12 characteristics of the -- then F -- differ and may
13 differ materially from the characteristics of the
14 preliminary pool of mortgage loans. Then it cuts
15 off again. And then it says: Characteristics of
16 the final mortgage loan pool are expected to be
17 similar to the characteristics of -- another T --
18 it cuts off again -- in the free writing
19 prospectus, coma, they are not expected to conform
20 in all material respects. (As read.)
21 So the prospectus, if I understand,
22 contemplates that mortgage loans may not actually
23 go into the final PSA that's in that loan pool. Is
24 that fair?
25 A It says preliminary, yes.

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1 Q Okay. Now, as we currently sit here today, do
2 you have any information if there's any other
3 mortgage loan pool or plaintiff trying to foreclose
4 or eject Ms. Congress other than the plaintiff in
5 this case?
6 A No, I don't have any information.
7 Q Did you review her -- the transcript from the
8 first trial?
9 A Parts of it.
10 Q Parts of it. Let me ask you this: Did you
11 read in there that she was in default?
12 A Yes.
13 Q Okay. And if somebody was in default for a
14 couple of years, would you not expect if they were
15 owed the money that they would come looking for the
16 money through foreclosure or otherwise?
17 A It's possible.
18 Q It's possible. But you're not aware of anybody
19 else other than the plaintiff in this case making
20 that claim, are you?
21 A No.
22 MR. WOOTEN: Objection, Your Honor. He's
23 not here about what's going on with somebody else
24 that can collect a debt.
25 THE COURT: Overrule.

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1 Q And as we sit here today you know that
2 Ms. Congress's loan was included in the mortgage
3 loan schedule for the Plaintiff's trust in
4 question, right?
5 A Yes.
6 Q Okay. But you don't know of any final trust,
7 that other trust we're talking about, you have not
8 seen any document showing that she was in the final
9 PSA, do you?
10 A I don't have that.
11 MR. RAMEY: Give me a moment to confer.
12 THE COURT: Yes, sir.
13 Q (BY MR. RAMEY:) Do you remember we were
14 talking about the mortgage assignment, the
15 documents out of the mortgage assignment?
16 A Yes.
17 Q You were saying you would expect that mortgage
18 assignment would have been done a lot earlier than
19 it was?
20 A Yes.
21 Q I understand you're an attorney licensed in
22 New York?
23 A Yes.
24 Q Never been licensed in Alabama, have you?
25 A No.

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1 Q Have you ever practiced in Alabama?
2 A No.
3 Q Ever practiced foreclosure law?
4 A No.
5 Q And you never have practiced foreclosure law in
6 Alabama?
7 A That's right.
8 Q So you don't know the standards or what
9 procedures they go through in foreclosing and
10 assigning documents, do you?
11 A That's right.
12 Q Now, with respect to the mortgage assignment,
13 did Ms. Congress's mortgage even have to be
14 assigned to this trust?
15 A There was a -- I would have to check those
16 provisions.
17 Q Okay. Well, have you ever heard the concept of
18 -- are you familiar with the company called MERS?
19 A Yes.
20 Q Have you ever heard the concept of a MOM, a
21 mortgage?
22 A Yes.
23 Q MERS as original mortgagee?
24 A Yes.
25 Q And I know we've looked through a lot of

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1 documents, but do you know if MERS was the original
2 mortgagee of the mortgage in question?
3 A I believe it was.
4 Q Let's go ahead and look at PSA again. Let's go
5 to my favorite, Section 2.01. You may be looking
6 over 2.01 with me, or be looking it over.
7 Do you see if it's a MERS as original mortgagee
8 or a MOM, does the pool require that the mortgage
9 actually be assigned to the trust or just the note?
10 A Sorry. Are you referring to subparagraph 2?
11 Q I believe that's about right.
12 A I'm sorry. Could you ask the question again?
13 I'm not sure what you're asking.
14 Q Sure. Sure. You understand -- it's my
15 understanding certain steps have to take place in
16 order to transfer the various pieces of
17 Ms. Congress's mortgage loan into the trust.
18 A Yes.
19 Q One of those is you have to assign the note or
20 provide -- you need to provide the note.
21 A Yes.
22 Q Convey the note. If it's a MERS as original
23 mortgagee, do you have to convey or assign the
24 mortgage?
25 A The -- I understand the question. I'm not

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1 seeing the -- I've got you the provision. I see
2 reference to MERS in Paragraph 4.
3 Q That's fine. It's not --
4 A Are you referring to --
5 Q In paragraph B --
6 A B.
7 Q Paragraph B, there is a subsection 2 that says
8 with respect to Mom loans.
9 A Correct.
10 Q Do you see that?
11 A Uh-huh.
12 Q With respect to Mom loans you have to deliver
13 and deposit with the trustee or the custodian or
14 the duly appointed agent of the trustee for such
15 purpose, the documents, or instruments described in
16 MERS --
17 A Enclosing one and five --
18 Q One and five below, correct?
19 A Uh-huh.
20 Q All right. And the assignment that you were
21 talking about, a mortgage assignment is listed as
22 3, right, little i 3?
23 A Yes.
24 Q So that's not one of the things if it's a MOM
25 you have to deliver?

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1 A That's right.
2 Q Right. You have to deliver one number, the
3 original mortgage note?
4 A Uh-huh.
5 Q And you have to deliver five?
6 A Yes.
7 Q The original with each modification. But
8 there's no requirement if it's a MOM for you to
9 actually have to deliver an assignment of mortgage
10 to the trust.
11 All right. So the mortgage assignment we are
12 talking about, there's nothing wrong with it being
13 assigned much later than the closing date per the
14 PSA, is there?
15 A There's nothing wrong with it being assigned.
16 Q Let me back up. I think I lost you on that.
17 That's fine.
18 The mortgage assignment, the problem you had
19 with it was it was after the closing date --
20 A Yes.
21 Q -- of the trust, correct?
22 A Uh-huh.
23 Q The mortgage assignment, correct?
24 A Yes.
25 Q And the PSA language we just talked about

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1 doesn't say you have to deliver any assignment,
2 does it, if it's a MERS as original mortgagee,
3 which Ms. Congress's mortgage was.
4 A Well, are you referring to my affidavit?
5 Q No.
6 A Because I have --
7 Q No, it's my understanding you testified here a
8 few minutes ago that the assignment of mortgage was
9 too late.
10 A No, I don't think I said anything about the
11 assignment of mortgage.
12 Q Okay.
13 A I did in the affidavit. I could be wrong. But
14 I believe in the affidavit I referred to the --
15 THE COURT: Your point is that there
16 doesn't need to be an assignment of the mortgage
17 and the timing of it is irrelevant?
18 Q Per the PSA, yes. Is that right?
19 A In my affidavit, I was referring to the
20 assignment of mortgage as being the evidence of the
21 transfer.
22 Q Evidence of the transfer?
23 A In the absence of any information on the note.
24 Q Right. Thank you.
25 A I don't believe I said anything -- correct me

1 better question.
2 A Ms. McCullough.
3 Q In your affidavit you said you were told that
4 the plaintiff took the position that the mortgage
5 note was transferred -- and I think it was July of
6 2008 -- by virtue of the mortgage assignment,
7 correct?
8 A I believe that sounds accurate.
9 Q That sounds accurate. Were you told that by
10 your attorneys?
11 A Yes.
12 Q You weren't told that by anyone associated with
13 the trust?
14 A No.
15 Q Or anything like that? You didn't see that
16 testimony in the prior trial, did you?
17 A No.
18 Q Okay. When you gave your first opinion, it was
19 originally based on the note that was endorsed in
20 blank?
21 A Yes.
22 Q And per that opinion based on that document it
23 was your opinion that this trust never owned the
24 mortgage note?
25 A Right.

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1 if I'm wrong. I don't believe I said anything
2 about --
3 Q So your problem with the mortgage assignment
4 was you saw that as some kind of evidence of the
5 transfer of the note, and because it was after the
6 closing date it was too late?
7 A That's right.
8 Q Okay. This was, of course, before you had seen
9 Plaintiff's Exhibit -- I think it is 15?
10 A Yes, that's right.
11 Q The allonges. Okay. And did you listen to
12 Ms. McCullough's testimony here previously today?
13 A Most of it.
14 Q Did you hear her tell why the mortgage
15 assignment document is prepared?
16 A Yes.
17 Q And have you heard anyone from our side today
18 ever state that the note was transferred through
19 that document entitled Mortgage Assignment?
20 A I heard questions discussing it.
21 Q Well --
22 A Yes, I have heard -- I heard her say that she
23 didn't believe that's what happened. Is that
24 correct?
25 Q Well, I'm not sure who her was. Let me ask a

1 Q Right. Okay. Since that time -- and when
2 making that opinion you had never reviewed the
3 original of the mortgage note?
4 A That's right.
5 Q Since that time you have now seen the original
6 note with the endorsement, the blank endorsement
7 filled in as well as the allonge, correct?
8 A Yes.
9 Q And you told us today that those endorsements.
10 comply with PSA.
11 A I'm sorry. The allonge?
12 Q Yes.
13 A The information on the allonge --
14 Q Yes.
15 A -- shows the chain of title to the trustee.
16 Q All right. Shows the accurate per the PSA, as
17 required by the PSA?
18 A It says it.
19 Q Okay. And you stated earlier during direct
20 that you -- that gave you some kind of pause, but
21 you couldn't be certain if the plaintiff here
22 actually owned the mortgage loan?
23 A That's right.
24 Q Right. And also, in your opinion, you talked
25 about the fact that you looked at two mortgage loan

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1 schedules, both of which related to two different
2 trusts, both of which pertained to listing
3 Ms. Congress's loan, correct?
4 A Yes.
5 Q And when you gave that opinion, the only
6 evidence you saw in that one trust of her mortgage
7 loan was in a prospectus, correct?
8 A That's correct.
9 Q It was not in the final PSA?
10 A That's correct.
11 Q So as we sit here today, now, the only evidence
12 you have seen of her mortgage loan is in the
13 plaintiff's trust, isn't it?
14 A Through the mortgage loan schedule, yes.
15 Q Yes. So when you gave your opinion earlier,
16 you gave an opinion earlier that you still didn't
17 believe that the mortgage loan in question was
18 owned by the plaintiff's -- by the plaintiff's
19 trust because you thought another trust might own
20 it?
21 A Yes. That's right.
22 Q Now that you have no evidence that that other
23 one owns it, do you still have that same opinion?
24 A I have no evidence that the other one owns it?
25 Q Yes. You saw her name only on the prospectus,

1 of the note, and pull out 13, please.
2 THE COURT: I would like to say that I
3 would like to vote. The polls close at seven,
4 so --
5 MR. WOOTEN: Yes, sir.
6 THE COURT: Do you think we can wrap it up
7 within the next half hour or so?
8 MR. WOOTEN: Sure.
9 Q 13 which is the assignment. You've got a small
10 stack, don't you? Here, let's move some of this
11 stuff out of the way. This document and this
12 document.
13 A 13. Okay. I've got it.
14 Q When you look at 13 and 1, Tom, which was the
15 evidence admitted in the previous case. Can you
16 read those documents together?
17 A Yes, sir.
18 Q This chart shows a conveyance to the trust by
19 MERS as nominated for MLN on July 29th, '08. Is
20 that an agreement with what Exhibit 13 says?
21 A Yes, it is.
22 Q And does Exhibit 13 say it is also a conveyance
23 of the note and the indebtedness?
24 A Yes, it does.
25 Q And that was a notarized document filed in the

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1 correct?
2 A Isn't that evidence that another one owns it?
3 Q That the preliminary document --
4 A Well, isn't that evidence? It seems to me that
5 it is.
6 Q Okay.
7 THE COURT: That is what you base that
8 opinion on is the prospectus?
9 THE WITNESS: Yes.
10 Q Thank you. And so at best, as it currently
11 stands, you don't know at best which of these two,
12 if any, own it?
13 A There is -- yes, there's conflicting
14 information.
15 Q Okay. Let me ask this: Is it your opinion
16 that the plaintiff does not own it?
17 A There is -- it's my opinion that I can't tell
18 if the plaintiff owns this mortgage.
19 Q It's your opinion that you can't tell. Okay.
20 MR. RAMEY: That's it, Your Honor.
21 THE COURT: All right.
22 REDIRECT EXAMINATION
23 BY MR. WOOTEN:
24 Q Tom, with respect to the documents, pull out
25 Exhibit 1 and Exhibit 15, which are the two copies

1 probate records of Jefferson County by an attorney
2 acting as an officer of MERS, right?
3 A That's my understanding.
4 Q This was from the testimony of the previous
5 trial, the assignment they relied upon to
6 foreclose, right?
7 A That's my understanding, yes.
8 Q And there are no other mortgage assignments,
9 correct?
10 A That's right.
11 Q And what we talked about earlier about the
12 problem with the timing of the assignment, not the
13 note, but the assignment, was that if an assignment
14 was necessary, it should have been
15 prepared by the parties to the securitization prior
16 to the closing date, right?
17 A That's right.
18 Q And that did not happen?
19 A Correct.
20 Q So the testimony is, it's a superfluous
21 document that means nothing, in other words.
22 That's the question being asked. A superfluous
23 document means nothing. It's quick claim deed.
24 The assignment of mortgage is not a quick claim
25 of MERS interest to the trust, is it? It says

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1 assignment of mortgage. It doesn't say quick claim
2 of MERS interest to the trust.
3 A That's right.
4 Q If you look at the promissory note that was
5 presented in the previous trial, there is no
6 evidence on the face of that document that this
7 trust owns that loan, right?
8 A That's right.
9 Q And what your testimony is with the -- if you
10 consider 15, which is the document with the
11 allonge, is that it's unclear now because U.S. Bank
12 as trustee is on the allonge, right?
13 A That's right.
14 Q But we have shown fifteen different series
15 trust, that in all those exhibits we've marked on
16 the floor, that have the same parties with the same
17 requirements for endorsement to the trustee, that
18 the time pattern fits, any of those could be the
19 owner, right?
20 A That's right.
21 Q The mortgage loan schedule, when we showed you
22 the mortgage loan schedule for EMX9, the 2006
23 Trust, we never said that was the final schedule,
24 did we?
25 A No.

1 this trust.
2 Q Okay. So when you say a specific endorsement,
3 even though the document says, "endorsement to the
4 trustee," well, the trustee in this case -- what is
5 the name of the trustee in this case? Is it not
6 Trustee for RASC Series 2007-EMX1? Is that the
7 name of the trustee for this plaintiff?
8 A One moment. I would assume that that actually
9 shows up as a defined term in the pooling and
10 servicing agreement. I don't have the pooling and
11 servicing agreement.
12 Q Okay. Here. That's the preamble identified?
13 A Yes. It says U.S. Bank, National Association
14 or banking association organized under the laws of
15 the United States as trustee and supplemental
16 interest trustee.
17 Q Okay. And who are they trustee for in that
18 agreement?
19 A For the trust created by Series 2007-EMX1.
20 Q So in that document, when you say endorsement
21 to the trustee, it means endorsement to the trustee
22 for this trust; is that right?
23 A That's right.
24 Q So when you say endorse it to the trustee, if
25 you endorse it to U.S. Bank as trustee for RASC

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1 Q We said it was a prospectus that that showed up
2 in, right?
3 A That's right.
4 Q And prospectuses do talk about the
5 characteristics and contents of a particular deed,
6 correct?
7 A That's right.
8 Q In your mind, why was it not important to go
9 and look at what they said about what loans they
10 believed were in the trust as far as the giant loan
11 -- mortgage loan schedule, nine hundred pages?
12 A Why --
13 Q We looked at the individual loan documents in
14 the case, was there any evidence of conveyance to
15 the trust?
16 A To this trust? No, I didn't see any evidence.
17 Q So either there was a conveyance to the
18 trustee, it's not specific enough to identify the
19 owner, right?
20 A That's right.
21 Q So even if they thought they conveyed to this
22 trust, and even if they meant to convey to this
23 trust, there is no conveyance to identify the
24 trust, right?
25 A That's right. The language does not identify

1 Series 2007-EMX1, I can go back and do car wrecks,
2 can't I?
3 A I'm sorry. Can you say that again?
4 Q That was for their benefit.
5 If this was endorsed to U.S. Bank as Trustee
6 for Asset-Backed Pass-Through Certificate Series
7 2007-EMX1, we don't have fifteen PSAs on the floor
8 that have dates and parties that would work for
9 this document, do we?
10 A No.
11 Q We don't have questions about dates and times
12 and places because you can look at the face of the
13 document and see that it's this trust, right?
14 A Right.
15 Q And if the promissory note that was presented
16 to this Court in the previous case were filled in
17 as was required on Page 32 of the PSA, if that note
18 were filled in, that blank endorsement would have
19 said U.S. Bank as trustee based on the documents
20 you were given on Exhibit 1?
21 A If this -- I'm sorry -- Exhibit 1, if that were
22 filled in?
23 Q Based on the requirements in Page 32, 117,
24 delivery of a blank note. Wouldn't the depositor
25 have filled it in to the trustee?

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1 A Yes, sir.
2 Q So if the steps were filled in for the trustee,
3 that blank note would have been filled in for the
4 trustee?
5 A Yes, that's right.
6 Q So, again, the point being having the
7 collateral file -- flip through the collateral file
8 for me. It says Exhibit 18, I believe. It should
9 be right here.
10 On the first page, does it say down at the
11 bottom of that first page what the date of delivery
12 is? Right there?
13 A It says cover sheet printed 10-18-2006.
14 Q Okay. Looking at this information, you see on
15 the rest of the page, does it give you any
16 information to tell you where that loan is or --
17 A No, it doesn't identify a trust.
18 Q Then there's next one. Is it dated later down
19 at the bottom?
20 A Yes, 12-21-06.
21 Q Does it identify a trust name?
22 A No, it doesn't.
23 Q Okay. And does this one identify the third
24 page? Is it dated in 2007?
25 A Yes, 4-20-2007.

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1 Q Does it identify a trust name?
2 A No, it doesn't.
3 Q And I asked for the scanned sheets that we went
4 through that had the dates across the top of them.
5 A Those are dates.
6 Q The date was August of '07; is that right?
7 A Yes.
8 Q What's the cutoff date for that trust that they
9 say is the plaintiff? Was that March 12th, '07?
10 A March 12th or February 1st. I'm not sure.
11 Q The closing date is March 12th.
12 A Yes.
13 Q That would have been the date delivery to the
14 trustee is certified by, right?
15 A That's right.
16 Q So, again, if all their dates are correct and
17 this is August of '07, and that's when it was
18 delivered to the trustee, would that be delivery to
19 the trustee late?
20 A Well, based on --
21 Q On that date that they were using?
22 A That date would not be an effective delivery
23 date to the trustee.
24 Q Because it says the delivery was -- it says
25 here, right?

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1 A Yes.
2 Q It says, closing date March 12th. So if that's
3 the date they're relying on to say that the trustee
4 got it, that's when it was sent, that date's five
5 months after the time the trustee accepted the
6 asset, right?
7 A Yes, it is.
8 Q So that still wouldn't be an effective
9 conveyance to the trust from this case?
10 A That's right.
11 Q You know there's a hint here that this is a
12 self-inflicted wound, you know, and somehow
13 Ms. Congress might be unjustly enriched or
14 something like that.
15 But the issue is, again, no document they have
16 given you, me, or anybody else in this case, proves
17 any trust owns this loan other than that loan
18 schedule that they filed in with this particular
19 one, right? And that's not proof, is it?
20 MR. RAGSDALE: Isn't that really for you
21 to decide?
22 THE COURT: Well, I'm going to let him ask
23 him.
24 Q I mean, mortgage loan schedules not filed
25 typically with the pool --

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1 A Yes, there is nothing that indicates this
2 trust.
3 Q Okay. So if they thought they sold it to this
4 trust but they didn't convey it according to the
5 terms of the agreement, it would still be
6 exception, still wouldn't be owned by this trust,
7 right?
8 THE COURT: I think that's more probably
9 argument than a question for this witness.
10 Q (BY MR. WOOTEN:) So Tom, let me just ask you
11 this. Mr. Ramey asked you about the
12 representations and warranties in the agreement.
13 And he said no one has challenged the
14 representations and the warranties in the agreement
15 about these steps, right?
16 A Yeah, I believe so.
17 Q Okay. The representations and the warranties
18 in the agreement, what was your understanding as a
19 market participant about when all these steps were
20 being completed with respect to the dates of the
21 pooling and servicing agreement?
22 A That they would be completed prior to the
23 closing of the transaction.
24 Q So when the representations and warranties were
25 being made in the deal documents, was it your

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1 expectation as a market participant, all of this
2 had already occurred?
3 A Yes.
4 Q And that was what you understood from those
5 representations and warranties?
6 A Yes, subject to certain completion steps, yes.
7 Q Right. But when you look at all the documents,
8 the first note, the second note, they still do not
9 show compliance with the fundamental terms of this
10 trust with respect to the conveyance of these --
11 completion of these processes, right?
12 A The first -- I'm sorry. In pieces. The first
13 note that's endorsed in blank does not.
14 Q The second has the allonge that says U.S. Bank
15 as trustee?
16 A That's right.
17 Q The trustee for the plaintiff trust is
18 U.S. Bank as Trustee for R-A-S-C, RASC Series
19 2007-EMX1, right?
20 A That's how they're identified in the pooling
21 and servicing agreement.
22 MR. WOOTEN: Tender the witness.
23 THE COURT: Any other questions?
24 MR. RAMEY: One question.
25 THE COURT: All right.

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1 MR. RAMEY: Your Honor, I want to offer
2 Plaintiff's Exhibit 20, which is just another copy
3 of the pooling and servicing agreement. This was
4 actually taken from the SEC's website as shown by
5 the front page. Otherwise, it's pretty much
6 identical, except it's missing a couple of pages
7 that are in there that aren't in this one. Y'all
8 can take a look at it.
9 MR. WOOTEN: Which one? What's it
10 different too?
11 MR. RAMEY: Well, this one is from the SEC
12 website. The one y'all got, I believe actually
13 came from --
14 MR. WOOTEN: Description site.
15 MR. RAMEY: That description site.
16 MR. WOOTEN: Or subscription site.
17 MR. RAMEY: Subscription site.
18 MR. WOOTEN: Are you saying there's a
19 difference in the documents, though?
20 MR. RAMEY: Just in the very beginning.
21 MR. WOOTEN: Which is what?
22 MR. RAMEY: Which is essentially this
23 first page with the RASC Series listing. I don't
24 think that's apart of the actual SEC filing.
25 MR. WOOTEN: And that's the AK.

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1 MR. RAMEY: Yes. That document might be
2 in this first page, 1 of 117.
3 MR. WOOTEN: Why don't you show me.
4 MR. RAMEY: What I'm saying is I don't
5 believe that this first page is actually part of
6 what is filed officially with the SEC.
7 MR. WOOTEN: This is header for SEC info.
8 MR. RAMEY: Okay.
9 MR. WOOTEN: It shows the exhibit.
10 MR. RAMEY: I want to go ahead and admit
11 ours nevertheless, and I have just one other
12 question.
13 THE COURT: Any objection?
14 MR. WOOTEN: No.
15 THE COURT: All right. It's in.
16 Plaintiff's 20.
17 (Whereupon, Plaintiff's Exhibit
18 Number 20 was marked and received
19 into evidence.)
20 RE-CROSS-EXAMINATION
21 BY MR. RAMEY:
22 Q And my only question is as far as you were
23 asking about who the trustee is and definitions,
24 and I want to direct yourself to -- and I'm using
25 you all's version of the PSA. A couple of pages

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1 into it where it list all the parties. Do you see
2 that?
3 A Uh-huh.
4 Q It says Residential Asset Securities
5 Corporation depositor. Defined as depositor.
6 A Yes.
7 Q Would you agree with me?
8 A Yes.
9 Q Residential Funding Company, LLC, defined as
10 master servicer. Would you agree with me?
11 A Yes.
12 Q And it says U.S. Bank, National Association
13 defined as trustee.
14 A Yes. That's the way it was written in the
15 preamble.
16 MR. RAMEY: That's all the questions I
17 have, Your Honor.
18 THE COURT: All right. To get out of
19 here, you all will need to go down to the ground
20 floor and exit under the stairs on 21st Street, and
21 the same for in the morning. We'll start out at
22 7:30, and so y'all be here on time. Come through
23 that ground floor, and I'll tell them to let y'all
24 inside.
25 MR. WOOTEN: Thank you, Your Honor.

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1 (Court in recess.)
2
3 5:45 p.m.
4 JUNE 2, 2010 7:30 a.m.
5 PROCEEDINGS
6 *****
7 THE COURT: Have a seat. Good morning.
8 IRA MARK BLOOM,
9 having first been duly sworn, was examined and
10 testified as follows:
11 MR. WOOTEN: Your Honor, this morning they
12 wanted to swap out a copy of the collateral file to
13 get one that had those dates across the top.
14 THE COURT: Yes.
15 MR. WOOTEN: We're just verifying that
16 right quick.
17 THE COURT: All right. We can do that
18 after.
19 MR. WOOTEN: All right.
20 DIRECT EXAMINATION
21 BY MR. WOOTEN:
22 Q Professor, if you would, please state your full
23 name for the record.
24 A Ira Mark Bloom.
25 Q And Professor, how are you currently employed?

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1 A Albany Law School in Albany, New York.
2 Q And how long have you been so employed?
3 A I've been in Albany since 1970.
4 Q All right. And if you would, would you tell
5 the Court the emphasis of your teaching and
6 training?
7 A Yes, sir.
8 MR. RAGSDALE: Excuse me. I don't mean
9 to --
10 MR. WOOTEN: Sure.
11 MR. RAGSDALE: Although you are welcome to
12 go through these preliminaries, we will stipulate
13 that Professor Bloom is an expert in New York law.
14 THE COURT: Excellent.
15 MR. RAGSDALE: Qualified to give his
16 opinion.
17 THE COURT: Thank you.
18 MR. WOOTEN: Okay.
19 THE COURT: What do you teach?
20 THE WITNESS: I teach trust and estates,
21 estate planning, property.
22 THE COURT: All right.
23 Q Professor Bloom, let me show you, just for the
24 record, a copy of your CV --
25 A Yes.

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1 Q That I've marked as Defendant's Exhibit 23 for
2 identification.
3 (Whereupon, Defendant's Exhibit
4 Number 23 was marked for
5 identification.)
6 Q Can you just flip through and make sure that
7 it's a complete copy of your CV that you provided
8 to me previously?
9 A Yes, it is.
10 Q All right.
11 MR. WOOTEN: And Judge we would offer it.
12 THE COURT: It's admitted, Number 23.
13 (Whereupon, Defendant's Exhibit
14 Number 23 was received into
15 evidence.)
16 Q Professor, we have been working off of a
17 document which is -- and I know you have a notebook
18 that I provided you that has the SEC filings. We
19 marked this one as Exhibit 22.
20 A Okay.
21 Q And it has the same SEC filings that we have
22 provided to you, and I know that you've made some
23 notes and stuff in the margin of your notebooks,
24 but this was -- when I refer to Exhibit 22, I'm
25 referring to the SEC filings that we've given you

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1 in this case. Okay?
2 A Okay.
3 Q And I'll just sit this right here.
4 The defendant (sic.) stipulated that you are an
5 expert in New York law. Can you tell the Court why
6 the agreement in this case is governed by New York
7 law?
8 A Yes. I looked at the trust agreement and
9 specifically Section 11.04 is entitled Governing
10 Law, and reads: "This agreement and the
11 certificate shall be governed by and construed in
12 accordance with the laws of the State of New York,
13 without regard to the conflict of law principles
14 thereof. Other than Sections 5-14.01 and 14.02 of
15 New York's general obligations law and the
16 obligations, rights, and remedies of the parties
17 hereunder shall be determined in accordance with
18 such laws."
19 Q Okay. And in reading that clause, is it clear
20 to you that under New York law this trust and all
21 of its activities are governed pursuant to New York
22 law?
23 A Yes.
24 Q Does that include the matter by which the trust
25 acquires its assets?

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1 A Yes.
2 Q Would you, please, tell the Court what the
3 requirements are for this trust to be funded with
4 its assets under New York law.
5 A Sure. Well, just by way of explanation. New
6 York is kind of idiosyncratic in many ways. And we
7 have a large body of statutory trust law which is
8 contained in the New York estates, powers, and
9 trust law. And we typically refer to that as the
10 EPTL. And Section EPTL 7-1.18, which was enacted
11 in 1997 and applies to all lifetime trusts,
12 provides in part as follows: "A lifetime trust
13 shall be valid as to any assets therein, to the
14 extent the assets have been transferred to the
15 trust."
16 So essentially -- this is really a codification
17 of New York law to the effect that in order to have
18 an asset be part of a trust, it actually has to be
19 transferred to the trust.
20 Q So when we say "transfer," does that encompass
21 a delivery that complies with New York law of the
22 asset to the trust?
23 A Yes. It contemplates sufficient transfer under
24 New York law, and then, in turn, what is sufficient
25 transfer under New York law depends on a particular

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1 asset being transferred.
2 Q Okay.
3 A So --
4 Q With respect to a promissory note, how is a
5 transfer accomplished?
6 A Okay. Well, it's necessary to really look at
7 New York's Uniform Commercial Code which governs
8 the transfer of negotiable instruments, and I'm
9 assuming and I think it's pretty clear that the
10 note here was a negotiable instrument under the
11 New York Uniform Commercial code. And so in order
12 to accomplish a transfer, it's necessary to comply
13 with New York's Uniform Commercial Code Section
14 3-2.02. And in effect, there has to be a
15 negotiation of the instrument. And not only must
16 there be in effect a transfer of possession, but
17 there has to be an endorsement on the instrument to
18 effectuate a transfer.
19 And I should add, again, New York being
20 idiosyncratic, New York, along with South Carolina,
21 is the only state that has not adopted the revised
22 Uniform Commercial Code. So Section 3-2.02 in New
23 York is going to be different than what you would
24 have, say, in Alabama or other states.
25 Q All right. Now, with respect to this case, you

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1 were not able to be present yesterday, but we had
2 testimony about the fact that there was a
3 promissory note which was endorsed in blank in a
4 previous trial. And you saw that as part of your
5 initial opinion, correct?
6 A Yes. I saw the promissory note that was
7 endorsed in blank.
8 Q And it was your opinion that that, based on
9 what we had between the mortgage assignment and the
10 promissory note from the previous trial, that that
11 was not trust property?
12 A Well, I mean, I think it depends on when, in
13 fact, the -- it depends on whether, in fact, the
14 trustee actually got physical possession of the
15 note and when that occurred.
16 Q Okay.
17 A And so I think you've asked me to assume that
18 that occurred after the closing date in the
19 agreement.
20 Q Okay. And in this trial we've been presented
21 with a collateral file for this case and -- is this
22 the swap?
23 MR. WOOTEN: Your Honor, I'm going to
24 enter the new 18 that has the dates on it and a
25 cover sheet off of the collateral file.

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1 MR. RAGSDALE: Aren't we going to
2 substitute it?
3 MR. WOOTEN: Yeah, substitute it. That's
4 fine. We'll just give them back the one we're
5 substituting.
6 THE COURT: Let the record show that
7 physically the first one has been removed from the
8 record and that this one will be substituted.
9 Q (BY MR. WOOTEN:) This is the collateral file
10 which has been given to the Court as an accurate
11 representation of the ownership file of the trust.
12 A Okay.
13 Q Will you flip through that file and take a look
14 at the documents in that file, Professor.
15 A All right. I see an adjustable rate note and
16 on the last page of that I see an endorsement to
17 EMAX Financial Group by Mortgage Lenders Network
18 Q All right. And will you take a moment to flip
19 through the complete file --
20 A Sure.
21 Q -- and verify --
22 A Sure.
23 Q -- and see what all contents are in there?
24 A All right. Well, I don't know how much time
25 you want me to spend, but I see that there's a

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1 mortgage here and title insurance. Let's see. I
2 guess at the end I see an adjustable rate rider,
3 and that's signed by a Erica Sumter Congress. And
4 the final page is entitled Allonge to Promissory
5 Note.
6 Q When you looked at the entire contents of that
7 file taken together, do you have an opinion as to
8 who the owner of that promissory note is under New
9 York law?
10 MR. RAGSDALE: I'm sorry. I missed the
11 that question.
12 THE COURT: He's asking if he has an
13 opinion about who is the owner of the promissory
14 note under New York law.
15 MR. RAGSDALE: Thank you.
16 A You know, I do. And I guess what my opinion is
17 is that EMAX -- EMAX Financial Group is -- this
18 note was endorsed to EMAX Financial Group.
19 Q Okay.
20 A And the question, I think, becomes the
21 effectiveness of this document at the very end of
22 the file called the Allonge to the Promissory Note.
23 And basically, New York, again, because it has the
24 original UCC 302.2, that provides that an
25 endorsement must be written by or on behalf of the

1 extension or part of it.
2 And as I understand that, I think what they're
3 talking about is some type of, for example, gluing
4 the paper on that would make it apart of the
5 original document. And I would feel a stapling
6 would be sufficient. But I don't see any in this
7 file, any act that firmly affixes the purported
8 allonge to the instrument.
9 And, you know, I think that the reason for this
10 requirement, the original reason, you know, was to
11 prevent fraud.
12 And the final point that I think you might find
13 of interest is that the UCC comment says that such
14 paper is called an allonge. And Black's Law
15 Dictionary defines an allonge as follows: A slip
16 of paper sometimes attached to a negotiable
17 instrument for the purpose of receiving further
18 endorsements when the original paper is filled with
19 endorsements. Former UCC 320.2, which is actually
20 what New York law is, required that endorsements be
21 made on the instrument unless there was no space,
22 and only then could an allonge be used.
23 Current UCC is different. Of course, in
24 Alabama, it would be different. But -- so, I'd
25 also, on the basis of that conclude that even if

1 holder and on the instrument. And the instrument,
2 of course, being the promissory note. Or on a
3 paper so firmly affixed thereto as to become apart
4 thereof.
5 And so I guess the question is whether this
6 paper, which is at the end of the file, and it
7 complies with the New York requirement that the
8 paper is so firmly affixed as to become part
9 thereof. And my conclusion is that it is not --
10 does not -- the allonge, purported allonge does not
11 comply with New York law because it is not firmly
12 affixed thereto.
13 And I think there are comments to the UCC, the
14 original UCC, which, in fact, are included in
15 New York statute analysis. And basically, the
16 original UCC, which provides us part of the
17 following comments, and I think comments under the
18 UCC are very important. That Subsection 2 follows
19 decisions holding that a purported endorsement on a
20 mortgage or other separate paper pinned or clipped
21 to an instrument is not sufficient for a
22 negotiation. The endorsement must be on the
23 instrument itself -- and it's clearly not here --
24 or on paper intended for the purpose which is so
25 firmly affixed to the instrument as to become an

1 the allonge was firmly affixed, it would not
2 satisfy New York law because you can only use this
3 additional paper if there isn't any space on the
4 instrument. And when I look at the -- when I
5 looked at this promissory note, there's plenty of
6 space. There's space on the front and there's a
7 total blank on the back. So, you know, on the
8 basis of New York law, my opinion is that this
9 purported allonge is not effective -- is not an
10 effective endorsement. And because it's not an
11 effective endorsement, then there hasn't been --
12 there was no transfer of the asset to the trust
13 with respect to what's on the allonge. And that's
14 why my opinion was that EMAX Financial is the
15 holder of the instrument because that is on the
16 original instrument, assuming that's the original
17 instrument.
18 Q Right. And I will tell you that I reviewed the
19 collateral file and the promissory note in the
20 collateral file did have Ms. Congress's original
21 signature on it. So that is a representative copy
22 of the collateral file.
23 So with respect to having that discussion,
24 Professor, you are satisfied that this trust who is
25 the plaintiff in this action is not the owner of

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1 this promissory note?
2 A Assuming that this is the -- I'm going to
3 assume this is the promissory note?
4 Q Yes.
5 A The actual promissory note. Well, it was
6 endorsed to EMAX Financial. It was not endorsed
7 over to the trustee. So I don't see that the
8 trustee is the owner of the -- of that document.
9 Q With respect to the possibility that the trust
10 might have a remedy or affix, you've reviewed the
11 trust instrument, correct?
12 A What do you mean remedy or affix?
13 Q Does the trust instrument expressly state that
14 if the assets are not conveyed by the closing date
15 to the trust that the trust is not to accept any
16 further action?
17 A Oh, yeah. Yeah. So, I mean, I guess here
18 before we move on, I would just simply state that
19 my opinion, the asset was not -- did not become an
20 asset of the trust. But I've also looked at
21 Article 10 of Subparagraph (i) that essentially
22 says that the trustee cannot accept any
23 contributions of assets after the March 12th date.
24 If -- well, I'll maybe read this. Following
25 the start up date, neither the necessary -- nor the

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1 trustee shall accept any contributions of assets to
2 any REMIC unless -- and then subject to Section
3 10.01(f) -- the master servicer, certificate of
4 insurer, and the trustee shall receive an opinion
5 of counsel to the effect that the inclusion of such
6 assets in any REMIC will not cause any REMIC
7 created to fail to qualify as a REMIC at any time
8 and subject the REMIC to any taxes, et cetera, et
9 cetera. (As read.)
10 So, again, in effect, this part of the
11 agreement specifically prohibits the trustee from
12 accepting an asset if by accepting the asset there
13 would be adverse tax consequences.
14 Q And that is if there's a possibility of adverse
15 tax consequences, right?
16 A Yes.
17 Q And your understanding is that a defaulted
18 mortgage loan is not a qualified asset for this
19 trust?
20 A That's my understanding, so that if, in fact,
21 there was an attempt after the closing date to
22 transfer this asset into the trust, for example,
23 today, this is not permitted. And, in fact,
24 New York -- under New York law a trustee is not
25 permitted to contravene the terms of trust

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1 agreement.
2 Q Okay.
3 MR. WOOTEN: Professor, I'll tender the
4 witness now. I believe the other side is going to
5 have some questions for you.
6 THE WITNESS: Thank you.
7 CROSS-EXAMINATION
8 BY MR. RAGSDALE:
9 Q Hi, Professor. I'm Barry Ragsdale. I don't
10 think we've met before.
11 A No. Nice to meet you.
12 Q Nice to meet you. I appreciate you coming down
13 to Birmingham.
14 You're not an expert in Alabama law or you
15 don't purport to be?
16 A No, I do not.
17 Q Never been licensed in Alabama?
18 A No.
19 Q Certainly never foreclosed on a house in
20 Alabama?
21 A No.
22 Q Or participated in that?
23 A No.
24 Q You would recognize that Alabama law is much
25 different than New York law in a variety of ways,

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1 right?
2 A Yes.
3 Q For example, New York law is a lien state as
4 opposed to a title state, right?
5 A Yes.
6 Q Can you briefly explain that difference?
7 A Yeah. Well, in terms of mortgages originated
8 on a middle ages, and originally the person
9 borrowing the money in order to get the loan had to
10 convey title to the property. And so that's kind
11 of a title situation. But over time, the mortgage
12 note is treated more in the nature of a lien as
13 security for the payment of the loan. So, you
14 know, I think that's the difference.
15 Q Okay. And are you aware that Alabama is a
16 title state still?
17 A No, I'm not aware of that.
18 Q Okay.
19 A But --
20 Q Are you aware that Alabama allows for
21 non-judicial foreclosure and that that's the
22 primary means by which foreclosure occurs?
23 A I am aware of that.
24 Q Okay. New York primarily is a judicial
25 foreclosure state?

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1 A Primarily, yes.
2 Q Okay. In addition to that, I think you pointed
3 out that New York has not adopted the newer version
4 of the UCC; is that correct?
5 A That's correct.
6 Q Let's talk generally about trust law, which I
7 think may be uniform around the country on some of
8 the things we're going to --
9 A Okay. Sure.
10 Q But you would agree with me that there are
11 differences in trust and property law from state to
12 state?
13 A Oh, yes.
14 Q And that, in fact, those vary sometimes
15 greatly?
16 A Sure.
17 Q Okay. Generally, when interpreting and looking
18 at a trust agreement, the intent of the parties to
19 that agreement is what governs the interpretation
20 of it?
21 A Yes.
22 Q That's true everywhere?
23 A Yes.
24 Q And generally when courts are looking at a
25 trust agreement, they indulge in certain

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1 presumptions, don't they?
2 A It depends. What do you mean by a certain
3 presumption?
4 Q Well, for example, they -- there is a
5 presumption that the trustees intent is to get the
6 assets into the trust if that's stated in the trust
7 agreement.
8 A I would think that would be the case.
9 Q Okay. How about this? If a party comes into
10 court and challenges the actions of a trustee as
11 being in contravention of the trust agreement, the
12 court starts out with the presumption that the
13 trustee acted in conformity there with.
14 A I'm not sure that's the case.
15 Q Well, who has the burden in that case? If a
16 party comes into court, such as Ms. Congress, and
17 alleges that the trustee acted outside the standard
18 of the trust, isn't that Ms. Congress's burden of
19 proof?
20 A Well, I think that the burden is to show that,
21 in fact, the asset got transferred to the trust.
22 Q Well, who -- you say we have to prove that
23 before Ms. Congress has to prove the first part of
24 her allegation that we violated the trust?
25 A I think that from, you know, my looking at

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1 cases in New York, the question is really whether,
2 in fact, the asset got transferred to the trust.
3 Q Okay. And if there's equal amounts -- there's
4 no evidence either way, you're saying that's our
5 burden, not Ms. Congress's burden?
6 A I don't know that I'm saying that I can give
7 you an opinion on that.
8 Q Either way?
9 A Yeah.
10 Q Okay. Have you actively litigated trust cases
11 in New York?
12 A I have been involved in a lot of trust cases in
13 the capacity as an expert, so assisting counsel.
14 So I haven't been the actual litigator on the case,
15 but, you know, I've been involved with trust cases,
16 and, you know, I've certainly been involved in some
17 trust litigation, but not as the lead litigator. I
18 assume you are the lead litigator, but I'm not in
19 that position.
20 Q You might get in trouble assuming I'm the lead
21 litigator.
22 A No. I think that's a nice thing to do.
23 Q Well, let me ask this question: Are you
24 familiar with a case out of New York called the
25 Application of Muratori. It's a 1944 case from the

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1 Supreme Court.
2 THE COURT: How do you spell it?
3 MR. RAGSDALE: M-u-r-a-t-o-r-i.
4 THE COURT: Thank you.
5 A I am, actually.
6 Q Okay.
7 A You know, this is a 1944 case?
8 Q Yes.
9 A Okay.
10 Q You are familiar with that case?
11 A I am.
12 THE COURT: You're not going to have to
13 stand up and recite it.
14 A Okay. Yeah. Yes.
15 Q You can say I'm prepared.
16 A I have the case in front of me.
17 Q Excellent. Footnote 6 in that case. I don't
18 know if you have the footnotes out of West.
19 A I don't see that I have the footnote here.
20 Okay. Maybe you can tell me the footnote.
21 Q Can I show you?
22 A Oh, yeah. Please do. That's not a footnote.
23 That's a headnote.
24 Q I'm sorry. I get confused on that.
25 A Yeah. So, yes.

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1 Q Would it be accurate to say that the court
2 there said that in the instances where many years
3 have passed and there have been a number of
4 transfers that a presumption will be indulged that
5 the trustee in fact made the transfer in compliance
6 with the trust?
7 A I mean, I think the statement says what it
8 says, and so, neither is this case to be confused
9 with one where success of transfers from the
10 trustee's grantee have taken place and many years
11 have elapsed, making it difficult, even impossible
12 to determine whether the trustee acted in
13 contravention of the trust. In which case the
14 presumption may arise that the trustee acted within
15 the trust powers. Yeah, I think that's a fair
16 statement of what I just read.
17 Q Do we know this 1944 case is still good law as
18 far as you know?
19 A As far as I know it's still good law, and, you
20 know, I guess maybe I would -- since you asked me
21 about that case --
22 Q Well, I'll tell you what, can I move on to
23 something else and your counsel will get to ask you
24 to elaborate?
25 A Sure.

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1 Q Let me read a statement of law to you and see
2 if you agree with that. "A trustee is presumed to
3 have acted in good faith and to have performed his
4 or her duties under the trust, the burden of
5 proving a breach thereof being on the one
6 asserting." Would you agree with that statement of
7 law?
8 A I'm sorry. Can you just read that again?
9 Q Sure. I'm sorry.
10 "A trustee is presumed to have acted in good
11 faith and to have performed his or her duties under
12 the trust, the burden of proving a breach thereof
13 being on the one asserting it."
14 A What are you reading from?
15 Q I'm reading from Corpus Juris Secundum.
16 A Okay.
17 Q Would you agree that that's a statement of
18 trust law that would be applicable?
19 A I would, but I would certainly make some
20 explanations on a particular case --
21 Q I would be disappointed if a professor didn't
22 have some exceptions to statements of law.
23 A Okay. Fine.
24 Q But, generally, that's true, is it not?
25 A Generally that's true.

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1 Q Now, in the event that the intent of the
2 drafters of the document governs its
3 interpretation, who are the parties to the PSA in
4 this case?
5 A Okay. Well, the parties go back to the
6 beginning of the document. Obviously, your client
7 is one of the parties and we have Residential Asset
8 Securities Corporation, Residential Funding and, of
9 course, U.S. Bank.
10 Q Okay. Clearly Ms. Congress is not a party to
11 this PSA, right?
12 A Clearly she's not.
13 Q Clearly she's not a third party or an intended
14 third-party beneficiary of this PSA, right?
15 A That is correct.
16 Q So she is essentially a stranger to this
17 agreement, right?
18 A Yes.
19 Q Generally, under both New York law and the law,
20 as far as I can tell, everywhere, only parties to a
21 trust or intended third-party beneficiaries have
22 standing to rely on provisions of the trust to
23 challenge the actions of the trustee; isn't that
24 true?
25 A I don't think that's true. I think that --

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1 Q Can you give me an example of where a --
2 A Yeah. I think what's -- I think what's
3 important to understand is -- again, the New York
4 law being idiosyncratic.
5 Q Can I stop you right there. What do you mean
6 by that?
7 A Well, I mean that New York hasn't adopted the
8 revised UCC. New York's -- the estates, powers and
9 trust law 7-118, a funding provision is unique in
10 terms of requiring in certain instances, certain
11 funding to be done in order for a trust to be
12 valid. New York doesn't recognize oral trusts -- I
13 mean, I could go on and on.
14 Q Please don't.
15 A Okay.
16 Q Let me say this: You would agree with me that
17 New York law generally in this area that you're an
18 expert in --
19 A Yes, sir.
20 Q -- is more restrictive on acts of trustees, on
21 negotiation of commercial paper, those kind of
22 things?
23 A Yes. New York, and I think -- yeah, New York
24 law is -- does not particularly like trusts and
25 wants to make sure the trust -- that the I's are

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1 dotted and T's are crossed. One of the
2 idiosyncratic aspects is estates, powers, and trust
3 law Section 7-2.4. And that is if the trust is
4 expressed in the instrument creating the estate of
5 the trustee. And this clearly is the case here,
6 where we have the trust in creating -- trying to
7 attempt to create the agreement. Every sale,
8 conveyance, or other act of the trustee in
9 contravention of the trust is void.
10 Q Okay. And that's relatively New York -- or
11 unique to New York law?
12 A That's relatively unique to New York. It's
13 been in the New York statute since 1830. And it
14 really says that when a trustee oversteps his or
15 her or its authority, the act is void, period. And
16 so that's, again, a very significant difference
17 from other states in terms of this statute.
18 And, in fact, the case that you cited to me --
19 Q Uh-huh.
20 A -- involved the forerunner of 7-2.4.
21 Q Right.
22 A And, in fact, the question is whether if the
23 act contravenes the trust, it is void, period.
24 Q And again, that's more onerous than certainly
25 it would be in Alabama or elsewhere?

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1 A Yes.
2 Q Okay. Now, let's look back at the choice of
3 law provision if we could.
4 A Oh, sure.
5 Q And can you find it.
6 A I've got it here.
7 Q Okay. It states, does it not, that this
8 agreement and the certificates are governed and
9 construed in accordance with New York law, right?
10 A Yes.
11 Q Okay. It doesn't say anything about whether or
12 not the laws of other states are supplanted to
13 govern foreclosure proceedings, for example?
14 A No.
15 Q No. And it doesn't say anything about the fact
16 that when involved in a foreclosure on an ejection
17 proceeding in Alabama, Alabama law can't govern
18 that, does it?
19 A It does not.
20 Q And your contention, then, is that the drafters
21 of this trust --
22 Well, let me ask you this: What do you think
23 was the intent of the drafters of this trust?
24 Well, let me restate that.
25 Don't you believe it was the intent of the

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1 drafters of this trust to make sure that these
2 assets were marshalled and put into the trust, and
3 that they then could be negotiated properly and
4 securitized? Wasn't that the purpose of the trust?
5 A Sure.
6 Q Okay. Now, it's your position, then, that in
7 doing so, in drafting a trust agreement that was
8 intended to make sure that the assets got
9 marshalled, put into a trust so that it could be
10 sold, securitized, that the drafters of that trust
11 chose to apply across the board the most onerous,
12 restrictive laws in the United States? That's your
13 position?
14 A My position is they chose to apply New York
15 law.
16 Q To the interpretation of the agreement, right?
17 A For all purposes of the agreement. Whether the
18 asset was validly transferred. Whether, in fact,
19 an act of the trustee contravened the trust and was
20 therefore void under New York law. The parties,
21 for whatever reasons, chose New York law. I mean,
22 I could speculate as to why they did.
23 Q Please don't.
24 A Okay.
25 Q But wouldn't you agree with me that applying

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1 the most restrictive, onerous, antiquated,
2 idiosyncratic laws in the country, appears to
3 contradict their intent of trying to make these
4 assets easily marshallable, negotiable, and
5 securitized?
6 A Well, not necessarily because I don't think the
7 New York law is particularly onerous in regards to
8 the transfer.
9 Q Well, let's take an example. Are you familiar
10 with New York -- I mean, excuse me -- Alabama law
11 regarding the ability to use an allonge and whether
12 it has to be glued or stapled to an assignment?
13 A I'm not specifically familiar with Alabama law,
14 but I -- the answer is I'm not specifically
15 familiar with Alabama law on this point.
16 Q Okay. And so you don't have an opinion under
17 Alabama law whether a rubber band around the
18 assignment -- excuse me -- around the note and the
19 allonge is sufficient to satisfy Alabama law?
20 A No, I don't.
21 Q Okay. But your opinion is that violates New
22 York law?
23 A My opinion is absolutely it violates New York
24 law.
25 Q So then, it's your opinion that the drafters of

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1 this trust, knowing that notes and mortgages were
2 going to be marshalled from all over the country,
3 intended to apply the restrictive, antiquated, and
4 idiosyncratic New York law regarding the use of
5 Rubber Cement to attach an allonge to a note;
6 that's your opinion?
7 A My opinion is that the parties agreed that
8 New York law applies in all instances.
9 In fact, let me point out to you in this 11.04,
10 it says that the agreement shall be governed by
11 New York law without regard to the conflict of law
12 principles.
13 Q Sure.
14 A And that to me is a clear indication that the
15 parties intended that the local law of New York
16 apply, and even though there might be real property
17 in Alabama, they're not going to look to New York
18 conflict of laws. The only exception is these two
19 general obligation principles. And 5-14.01
20 basically says the parties can agree that New York
21 law governs even if there isn't a reasonable
22 relationship to the state with respect to that
23 agreement.
24 And, you know, so I think it's whether the
25 parties understood all of New York law, they agreed

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1 to New York law and New York law is clear on
2 various points. And --
3 Q There's a New York case that says rubber
4 banding doesn't count?
5 A No, there's no -- I've not seen any New York
6 case on that. But what I do is I first go -- if
7 there's a statute, I first go to the statute. And
8 the statute, 3-202.2, the paper has to be so firmly
9 affixed as to become apart thereof.
10 Q And so it's your opinion that unless it's --
11 does a staple work?
12 A I think a staple works, yeah.
13 Q Even though it can be taken off?
14 A Even though -- yeah. I think it works, and I
15 think that, again, the allonge is a very historical
16 concept. And they wanted to make sure that this
17 additional piece of paper that had the signatures
18 was apart of the original document, so they
19 required gluing or pasting, but I think in modern
20 day, stapling would be sufficient.
21 Q Would a paper clip work?
22 A No, a paper clip wouldn't work.
23 Q What about one of those really strong paper
24 clips, you know, that really holds it in there
25 tight like this little kind of thing; would that

1 work?
2 A Well, I'm just reading --
3 Q Well, I'm asking your opinion. See this thing?
4 Is that -- that would really stick it in there.
5 A No, no.
6 Q Okay.
7 A That's not --
8 Q Okay.
9 A Because that can be -- the whole purpose of the
10 requirement for firmly attaching is to prevent
11 fraud. You could just easily take that off even
12 though it might be a very strong thing. And also,
13 you know, that pinned or a clip is not sufficient
14 for negotiation.
15 Q Let's talk about that. It's to prevent fraud
16 on whom? The parties to the note or the assignees
17 of the note?
18 A Yeah, I mean, I think what, you know, what we
19 have is the Uniform Commercial Code has this
20 concept that when we have a negotiable instrument,
21 you want to make it freely transferable. We want
22 -- it's essentially like cash, and we want to make
23 sure that there isn't any fraud. So if you don't
24 -- if you have -- if you don't have it firmly
25 affixed, then you could attach it at a later time,

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1 there might be more than one note out there. But
2 by firmly affixing it to the original, it's very
3 clear what we have.
4 Q And you agree with me that New York law is more
5 restrictive on that than elsewhere?
6 A I guess I'd have to look at South Carolina law
7 which also has the original UCC.
8 Q I'll give you South Carolina. What about
9 Alabama?
10 A Well, assuming Alabama has enacted the new UCC,
11 then, in fact, the new UCC doesn't require the
12 firmly attaching as it did under the original UCC.
13 Q Now under your theory of the case, you think
14 EMAX is the owner of this note?
15 A Based on this file that I have. I see that --
16 yeah, I see the -- let me get the file here. Yeah.
17 I see that the endorsement was to EMAX.
18 Q Okay. Do you have an opinion as to whether or
19 not EMAX, as we sit here today, can foreclose on
20 Ms. Congress?
21 A I do.
22 Q And what is it?
23 A Well, I think that if EMAX owns the note, I
24 think that the general law is to the effect that
25 the mortgage follows the note, and I think that

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1 EMAX could foreclose.
2 Q Okay. Now, you're aware -- or let me represent
3 to you that Alabama has, in fact, maybe the only
4 place we're ahead of New York, but we did adopt the
5 new UCC.
6 A Yes.
7 Q You're aware that the modern version of the UCC
8 allows a holder of the note to enforce its terms
9 whether or not they're the owner.
10 A Okay.
11 Q Do you agree with me about that?
12 A I don't know that I'm conversing with that. My
13 rule as a trust expert/lawyer is to figure out
14 whether the asset gets -- was sufficiently
15 transferred into a trust. I'm not -- don't purport
16 to be an expert on the UCC per se. But I do --
17 when I have a trust question that involves whether
18 it is a valid transfer, I certainly am comfortable
19 looking at that part of the UCC that deals with
20 transfers.
21 Q And let's get back to that. Your opinion is,
22 in addition to the glue, staple thing --
23 A Yes.
24 Q -- is that because it was not or at least you
25 don't believe it was assigned, deposited to the

1 Q -- (f).
2 A All right.
3 MR. LAY: Will you give us a page number?
4 THE WITNESS: 66.
5 THE COURT: Do you have different one?
6 MR. RAGSDALE: We have the same one.
7 THE COURT: You two have the same one?
8 MR. RAGSDALE: Yes, sir. We'll let you do
9 that.
10 THE COURT: Okay.
11 Q (BY MR. RAGSDALE:) Would you read that section
12 to yourself or at least -- unless you --
13 A You know, I've read this a couple of times.
14 Q Okay.
15 A It certainly is a lengthy and a convoluted
16 provision.
17 Q Isn't it? It provides, does it not, that is
18 Section 10.01(f), that the trustee, in fact, can
19 accept assets after the March 2007 cutoff date, it
20 just may produce tax consequences that either have
21 to be dealt with by a letter from counsel, or the
22 agreement also provides if somebody agrees to
23 indemnify the parties for that reason, right?
24 A Let me just understand the first part of that.
25 The trustee can accept assets after the start up

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1 trust by that March 2007 date, therefore it can't
2 ever be assigned?
3 A Yeah, that's my opinion because any subsequent
4 assignment -- well, I think in this particular
5 case, my assumption is that the loan is in default.
6 And so that loan could not be subsequently
7 transferred because it would cause adverse tax
8 consequences. And that Paragraph 10(i)
9 specifically precludes the trustee from acting, and
10 the trustee acting would be in contravention of the
11 trust and void under EPTL 7-2.4.
12 Q Okay. Can we look back at the PSA?
13 A We can.
14 Q Let's look at something that requires my
15 glasses.
16 THE COURT: If you all would, give me
17 about five minutes.
18 MR. RAGSDALE: Sure. Absolutely.
19 (Short recess.)
20 THE COURT: All right. Mr. Ragsdale.
21 MR. RAGSDALE: Thank you, Your Honor.
22 Q (BY MR. RAGSDALE:) Would you look at the PSA?
23 A Oh, yes.
24 Q Section 10.01 --
25 A Yep.

1 date if they are -- don't cause adverse tax
2 problems.
3 Q That's one?
4 A That's one, yeah.
5 Q That's true, isn't it?
6 A Yeah. I think that's true by (i) which
7 essentially by negative implication says that, you
8 know, if it's not going to cause adverse tax
9 consequences you may accept.
10 Q Them after the fact?
11 A Yeah.
12 Q Okay. Even like today, right?
13 A It doesn't seem to be precluded. Again, you
14 would have to have an opinion of counsel whether
15 it's not going to cause adverse tax consequences.
16 Q Okay. And that opinion of counsel is intended
17 to protect the certificate holders?
18 A Yes.
19 Q It's not to protect Ms. Congress, is it? I
20 mean, that's a provision that's put in the
21 agreement so that the people that invested or
22 bought interest in this trust don't suffer adverse
23 tax consequences?
24 A Yes.
25 Q Is that a provision that if those parties and

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1 the trustee all agree can be waived?
2 A No.
3 Q Why not?
4 A Because, again, under New York law, if a trust
5 -- and this trust is irrevocable, by the way,
6 unless you provide otherwise in New York, the trust
7 is irrevocable.
8 Q Okay.
9 A And it cannot be changed.
10 Q Is that one of those idiosyncratic aspects of
11 New York law?
12 A Yeah, I think most states would not have that
13 as the default rule. But most trust documents
14 provide whether it's irrevocable or revocable.
15 Yeah. This is clearly going to be an irrevocable
16 trust. When any irrevocable trust there's a
17 provision that prevents the trustee from doing
18 something that that cannot be changed by -- that
19 cannot be changed.
20 Q Okay. But you would agree with me, would you
21 not, that if could be done, even today, if there
22 were a counsel opinion that it didn't cause adverse
23 tax consequences?
24 A I would -- I think I would -- looking at this
25 Article 10(i), which says, cannot accept any

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1 contributions unless there's a favorable opinion, I
2 would think that, yes, that could be done.
3 Q Okay. And as you sit here today, you don't
4 know one way or the other whether or not there were
5 any opinions of counsel about accepting assets into
6 this particular trust after the March 2007 date,
7 right?
8 A No.
9 Q There could be?
10 A Well, I would assume that that opinion would be
11 -- would be incorrect since my understanding of tax
12 law. The REMIC law provision is that when a note
13 is in default it can't be accepted. But if you
14 have an opinion of counsel that said that, you
15 know --
16 Q You would disagree with it?
17 A Yeah. I mean, I would want to research REMIC a
18 little more, but I think the assumption is that --
19 THE COURT: Whether he was right or wrong,
20 if such letter existed that would make it all right
21 to transfer assets to the trust even now?
22 THE WITNESS: I mean, I guess -- Judge,
23 you know, like if you had someone right out of law
24 school that said, well, in my opinion this is okay.
25 I'm not sure that that would be, you know -- I

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1 mean, you might want to go behind that. I think if
2 you had a reputable opinion of counsel and --
3 Q Show me the word reputable in there. It's not
4 in there, is it?
5 A No. I don't -- I think that -- you know, I
6 think that, as you mentioned, this is designed to
7 protect the certificate holders because there would
8 be adverse consequences to them. So I think that
9 counsel is -- you know, someone who is qualified to
10 render an opinion.
11 Q Let me just stop right there. There's nothing
12 in the agreement the says the opinion of counsel
13 has to be by somebody who meets your standard for
14 reputable, right?
15 A No, it does not.
16 Q Okay. So an opinion of counsel that it doesn't
17 cause adverse tax consequences satisfies that
18 provision, and the trust, even today, could accept
19 these assets?
20 A Yep.
21 Q Okay. In addition the agreement provides, does
22 it not, that the trust can accept assets after the
23 cutoff date if there is indemnification?
24 A Oh, no, I don't agree with that. I don't agree
25 with that.

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1 Q Do you know Mr. Adams -- do you know Mr. Adams
2 yesterday testified that that was a provision in
3 the agreement?
4 A I don't know what he testified to, but I'm
5 looking at this lengthy 10.01(f) which does provide
6 that the -- there can be indemnification agreement
7 if the REMIC administrator and master servicer or
8 both determine to indemnify the trust against the
9 impositions of tax, that they could take that
10 contemplated action.
11 Q Okay. Why doesn't that provide, then, that
12 they could take that contemplated action if they
13 are indemnified?
14 A Well, because it doesn't say the trustee can do
15 that.
16 Q What contemplated action is it talking about,
17 then?
18 A You know, I think REMIC is a very complex
19 provision, and I think there could be a lot of
20 activities in REMIC that don't involve,
21 specifically, accepting a disqualified loan, for
22 example. So I think --
23 Q I'm taking it that you're also an expert in
24 REMIC?
25 A No, I'm not an expert in REMIC.

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1 Q Okay.
2 A But I cannot --
3 Q I'm sorry.
4 A Can I just read to you another sentence in that
5 -- is that okay?
6 Q That's all right with me.
7 A All right. It's hard for me --
8 Q You have the same problem I have.
9 THE WITNESS: I'm sorry, Judge, it's very
10 convoluted.
11 A "In addition, prior to taking any action with
12 respect to the trust fund or its agreement, the
13 trustee shall consult with the certificate insurer
14 and master servicer or the REMIC administrator as
15 applicable with respect to whether such action
16 would cause an adverse REMIC event to occur with
17 respect to the trust fund."
18 And here's a critical part, I think, of this
19 sentence. "And the trustee shall not take any
20 action or cause the trust fund to take any such
21 action as to which the servicer or administrator
22 has advised in writing that an adverse REMIC event
23 could occur." Q Okay.
24 A So as I read that sentence, even though there
25 might be some indemnification that could be

1 I see that this indemnification would relate to
2 activities once they're servicing an existing loan
3 or doing whatever.
4 So I think the fact that indemnification is
5 possible does not change the sentence that says
6 that if there's going to be adverse consequences
7 the trustee cannot take any action. And it's the
8 trustee who is the only party that, in fact, can
9 own an asset of the trust. That's the nature of
10 the trust.
11 Q The trustee owns it, right?
12 A The trustee owns it. And so the trustee, even
13 in this 10.01(f), which is -- because there's an
14 exception in (i), that says, and subject to this
15 (f) provision, even this (f) provision specifically
16 says the trustee can't do something that's going to
17 cause adverse tax consequences.
18 Q Unless he has an opinion of counsel?
19 A Oh, yes. Yes.
20 Q And we don't know whether there was one or not
21 in this case?
22 A No, I don't know.
23 Q Okay. Now, let me, for just a moment, go back
24 to the staple thing.
25 Is it your opinion that even if the original

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1 offered, that does not relate to the trustee being
2 able to accept a contribution that would cause
3 adverse REMIC consequences.
4 Q You called it convoluted. Is that the same as
5 ambiguous? Is that provision ambiguous in your
6 mind?
7 A No, that doesn't seem very ambiguous. That
8 sentence doesn't seem ambiguous to me.
9 Q What about the whole section?
10 A Well, I think what will be the problem with
11 this document, which looking at this document, I
12 assume was done by some Wall Street lawyer, okay
13 and it's very complex.
14 Q I don't want to express any opinion about that.
15 A I don't either because I don't live in
16 New York. I live in Upstate New York.
17 But in any event, I think what you have to do
18 is look at this agreement and see, in fact, you
19 know I think you correctly point out that there is
20 an ability to do something that would cause adverse
21 consequences by someone other than the trustee.
22 But you would have to look at the duties of both of
23 the master servicer and the REMIC administrator.
24 And I haven't, you know, they're very complex in
25 their duties, but I see that they're servicing, so

1 promissory note would have been stapled to the
2 allonge, that that would be inadequate under
3 New York law?
4 A No, I don't think so.
5 Q Okay. I think that stapling would be firmly
6 affixing.
7 Q Okay. Can we staple it right now and it would
8 satisfy New York law? Yeah?
9 A You can staple -- I mean, I don't think you
10 want to take this exhibit here and do it, right?
11 Q But if we take the original note and staple it
12 -- if we stapled it, that satisfies New York law?
13 A I don't know if there are any cases on that. I
14 think it's kind of a modern day equivalent of
15 pasting or gluing. You know, New York has a -- you
16 know, is very concerned about staples. And if
17 there's any indication that something was stapled
18 and the staple is removed, there would have to be
19 testimony about that. So I think that would
20 satisfy any possibility of fraud, that by stapling
21 would be sufficient.
22 Q Okay. So I don't have to get glue? A staple
23 would do?
24 A You don't have to get glue.
25 Q Okay. I have no idea where to get glue.

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1 Well, let me ask this question. Let's go back
2 and look at the PSA if we could.
3 A Okay.
4 Q Look at Section 2.06(c) and (d), and I'll ask
5 you this question. I'll let you find it.
6 A All right. (c) and (d). Yes. Purposes and
7 Powers of the Trust.
8 Q Right. And it provides that the purpose of the
9 trust, the first one is to sell the certificates to
10 the depositor in exchange for the mortgage loans,
11 right?
12 A Yes, it says that.
13 Q That's the primary purpose of this trust. And
14 under the law of New York and elsewhere, the
15 primary purpose and intent of the drafters of the
16 agreement govern its interpretation, right?
17 A When there's ambiguity, sure.
18 Q Now, in addition to that, Section C and D of
19 Section 2.06 provide that the trustee and the trust
20 have fairly broad discretion within the compliance
21 of the agreement, do they not. They've got broad
22 authority, the trustee does?
23 A They have authority to carry out the purposes
24 of the trust.
25 Q Okay.

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1 A And only -- you know, only that authority.
2 Q Sure. And it authorizes engaging in
3 activities, including the marshalling of the assets
4 and making sure that those assets are within the
5 trust. Isn't that part of the trustee's
6 responsibility and authority?
7 A Yep. I think the trustee has to -- when they
8 get, you know, get an asset, they have to do a lot
9 of different things and have to make sure that
10 everything is proper.
11 Q Okay. One of the things that a trustee can do,
12 for example, is if it gets an endorsement -- if it
13 gets a note endorsed in blank, the trustee can fill
14 in those endorsements, can't he?
15 A Well, I think that actually Section 2.01(c)
16 says, if the depositor delivers to the trustee any
17 mortgage note in blank, the depositor shall or
18 shall cause the custodian to complete the
19 endorsement of the mortgage note.
20 Q Okay.
21 A So I don't know if it's the trustee that
22 basically endorses it to itself.
23 Q The depositor --
24 A Yeah.
25 Q -- can cause the custodian of records to fill

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1 in the necessary endorsements?
2 A Yes.
3 Q And is there anything in that provision that
4 says that can't be done after it's received by the
5 trustee? In fact, it says -- doesn't it say if
6 it's deposited with the trust?
7 A Yeah. I think that, you know, if, in fact, the
8 note is endorsed in blank, which is originally what
9 had happened in this file, that, in fact, then it
10 would be required that the note now be endorsed to
11 the trustee.
12 Q Okay. And there's no time limitation put in
13 there, is there?
14 A You know, there are some time limits about
15 ninety days and such. Like, you know, hence, the
16 agreement is -- has a lot of nuances to it. But
17 it's talking about in conjunction with the interim
18 certificate issued by the custodian, and I think
19 that has to be done within a certain period of
20 time. So, I think there are time requirements.
21 Q Not in that provision? You're saying --
22 A No. No. Not in that provision.
23 Q Okay. And when you say the agreement has a lot
24 of nuance, it's still your position it's not
25 ambiguous?

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1 A Right. It's not ambiguous. It's just that
2 there's a lot of different things going on in this
3 agreement with custodians, with REMIC
4 administrators, with services. So that's what I
5 mean it's a lot -- you know, it's --
6 Q It's nuanced and convoluted, but not ambiguous?
7 A Right.
8 Q Right.
9 A It's not ambiguous in terms of the issues that
10 I'm giving an opinion on. There may be other parts
11 that are.
12 Q Okay. Turn with me, if you would, while we're
13 at Section 2.01, I think we were looking at.
14 A Yes.
15 Q 2.01(d).
16 A All right.
17 Q Speaking of nuanced and convoluted.
18 A Yes.
19 Q Are you familiar with that section?
20 A I have looked at that section, and yes.
21 Q Okay.
22 A But, you know -- yes. Why don't you ask your
23 question.
24 Q I will. If you'll -- I don't know how to point
25 this out other than to point it out.

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1 A Okay.
2 Q Look at subsection, I think it may be (b) down
3 here. It starts with a "B." I'm having trouble
4 finding it here. It's right here in the middle.
5 The conveyances.
6 A Is it in the first paragraph?
7 Q Yes, it is. If possible, I think yours is in
8 smaller print than mine. I wish we would have
9 written this on a grain of sand. It would be so
10 much easier.
11 THE COURT: What's the section?
12 MR. RAGSDALE: It is 2.01(c).
13 A Oh, (c)?
14 Q I'm sorry. (d).
15 A Yeah.
16 Q I'm sorry. (d). It starts out: "It is
17 intended."
18 A Yes.
19 Q You will see it.
20 A Yes.
21 Q Do you see that?
22 A Yes. Yes.
23 Q Okay. And there's a (b) down there that starts
24 out: Conveyances provided for in this Section
25 2.01.

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1 A Yes.
2 Q And it says: Shall be deemed to be a grant by
3 the depositor to the trustee of a security interest
4 in all of the hereafter acquired in and to (a) the
5 mortgage loans, including the related mortgage
6 note, the mortgage, any insurance policies, and all
7 other documents in the related mortgage file.
8 Do you see that?
9 A Yes, I see that. Let me just --
10 Q Okay. You are aware, are you not, that this
11 PSA had a number of voluminous attachments
12 including a mortgage loan schedule. Are you aware
13 of that?
14 A Is that what's in this file here.
15 Q No. It's a gianormous stack of stuff.
16 It's in the shuck. This big, long nine-hundred
17 page printout, have you seen that?
18 A No.
19 Q Let me ask you this: Are you aware that this
20 particular loan that we're here about today is
21 expressly listed in the mortgage loan schedule?
22 Were you aware of that, for this trust?
23 A I don't know if I was aware of it. But I guess
24 I'm making that assumption.
25 Q Okay.

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1 A Yeah.
2 Q Will you make that assumption with me that it
3 is listed amongst the mortgage loans that are part
4 of this trust?
5 A Yes, I'll make that assumption, sure.
6 Q Okay. And further, would you make the
7 assumption with me that as apart of this agreement
8 the depositor warrants and represents that it, in
9 fact, deposited the necessary documents for
10 Ms. Congress's loan with this particular trust?
11 A I'll agree that the document says that's what
12 it did. I wouldn't necessarily agree that that's
13 what occurred.
14 Q Okay. But the depositor says they did it,
15 right?
16 A The depositor says --
17 Q Okay.
18 A -- you know.
19 Q And you would agree with me that the trustee
20 says as part of this agreement that it received the
21 necessary loan documents, et cetera, from
22 Ms. Congress's loan?
23 A Well, if you can point that out to me I'm sure
24 that I'll agree that it says that.
25 Q I was kind of hoping to avoid doing that.

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1 A Okay.
2 Q All right. Well, let me ask you this: If
3 Mr. Adams testified yesterday, who purports to be
4 an expert on such things.
5 A Yes.
6 Q That that agreement does provide, in fact, that
7 the trustee has represented and warranted that it
8 received the necessary documents and that this loan
9 is a part of this particular trust; would you
10 disagree with that?
11 A If that's his testimony, then I wouldn't
12 disagree with it.
13 Q Okay. You don't independently have any
14 knowledge of the PSA that would contradict that?
15 A No. No.
16 Q Okay. Fair enough. Now, this Section 2.01(d).
17 A Yes.
18 Q It provides, does it not, if you would look
19 down -- now, let's try this again. How about three
20 quarters of the way down or more than that. How
21 about that? I'll show you the line.
22 A Is it in a new sentence.
23 Q Yes. It's in a new sentence down here maybe.
24 Yeah. This sentence right here (indicating). It
25 makes reference, does it not, if it starts in the

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1 parenthetical (c) where it says: The possession by
2 the trustee, the custodian of any other agent of
3 the trustee of mortgage notes, of such other items
4 of property as constitute instruments, money,
5 payment, intangibles, negotiable items, goods,
6 deposit account, letters of credit -- I was just
7 seeing if you were keeping up with me -- advices of
8 credit, investment property, certificated
9 securities of channel paper, shall be deemed to be,
10 quote, possessed by the secured party, close
11 quote, or possessed by a purchaser or a person
12 designated by the secured party for purposes of
13 perfecting a security interest pursuant to the
14 Minnesota Uniform Commercial Code and the Uniform
15 Commercial Code of any other applicable
16 jurisdiction as in effect, including without
17 limitation -- and then it cites some sections.
18 Do you see that?
19 A Yeah, I see that.
20 Q So it's not true, is it, that everything about
21 this PSA is governed exclusively by New York law.
22 In fact, that provision says that it was deemed to
23 be possession under the Uniform Code of Minnesota
24 or any other applicable jurisdiction.
25 A Yes.

1 comply with Articles 8 and 9 of the Uniform
2 Commercial Code. But it assumes that the asset is
3 first in the trust. Once the asset is in the
4 trust, then you can get security interest perfected
5 under the UCC, maybe in compliance with Minnesota's
6 Uniform Commercial Code.
7 But it certainly doesn't, in my mind, say that
8 the governing law is -- therefore the governing law
9 is whatever you want it to be. This is a very
10 specific exception that I think is -- it's
11 actually, I think, really dealing with security
12 interest with respect to the certificate holders,
13 but it's not dealing with the actual note or
14 mortgage that has to be owned by the trustee.
15 Q Okay. Interesting, but not my question.
16 A Okay.
17 Q My question is this: Despite the fact that the
18 agreement says that this agreement shall be
19 governed and construed in accordance with New York
20 law, there are provisions, including this one, that
21 say, determining the security interest of the
22 parties, determining the ability, for example, to
23 foreclose, shall be determined by the UCC in the
24 applicable jurisdiction?
25 A Yeah, that's what it says.

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1 Q Okay. So we can get beyond the it's only
2 New York, right? In fact, that provision says that
3 it shall be deemed to be in compliance with the
4 Uniform Commercial Code of the applicable
5 jurisdiction, in this case, Alabama.
6 A You know, again, I'm not an expert on UCC, but
7 I think --
8 Q I'm just asking you, doesn't the agreement
9 specifically make reference to --
10 A Minnesota, yes.
11 Q -- and the Uniform Commercial Code of any other
12 applicable jurisdiction?
13 A It does. But my limited understanding of
14 Articles 8 and Article 9 is that this deals with
15 security interest, and, in fact, notes and
16 mortgages that have already been transferred into
17 the trust. And that in order to -- it's very
18 important that there be a security interest in
19 these documents.
20 Q It is, isn't it? I mean, that's critical to
21 the effectiveness of the trust?
22 A It's critical to the effectiveness of the whole
23 transaction to have certificates issued so that
24 there be mortgage backed securities and that there
25 are securities. So this is designed, I believe, to

1 Q Okay. Now, let me show you, if I can, this is
2 the Code of Alabama.
3 A Okay.
4 Q Section 7-3-301, Person Entitled to Enforce
5 Instrument, and ask you to read that section to
6 yourself.
7 Have you read that?
8 A Well, no. Yeah, I've have read it. Whether I
9 understand it is another question.
10 Q It will not be on the exam.
11 A All right. Okay. Maybe you can ask a question
12 and I can say --
13 Q Okay. Let me start by saying: Do you know
14 whether or not this provision differs from New York
15 law?
16 A Yeah. This looks to be the -- apart of the
17 UCC.
18 Q I'll even represent to you that it is.
19 A Thank you. And I think I might have somewhere
20 in my materials what is New York's equivalent, but
21 this is Uniform Commercial Code 3-301.
22 Q Right.
23 A Right. And if you give me a moment I could --
24 Q Okay.
25 A Because I do believe that I have that section

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1 somewhere, but finding it -- yeah. No. I have
2 3-201, not 3-301.
3 Q Okay.
4 A So I can't really tell you whether this is
5 different from New York law.
6 Q Okay. I probably shouldn't have asked you
7 that. I didn't really care.
8 A Okay.
9 Q That provision, though, provides, does it not,
10 that in order to enforce a negotiable instrument
11 you do not have to be the owner, you merely have to
12 be the holder?
13 A That's what it says.
14 Q And you don't have any reason to doubt that
15 that is the law in Alabama?
16 A I have no reason to -- when you say, "the
17 holder," you say -- you're looking at this non
18 holder part?
19 Q I think.
20 A A non holder in possession who has the rights
21 of the holder.
22 Q Right.
23 A So I guess I would want to find out who -- how
24 a non holder has the rights of the holder.
25 Q Okay. Well, would you agree with me that a

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1 holder of a negotiable instrument has the right to
2 enforce it even if he is not the owner under
3 Alabama law?
4 A Well, you know, again, this is -- I'd really
5 want to look at this a little more. I'd want to
6 look at the comments as to what was intended, but I
7 need to know when a non holder in possession has
8 the rights of a holder.
9 Q And I actually forgot you're not a UCC expert.
10 A I'm not an UCC expert.
11 Q And you're not an expert on Alabama law?
12 A Not, I'm not an expert on Alabama law.
13 Q Okay. Well, then I'll quit asking you
14 questions about Alabama law. How about that?
15 A Okay.
16 Q One last question, I guess, on that line,
17 though, is, do you know what law governs the
18 interpretation of Ms. Congress's mortgage and note,
19 assuming they were entered into in Alabama,
20 assuming they involve real property in the state of
21 Alabama?
22 A Yeah. I would think that in terms of the
23 validity of a mortgage, those kinds of issues would
24 be determined by Alabama law.
25 Q Okay. And in the absence of the trust, the

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1 right to foreclose would be determined by Alabama
2 law, the absence of this PSA that you rely on?
3 A The right to foreclose would depend on who owns
4 the note.
5 Q Really? Not who holds the note?
6 A Who holds the note.
7 Q Okay.
8 A So if the note is held or owned by Person A and
9 Person B has the mortgage, Person B can't foreclose
10 on the mortgage. I saw, for example, there was an
11 assignment of the mortgage in 2008, but unless
12 there had been -- the note had also been assigned
13 that, you know, that the mortgage holder doesn't
14 have rights per se. It's really rights to --
15 Q The note?
16 A To the note.
17 Q Right. So it's the holder of the note --
18 A Yes.
19 Q -- that has the right to foreclose?
20 A Yes.
21 Q So in the absence of the trust, in the absence
22 of this PSA --
23 A Okay.
24 Q -- I want you to -- we're going to do a
25 hypothetical.

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1 A All right.
2 Q In the absence of that, I want you to assume
3 that U.S. Bank holds the original note. In the
4 absence of that PSA they would have the right to
5 foreclose as a holder of the note?
6 A When you say, "holder," that is that it was
7 negotiated pursuant to required law?
8 Q Well, okay.
9 A I mean, I guess that's the definition of a
10 holder.
11 Q Sure. Assuming you meet the definition of a
12 holder under the Alabama --
13 A Yes.
14 Q Okay. Under the Alabama UCC, assuming we meet
15 the definition of a holder under the Alabama UCC,
16 in the absence of that PSA, U.S. Bank would be
17 entitled to foreclose under Alabama law?
18 A They would, but it would depend on whether they
19 were doing it in a trustee capacity or in a
20 non-trustee capacity. I mean, if they, in the
21 absence of this agreement, I'm going to assume they
22 wouldn't be in trustee capacity, they, holding the
23 note, would have the right to foreclose.
24 Q Holding the note?
25 A Yes.

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1 Q Okay. So in the absence of the PSA --
2 A Yes.
3 Q U.S. Bank, period, is the holder of the note,
4 has right to foreclose under Alabama law?
5 A Assuming they were. That would be also under
6 New York law.
7 MR. RAGSDALE: Hold on, Judge.
8 Q I'm apparently required under Alabama law to
9 ask you how much you're being paid.
10 A Five hundred dollars an hour.
11 Q Okay. And do you know how much you've billed
12 the lawyers in this case for your work?
13 A I got an initial retainer of three thousand
14 dollars, and haven't had any subsequent billing. I
15 haven't billed them.
16 Q Do you have any idea how many hours you've put
17 in?
18 A I would say that, you know, in the neighborhood
19 of thirty hours.
20 Q Okay. I think this is the final area.
21 Under your answer that I think you gave
22 earlier, which is that based on your theory that
23 the allonge is ineffective.
24 A Yes.
25 Q EMAX, according to you, has the right or would

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1 have the right to foreclose on that note in the
2 absence of any other endorsements?
3 A Yes.
4 Q Okay. And it's EMAX that would have the right
5 to complain if somebody else tried to foreclose,
6 right? I mean, EMAX would be able to say, no,
7 that's my right?
8 A Okay.
9 Q Is that true?
10 A Yeah, I think that's -- I mean, if you don't
11 own the note -- someone doesn't own the note, they
12 couldn't foreclose. And obviously, the owner of
13 the note would be very unhappy with that result.
14 Q And as we sit here today as far as we know EMAX
15 isn't complaining about the fact that U.S. Bank is
16 trying to foreclose, right?
17 A I have no information on that.
18 Q Okay. And one other thing. You're not aware
19 of any evidence, are you, that Ms. Congress's note
20 is listed on the mortgage loan schedule of any
21 other trust other than this trust?
22 A I'm not aware of that, no.
23 MR. RAGSDALE: Thank you, Professor. I
24 appreciate your time.
25 THE WITNESS: Thank you.

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1 REDIRECT EXAMINATION
2 BY MR. WOOTEN:
3 Q Professor --
4 THE COURT: Let me ask you one thing
5 before we move on.
6 THE WITNESS: Sure.
7 THE COURT: Is there any difference
8 between a holder and an owner of a note? You seem
9 to be using them interchangeably.
10 THE WITNESS: Yeah, I think the UCC talks
11 about a holder. And I think my understanding is
12 that a holder is one who basically either
13 originally owns the note or is -- has -- the note
14 has been transferred by proper negotiation.
15 THE COURT: So it sounds to me like
16 they're the same?
17 A Yes. All right. Thank you.
18 REDIRECT EXAMINATION
19 BY MR. WOOTEN:
20 Q Professor, let's just start with the simplest
21 thing we can clear up.
22 A Okay.
23 Q Mr. Ragsdale seemed to imply that you can just
24 go get any, as you mentioned, first year law
25 student to write an opinion of counsel letter and

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1 that would satisfy the requirements to accept this
2 asset on time. Was that your impression of the
3 question?
4 A Well --
5 Q If you will, look at Page 17 of the agreement.
6 A Page?
7 Q Was the definition section.
8 A Oh, okay.
9 Q It defines opinion of counsel.
10 A Okay.
11 Q And, if you will, read that.
12 A A written --
13 Q You don't have to read it out loud. You can
14 read it to yourself.
15 A Oh.
16 Q You were mentioning that you couldn't imagine
17 anybody -- you couldn't imagine anybody would write
18 an opinion of counsel letter saying you could
19 accept a disqualified asset. You seemed a little
20 incredulous by the suggestion, right?
21 A I did. Yes.
22 Q Nobody wants to take on a billion dollars worth
23 of tax liability for a busted trust, right?
24 A Well, you have to have a lot of malpractice
25 insurance.

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1 Q Not a good idea, is it?
2 A No, no.
3 Q Does this opinion of counsel definition put
4 some qualifications on just who might really
5 qualify to give an opinion of counsel like this?
6 It doesn't say any independent opinion of counsel?
7 A Yes.
8 Q Okay. So if for somebody who didn't have a
9 vested interest in proving they had a right to
10 foreclose, those independent opinions of counsel
11 was going to violate the tax code, does that seem
12 to you like something a reasonable expert on trust
13 law and REMIC provisions would do?
14 A I'm sorry. Would you repeat that?
15 Q Does it seem to you that a reasonable New York
16 lawyer with skill and knowledge that you would
17 expect them to have in the industry would render an
18 opinion of counsel that the trust could accept a
19 defaulted loan more than three years after it
20 closed for purposes of fixing a problem with
21 standing after they've been caught without it?
22 A No.
23 Q Not an independent lawyer, right?
24 A Right.
25 Q An independent lawyer.

1 to be transferred to the trust. But then the next
2 sentence, the beginning of it, I think is critical.
3 For purposes of this section, a transfer is not
4 accomplished by recital of assignment holding a
5 receipt in the trust instrument. So that what New
6 York law and it may be different -- I think it's
7 different in other states -- is that merely a
8 reciting that there's been an assignment or a
9 holding is not sufficient to get the asset into the
10 trust.
11 In fact, the Court might be interested --
12 there's a very recent opinion in the Bishop case,
13 the citation is 899 New York Sub 2nd 612, and the
14 last two 612. And it's an appellant division. We
15 have an intermediate appellate court, first
16 department.
17 Let me just briefly read this. "In order for
18 assets to become part of the trust, the grantor is
19 obligated to actually transfer the assets to the
20 trust. Furthermore, the language of the statute is
21 clear that mere recital of assignment holding a
22 receipt is insufficient for transferring assets to
23 a trust." Here the trust instrument simply recited
24 that various assets belong to or had been assigned
25 to the trust. There was no evidence in the record

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1 A An independent counsel.
2 Q Right. Nobody whose name typically you find
3 attached to these SEC filings, like the Thacher,
4 Proffit & Woods, those people, Mayor Brown, those
5 people don't write those kind of opinions to your
6 knowledge, do they?
7 A Not to my knowledge.
8 Q Because like you said, you need a lot of
9 malpractice insurance to put your name on that,
10 don't you?
11 A Yes.
12 Q Okay. Mr. Ragsdale seemed to intimate that
13 there was some special significance to the fact
14 that these parties said they did what they were
15 supposed to do.
16 A Right.
17 Q Tell the Court what you think about the
18 significance of the parties saying in the agreement
19 that they did what they said they did. They made a
20 representation or a recital. What is the legal
21 effect of that?
22 A Well, the legal effect in New York is governed
23 by this EPTL Section 7-1.18, which the -- I
24 originally read that -- the first sentence, that in
25 order for an asset to be part of the trust it has

1 that any deed had actually been executed.
2 Q Is that kind of where we find ourself based on
3 the --
4 A I think --
5 Q -- of this case?
6 A -- that's where we find ourselves is that in
7 effect we need to have proof of actual transfer in
8 compliance with New York's Uniform Commercial Code
9 with respect to this negotiable instrument.
10 Q So for this giant box of mortgage loan
11 schedules that's a representation that it's in that
12 trust --
13 A Yeah.
14 Q -- if you were to examine every loan file and
15 found that it was endorsed to EMAX, would it be
16 your opinion that any of these loans had ever been
17 conveyed to this trust?
18 A No.
19 Q So this is worthless as evidence of conveyance
20 to the trust, right?
21 A I think New York law would say that the mere
22 recital of assignment, holding, or receipt is
23 insufficient to have the asset transferred to the
24 trust. If you want to say that -- I don't like to
25 characterize big documents as worthless.

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1 Q I understand. It is evidence of an intent.
2 It's evidence of a plan?
3 A Right. Right. But, in fact, in order to
4 accomplish -- and this really goes to the nature of
5 transferring assets, generally. You need to have
6 the intent to do it and you need to have requisite
7 delivery. And with a negotiable instrument, you
8 not only have to have delivery of possession, you
9 have to have endorsement and acceptance.
10 Q All right. Let's talk about the Muratori case
11 that Barry mentioned.
12 A Yeah, that 1944 case that he pointed out?
13 Q Yes.
14 A Yes.
15 Q This case deals with someone coming in many
16 years after the fact and saying, we believe the
17 trustee acted beyond their authority. Is that a
18 fair summary?
19 A No, I don't think that's a fair summary.
20 Q Okay. Tell the court why this is not an
21 analogous case to the present situation.
22 A Well, because what counsel asked me to read is
23 this court, which was applying the forerunner of
24 the EPTL 7-2.4, which says that an act in
25 contravention of the trust is void. So let me read

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1 this: Neither is this case to be confused. So the
2 case that was actually decided didn't involve
3 successive transfers that have taken place and many
4 years have elapsed. That was not the case in the
5 case that was decided. The distinguishing in this
6 case, rendering it difficult or even impossible to
7 determine whether the trustee acted in
8 contravention of the case.
9 In that case, there is going to be a
10 presumption that the trustee acted correctly and
11 not in contravention of the trust.
12 But in my view, what we have here is an
13 agreement that was going to effective March 2007,
14 and we have -- well, it is what? 2010. It's three
15 years later that we're litigating this thing.
16 There is nothing difficult or impossible to
17 determine whether the trustee would act in
18 contravention of the trust if the trustee accepted
19 a defaulted loan.
20 Q And even if you assume the contents of the
21 collateral file are correct, you are looking at the
22 evidence that this loan is not in this trust. It's
23 never been conveyed to this trust, right?
24 A Based on the filing you gave me, I see that
25 it's been conveyed to EMAX, and the attempt to do

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1 anything further was invalid under New York law
2 because it didn't comply with New York's Uniform
3 Commercial Code.
4 Q All right. And you mentioned that you thought
5 there was something instructive to the Court about
6 this case. Would you tell the Court?
7 A Yeah.
8 THE WITNESS: Yeah. Your Honor, this case
9 is called Dana, and it's in 465 New York Sub 2nd
10 102. It's a 1982 case. And I think it has -- may
11 have some relevance here because in that case,
12 essentially, what happened is that an individual
13 created a trust, named himself as trustee, actually
14 husband and wife involved. But just to simplify,
15 an individual created this trust, and created a
16 trust that was designed to comply with the federal
17 tax laws, estate tax laws. Specifically, this was
18 called the -- it's a charitable -- renamed the
19 trust.
20 But in order to comply with -- to have a valid
21 charitable trust and therefore get a deduction, it
22 is critical that the trustee agreeing not to sell
23 assets to himself. And the trust specifically said
24 that the trust was prohibited from engaging in any
25 act of self dealing.

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1 Well, it turned out the trustee sold the trust
2 assets including real and personal property to
3 himself. And the question was, what was the effect
4 of this self dealing? And the court said that
5 because the trustee was specifically prevented from
6 engaging in self dealing that would cause adverse
7 tax consequences, that this act would cause the
8 court to invoke EPTL 7-2.4 to void the transaction.
9 And I think, essentially, that Article 10,
10 which prevents the trustee from accepting an asset
11 where it would cause tax problems, it's very
12 similar to this case, and I feel confident that
13 New York would basically say this is a void act.
14 Q So --
15 MR. RAGSDALE: Can I see that case?
16 MR. WOOTEN: Sure.
17 MR. RAGSDALE: Thank you. Can I staple
18 it?
19 THE WITNESS: But you can't put a rubber
20 band around it.
21 MR. RAGSDALE: Fair enough. I mean,
22 you'll be able to take the staple out.
23 THE WITNESS: But I will see the evidence
24 that there was a staple mark, but I want see
25 evidence of a rubber band.

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1 MR. RAGSDALE: Or a quitclaim (sic)?
2 THE WITNESS: Whatever that is.
3 THE COURT: All right. Go ahead.
4 THE WITNESS: I'm sorry.
5 Q (BY MR. WOOTEN:) Professor, go back to Page 32
6 of the agreement.
7 A I'm sorry. 32?
8 Q 32, yes, sir.
9 A Yes.
10 Q The convoluted section that mentions Minnesota
11 law.
12 A Yes.
13 Q Take a moment and read that section in its
14 entirety.
15 THE COURT: What section? (d)?
16 MR. WOOTEN: It's Paragraph (d).
17 THE COURT: You want him to read that
18 whole section?
19 A Well, Counsel, if I was going to read that, we
20 would be here, you know, well past --
21 THE COURT: We're not going to do that.
22 Q But let me -- I've got two good teachers on
23 that. Professor Bloom, you sound like one of my
24 law school professors. Don't make me do that.
25 Look at the sentence under -- it begins with:

1 holders would want to have some security that
2 they're going to get paid, so that Articles 8 and 9
3 would allow the perfection of security in an asset
4 that's in the trust already.
5 Q And it would allow the perfection of that
6 security instrument in the trust assets in states
7 other than New York?
8 A Yes.
9 Q And in compliance with other states UCC?
10 A Yes.
11 Q For purpose of perfecting the security interest
12 in the trust assets?
13 A Yes.
14 Q Okay.
15 A Yes.
16 Q That has nothing to do with adopting every
17 states' Article 3 requirements for negotiation and
18 delivery to the trust, right?
19 A No. No. This is only dealing with once the
20 asset is in the trust that because, as I pointed
21 out in 2.06, that the purposes of the sale of
22 certificates to the depositor who's in turn is
23 going to sell the certificates, that the whole idea
24 is that these are going to be securities -- that's
25 the whole basis here of having these mortgage

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1 "Nevertheless." It looks like it's the third
2 sentence.
3 A In the first paragraph?
4 Q In subparagraph (d).
5 THE COURT: It says, "Nonetheless?"
6 Q It says, "None of the less." I'm sorry. It's
7 above the part that Mr. Ragsdale had you read,
8 right?
9 A Nonetheless, paren (a)?
10 Q Yes.
11 A "This agreement is intended to be hereby -- is
12 a security agreement within the meaning of Articles
13 8 and 9 of the New York Uniform Commercial Code and
14 other UCC jurisdiction."
15 Q So that paragraph leads with: This document is
16 governed under the New York UCC, right?
17 A Yes.
18 Q And it talks about Articles 8 and 9?
19 A Yes.
20 Q And those deal with bulk sales, right?
21 A No. I think those are dealing with basically
22 securities and security interests. And I think
23 what it's really designed to deal with is once an
24 asset is in the trust and then, in fact, here the
25 certificates were issued, but the certificate

1 backed securities, that there is some security
2 interest once the asset is in the trust.
3 Q Right. And so it's not the magic bullet that
4 means that all the New York law provisions unwind
5 and every other state --
6 A No, no, no. I think it's very -- it's limited
7 to saying once you have complied with New York law
8 to get it into the trust, then in terms of
9 perfecting the security interest you have to look
10 to whatever -- you know, whatever this (d)
11 provides.
12 Q And last thing, and I'll be through.
13 A Okay.
14 Q With respect to the questions about whether
15 U.S. Bank as trustee for this trust, could be the
16 holder of this note for purposes of collection --
17 A Yes.
18 Q -- is that permissible understand this
19 agreement?
20 A If it wasn't -- didn't own the note?
21 Q If it was not the owner of the note --
22 A Right.
23 Q -- could it be designated the holder of the
24 note to foreclose?
25 A I don't think so because I think the purpose of

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1 the agreement is that if -- that the trustee has to
2 own the note and have validly acquired it and not
3 acquired it, whether it be an adverse tax
4 consequence. And so I don't think it's a trustee
5 function of U.S. Bank to be a collection agency for
6 EMAX.
7 Q Okay. So in your opinion under New York law,
8 looking at the collateral file, EMAX is the party
9 who should have been foreclosing on Ms. Congress?
10 A Yeah, assuming that's -- yeah, assuming that's
11 the note, that EMAX is the holder of the note and
12 then would have the right to foreclose on the
13 mortgage.
14 Q And you are absolutely confident based on
15 contents of that collateral file that at the time
16 this foreclosure commenced, the trust did not own
17 the loan?
18 A Yes. I'm absolutely confident that the trust
19 did not own the loan.
20 Q Okay. And in your opinion, based on your
21 knowledge of New York Trust Law, now that the loan
22 is defaulted, the trust can never acquire the loan?
23 A If the trust attempted to acquire without the
24 requisite opinion of counsel, it would be a void
25 act under New York law. In fact, there is -- there

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1 is a very old New York Court of Appeals case, our
2 highest court, the Supreme Court is the lowest
3 court in New York.
4 MR. RAGSDALE: Same here.
5 A Courts-at-large has its jurisdiction. I know
6 of no such power to dispense with the enactment of
7 the Legislature and make that valid which the law
8 giver has it pled shall be void. So it would be a
9 void act and there's no power to do anything about
10 it.
11 Q And that is settled law in New York?
12 A In effect, this is current EPTL 7-2.4, an act
13 in contravention of the trust is void, period.
14 RE-CROSS EXAMINATION
15 BY MR. RAGSDALE:
16 Q Your opinion is that Ms. Congress's loan never
17 became apart of this trust, right?
18 A That's my opinion, yes.
19 Q So your opinion is the trust is irrelevant to
20 Ms. Congress's note because it was never held by
21 this trust, never became apart of it?
22 A Right.
23 Q Okay. So if the trust is irrelevant, then the
24 invocation of New York law governing any aspect of
25 this proceeding is also not applicable, right?

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1 A No. I think there's two parts to it. One is
2 was the note ever acquired -- was the note acquired
3 by the closing date March 12th, 2007?
4 Q Let's assume that's true. Let's assume that
5 you're right. It was never acquired by the trust?
6 A Right. And then what I'm further saying is
7 that the trustee cannot now acquire that note
8 because it would be in contravention of the trust.
9 Q I'm all over you.
10 Let's assume that the trust and the trustee
11 have no role in this.
12 A Okay.
13 Q Okay.
14 A I'll assume that.
15 Q U.S. Bank as holder of this note, we talked
16 about, could still foreclose?
17 A No.
18 Q U.S. Bank? You're telling me because U.S. Bank
19 is the trustee in that they can't foreclose on a
20 note that was never covered by the PSA?
21 A How did they get the note?
22 Q They asked for it and it was given to them.
23 They're the holder of the original note. U.S. Bank
24 is the holder of the original note as we stand here
25 today. And you tell me the trust has no

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1 application because it was never apart of the
2 trust. So let's just forget the trust, because
3 your position is it has no governing authority,
4 right, because it's not an asset of the trust?
5 A Right.
6 Q So U.S. Bank as the holder --
7 A No. In order to be a holder it has to be
8 endorsed -- you know, just because you have
9 possession of a note doesn't mean that you are the
10 holder of the note, because under the UCC --
11 Q Applicable in Alabama?
12 A -- applicable in Alabama. Applicable in every
13 state.
14 Q Except New York and South Carolina?
15 A No, no. No. New York -- well, Alabama
16 requires that there be an endorsement. The
17 question is whether, you know, the endorsement was
18 proper.
19 Q Right. And you don't have an opinion about
20 whether the endorsement on that allonge is proper
21 under Alabama law, do you?
22 A I don't have an opinion as to whether that was
23 proper in Alabama law.
24 Q Okay. Assuming it is -- assuming it's a proper
25 endorsement to U.S. Bank.

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1 A Notes share the capacity (sic).
2 Q But it is capacity as a holder of the note, it
3 could foreclose?
4 A If it got the note in due course and it was the
5 holder, then it --
6 Q Could foreclose?
7 A Yes.
8 Q Okay. Let me clear something up in response to
9 the Judge's question if we can.
10 A Okay.
11 Q Let me show you the Alabama Code again, part of
12 the UCC?
13 A Sure.
14 Q 3-203.
15 A All right.
16 Q Transfer of Instrument Rights Acquired by
17 Transfer.
18 A Okay.
19 Q And you can either read it out loud or to
20 yourself, the highlighted portion of the
21 commentary. And I think you said as an academic
22 you look first at the statute and then the
23 commentary to inform your interpretation?
24 A Uh-huh.
25 A Okay. I see ownership rights and instruments

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1 that concern by principles of law of property
2 independent of Article 3.
3 Q It provides, does it not, in this first
4 sentence --
5 A Yep.
6 Q Although transfer of an instrument might mean
7 in a particular case that title to the instrument
8 passes to the transferee. The result does not
9 follow in all cases.
10 A Okay.
11 Q The right to enforce an instrument and
12 ownership of the instrument are two different
13 concepts.
14 A Okay.
15 Q Is that right?
16 A Okay.
17 Q Do you have any reason to question whether
18 that's applicable Alabama law?
19 A No, no reason to question that.
20 THE COURT: What's the section number?
21 MR. RAGSDALE: 7-3-203.
22 THE COURT: Thank you.
23 Q Just a few more questions.
24 A Okay.
25 Q This Dana case?

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1 A Yes, sir.
2 Q Okay. The court held that the act was void?
3 A Yes.
4 Q Who brought that action? Excuse me. In other
5 words, who raised the issue that the act and
6 contravention of the trust was void?
7 A It turns out that the person who created the
8 trust had a conservator appointed, so the
9 conservator was claiming that -- in fact, the
10 conservator was claiming, was that this trust was
11 never validly created. And what the court held,
12 was the trust was validly created, but the act of
13 self dealing contravened the trust was a void act.
14 Q And they held that in a lawsuit brought by --
15 it was a co-conservator, wasn't it?
16 A It could be, yeah.
17 Q Yes. You don't have any doubt that a
18 conservator named in a trust has standing to
19 challenge the existence of the trust or the acts of
20 the trustee?
21 A Conservator --
22 Q Named in the trust, which is what I think you
23 told me.
24 A No, no, no. I don't think the conservator.
25 The person who created the trust was -- became

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1 incapacitated, and then a conservator was
2 appointed.
3 Q Oh, by the court?
4 A By the court, yes. And now the conservator is
5 saying, well, this trust was not validly created.
6 Q Okay.
7 A The court saying, well, it was validly created
8 but the act was void.
9 Q Are you familiar with the case of Cashman vs.
10 Petree. A New York case from 1964. Let me read
11 you this sentence and see if you would dispute it.
12 In that case the court held that, quote, only
13 persons who have any right to object in this
14 instance would be income beneficiaries of the
15 trust.
16 Would you agree with me that under New York law
17 only parties to the trust or intended beneficiaries
18 have the right to come into court and challenge
19 whether or not a trustee complied with the terms of
20 the trust?
21 A Absolutely no.
22 Q Well, would you give my associates the cite to
23 the cases where non parties, that is, people who
24 are not parties to the trust, people who are not
25 intended beneficiaries have gone into court in

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1 New York and challenged actions of the trust, just
2 your best cite.
3 A There's hundred of cases dealing with MERS.
4 MERS. Do you know about MERS?
5 Q I've heard of it.
6 A I've heard of it too. You know, where, in
7 fact, MERS is trying to in New York foreclose on a
8 mortgage.
9 Q And New York courts have said you can't do
10 that?
11 A Right.
12 Q Okay. Are you aware Alabama courts have said
13 MERS can foreclose here?
14 A I am aware of that Crumb case, and yeah.
15 Q But that's not a term of derogation. That's
16 the name of the party, right?
17 A Yeah.
18 Q Okay.
19 A I think the point, Counsel, is that if someone
20 is trying to enforce rights against, for example,
21 in this case, against Ms. Congress, that she has a
22 right to say that in fact, this --
23 Q You don't own the note?
24 A You don't own the note.
25 Q Okay. But does she have to prove that?

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1 A I think she has to -- you know, I think if
2 there's evidence that -- again, I don't know if
3 you're going back to the presumption, but, you
4 know, if, in fact, the note is note owned, then the
5 person can't, in fact, sue on it.
6 Q Okay.
7 A So I think that's her position, as I understand
8 it, is look, U.S. Bank don't own this note under
9 this trust, and therefore, you cannot foreclose.
10 Q Can you cite me the hundreds of cases in which
11 a non-party has challenged the actions of a trustee
12 under the term pursuant to the terms of the trust?
13 Can you just give me one cite to that?
14 A You know, I can't give you one site to it
15 because, generally, the trust is not -- I think
16 what you have is there are a lot of cases dealing
17 with third-party liability to trustees or trustees
18 having liability, third-party trustees, those are
19 cases where -- that you would find that there would
20 be a third party not to the trust who would be
21 complaining about some action of the trustee.
22 Q Can you give me a cite to one of those cases?
23 A No, but there are -- like several sections, I
24 think starting about Section 290 that deal with
25 issues with respect to third parties, intra

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1 trustees. So there's a lot of activity in that
2 area.
3 As to whether, in fact, a third party is bound
4 by a trust? The third party can say, well, I'm not
5 bound by the trust. So, you know, I think that
6 there are cases where third parties can contest
7 aspects of the trust.
8 Q Even if they're not beneficiaries of the trust?
9 A Absolutely.
10 Q But you can't cite me to a case?
11 A No, but I can cite you the restatement of
12 trust, which, by the way, is very authoritative in
13 New York. You know, it's going to be replete with
14 instances where third parties are involved in terms
15 of situations.
16 Q In this instance, in the absence of the issue
17 you raised about the allonge not being --
18 A Yes.
19 Q -- by the way, the allonge says it's affixed,
20 doesn't it?
21 A Yeah. It says it's affixed. And the trust
22 says that the assets are owned by the trust.
23 Q Okay. In the absence of your argument about
24 the allonge not being a proper transfer, are you
25 aware of any evidence at all that this note was not

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1 transferred to the trust by the date specified?
2 A I'm not aware of any evidence that it was or
3 wasn't.
4 Q Okay. Equipoise, do you know that term?
5 A I know that term.
6 Q I looked one up when you started using those
7 professorial words. That means the evidence is --
8 there's no evidence either way, right?
9 A Well, I don't know what the evidence is. But I
10 am not aware of any evidence as to whether, in
11 fact, the transactions occurred by March 12th,
12 2007.
13 Q Okay. You do have, though, in the PSA, both,
14 all of the parties to the PSA saying it was, right?
15 I mean they say it. You don't believe it, but they
16 say it, right?
17 A No. I don't necessarily believe it or would
18 not believe it.
19 Q Okay.
20 A I just know that New York law says it doesn't
21 matter what you say, it matters what you do. And
22 if you don't physically and actually transfer it,
23 it doesn't matter what you recite that you own it,
24 you recite that you assigned it. That's not good
25 enough in New York.

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1 Q Those cases say a mere recital, right?
2 A Not a case. This is a statute.
3 Q But it says a mere recital.
4 A Yes.
5 Q Okay. In this instance it's more than a
6 recital. It's a representation and warranty that
7 it occurred, and specifically listing in the
8 mortgage loan document that. That's more than a
9 mere recital, isn't it? It is a representation and
10 warranty.
11 For example, under contract law, a recital
12 whereas, whereas, those kind of recitals are not
13 actionable. You can't bring a lawsuit based on a
14 recital, a mere recital, can you?
15 A No, but I think --
16 Q Okay. Can you bring a lawsuit based on a
17 representation or a warranty that an act was done,
18 in fact, if it was not done, could you bring that
19 lawsuit?
20 A Again, I'm not a contract lawyer, but I assume
21 that's the case. But again --
22 Q Okay.
23 A -- going back that no evidence -- the
24 representation is not good enough to get it into
25 the trust in New York. It has to be actually

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1 transferred. You can say whatever you want, but
2 it's not good enough under EPTL 7-1.18.
3 Q In this case what we have is the parties saying
4 it was done in the agreement. You agree with that?
5 The mortgage note specifically listed and
6 referenced in the attachment to the PSA, right?
7 And you have an endorsement, which you challenge,
8 but an endorsement to U.S. Bank as trustee, right?
9 A Yes.
10 Q You have all of that?
11 A Yes.
12 Q And on the other side you have nothing. You
13 have no evidence that it wasn't done.
14 A Well, I don't know. Does this file talk about
15 -- is there an August date here on this file?
16 Q When it was scanned into the computer.
17 A Oh, when it was scanned into the computer.
18 Q Yeah. That probably isn't -- there is no
19 reference in the PSA to scanning dates, are there?
20 Is there a scanning date deadline? I don't know of
21 any. Do you know of any?
22 A No, I don't know of any. Okay.
23 Q Okay. So in the absence of your objection to
24 allonge, you have the evidence I just mentioned,
25 the representations, the warranties, the listing in

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1 the mortgage loan schedule, the endorsement to the
2 trustee, and you can't tell me any evidence over
3 here that it wasn't done, right?
4 A I'm not aware of any evidence as to when or --
5 when it was done.
6 Q And you don't know one way or the other when
7 that note with the allonge was delivered to the
8 trust, right?
9 A To the trustee, no.
10 Q Okay. I mean, as far as you know -- I'm sorry.
11 A We don't even know who the -- when you say
12 trustee, U.S. Bank, there's got to be some
13 individual. So is there some evidence as to who
14 actually got the note from U.S. Bank?
15 Q You're saying that a transfer to U.S. Bank
16 isn't sufficient? There has to be a person's name?
17 A You have to deliver possession to someone who
18 is, you know, part of the U.S. Bank.
19 Q Oh, okay. You mean somebody who works for
20 them?
21 A Yeah. Yeah. Somebody who works for them.
22 Q Okay.
23 A Yeah. I mean, I guess as far as I know, I
24 don't know any evidence as to when the transfer
25 occurred.

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1 Q You have no opinion and you cannot say one way
2 or the other whether that note with the allonge was
3 transferred by the cutoff date?
4 A I can absolutely not say that one way or the
5 other.
6 Q Okay.
7 MR. RAGSDALE: I think I'm done with you.
8 Thank you.
9 THE WITNESS: All right. Thank you.
10 THE COURT: Anything else?
11 FURTHER REDIRECT EXAMINATION
12 BY MR. WOOTEN:
13 Q In the absence of a date, Professor --
14 A Yes.
15 Q -- if you look at the collateral file under New
16 York law, is there a conveyance to this trust?
17 THE COURT: In the absence of what?
18 Q In an absence of a date certain --
19 THE COURT: Oh.
20 Q -- if you look at the collateral file, their
21 evidence of the trust ownership, is there a
22 conveyance to this trust?
23 A Well, we're talking about the allonge problem,
24 right?
25 Q Yeah. We've already addressed that. I'm

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1 talking about looking at the promissory note.
2 A Looking at the promissory note.
3 Q Under New York law their evidence of trust --
4 A I need to know when it was done.
5 Q Yeah. But based on the contents of the
6 document --
7 A Yes.
8 Q -- who owns the note?
9 A Based on New York law, EMAX Financial Group,
10 LLC owns the note.
11 Q Professor, we talked about this mortgage
12 assignment that you saw.
13 A Yes.
14 MR. LAY: And the date.
15 Q And the date on it that says, 29th of July,
16 '08.
17 A Yes.
18 Q And you talk about the fact that the assignment
19 says that it's a transfer of the mortgage and the
20 note.
21 A Yes.
22 Q Is that evidence that it was transferred after
23 the date?
24 A It seems to be.
25 Q Okay. And if you read the sworn mortgage

1 A Yeah.
2 Q When you look across the top of the file that
3 says original 8-29-07.
4 A Yes.
5 Q And then it says revision?
6 A Yes.
7 Q Does that implicate to you any significance of
8 the date the scan took place or does that look like
9 the form date or do you know?
10 A I don't know.
11 Q So that doesn't mean anything, does it?
12 A Excuse me?
13 Q It doesn't mean anything as far as date of
14 transfer, does it?
15 A No.
16 Q But if the cutoff date were March 12th, 07 --
17 A Yeah.
18 Q -- and that was the date that it was scanned
19 into the trustee, that would be after March 12th
20 also, wouldn't it?
21 A Yes.
22 Q So if you relied on that date, that would be
23 evidence it was delivered out of time, right?
24 A Yes.
25 MR. WOOTEN: Nothing further.

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1 assignment of an attorney --
2 A Yes.
3 Q -- would you expect the contents to be truthful
4 and accurate?
5 A Yes.
6 Q Would you rely on that if you saw that in the
7 probate records?
8 A Yes.
9 Q And would you assume based on the contents of
10 that assignment that a transfer occurred on that
11 date?
12 A Yes.
13 Q And would that be out of time?
14 A Yes.
15 Q So in the absence of any other evidence, that's
16 direct evidence that the transfer occurred after
17 the fact, right?
18 A Yes.
19 Q When you examined the top of the collateral
20 file where it has dates across the top of the
21 collateral file --
22 A Show me these dates.
23 Q -- and you look at the scan sheet, the scan
24 sheets they were referencing say this was the scan
25 date.

1 THE COURT: All right. Nothing else?
2 MR. RAGSDALE: I have one question, Judge.
3 FURTHER RE-CROSS EXAMINATION
4 BY MR. RAGSDALE:
5 Q Are you aware that under this PSA a MERS as
6 original mortgagee, what's called a MOM mortgage
7 which this one was.
8 A Yes.
9 Q The mortgage doesn't even have to be assigned
10 to the trust. Are you aware of that?
11 A Right.
12 Q Okay. So that there's no requirement under
13 this PSA that the mortgage ever be assigned to the
14 trust?
15 A Well, I think the 201 talks about 201(b) talks
16 about the mortgage being assigned. But, yeah, I'll
17 assume that it doesn't have to be assigned.
18 Q So the document that Mr. Wooten just asked you
19 about is completely unnecessary under the PSA?
20 A No. I think under 2.01(b) little one and two,
21 you've got to have the original mortgage.
22 Q Has to be assigned to the trust?
23 A Yes.
24 Q So every one of the mortgages under this trust
25 that were not assigned, despite the fact that it

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1	says that MERS mortgages don't have to be assigned,	1	THE COURT: I had thought you said it was
2	every one of those is invalid under New York law,	2	in the --
3	every one of those assignments if it wasn't	3	MR. WOOTEN: I apologize if I misled the
4	assigned?	4	Court in any way.
5	A No, because see under New York law, and I think	5	THE WITNESS: -- the trust '09.
6	probably under every law, if you have the note that	6	MR. WOOTEN: We meant it was in the
7	allows you to sue on the mortgage.	7	prospectus as a preliminary pool.
8	Q Oh, okay. Even under New York law if you have	8	THE COURT: Okay. Well, with that
9	the note?	9	stipulation and 22 is admitted with those removed.
10	A Yes.	10	(Whereupon, Defendant's Exhibit
11	Q You don't need to have the mortgage assigned?	11	Number 22 was received into
12	A Yes. But the flip side of what's different, if	12	evidence.)
13	you have the mortgage but you don't have the note,	13	MR. RAGSDALE: Thank you, Judge.
14	you can't sue in New York, but you told me in	14	THE COURT: All right. In the morning.
15	Alabama in the Crumb case you could.	15	MR. RAGSDALE: In the morning. Start at
16	Q Okay.	16	9:00?
17	MR. RAGSDALE: That's all Judge.	17	THE COURT: Nine o'clock. Thank y'all.
18	MR. WOOTEN: Judge, we just need to make	18	THE WITNESS: Thank you, Your Honor for
19	sure we've offered 22 and Ryan and I have agreed to	19	accommodating me.
20	take out the documents that don't have to do with	20	THE COURT: You're welcome.
21	the securitization issues for this trust.	21	
22	THE COURT: All right.	22	(Court in recess.)
23	MR. RAGSDALE: Yes.	23	June 3, 2010 9:00 a.m.
24	MR. WOOTEN: We're going to remove	24	P R O C E E D I N G S
25	everything that is not a securitization document.	25	* * * * *
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1	MR. RAGSDALE: One last housekeeping.	1	THE COURT: Good morning. Who is our next
2	Y'all were going to bring the mortgage loan	2	witness? Ms. Congress come on up.
3	schedule for that 2006 thing.	3	All right. On the record. Yes, sir?
4	MR. WOOTEN: I represent to the Court that	4	MR. RAGSDALE: We have agreed between the
5	the mortgage loan schedule for the other trust, the	5	parties to make as an exhibit the trial testimony
6	final one, does not have that loan number in it.	6	from the previous trial.
7	MR. RAGSDALE: And we would move to strike	7	THE COURT: Very good.
8	whatever it was, Defendant's Exhibit 2, which was	8	MR. RAGSDALE: And we stipulate
9	the preliminary prospectus which was represented	9	that Ms. Congress's previous testimony is
10	that it was included with that. I heard you say	10	admissible as if she gave the testimony today.
11	it.	11	THE COURT: Very good.
12	MR. WOOTEN: Well, represented --	12	MR. RAGSDALE: Does that work?
13	MR. RAGSDALE: It was not included.	13	MR. LAY: Well, are we not stipulating
14	MR. WOOTEN: We represented that the loan	14	that the entire transcript --
15	was on the schedule in the preliminary prospectus.	15	MR. RAGSDALE: Yes, we are.
16	MR. RAGSDALE: Can we stipulate, then,	16	THE COURT: And that I may consider that
17	that the only one of these stacks of PSAs, the only	17	in --
18	place where Ms. Congress's loan appears in any	18	MR. LAY: Anything in the previous trial?
19	mortgage loan schedule is on the trust we're here	19	MR. RAGSDALE: Yes.
20	about today.	20	THE COURT: That I will consider any
21	MR. WOOTEN: Yeah.	21	evidence already heard in making the decision in
22	MR. RAGSDALE: It's not in any of the	22	this case.
23	others.	23	MR. LAY: Part of it is to expedite today
24	MR. WOOTEN: And we did not find it in any	24	so we don't have to go through --
25	final document.	25	THE COURT: Well, I'm grateful for that.

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1 MR. LAY: We are to, Your Honor.
2 (Whereupon, Plaintiff's Exhibit
3 Number 21 was marked and received
4 into evidence.)
5 THE COURT: All right. Ms. Congress. If
6 you would, Rhonda.
7 ERICA SUMTER CONGRESS,
8 having been first duly sworn, was examined and
9 testified as follows:
10 THE COURT: First, let me ask you, are you
11 feeling better?
12 THE WITNESS: Yes, sir.
13 THE COURT: If you need a break or if you
14 don't, let me know and we'll take a break.
15 THE WITNESS: Okay. Thank you.
16 MR. LAY: Yes. Judge, I don't know if I
17 told you, but she recently had surgery.
18 THE COURT: I didn't know that but I knew
19 she wasn't feeling well.
20 MR. LAY: Yes, sir. And, Judge, because
21 we've stipulated, I'm going to skip all the
22 preliminary stuff and just get to the things I
23 wanted to ask.
24 THE COURT: Very good.
25 DIRECT EXAMINATION

1 Q And you do recall most of it, correct.
2 A Yes.
3 Q All right. So we're going to skip to a few
4 things -- I just have a few extra questions to go
5 over and I believe the other side is then going to
6 have some questions for you as well. Okay?
7 A Okay.
8 Q I'm going to show you what's previously been
9 marked as Plaintiff's Exhibit 10. That was the
10 exhibit.
11 A Okay.
12 Q Can you tell me what that document is?
13 A It's a notice of acceleration of promissory
14 note and mortgage.
15 Q All right. Do you recall -- that's a letter
16 from the attorney Sirote & Permutt; is that
17 correct?
18 A Yes.
19 Q And do you recall getting that letter?
20 A Yes.
21 Q And what is the date of the letter?
22 A July 11, 2008.
23 Q All right. And do you recall what day of the
24 week you got the letter, or did you get it on July
25 11th?

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1 BY MR. LAY:
2 Q State your name for the record.
3 A As it is now?
4 Q Just state your name.
5 THE COURT: Yes, give us both.
6 A Okay. Erica Sumter. And on the mortgage it's
7 Erica Sumter Congress.
8 Q Okay. You are the person identified in the
9 mortgage documents that you've seen?
10 A Yes.
11 Q But you are now going by your previous name of
12 Erica Sumter?
13 A Yes.
14 Q Then I'll call you Ms. Sumter instead of
15 Ms. Congress. I had forgotten about that.
16 Ms. Sumter, you remember testifying in this
17 court back in October?
18 A Yes.
19 Q Okay. And you know we're here in a second
20 trial or an additional trial for further
21 information on your case?
22 A Yes.
23 Q And you've read the transcript of your previous
24 testimony?
25 A Yes.

1 A I don't believe I got it on July 11. I got it
2 over the weekend. It had to be on a Saturday when
3 I received this letter.
4 Q Okay. And what did you do when you got that
5 letter?
6 A Well --
7 Q Well, first explain to me when you read the
8 letter what was your impression of it?
9 A When I read the letter I got upset because I
10 read the section that said that the house was being
11 foreclosed and that it was going to be sold on the
12 courthouse steps. And so when I read the letter I
13 immediately got upset.
14 Q Why were you upset?
15 A Because I had already contacted the mortgage
16 company. I had talked to them already and asked
17 them -- told them I was going to need some
18 assistance. And they agreed to help me. And they,
19 you know, they agreed to mail me out paperwork and
20 all this. They were supposed to be working with me
21 about, you know, the mortgage. And then I got this
22 letter.
23 Q So you were surprised?
24 A Yes.
25 Q Okay. And did you -- had you talked to them on

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1 several occasions prior to getting the letter?
2 A Prior to this letter?
3 Q I mean, you said you had been working with them
4 already.
5 A Right. I had called them and told them that I
6 was going to have -- that I -- first, I had
7 problems paying the mortgage and I needed to come
8 up with a plan. They said if there was something
9 they could do to assist me with my mortgage. And
10 the guy that I spoke with told me that he was going
11 to mail me out some paperwork for me to fill out
12 and send back.
13 Q Okay. Did you get that paperwork?
14 A Yes.
15 Q And did you fill it out?
16 A I did.
17 Q And sent it back in?
18 A And I sent it back in.
19 THE COURT: Was that before your July 11th
20 letter?
21 THE WITNESS: Yes.
22 Q All right. And when you got this you said you
23 were surprised. And what action did you take at
24 that point?
25 A Well, on the next Monday -- because I

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1 couldn't --
2 Q Would that have been July 14th, 2008?
3 A Yeah, that should have been that date.
4 Q All right.
5 A And so I called the mortgage company, the
6 number that I had been, you know, called before.
7 And I talked to the person that answered the phone
8 and I told them -- I had the letter and I told them
9 what the letter had said. And the guy on the phone
10 told me that he didn't see anything that indicated
11 that the house was going to be foreclosed on. It
12 was too soon, was his words. I remember he said it
13 was too soon for them to foreclose on the house and
14 for me not to worry about it. I asked him
15 specifically what to do about the letter. He said
16 don't worry about the letter, that the attorneys
17 worked for them and to disregard the letter.
18 Q To disregard the letter?
19 A Yes.
20 Q But you told them you had gotten the letter
21 from Sirote?
22 A Yes.
23 Q Now, in the letter that you got, it mentioned
24 that you're being notified that the mortgage that
25 you signed on July 26th, 2006 for Mortgage Lenders

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1 Network is being foreclosed on. And it states that
2 the mortgage has subsequently been transferred and
3 assigned to U.S. Bank. Were you familiar with
4 U.S. Bank at all?
5 A No.
6 Q Had you ever heard of them?
7 A I mean, as far as the mortgage?
8 Q Well, I mean, in relation to you, not --
9 A No.
10 Q And so it was a surprise to you, then, to see
11 that they are mentioned as -- or is it a surprise
12 to you that they are mentioned as the person --
13 A Well, the thing of it is that, that wasn't --
14 at the time that I got this letter for me, that was
15 not an issue. Like all of that in the top part,
16 you know, I guess because I'm just a regular
17 person, means nothing to me. The only thing that
18 really meant something to me when I got this letter
19 was that this house was being foreclosed on.
20 Q That was your focus?
21 A That was my focus. I can't say that I even
22 paid attention to, you know, all this stuff at the
23 time. That series number and all of that, I don't
24 -- you know. I don't know anything about that.
25 But I know that this is my house and I know that

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1 I've been working with Homecomings Financial, and I
2 know that they told me that they were working with
3 me and they were not foreclosing.
4 Q Well, let me backup to that. You had not sent
5 any payments to U.S. Bank --
6 A No.
7 Q -- or anything related to U.S. Bank?
8 A No.
9 Q Or any of these numbers or trust information
10 that's listed there?
11 A No.
12 Q Had you ever gotten any letters from them
13 saying that they were your mortgage company --
14 A No.
15 Q -- or the owner of your note or holder of your
16 note or any of that kind of stuff?
17 A No.
18 THE COURT: And who was it that you
19 called? Who were you dealing with?
20 THE WITNESS: Homecomings Financial.
21 Q Now, in the previous trial as well as earlier
22 in this trial -- let's see if I can get the
23 exhibit.
24 MR. LAY: Everybody has got their own
25 markings and copies. That makes it difficult.

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1 There it is. I've got it.
2 Q What was marked as Plaintiff's Exhibit 3, and
3 if you could turn to Page 35 of that. They are
4 numbered at the top, I think.
5 THE COURT: What's your question?
6 Q You said that you called them on the 14th.
7 A Uh-huh.
8 Q Do you see the entry there where it says 7-14?
9 A Yes.
10 Q About the third line down.
11 A Okay. Yes.
12 Q And it says the action result, advised of
13 foreclosure process and no sale date. And it says
14 that -- looks like a C. Hodrick. Looks like
15 probably initial C, and then the last name Hodrick.
16 Is that the person that you spoke to or do you
17 remember?
18 A I don't remember the person's name that I spoke
19 to. I just know it was a guy.
20 Q It was a male?
21 A Uh-huh.
22 Q But that's consistent with what you're saying
23 he advised you?
24 A Yes.
25 Q That there was no sale date.

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1 And I believe the next entry states that in
2 thirty days advised to contact us with information.
3 Do you know what that would mean? Is that the
4 information that they were requesting or do you
5 know?
6 A I don't -- I don't remember.
7 Q Okay. If you don't remember, that's fine.
8 A Uh-huh.
9 Q Okay. Thank you. And what -- after you talked
10 to him, what happened?
11 A After I talked with the customer service
12 person?
13 Q Yes.
14 A I had already sent off the package, so I was
15 just, you know, waiting to hear back from them.
16 And the next thing I know I got a letter in the
17 mail saying that the house had been sold. That
18 they sold the house.
19 Q And were you surprised to hear that?
20 A Yes.
21 Q Did you get -- how did you find out that it was
22 sold?
23 A I got a letter in the mail.
24 Q I'm going to show you what's, I believe marked
25 Plaintiff's 14. Can you look at that and see if

1 you recall that or can identify it?
2 A Yes.
3 THE COURT: What's the date of it?
4 THE WITNESS: It's August 12th, 2008.
5 THE COURT: Thank you.
6 Q And that letter was from the same attorney
7 firm; is that correct?
8 A Yes.
9 Q And what did you do at that point?
10 A Well, when I got this letter that the house was
11 foreclosed on, I called the mortgage company again.
12 But this time when I called the mortgage company,
13 the person that answered the phone said that they
14 couldn't help me because they didn't show me in
15 their system anymore.
16 Q They didn't show you in their system anymore?
17 A Right. So they couldn't help me.
18 Q Do you remember when you called that time?
19 A It had to be the same day that I got the
20 letter.
21 THE COURT: August 12th.
22 Q You said the letter. This letter, you're
23 speaking the August 12th one?
24 A Yes.
25 Q All right. And I believe your mortgage is

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1 dated for 2006; is that correct? Is that when you
2 got the house?
3 A Yes.
4 Q The house, where is it located? In the
5 Center Point area?
6 A It is.
7 Q And how much was the purchase price of the
8 house?
9 A I can't remember. I think it was a hundred --
10 that's the value. I think it was a hundred and
11 seven thousand dollars.
12 THE COURT: Will you stipulate to that?
13 MR. RAGSDALE: I believe --
14 MR. DAUGHERTY: Well, I think we can
15 stipulate to the refinance price in 2006 of a
16 hundred and four thousand, four hundred dollars.
17 That's what's on the mortgage note, Your Honor.
18 THE COURT: Okay.
19 MR. RAGSDALE: We'll stipulate to the
20 amount on the mortgage refinanced.
21 MR. LAY: And it was a hundred and --
22 MR. DAUGHERTY: I believe it was a hundred
23 and four thousand dollars.
24 MR. LAY: Okay.
25 Q (BY MR. LAY:) Is that close to what you

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1 remember?
2 A Yes.
3 Q And you were not refinancing the house. You
4 bought the house -- this was a purchase for you?
5 A Yeah. I refinanced the house into that
6 mortgage.
7 Q All right. Is that an approximate value of
8 what the house, as far as you know, was worth at
9 that time you bought it?
10 MR. DAUGHERTY: Objection, Your Honor, to
11 her ability to testify to the value of the
12 property.
13 THE COURT: Overrule. She's the owner.
14 MR. DAUGHERTY: Yes, sir.
15 A At the time it was -- well, I can't say
16 appraised, I guess because --
17 THE COURT: His question is, do you think
18 that a hundred and four thousand is an accurate
19 value of the house when you bought it?
20 THE WITNESS: Yes.
21 THE COURT: Or when you refinanced it?
22 THE WITNESS: Yes.
23 THE COURT: All right.
24 Q And did you have to -- was the property
25 appraised in order for you to get the mortgage?

1 price of the house?
2 A Yes.
3 Q Why?
4 A Because at the time that the house was
5 foreclosed, I had received my tax card from the
6 courthouse where you're supposed to pay your taxes,
7 and it is stated that the house was worth a hundred
8 and fifteen thousand.
9 MR. DAUGHERTY: Objection, Your Honor, her
10 ability to testify based on the tax assessors
11 records. They are notorious for their inability to
12 prove value. It makes her testimony completely --
13 THE COURT: Well, she's not offering that
14 for the truth of it. She's telling why she was
15 surprised. Overrule.
16 MR. DAUGHERTY: And I'm just noting my
17 objection on the record.
18 THE COURT: Yes, sir.
19 Q Well, let's see. You got this loan in 2006,
20 correct?
21 A Uh-huh.
22 THE COURT: Yes.
23 A I'm sorry. Yes.
24 Q And the foreclosure date, I believe it was in
25 July of 2006, wasn't it?

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1 A Yes. Well, I think it was.
2 Q In other words, did you have to get an
3 appraisal as apart of getting this mortgage? Do
4 you recall?
5 A I don't.
6 Q And were you aware of what they sold the
7 property for?
8 A When they auctioned it?
9 Q Yes.
10 A Something like forty thousand dollars because
11 it was in the letter that they sent.
12 Q Did it have an attached foreclosure deed? Is
13 that what you're speaking of?
14 A Yes.
15 Q Okay. I'm going to show you what's marked
16 Plaintiff's 12 if you can look at that, if that's
17 what you're speaking of.
18 A Yes, this looks like what it was. Yes, this
19 was it.
20 Q Okay. You said forty something. This says it
21 was actually forty-nine.
22 A Yes.
23 Q Is that accurate?
24 A Yes.
25 Q And what -- were you surprised at the sale

1 A Yes.
2 Q The foreclosure date was August of 2008 --
3 Are you okay?
4 A It just hurts if I cough.
5 Q I'm sorry. -- August of 2008; is that correct?
6 A Uh-huh.
7 Q So we're talking about a two-year period?
8 MR. LAY: Do you need to take a minute?
9 THE WITNESS: I just need some water.
10 MR. LAY: We'll hold. Just hang on.
11 (Off the record.)
12 (Whereupon, Defendant's Exhibit
13 Number 24 was marked for
14 identification.)
15 Q So as I was saying, there's the two-year period
16 from the time you got the mortgage to the actual
17 foreclosure date?
18 A Yes.
19 Q And also around August you said you had
20 received the note, the tax records had just come
21 out for that year as well?
22 A Yes.
23 Q I'm going to show you what we've marked as
24 Defendant's Exhibit 24.
25 MR. RAGSDALE: I'm sorry. 24?

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1 MR. LAY: Defendant's 24.
2 Q At the time of the foreclosure sale -- and keep
3 in mind we're talking about in 2008. At the time
4 of the foreclosure sale, from 2006, which was the
5 two-year period, was there any substantial
6 difference to the house?
7 A No.
8 Q In other words, had you made any improvements,
9 significant improvements?
10 A No.
11 Q Was there any damage to the property in 2008
12 from 2006 to 2008?
13 A No.
14 Q Any significant changes otherwise?
15 A No.
16 Q And I believe we stipulated the mortgage amount
17 was a hundred and six thousand and the tax
18 assessor's --
19 THE COURT: A hundred and four.
20 Q A hundred and four. The tax was one fifteen,
21 which is just slightly different for a two-year
22 period.
23 Okay. I'm going to show you what's marked as
24 24. See if you recognize that.
25 A It's an appraisal for the property.

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1 Q Okay. Is that your address on there, the
2 address of the property?
3 A It is.
4 Q And --
5 THE COURT: Tell me, what is 24?
6 MR. LAY: An appraisal of the house.
7 THE COURT: Okay. And the date of it?
8 MR. LAY: Let me see.
9 MR. WOOTEN: It was done in conjunction
10 with the refinance, Judge.
11 MR. LAY: July 2006.
12 THE COURT: So it's '06. Okay.
13 Q And is that what you were speaking of about you
14 thought there was an appraisal at that time?
15 A Yes.
16 Q And was that done in conjunction with you
17 getting the mortgage?
18 A Yes.
19 Q And those documents were submitted with the
20 mortgage package?
21 THE COURT: Come on, Ken. Let's move it
22 along.
23 Q Is that correct?
24 A Yes.
25 MR. LAY: Judge, we offer Exhibit 24.

1 THE COURT: It's in.
2 (Whereupon, Defendant's Exhibit
3 Number 24 was received into
4 evidence.)
5 MR. LAY: That's all I have, Your Honor.
6 THE COURT: All right. Any cross?
7 CROSS-EXAMINATION
8 BY MR. DAUGHERTY:
9 Q Good morning, Ms. Congress.
10 A Good morning.
11 Q About your call to the Homecomings --
12 MR. RAGSDALE: You need to speak up, Ryan.
13 MR. DAUGHERTY: I'm sorry.
14 Q About your call to Homecomings, you never
15 called them back after that time, between then and
16 the foreclosure, did you?
17 A No.
18 Q And you never called the attorney whose number
19 was listed on the acceleration letter?
20 A No.
21 Q But that acceleration letter said if you had
22 any questions or concerns to call the attorney?
23 A At this point, yes, after reading it in its
24 entirety, yes.
25 Q And you never got anything in writing from

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1 Homecomings saying that they wouldn't foreclose,
2 did you?
3 A That they would not foreclose?
4 Q Right.
5 A In writing? No.
6 Q So you're just basing that strictly on this
7 telephone call you had?
8 A Yes.
9 MR. RAGSDALE: Ryan, could I interrupt for
10 a moment?
11 MR. DAUGHERTY: Yes.
12 Q Do you have that appraisal, Ms. Congress?
13 Now those pictures are kind of bad. But is
14 that a fair and accurate depiction of your house as
15 it existed? No, those are actually comparables,
16 aren't they?
17 A Right.
18 Q So there aren't any pictures in here of your
19 house or are they on this previous page? That's
20 it. Now, are those fair and accurate depictions?
21 A Oh, yeah, it is my house. Yes.
22 Q That's it?
23 A That's my house.
24 Q Okay.
25 A Yes.

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1 Q Now, Ms. Congress, I'm showing you what I have
2 marked as Plaintiff's Exhibit Number 21. I'm going
3 to show you these pictures on the back page of
4 this. I want you to take a look at those.
5 MR. LAY: Which exhibit is that?
6 MR. DAUGHERTY: 21. It is an appraisal in
7 2008.
8 MR. WOOTEN: Is that a BPO?
9 MR. DAUGHERTY: That would be correct.
10 MR. WOOTEN: Will you tell the Judge what
11 BPO is in case he doesn't know what the terms are.
12 Q Ms. Congress, if you could, could you please
13 look at those pictures and tell me if that's a fair
14 and accurate depiction of your house also?
15 A Yes.
16 Q And are those also pictures of your house on
17 the second page?
18 A Yes.
19 Q And here, is that your street address there at
20 the top of the Exhibit Number 21.
21 A Yes.
22 Q And your name?
23 A Yes.
24 MR. DAUGHERTY: Your Honor, we would move
25 to admit Plaintiff's Exhibit Number 21 into

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1 evidence.
2 THE COURT REPORTER: Judge, hang on a
3 minute. We have a conflict.
4 MR. DAUGHERTY: We have a what?
5 THE COURT REPORTER: Because you marked
6 the transcript as 21.
7 MR. DAUGHERTY: I'm sorry.
8 THE COURT REPORTER: That's okay.
9 MR. DAUGHERTY: So this is 22.
10 THE COURT: So this will be 22.
11 (Whereupon, Plaintiff's Exhibit
12 Number 22 was marked for
13 identification.)
14 MR. LAY: Judge, I don't think we've seen
15 this.
16 MR. RAGSDALE: Feel free. Are we sticking
17 to the one lawyer, one witness.
18 MR. WOOTEN: I just want to look at it.
19 THE COURT: He needs to let him see the
20 documents before they're offered.
21 MR. RAGSDALE: I was anticipating an
22 objection.
23 MR. WOOTEN: No. I just want to clarify.
24 I mainly want to let the Judge know what BPO is.
25 BPO stands for Broker Price Opinion, I think.

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1 THE COURT: All right. You're going to
2 have cross. Ken will have an opportunity to ask
3 more questions.
4 All right. So that's introduced as 22.
5 MR. DAUGHERTY: 22, Your Honor. I
6 apologize for the confusion.
7 THE COURT: All right.
8 MR. LAY: Judge, and before it's
9 introduced, we may have an objection. Judge, if
10 he's offering this as evidence, we're going to
11 object on two grounds. One, we've not ever seen
12 this before. Two, it's -- we don't know where it
13 comes from. Unlike the previous exhibit that was
14 introduced came from the mortgage company records
15 and was handed over by --
16 THE COURT: All right. Well, I'll sustain
17 the objection. Why weren't they given a copy of
18 it?
19 MR. DAUGHERTY: Well, Judge, it's in
20 rebuttal to their testimony, the disclosure told
21 that it was evidence. And also, Your Honor, I
22 would also point out that what Ken is attempting to
23 go into is a defective foreclosure based on the
24 value of the property at the time. And, Your
25 Honor, that was not disclosed as an affirmative

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1 defense.
2 MR. LAY: As what?
3 MR. DAUGHERTY: His blanket affirmative
4 defense of wrongful foreclosure to the extent that
5 could encompass anything in the world that could be
6 wrong, we weren't given notice of. I'm entitled to
7 bring this document in as rebuttal.
8 THE COURT: Well, but he's got a good
9 point. We don't know where the document came from,
10 how authentic it is, or any of those things. It
11 might be relevant, but I think you've got to get it
12 in from somebody other than --
13 MR. DAUGHERTY: Well, Your Honor, is the
14 objection hearsay?
15 THE COURT: That's one of them.
16 MR. DAUGHERTY: Well, I'm not offering it
17 for the --
18 THE COURT: He has two objections. One,
19 he was never shown a copy prior to the trial in
20 accordance with the pretrial order, and Number 2,
21 he doesn't know if it's properly authenticated.
22 And I guess that would include hearsay.
23 MR. DAUGHERTY: Well, Your Honor, we were
24 not shown several of their exhibits prior to trial.
25 THE COURT: Well, that's no excuse. I

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1 sustain the objection.
2 MR. RAGSDALE: May I?
3 (Whereupon, Plaintiff's Exhibit
4 Number 23 was marked for
5 identification.)
6 MR. DAUGHERTY: Your Honor, I have marked
7 as Plaintiff's Exhibit Number 23 the pictures off
8 of what was Plaintiff's Exhibit Number 22, and I
9 would offer these into evidence.
10 MR. WOOTEN: Judge, the same objection.
11 It's a portion of that document which you struck.
12 THE COURT: Well, isn't it a picture of a
13 house? I mean, what are we fussing about?
14 MR. WOOTEN: Your Honor, that's fine.
15 THE COURT: All right. They're admitted.
16 MR. DAUGHERTY: Thank you.
17 (Whereupon, Plaintiff's Exhibit
18 Number 23 was received into
19 evidence.)
20 THE COURT: Are those accurate photographs
21 of your house, Ms. Sumter?
22 THE WITNESS: Yes.
23 Q (BY MR. DAUGHERTY:) Ms. Sumter, I believe I
24 was calling you Ms. Congress earlier.
25 A That's okay.

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1 Q You're testimony earlier was that you base your
2 opinion and value on the tax appraisal, didn't you?
3 A Yes.
4 Q Now, the value of the property in Center Point
5 has gone down, hasn't it?
6 A Now that, I don't know.
7 Q Okay. I'm going to show you another series of
8 photographs, okay?
9 A Okay.
10 Q I'm going to mark these as Plaintiff's Exhibit
11 Number 24.
12 (Whereupon, Plaintiff's Exhibit
13 Number 24 was marked for
14 identification.)
15 Q I want to show you these series of photographs
16 and let me know if these are fair and accurate
17 depictions of your house as it exists today.
18 MR. LAY: Judge, I'm going to object
19 because I'm not sure if the value of the house
20 matters today as it was at foreclosure. The
21 question was what the sale price was in 2008.
22 MR. DAUGHERTY: I'll be quick, Judge.
23 THE COURT: Well, what is the relevance?
24 MR. DAUGHERTY: I'll be very quick, Judge,
25 about this.

1 THE COURT: Quick is his answer.
2 MR. LAY: Okay, Judge. I'll sit down.
3 MR. RAGSDALE: Brevity is to be admired.
4 THE COURT: Yes.
5 A And your question again?
6 Q Are those fair and accurate depictions of your
7 house as it exist today?
8 A Yes.
9 THE COURT: That's 24?
10 MR. DAUGHERTY: That was 24, Your Honor,
11 and I'm going to do 25 as well.
12 (Whereupon, Plaintiff's Exhibit
13 Number 25 was marked for
14 identification.)
15 THE COURT: What is the relevance of the
16 current value of the house?
17 MR. DAUGHERTY: I'm not asking about
18 value, Your Honor. I'm asking about condition.
19 THE COURT: Well, wouldn't that be the
20 same question?
21 MR. DAUGHERTY: Not exactly.
22 THE COURT: What does the condition --
23 what matters about the condition now?
24 MR. DAUGHERTY: Just a couple of more
25 questions, Your Honor, and I'll be there. Okay?

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1 Q Ms. Congress, I'd like for you to take a look
2 at these, and also, let me know if those describe
3 the current condition of your house as it exist
4 today.
5 A Yes.
6 Q And those pictures are dated June 2nd, 2010,
7 aren't they, Ms. Congress?
8 A Yes.
9 Q Ms. Congress, you don't live there anymore. Do
10 you still go there?
11 A I still go. Well, I haven't been because I had
12 surgery.
13 Q Okay.
14 A And so I haven't been able to. It was major
15 surgery, so I've been confined. So I haven't been
16 able to go to the house.
17 Q Have you moved your stuff out?
18 A Yes.
19 Q So it's empty?
20 A Yes.
21 Q Now, Ms. Congress -- Ms. Sumter, I apologize
22 again.
23 A That's fine.
24 Q You have contended that my client doesn't have
25 the power to enforce the debt on your house, or

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1 your attorneys have. Do you understand that?
2 A Yes.
3 Q Has anybody else called you about this note,
4 this mortgage or this debt?
5 A No.
6 Q Has EMAX Financial Group, LLC called you about
7 this debt?
8 A No.
9 Q How about Residential Funding Corporation, LLC?
10 A No.
11 Q Residential Asset and Securities Corporation?
12 A No.
13 Q So nobody else but Homecomings?
14 A They haven't contacted me.
15 Q When the foreclosure was going on, Ms. Sumter?
16 A They didn't contact me during the foreclosure
17 either. I called them.
18 Q I understand. But they sent you
19 correspondence, right?
20 A Yes.
21 Q And that correspondence listed U.S. Bank,
22 right?
23 A The correspondence that --
24 Q That you got about the foreclosure sale?
25 A That I got from Homecomings?

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1 Q Yes, ma'am.
2 A I didn't receive anything from Homecomings
3 regarding the foreclosure.
4 Q How about anything regarding foreclosure?
5 A That came from the attorney's office?
6 Q Yes.
7 A Once I looked back at that letter and read
8 through that letter again, then I realized that
9 there was information in there from U.S. Bank. But
10 prior to that letter I had not ever received
11 anything else from them.
12 Q Now, Ms. Sumter, nobody is living in the house
13 right now, are they?
14 A Living there? No.
15 Q So nobody stays there on a regular basis?
16 A Not that I know of.
17 Q And they haven't for a while, have they?
18 A I can't -- well, what do you mean?
19 THE COURT: What do you mean "not that you
20 know of." You would know if somebody was living in
21 the house, wouldn't you?
22 THE WITNESS: Yeah. I hope that I would
23 know. But, no, no one is staying there.
24 Q And the vines are growing up on the outside?
25 A Yeah, that's recent.

1 Q And the stairs are broken?
2 A The stairs. One step has been -- well, I
3 repaired it and then it broke again.
4 Q And there was a notice from Center Point about
5 some kind of violation of an ordinance of some sort
6 on the garage?
7 A Yes. But I haven't been able to go by the
8 house for a month, so --
9 MR. RAGSDALE: Are you done?
10 MR. DAUGHERTY: I believe I am.
11 THE COURT: Anything else?
12 MR. LAY: Just a couple, Your Honor. I
13 better not say that. You will hold me to it, won't
14 you?
15 THE COURT: Yes, sir.
16 REDIRECT EXAMINATION
17 BY MR. LAY:
18 Q Ms. Congress, you remember when we were here in
19 October, correct?
20 A Yes.
21 Q Were you living in the house at that time?
22 A Yes.
23 Q Did you subsequently, not from my office, but
24 some other way, get a copy of the court order that
25 the Judge entered before?

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1 A Yes. There was a letter sent to my step mom
2 and when she received the letter, I read it.
3 Q Okay. And what happened after that?
4 A Well, when I received the letter, I tried to
5 contact you all and I couldn't reach you. And I
6 got scared, you know. I didn't want my stuff to be
7 set outside. So I --
8 Q Why were you scared?
9 A See, years ago when I had my daughter, I had
10 gotten behind on my rent, and then I --
11 Q Not related to this?
12 A Right. And when I went back to work I caught
13 my rent up. I paid it current. And everything was
14 fine, so I thought. I went back to work. And one
15 day I got a call. And when I received the call,
16 they told me that it was the landlord telling me
17 that I needed to come home right then, that they
18 had -- the maintenance people had put my stuff out
19 of my house. And before I got there, my stuff was
20 gone. I mean, my neighbors had took everything,
21 and everything was tore up. My baby's crib,
22 everything. So it's a fear for me. I cannot have
23 my stuff put outside. And it just is what it is.
24 So when I got that letter from my step mom -- I
25 just can't have my stuff put outside. They said

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1 the Judge had agreed with the mortgage company, and
2 I couldn't get in touch with you guys, so I went
3 immediately and found someplace to go.
4 Q Because you were concerned you might be set out
5 even though we had told you --
6 A Yes.
7 Q -- or we had not told you that that was the end
8 of the case?
9 A Right. But when my things got put out at that
10 apartment, the landlord there did nothing to
11 compensate me. And I got an attorney. That
12 attorney dragged their feet. They didn't do
13 anything. And my aunt was like, it's taking too
14 long. Here, call my attorney. And when I called
15 that attorney and he took over the case, it was too
16 late. They told me that the time frame or
17 something -- I can't remember what he said, had
18 passed and I couldn't do anything.
19 Q Okay. So you went to get you and your daughter
20 somewhere to live just in case things didn't work
21 out?
22 A Right.
23 Q You didn't want to take the chance that --
24 A My stuff -- I can't come from work again and --
25 Q You still want to fight for this house?

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1 A Yes.
2 Q And you don't want to give up?
3 A No.
4 Q But you didn't want to be physically set out,
5 even if it was by mistake?
6 A Right.
7 Q And you've had people checking on the house?
8 A Yes.
9 Q And you've gone over there yourself?
10 A Myself.
11 Q And was the letter from Center Point about the
12 grass not being cut?
13 A It was.
14 Q And as we sit here today, you haven't turned in
15 the keys to them or done anything to give up
16 possession of this place?
17 A No, I haven't.
18 Q You just didn't want to be there physically in
19 case something happened because of that?
20 A Right.
21 Q And you want to go forward with your case?
22 A I do.
23 MR. LAY: That's all.
24 THE COURT: All right. Anything else?
25 MR. DAUGHERTY: Your Honor, I have nothing

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1 further for the witness.
2 THE COURT: All right. Thank you,
3 Ms. Sumter. You may step down.
4 MR. DAUGHERTY: Your Honor, I do have an
5 oral motion that I'd like to make for the Court.
6 THE COURT: All right. Let's -- is there
7 any further testimony?
8 MR. WOOTEN: Yes. We would like to recall
9 Bill Haughton.
10 MR. DAUGHERTY: We're trying to track him
11 down, Your Honor.
12 MR. RAGSDALE: They had asked us this
13 morning. He was going to go back to Texas. I
14 think we caught him before he left. He's not here
15 yet.
16 MR. WOOTEN: We don't need but about ten
17 minutes. We've just got to clarify a couple of
18 things.
19 MR. RAGSDALE: I will say, if the question
20 is whether or not -- you can ask him this, whether
21 or not he knows what that date is on that file. I
22 think we'll stipulate he doesn't know what that
23 date is.
24 MR. WOOTEN: And I need to ask him about
25 one other document in the contents of that file,

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1 just to be clear.
2 MR. RAGSDALE: He's on his way.
3 THE COURT: All right. He's on his way.
4 Will that be the only other testimony?
5 MR. WOOTEN: We'll be done, Your Honor.
6 THE COURT: Thank you.
7 MR. RAGSDALE: No other witnesses.
8 MR. LAY: We don't have any other
9 witnesses.
10 THE COURT: All right. Just let me know
11 when he gets here. Does your motion deal with just
12 this witness?
13 MR. DAUGHERTY: It is for this witness's
14 testimony, Your Honor.
15 THE COURT: All right. Then go ahead.
16 MR. DAUGHERTY: Your Honor, I'd like to
17 make an oral motion to strike the record, to strike
18 the affirmative defense of the defendant based on a
19 low bid at the foreclosure sale.
20 THE COURT: Where did that come from? I
21 haven't heard that before.
22 MR. DAUGHERTY: It didn't come from the
23 first trial.
24 MR. LAY: Well, Your Honor, it's always
25 been apart -- I mean, that's one of the many issues

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1 that we raised. It was raised also before in a
2 previous trial in another case that we had with
3 Judge Vance. I mean, it's not that it was a
4 surprise to them. The documents that we've
5 submitted came from them. If you look at the top
6 of it, it's that same GMAC fax number. They were
7 turned over in discovery. In fact, I got it from
8 Ryan. There is nothing out of the ordinary here.
9 It's just a legal question. There's no dispute
10 about what the foreclosure price was. There's
11 no --

12 THE COURT: The disparity between the fair
13 market value and the sales price is not sufficient
14 to show that it wasn't --

15 MR. LAY: What?

16 THE COURT: Isn't it true that just the
17 disparity between the appraised fair market value
18 and the amount achieved at the foreclosure sale is
19 not evidence that it was not a reasonable
20 transaction at the sale?

21 MR. LAY: No. It is. The question
22 becomes how much of a disparity? And there's a
23 recent case that we were all involved in, and this
24 is one of the reasons that it is important and why
25 it's gotten added significance now recently. As

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1 Ryan is well aware of, a case that we all were
2 involved in, the case of Berry v. Deutsche Bank
3 that came out on May 14th, in which we won that
4 case on this very issue, and it's very similar.

5 Now, the value in that case was a little bit
6 lower. It was thirty-nine percent of value. In
7 this case it's about forty-nine percent of value.
8 The court did not give specific guidelines as to
9 what percentage, but what they said is if it's
10 shockingly different than the market value versus
11 what the foreclosure sale price was, then it is a
12 wrongful foreclosure.

13 And in this case I think that's certainly close
14 enough for the Court to consider. Your Honor,
15 we'll be happy to provide you a case. It's a long
16 very detailed opinion.

17 THE COURT: Well, my concern is that it
18 sort of blindsides them, doesn't it?

19 MR. DAUGHERTY: A little bit.

20 MR. LAY: Well, Judge, I understand that,
21 and I apologize if it wasn't specifically mentioned
22 before. I will only say that the only evidence
23 that we're putting forth is the appraisal. I mean,
24 unless they're disputing that the mortgage that
25 they sold her -- I mean, if you want to say it was

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1 a hundred and six thousand, or four, whatever the
2 mortgage was. She said a hundred and fifteen. We
3 can stipulate to that. The point is, I think it's
4 important that the Court consider because they can
5 come back and sue her for a deficiency for sixty
6 thousand dollars in this case. And not only that,
7 it has tax consequences as the current IRS Tax Code
8 provides. There is a move to change that, but
9 right now the law is that she's taxed on the
10 deficiency amount.

11 THE COURT: Well, if that's your point,
12 perhaps they could have found a witness to bring in
13 here and say that this is the fair market value
14 under current financial conditions.

15 MR. LAY: But Judge, it's not the current
16 fair market value right now. The question is what
17 was the fair market value in 2008.

18 THE COURT: Well, there too. We all know
19 you can get an expert.

20 MR. WOOTEN: And Judge, may I offer to
21 resolve -- help with that issue. If the Court --
22 we would be glad to have them hire an independent
23 appraiser from the area --

24 THE COURT: No. We're going to finish
25 this case today.

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1 MR. WOOTEN: I assume we're going to have
2 a post-trial brief, from my understanding with
3 Barry, this morning we were talking -- I'd assume
4 somebody local could go out and submit it by
5 agreement as part of the post-trial briefing and
6 just the calculus of the value. I mean, we
7 wouldn't be opposed to that.

8 MR. LAY: I mean, whatever way we can,
9 we'd like the issue addressed. Whatever they want
10 to be --

11 THE COURT: I see that. But what I don't
12 understand is why wasn't it a previous issue? It
13 wasn't even mentioned in opening statements.

14 MR. LAY: Well, I mean, Judge it's always
15 sort of been an issue. It hasn't been -- the focal
16 point of this case, basically, on this go around
17 has been --

18 THE COURT: Y'all don't want this case
19 decided on that issue anyway, do you?

20 MR. WOOTEN: Your Honor, I don't believe
21 that issue is what we would like the case decided
22 on.

23 MR. LAY: I mean, we just need to
24 preserve.

25 THE COURT: All right. Well, okay. I'm

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1 not going to grant your motion to exclude the
2 testimony, but I will consider it for what it's
3 worth.
4 MR. DAUGHERTY: That's fine, Your Honor.
5 THE COURT: All right.
6 MR. DAUGHERTY: Thank you.
7 THE COURT: Let me know when the witness
8 gets here.
9 MR. LAY: Okay. Thank you.
10 THE COURT: About the briefing schedule or
11 the submission of proposed orders, how much time do
12 y'all need?
13 MR. RAGSDALE: I suggested fourteen days.
14 Is that too long?
15 THE COURT: Sounds good to me.
16 MR. LAY: Is it going to be both sides
17 submitting in fourteen days?
18 THE COURT: Simultaneously.
19 MR. LAY: Okay.
20 THE COURT: What's two weeks from
21 tomorrow?
22 THE CLERK: June 18th.
23 MR. WOOTEN: The witness has arrived, Your
24 Honor.
25 THE COURT: All right.

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1 MR. RAGSDALE: Our witness is here.
2 THE COURT: Yes, sir. Come up. Too bad.
3 You almost got away. Out of town by sunset is the
4 rule.
5 Have a seat, sir, and I apologize to you.
6 THE WITNESS: No problem.
7 THE COURT: All right. And you're still
8 under oath.
9 THE WITNESS: Yes, sir.
10 BILL HAUGHTON,
11 having been previously sworn, was examined and
12 testified as follows:
13 FURTHER REDIRECT EXAMINATION
14 BY MR. WOOTEN:
15 Q Mr. Haughton, I'm trying to clarify a couple of
16 points about your testimony. And I just want to
17 make sure I ask you on the record for clarity sake.
18 We made a copy of the collateral file. And I
19 don't know that you know this answer because you
20 testified that you're not involved in custodial
21 procedures for the company, right?
22 A Right.
23 Q The copy of the collateral file, during
24 Mr. Adams' testimony, there was some intimation
25 that because these scan sheets said August 29th of

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1 '07, that there was some significance to that
2 particular date. And if you will just look with me
3 at the scan sheets very quickly. I'll try to
4 identify them, but I'll stipulate to you with my
5 review, they all say that date.
6 Below that it says "REV." Do you know what
7 that means?
8 A No, I do not.
9 Q Do you know -- if the top line has the date of
10 August 29th, '07, do you know if that line has any
11 indication that this is a version of a form?
12 A No, I don't know that for sure. I don't know
13 what that represents.
14 Q Is it your testimony that that date is the date
15 that the documents were scanned into the file?
16 A I could not tell you that for sure. I don't
17 know.
18 Q When I asked you about this heading across the
19 bottom that said "desktop."
20 A Right.
21 Q Do you remember Mr. Daughtery asking you if
22 that looked like a file on a -- a computer file,
23 like a desktop file on a computer?
24 A Yes, I do.
25 Q So if you read the footer across the bottom of

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1 that allonge, it says, documents and settings and
2 then slash, right?
3 A Right.
4 Q Is it your understanding that documents and
5 settings would be the first subdivision of that
6 folder?
7 A Yes, it would.
8 Q Okay. And then there's another slash and it
9 says, scan '05.
10 A Correct.
11 Q And it doesn't say it's another folder?
12 A It could be, yes.
13 Q And then there is another slash and it says,
14 desktop slash?
15 A Correct.
16 Q So that would be another folder?
17 A It could be, yes.
18 Q And then it says, new doc type --
19 A Sheets.
20 Q -- sheets slash.
21 A Yes.
22 Q Is that correct?
23 A Yes.
24 Q And then lastly it has NALG, which is on the
25 face of the scan sheet that says allonge, right?

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1 A Correct.
2 Q And from the face of this document -- and you
3 can take them if you like. And I'll represent to
4 you that once you get to the first scan sheet,
5 which says, Kenwood Records Management. This file
6 has been scanned. Other. And the date of
7 5-11-2010. All --
8 Take a moment to look through this document and
9 tell me if you can tell if any those documents,
10 when those documents would have been scanned.
11 THE COURT: When they would have been
12 stamped?
13 MR. WOOTEN: Scanned.
14 THE COURT: Scanned.
15 A No, I cannot tell you a for sure date that
16 these were scanned.
17 Q Okay. And you have not represented to the
18 Court in any way that those documents were entered
19 into the collateral file at the same time?
20 A Actually put in a file at the same time?
21 Q In other words, you can't represent to the
22 Court that the original collateral file, that each
23 portion that is separated by a scan sheet was
24 entered into the collateral file at the same time?
25 A No. I wouldn't know when they were put in the

1 were retrieved, did you get them from Wells Fargo
2 as custodian of GMAC's records?
3 A We are the subservicer of the loan and so we
4 have the original documents. So they come from
5 Wells Fargo to us when we request them.
6 Q From Minneapolis?
7 A From Minneapolis.
8 Q And it is your testimony that no one other than
9 Chantell Fain had access to those documents other
10 than FedEx between the custodian and you?
11 A Not that I know of. The FedEx was addressed to
12 Chantell because I saw the FedEx envelope. And she
13 brought the document to me, and then I looked at
14 them and then gave it back to her and she sent them
15 by FedEx.
16 Q To your attorneys?
17 A Correct.
18 Q Is there a sheet which indicates a FedEx
19 tracking number?
20 A Yes.
21 (Whereupon, Defendant's Exhibit
22 Number 25 was marked for
23 identification.)
24 Q I'm going to show you what I have marked as
25 Exhibit 25 and ask you to compare the tracking

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1 file.
2 Q Right. Now, you testified, I believe -- and
3 that's one of the things I want to clarify -- that
4 you received the custodial file from GMAC's records
5 custodian, correct?
6 A Well, Chantell Fain requested it through her
7 contact at GMAC in Minneapolis that gets those
8 files and sends them to our legal department.
9 Q Okay. And is it your testimony that FedEx
10 delivered that file from Minneapolis to Chantell
11 Fain?
12 A Yes, it is.
13 Q And it's also your testimony that under the
14 pooling and servicing agreement Wells Fargo's
15 trustee facility for this trust is Minneapolis,
16 Minnesota, right?
17 A I believe that's correct, yes.
18 Q Is it your testimony that the document came
19 from Wells Fargo's acting as trustee for the trust
20 from Minneapolis, Minnesota, or a custodian for the
21 trust?
22 A That, I don't know. Wells Fargo is our keeper
23 of our documents.
24 Q Okay. And I guess that's what I'm trying to
25 clarify for the Court. At the point the documents

1 number from the FedEx website to the tracking
2 number in your file.
3 A They're the same.
4 Q They are the same. Does that document indicate
5 a document tracking history through FedEx?
6 A Yes, it does.
7 Q Where did that document originate? I believe
8 it would be the bottom entry.
9 THE COURT: You believe what?
10 MR. WOOTEN: It would be the bottom entry
11 in that list.
12 A It says Cedar Rapids, Iowa.
13 Q And that is not Minneapolis, Minnesota?
14 A No, it's not.
15 MR. RAGSDALE: We stipulate to that.
16 Q Does the document indicate -- you said it came
17 to Chantell Fain?
18 A It is addressed to Chantell.
19 Q And who signed for the document?
20 A Someone named M. Rudley.
21 Q Do you have any idea who M. Rudley is?
22 A I don't know this person, but all mail comes
23 through our mail department.
24 Q And what is the address of the mail department?
25 A 2711 North Haskell, Dallas, Texas.

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1 Q Is there any other identifying information
2 other than 2700 North Haskell?
3 A 2711. Our suite is 900.
4 Q Is that the mailing room?
5 A To our mail room?
6 Q Yes.
7 A Is that what you said?
8 Q Yes.
9 A Yes.
10 Q What is your suite?
11 A 900.
12 MR. WOOTEN: I show you wall I have marked
13 as 26 and 27. Are these identical?
14 MS. HOOD: Yes.
15 THE COURT: So it's just 26?
16 MR. WOOTEN: It's just 26.
17 (Whereupon, Defendant's Exhibit
18 Number 26 was marked for
19 identification.)
20 Q Does this appear to be a digital image of the
21 signature of M. Rudley receiving the FedEx package
22 from Iowa?
23 A Yes, it does.
24 Q And is it delivered on May 12th at 10:02 a.m.?
25 A Yes.

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1 THE COURT: What's the date?
2 THE WITNESS: The date was May the 12th at
3 10:02 a.m.
4 Q Are you aware of whether or not Wells Fargo has
5 a document custodian facility in Cedar Rapids,
6 Iowa?
7 A I do not know.
8 Q Let me show you a document from Wells Fargo's
9 website which indicates a search for --
10 MR. DAUGHERTY: Your Honor, we object to
11 the introduction of further documents which we have
12 not ever seen nor told about at this point.
13 MR. RAGSDALE: Or on the exhibit list.
14 MR. DAUGHERTY: Or on the exhibit list.
15 MR. WOOTEN: And that, Your Honor, is
16 because of the testimony regarding the chain of
17 custody of the documents, which these documents
18 contradict, and we did not have the FedEx tracking
19 number until the new document in the form of the
20 allonge was produced to us last Thursday night at
21 8:00 p.m.
22 THE COURT: All right. Then I overrule
23 the objection. It's in rebuttal.
24 (Whereupon, Defendant's Exhibit
25 Number 27 was marked for

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1 identification.)
2 Q (BY MR. WOOTEN:) 27 indicates, does it not,
3 the location search results for Wells Fargo in
4 Cedar Rapids, Iowa?
5 A Yes, it is.
6 Q Will you flip through that document and see if
7 you see a facility of Wells Fargo that is not a
8 bank branch.
9 THE COURT: What is this gentleman's name?
10 Is it R-u-t-l-e-y, Rutley.
11 THE WITNESS: R-u-d-l-e-y.
12 MR. DAUGHERTY: R-u-d-l-e-y, Judge.
13 THE COURT: Thank you.
14 MR. WOOTEN: And it just says "M." We
15 don't know what that --
16 THE COURT: Right.
17 MR. RAGSDALE: Well, the signature says
18 Mark.
19 MR. WOOTEN: Oh, it does. I'm sorry. I
20 just saw the "M."
21 A These appear to be branch locations.
22 Q Not document custodian facilities?
23 A No. We have an office in Waterloo, Iowa.
24 Q Okay. And that was what I was about to ask
25 you. There is a servicing arm of your employer

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1 near the location -- in the location described in
2 the document, correct, of a FedEx tracking number?
3 If you will flip back to the original FedEx
4 document that I gave you where it says Cedar
5 Rapids, Iowa. You do have a servicing arm of your
6 company there, right?
7 A In Waterloo, Iowa.
8 Q Okay. So what is in Cedar Rapids, Iowa for
9 your company?
10 A I don't know. I would imagine it's a FedEx
11 location.
12 Q Okay. Does it say below that the document
13 originated in Cedar Rapids, Iowa it was picked up?
14 A It does.
15 Q Do you know what the address of 3700 Jay Street
16 Southwest in Cedar Rapids, Iowa is?
17 A No, I don't.
18 (Whereupon, Defendant's Exhibit
19 Number 28 was marked for
20 identification.)
21 Q Let me represent to you that this is a document
22 from GMAC Mortgage's website that I have marked as
23 Defendant's Exhibit 28. If you will flip to the
24 second page, does that document indicate that there
25 is a GMAC Mortgage facility in Cedar Rapids, Iowa,

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1 at the top of the second page?
2 A It does.
3 Q The address is not the same as the one that I
4 read you, but you're not familiar with the exact
5 location of the GMAC Mortgage facility in Cedar
6 Rapids, Iowa?
7 A No, I'm not.
8 Q Does that indicate that it is a document
9 custody facility of GMAC Mortgage?
10 A No, I do not.
11 Q Do you know what that facility of GMAC Mortgage
12 is?
13 A No, I don't.
14 Q Do you have any reason to dispute that the
15 custodial file originated from GMAC Mortgage based
16 on the contents of those FedEx documents I've shown
17 you?
18 MR. DAUGHERTY: Objection.
19 THE COURT: Overrule.
20 A Can you ask that question again?
21 Q Yes. Based on the contents of the FedEx
22 documents, the search results showing no Wells
23 Fargo custodial facility in Cedar Rapids, and the
24 fact that GMAC Mortgage has a facility in
25 Cedar Rapids, do you have any reason to dispute

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1 that the custodial file originated in a GMAC
2 facility in Cedar Rapids, Iowa?
3 MR. DAUGHERTY: Objection, hearsay the
4 records.
5 A Yes, I do.
6 Q You do?
7 A Yes.
8 Q Okay. And why would you dispute that?
9 A Because my division of GMAC Mortgage does not
10 -- we don't have an office in Cedar Rapids. There
11 is an address in Cedar Rapids, but it could be a
12 branch location of GMAC Mortgage where they accept
13 payments. Our office is in Waterloo.
14 Q Okay.
15 A Would it have been possible for a GMAC employee
16 from Waterloo to deliver the custodial documents
17 for pick up in Cedar Rapids?
18 A That would be possible, but it's unlikely.
19 Q And you're certain that based on those
20 documents, the custodial file did not originate in
21 its delivery to you from Minneapolis, Minnesota?
22 MR. DAUGHERTY: Objection.
23 THE COURT: Overrule.
24 A It appears that it did not.
25 MR. WOOTEN: Tender the witness, Your

1 Honor.
2 THE COURT: Okay.
3 FURTHER RECROSS-EXAMINATION
4 BY MR. DAUGHERTY:
5 Q Bill, I gave you the abbreviated history of
6 your job whenever I first examined you in this
7 case. Did I miss the part where you testified
8 about working for FedEx?
9 A You did not miss that part. I do not work for
10 FedEx.
11 Q And so you wouldn't be able to authenticate
12 FedEx's records?
13 A No, not really.
14 Q You wouldn't know whether they're correct or
15 not?
16 A No.
17 Q What about Wells Fargo's website? Are you an
18 IT designer for Wells Fargo's website?
19 A No, I'm not.
20 Q Have you got any information on that document?
21 A No, I do not.
22 Q Okay. So looking at all the documents that
23 Mr. Wooten has shown you --
24 Let me ask you this question first: Is it your
25 belief and understanding as a representative of

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1 GMAC Mortgage that the custodian of record under
2 the pooling and servicing agreement is Wells Fargo
3 Bank National Association in Minnesota?
4 A Yes, it is.
5 Q And is that where you understand that that
6 collateral file came from?
7 A It is.
8 Q Now, is there anything in those documents that
9 says that that file didn't come from Minnesota to
10 Cedar Rapids, Iowa, and then was shipped further?
11 A Nothing indicates that that did not happened.
12 Q So, in fact, it could have happened that the
13 documents were shipped from Minnesota to Cedar
14 Rapids, Iowa, and then shipped from Cedar Rapids to
15 Dallas?
16 A Yes.
17 Q And, in fact, that's what the documents show?
18 A Yes.
19 Q Mr. Haughton, I'm showing you Plaintiff's
20 Exhibit Number 22, which was an exhibit previously
21 referred to in this case. I'm going to ask you if
22 you recognize that document and if you have seen it
23 before?
24 A Yes, I have seen it.
25 Q What is that document?

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1 A It's an exterior BPO or a broker price opinion.
2 Q Can you tell the Court what an exterior BPO or
3 broker's price opinion is?
4 A We go through an outside company who then
5 contracts with a local real estate agent in the
6 area. They pull comparables, drive by the homes,
7 take some exterior pictures, and determine their
8 best value of that property based on the
9 information.
10 Q And is that done prior to the foreclosure
11 usually?
12 A Yes, it is.
13 Q And do you recall what date the foreclosure was
14 in this case?
15 A I believe it was August 12th, 2008.
16 MR. WOOTEN: Judge, I'll stipulate he
17 recognize the document. We'll waive our
18 objection --
19 THE COURT: Waive objection to what?
20 MR. WOOTEN: That was a document you
21 struck earlier.
22 THE COURT: All right.
23 MR. WOOTEN: If he identifies it as one of
24 their documents, we're fine.
25 MR. DAUGHERTY: Move to admit.

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1 THE COURT: All right. It's admitted.
2 That's 22?
3 MR. DAUGHERTY: Yes, sir.
4 (Whereupon, Plaintiff's Exhibit
5 Number 22 was received into
6 evidence.)
7 THE COURT: Yes, sir.
8 Q Do you know if that document lists the fair
9 market value of the property almost contemporaneous
10 with the time of foreclosure?
11 A Yes, it does.
12 Q And what would that be?
13 A It list the probable sales price in the as-is
14 condition as sixty-one thousand, five hundred
15 dollars.
16 Q And is that Ms. Congress's address at the top
17 of the page?
18 MR. WOOTEN: Judge, we've already
19 authenticated the document. We're waiving our
20 objection. It's in for the value. What it says is
21 what it says.
22 THE COURT: All right. It's admitted.
23 MR. DAUGHERTY: Can I get one more thing
24 in, Judge?
25 THE COURT: Yes, one more thing.

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1 Q All right. Can you read the comment section of
2 that document, please, Bill?
3 A Yes. The comment is: "Subject is situated on a
4 corner lot off of a very busy street. Subject is
5 suffering from deferred maintenance. Lawn is
6 overgrown and needs to be landscaped. Similar
7 style and age homes. That's as to its conformity
8 to the neighborhood."
9 Q So it shows the reduced amount value, doesn't
10 it?
11 A Yes, it does.
12 Q Because of the deferred maintenance?
13 A Yes.
14 Q And damage?
15 A Yes. It says the roof appears to be damaged as
16 well.
17 MR. DAUGHERTY: That's all.
18 FURTHER REDIRECT EXAMINATION
19 BY MR. WOOTEN:
20 Q So Mr. Houghton, sort of the point of my asking
21 you to come back, is that you were very certain
22 when you were here on the first day of trial that
23 you knew that the custodial file came directly to
24 Chantell Fain and then came directly to you, right?
25 A Yes.

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1 Q Okay. Chantell Fain didn't sign for the FedEx,
2 did she?
3 A No, she did not.
4 Q And the FedEx record which is in your scanned
5 collateral file is the same FedEx tracking number
6 I've shown you?
7 A Correct.
8 Q And it says it came from Cedar Rapids, Iowa?
9 A It does.
10 Q Do you know if FedEx makes layovers?
11 A They do.
12 Q Makes layovers?
13 A I believe so, yes.
14 Q So do you know if FedEx's representation is
15 that they will show everywhere that document has
16 been since its origination?
17 A I believe they do.
18 Q Okay. So would you expect that if it
19 originated in Minneapolis, Minnesota, that that
20 document that sets forth the tracking history would
21 show it originated in Minneapolis, Minnesota?
22 A Yes, probably so.
23 Q Do you remember the testimony of Mr. Chase
24 Greene about the altered digital signature on the
25 allonge and it being compacted to fit into the

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1 space for your endorsement?
2 A I do.
3 Q And do you remember the testimony about the
4 fact that none of us had ever heard or seen an
5 allonge until last Thursday night?
6 MR. RAGSDALE: You mean none of you guys?
7 MR. WOOTEN: None of us. None of us.
8 Q Ms. Congress and her lawyers, Ms. Sumter and
9 her lawyers?
10 A Yes.
11 Q Okay. And do you remember saying that the
12 allonge was the last document in the file?
13 A Yes, I do.
14 Q And do you remember saying that no one could
15 have tampered with the file because it came
16 straight to Chantell Fain and straight to you?
17 A It was in my building when it came to Chantell
18 Fain. Our legal department does not open Federal
19 Express packages from anyone to anybody at our
20 company.
21 Q But the representation that you made to the
22 Court that it came directly from your custodian in
23 Minneapolis, Minnesota is now wrong, is it not?
24 A From our Minneapolis location. But since this
25 property was in foreclosure, sometimes the original

1 "it appears," what do you mean?
2 MR. LAY: Your Honor, is there an
3 objection from Mr. Ragsdale?
4 THE COURT: Yes.
5 Q So what I was saying is, we have questioned the
6 authenticity of the allonge and we questioned you
7 about it, correct?
8 A That's correct.
9 Q And you testified that it was the last document
10 in the custody file?
11 A Correct.
12 Q And you testified it was scanned separately
13 from the rest of the collateral file?
14 A Each document is -- excuse me -- each document
15 is scanned separately.
16 Q And the scan sheet indicates the document came
17 out of a subfolder that says "documents and
18 settings, scan '05, desktop, new document?"
19 A Yes, that's at the bottom of the sheet.
20 Q And you agree that desktop is a term for the
21 software system that your company uses to manage
22 its foreclosure process?
23 A No. We never call it desktop.
24 Q LPS Desktop?
25 A No, we don't even call it LPS Desktop. It's

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1 documents are required. They could have gone to
2 our foreclosure department in Waterloo where they
3 were maintained and then sent once they were -- it
4 was determined they were needed in Dallas.
5 Q But that wasn't your testimony yesterday or
6 Tuesday, was it?
7 A No.
8 Q That wasn't your understanding on Tuesday, was
9 it?
10 A My understanding of what?
11 Q Of the history of the collateral file from its
12 place of custody to your possession?
13 A Typically they're kept in Minneapolis unless
14 they are needed for litigation or foreclosure for
15 some reason.
16 Q And you would agree that part of our concern is
17 a document that purports to cure all the problems
18 with the promissory note as it relates to its
19 endorsements appears only after you're made aware
20 there are problems with the endorsements?
21 MR. RAGSDALE: Appears where?
22 Q In other words, they're apart of a legal
23 challenge to these deficiency of your evidence of
24 ownership.
25 MR. RAGSDALE: My question is when you say

1 called process management.
2 Q And it's not contained on the system called LPS
3 Desktop?
4 A No.
5 Q But you don't work in foreclosure?
6 A No, I don't.
7 Q And you don't work in document custody?
8 A No.
9 Q And this document did not come from where you
10 said it came from?
11 A I had every reason to believe that it came from
12 Minneapolis as they normally do unless they're
13 needed prior to this litigation.
14 Q So you were mistaken?
15 A I guess I was.
16 Q So you have no idea who had access to this
17 document in this custodial file prior to your
18 possession of it?
19 A No.
20 Q And because it didn't come from your document
21 custodian, you certainly aren't willing to tell the
22 Court under oath that the allonge was not added
23 after the issue was raised in this trial, are you?
24 A I have every reason to believe that employees
25 of GMAC would not forge something on to a document

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1 To imply that would be rather irritating to me
2 because I know I would never do it, and I don't
3 feel that other people at GMAC would. It would be
4 no benefit to them. They would have no clue what
5 this litigation was about. And why would someone
6 forge something?
7 Q And that would be because your vendor, LPS,
8 manages your foreclosure process for you, right?
9 A I wouldn't say they manage it. LPS Desktop is
10 a -- it's a system used for communication between
11 attorneys and mortgage servicers.
12 Q And is it your testimony that LPS has on-site
13 employees in Waterloo, Iowa?
14 A That, I don't know.
15 Q Okay. But you testified that they have on-site
16 employees in your facilities, right?
17 A No, I don't know that for sure. I don't recall
18 that.
19 Q You're familiar with the concept of an on-site
20 employee by a vendor, right?
21 A Yes.
22 Q And you know that LPS was involved in the
23 foreclosure practices, right?
24 A Involved. What do you mean?
25 Q Well, at least their software is involved in

1 rebuttal?
2 MR. RAGSDALE: No, sir. We'd just like to
3 give you a brief in two weeks.
4 THE COURT: Yes, sir. Make it in the form
5 -- I think I'd rather have it as a Word document as
6 a proposed final judgment.
7 MR. RAGSDALE: Okay. Rather than a brief?
8 THE COURT: You can do both if you want
9 to.
10 MR. LAY: Yeah. I think we prefer to do
11 both.
12 THE COURT: All right. That's fine. In
13 either Word or Word Perfect and e-mail it to me.
14 MR. RAGSDALE: Thank you, Your Honor.
15 THE COURT: Now, you all are satisfied. I
16 think everything that's been identified has been
17 admitted.
18 MR. RAGSDALE: I think that is correct.
19 THE COURT: All right. Y'all get with
20 Rhonda and make sure that nobody has ran off with
21 any of our exhibits.
22 Thank you, Gentleman.
23 MR. RAGSDALE: Thank you, Judge. And
24 thank you for indulging me yesterday.
25 THE COURT: All documents are in.

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1 the use of the foreclosure process.
2 A Their software involves a task. They are sent
3 back and forth between attorneys and GMAC's
4 foreclosure department.
5 Q Right. And so those would be indicated in your
6 notes and things like image ID numbers and things
7 like that, right?
8 A I don't know about image ID numbers. It talks
9 about the foreclosure date, the date it was
10 scheduled.
11 Q But you cannot tell the Court that this
12 custodial file came to you directly from the
13 document custodian in Minneapolis, Minnesota,
14 correct?
15 A No, I can't.
16 MR. WOOTEN: Nothing further.
17 THE COURT: All right. Anything else?
18 MR. DAUGHERTY: Oh, I think not.
19 THE COURT: All right. Get back to the
20 airport quickly.
21 THE WITNESS: Thank you.
22 THE COURT: Thank you, sir.
23 All right. Any further testimony.
24 MR. WOOTEN: Defendant rest, Your Honor.
25 THE COURT: All right. Anything in

1 (All exhibits marked and received
2 without objection are admitted into
3 evidence.)
4 (Exhibits marked and admitted into
5 evidence during the trial are
6 retained by the Court.)
7
8 END OF PROCEEDINGS.
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1 C E R T I F I C A T E
2 STATE OF ALABAMA)
3 JEFFERSON COUNTY)
4

5 I hereby certify that the above and
6 foregoing proceedings were taken down by me in
7 stenotype, and thereto were transcribed by means of
8 computer-aided transcription, and that the
9 foregoing represents a true and correct transcript
10 of the proceedings.
11

12 I further certify that I am neither of
13 counsel, nor of any relation to the parties to the
14 action, nor am I anyway interested in the result
15 of said cause.
16

17 _____
18 RHONDA W. HEAD, CCR
19 CERTIFICATION NO. AL-CCR-264
20 NOTARY PUBLIC, STATE OF ALABAMA
21 MY COMMISSION EXPIRES: 11-22-11
22
23
24
25

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