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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

In Re: )  
DEREK TODD & LETITIA ) **Case No. 08-42533-dm1-13**  
ROSHELLE TROUTMAN, )  
Debtors. ) Fort Worth, Texas  
Monday, May 24, 2010  
1:30 p.m. Docket  
MOTION FOR RELIEF FROM  
STAY

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE D. MICHAEL LYNN,  
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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1                   FORT WORTH, TEXAS - MAY 24, 2010 - 1:36 P.M.

2                   THE COURT: Please be seated. All right. This is the  
3 Derek and Letitia Troutman case. Could I have appearances,  
4 please?

5                   MR. ALFIERI: Good afternoon, Your Honor. Mark  
6 Alfieri for American Home Mortgage Servicing, Inc.

7                   MR. BARTHLOW: Good afternoon, Your Honor. Thad  
8 Bartholow on behalf of the Debtors.

9                   MS. SMITH: Caitlyn Smith also on behalf of the  
10 Debtors.

11                  THE COURT: All right. Mr. Alfieri, we're here on  
12 your motion. I believe you should proceed.

13                  MR. ALFIERI: Yes, sir. I would like to initially  
14 call Roger Kistler to the stand, please.

15                  THE COURT: All right. Mr. Kistler, is it?

16                  MR. KISTLER: Yes.

17                  MR. ALFIERI: Yes.

18                  THE COURT: Okay. Mr. Kistler, if you'll step over  
19 there, the court reporter will swear you in, and then you may  
20 be seated.

21                                 ROGER KISTLER, MOVANT AHMSI'S WITNESS, SWORN

22   DIRECT EXAMINATION

23 BY MR. ALFIERI:

24 Q Please state your name for the record, please.

25 A My name is Roger Kistler.

1 Q And where do you reside?

2 A I reside in Dallas, Texas.

3 Q Can you be more specific than that?

4 A 7751 La Sabrina.

5 Q Okay. And are you currently employed, Mr. Kistler?

6 A Yes. I work for American Home Mortgage Servicing, Inc.

7 Q And where are their offices?

8 A Their -- the office is at 1525 South Beltline Road,  
9 Coppell, Texas.

10 Q What do you do for -- and I'm going to call them AHMSI.

11 A Okay.

12 Q If I call them -- if I refer to them as AHMSI, you'll  
13 understand who I'm referring to?

14 A Yes.

15 Q What is your position AHMSI?

16 A I am Assistant Vice President and Department Manager for  
17 the Collateral Administration Department.

18 Q And would you please describe what your job  
19 responsibilities are?

20 A Job responsibilities include custodial relationships for  
21 all of our different custodians; assignment generation and  
22 execution; and updating the MERS online database are the basic  
23 functions of my department.

24 Q Okay. Now, you said a lot of things there that got me lost  
25 and perhaps an uninitiated person would get lost as well. So

1 let's take those responsibilities one at a time. With respect  
2 to your custodial responsibilities, be a little bit more  
3 explanatory on those.

4 A We are the only department within the company that is  
5 authorized to request original collateral files for any  
6 particular reason, whether that be legal, payoff, foreclosure.  
7 Any number of reasons. If a request is made to retrieve the  
8 original collateral file of note/mortgage/title policies, that  
9 request comes through my department. We also work with the  
10 custodian on all new acquisitions to make sure that all the  
11 files that we have recently agreed to service are at that  
12 particular custodian, and then to return any files on loans  
13 that either reinstate from a bankruptcy or a foreclosure or the  
14 payoff was erroneous and we can reinstate those particular  
15 files to the custodian.

16 Q Now, why would you need to interface -- strike that. Why  
17 is it important to get the original notes from the custodian?

18 A Certain states require that you provide an original note  
19 and mortgage or deed of trust for any legal action. In the  
20 case of a payoff, most states require that you return the note  
21 and security instrument to the borrower at the time of payoff.  
22 It's to either comply with state regulations or investor  
23 requirements.

24 Q Okay. Now, I may come back and visit that again, but let's  
25 move on. You mentioned MERS responsibilities. Is that an

1 acronym?

2 A MERS is an acronym for the Mortgage Registration --  
3 Mortgage Electronic Registration System, Inc.

4 Q And what -- tell me what is, please.

5 A It is an organization that was developed in 1999 by the  
6 Mortgage Bankers Association to help track the transfer of  
7 mortgages between servicers.

8 Q And why is that important?

9 A It is a way of electronically tracking servicing transfers  
10 vice the old method of recording a paper assignment in the  
11 County Records where the property is located.

12 Q Okay. So are we talking about -- so, just so that I'm  
13 clear, when you're talking about recording, you're talking  
14 about the real estate records?

15 A Yes, the real estate -- the county real estate records,  
16 regardless of what that happens to be, in any particular county  
17 or parish.

18 Q Okay. Does the MERS system have any interface with respect  
19 to the security, the securitization that a particular loan may  
20 be involved with?

21 A No, sir.

22 MR. BARTHLOW: Objection.

23 THE COURT: Okay. Just a minute. When he stands up,  
24 don't answer until he's had a chance to comment. Okay? Go  
25 ahead, Mr. Bartholow.

1 MR. BARTHOLOW: Objection. Lack of foundation. He's  
2 not testified to any degree of knowledge regarding what the  
3 MERS interface is. He needs to lay that out before I think he  
4 can answer this question.

5 MR. ALFIERI: I think he -- I was summarizing what --

6 THE COURT: All right. Let's make it simple. To your  
7 knowledge, does MERS have anything to do with the  
8 securitization of mortgages?

9 THE WITNESS: No, sir.

10 THE COURT: All right. Go ahead.

11 BY MR. ALFIERI:

12 Q Okay. Now, let's -- okay. All right. So you just  
13 answered the Judge by saying that you do have knowledge? You  
14 do have knowledge that --

15 THE COURT: No, I asked him to his knowledge, and he  
16 said, "No, sir," meaning to his knowledge there is no  
17 connection. If you want to explore it further, go ahead.

18 MR. ALFIERI: No, that's fine, Your Honor.

19 BY MR. ALFIERI:

20 Q Okay. So we've talked about MERS. We've talked about the  
21 custodial responsibilities you have. What else do you do, Mr.  
22 --

23 A It was the assignment generation and execution.

24 Q And what is that?

25 A That is whenever there is a need for a paper assignment on

1 a loan that does not happen to be within the MERS registration  
2 system, there is still a need to record a paper assignment  
3 between servicers.

4 Q Okay. And how often does that generally come up?

5 A We do maybe 12 to 15 a week.

6 Q Okay. Is it your experience that, in the vast majority of  
7 loans that AHMSI services, they are within the MERS system?

8 A We have approximately a 30 percent population of loans that  
9 are within the MERS registration system.

10 Q Okay. Okay. Thank you. Now, what qualifications did you  
11 have in order to obtain this position at AHMSI?

12 THE COURT: Let me stop you there, and I want to ask  
13 the witness the question.

14 Do I understand that what you're telling me is that MERS  
15 handles the transfer of mortgages from one servicing agent to  
16 another for the mortgages that are within that system?

17 THE WITNESS: MERS tracks those registrations.

18 THE COURT: Okay. Well, I'm asking you if you --  
19 let's suppose that you're going to transfer -- that you have a  
20 package of mortgages and you're going to transfer them for  
21 servicing to another servicer. All right? Do you just tell  
22 MERS, "We're transferring them to them" and they take care of  
23 -- it is reflected on their system and that effects the  
24 transfer as far as you're concerned?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Go ahead.

2 MR. ALFIERI: Okay.

3 BY MR. ALFIERI:

4 Q In order to get to your current position with -- at AHMSI,  
5 what qualifications did you have to have?

6 A I have almost 18 years of mortgage experience, with most of  
7 that being within the document-related areas of document  
8 control, document custody, document review, MERS, preparatory  
9 work, and assignment generation.

10 Q Okay. Can you briefly tell the Court -- go through the  
11 experience that you had, some of the mortgage companies, if you  
12 worked for mortgage companies?

13 A I was in the mortgage business for approximately 14 years  
14 in San Antonio. I worked for Bank-Plus Mortgage, Homeside  
15 Lending, and Washington Mutual Bank. I moved to Dallas in 2005  
16 and went to work for American Home Mortgage Servicing, a  
17 Maryland corporation.

18 THE COURT: Pull the microphone a little closer to  
19 you.

20 THE WITNESS: In 2005, I moved to Dallas and went to  
21 work for American Home Mortgage Servicing, a Maryland  
22 corporation. I worked there until they filed bankruptcy in  
23 August of 2007. In November of 2007, under a bankruptcy court  
24 order, Wilbur Ross purchased a select group of loans from  
25 American Home Mortgage and formed the corporation of American

1 Home -- American Home Acquisition Company. At the legal close  
2 of the bankruptcy transaction to purchase the loans in April of  
3 2008, the name of the company was changed to its current name  
4 of American Home Mortgage Servicing, Inc., a Delaware company.

5 BY MR. ALFIERI:

6 Q Okay. Let me stop you there.

7 MR. ALFIERI: Now, Your Honor, I'm going to refer to  
8 Tab 6 and Tab 8 in your notebook.

9 THE COURT: Yes, Mr. Bartholow?

10 MR. BARTHLOW: I'm sorry, Your Honor. I was just  
11 standing up to change the page.

12 THE COURT: All right. Okay. That's fine.

13 MR. ALFIERI: May I approach the witness, please?

14 THE COURT: Yes.

15 BY MR. ALFIERI:

16 Q Okay. Now, Mr. Kistler, I handed you two documents. One  
17 of them I labeled as Exhibit 1. You kind of got ahead of me a  
18 little bit. Can you identify what Exhibit 1 is?

19 A It is the bankruptcy court order concerning the purchase of  
20 loans from American Home Mortgage Holdings.

21 THE COURT: All right. Do I understand, you just said  
22 Exhibit 1. I'm looking at Exhibit 6, which appears to be what  
23 you're speaking of.

24 MR. ALFIERI: Can I show you -- show me what you've  
25 got.

1 THE COURT: Just, you told me you were looking at  
2 Exhibits 6 and 8, and --

3 MR. ALFIERI: It's in Tab -- yeah.

4 THE COURT: And I'm looking at -- Exhibit 1 appears to  
5 -- it says Page 1 of 221. And then Exhibit 6 is a court order  
6 out of the Bankruptcy Court in Delaware respecting American  
7 Home Mortgage Holdings, Inc.

8 MR. ALFIERI: Right.

9 THE COURT: Is that what you're speaking of?

10 MR. ALFIERI: Yes, Your Honor. I asked you to take a  
11 look at Tab 6 and Tab 8.

12 THE COURT: Right.

13 MR. ALFIERI: Tab 6 I'm going to designate as Exhibit  
14 1 for the witness. If you would prefer me to --

15 THE COURT: I'd rather -- I mean, let's try and keep  
16 this clear in keeping track of which is which.

17 MR. ALFIERI: Okay.

18 THE COURT: If you refer to this as Exhibit 6, then  
19 we're all going to be on the same page. It's going to be a  
20 little bit easier for when --

21 MR. ALFIERI: Okay.

22 THE COURT: -- one of you guys appeals.

23 MR. ALFIERI: That's fine, Your Honor.

24 THE COURT: Okay?

25 BY MR. ALFIERI:

1 Q Okay. Taking a look at Exhibit 6, can you identify that,  
2 please?

3 A It is the purchasing agreement between American Home  
4 Mortgage Holdings and AH Acquisition Company.

5 Q Take a look at it one more time and tell me what that is,  
6 please. (Pause.) Is it not an order from the Bankruptcy  
7 Court?

8 A It's an order from the Bankruptcy Court, yes, sir.

9 Q Okay. And what does the order do?

10 A The order --

11 MR. BARTHLOW: Objection, Your Honor. Again, lack of  
12 foundation. He hasn't testified as to having been involved in  
13 this order. I mean, certainly, we can all read the order and  
14 take judicial notice of it. But we don't know why he has any  
15 knowledge of the contents of this order.

16 THE COURT: Mr. Alfieri?

17 MR. ALFIERI: Well, he actually --

18 THE COURT: Mr. Alfieri?

19 MR. ALFIERI: He actually spoke about the order about  
20 five minutes ago.

21 THE COURT: Well, I understand that, but I think Mr.  
22 Bartholow's position is a reasonable one. The order, to the  
23 extent that it's going to have some role in this case, I'm  
24 going to interpret what it says. If you want to have him read  
25 portions of it, go right ahead. And if you want to lay a more

1 significant foundation respecting his knowledge of it, that's  
2 okay, though I have some question whether he was -- I don't  
3 know. I don't mean to speak out of turn, Mr. Kistler, but I'd  
4 be surprised if you drafted the order, were in court when the  
5 order was entered, or participated in arriving at the language  
6 in the order. So you may go ahead, but I'm not going to let  
7 him tell me what the order says.

8 MR. ALFIERI: Okay.

9 THE COURT: I mean, you can have him say it's his  
10 understanding that this transferred the mortgages attached as  
11 Exhibit A, if that's the case, and go from there. I don't care  
12 about that.

13 MR. ALFIERI: Okay.

14 BY MR. ALFIERI:

15 Q Earlier, you referenced an order from a bankruptcy court,  
16 Mr. Kistler.

17 A Yes.

18 Q Okay. Can you restate what you said with respect to that  
19 order?

20 A There was a bankruptcy order in November 2007 that  
21 authorized the sale of a particular group of loans from  
22 American Home Mortgage Holdings to, at that time, American Home  
23 -- AH Acquisition Company, which was under the umbrella of the  
24 W.L. Ross Companies.

25 Q Okay. And you're aware that bankruptcy case was filed?

1 A It was in -- all I know is it was in Delaware. Which court  
2 or anything, I do not know.

3 Q Okay. I want you to take a look at the document that I've  
4 put in front of you, which is labeled as Exhibit 6.

5 A Okay.

6 Q Do you recognize this document?

7 A It's the Bankruptcy Court order.

8 Q Okay. How do you know -- is this the court order that you  
9 referred to a little bit ago?

10 A Yes.

11 Q How do you -- okay. And how do you know that this document  
12 that I've put in front of you as Exhibit 1 is in fact that  
13 bankruptcy court order you were speaking about just a bit ago?

14 A It's the same one that we were shown back in 2007.

15 Q Okay. So you are familiar with this order?

16 A I have seen it before, yes.

17 Q Okay. Did you draft this order?

18 A No, sir.

19 Q Okay. Were you involved in the drafting of this order?

20 A No, sir.

21 Q No? But do you have knowledge of the entry of this order  
22 in the Bankruptcy Court?

23 A Yes, sir. I have knowledge that the order was entered, and  
24 it was the basis for the formation of the sale of the loans of  
25 American Home Mortgage Holdings to AH Acquisition Company.

1 Q Okay. I want you to turn to Page 4.

2 A Page 4?

3 Q Page 4 of that order. If you look down at the bottom,  
4 there's a 4.

5 A Okay.

6 Q Okay? Now, about, oh, a little bit better than halfway  
7 down the page, the order relates to -- the order states and  
8 refers to an Exhibit C with respect to stipulated servicing  
9 agreements. Can you read everything from the word Exhibit C to  
10 the end of that paragraph?

11 A (reading)

12 "Exhibit C, annexed hereto, the Stipulated Servicing  
13 Agreements, are stipulated to be executory contracts  
14 within the meaning of Section 365 of the Bankruptcy  
15 Code and shall be assumed by the Sellers and assigned  
16 to the Purchaser pursuant to Section 365 of the  
17 Bankruptcy Code, and the Court having reviewed and  
18 considered the motion, any objections thereto, and the  
19 arguments of counsel made, the evidence proffered or  
20 added at the sale hearing."

21 Q Okay. Now, let's go back to the front of the documents.  
22 Who is the seller?

23 A The seller is American Home Mortgage Holdings.

24 Q And who is the purchaser?

25 A AH Acquisition Company.

1 Q Okay. I'd like you now to turn to Page 26 of the same  
2 document. Go to Paragraph 30, please.

3 A I'm there.

4 Q And I'd like you start reading Paragraph 30 through to the  
5 end of the paragraph.

6 A (reading)

7 "Pursuant to the terms of the APA, the Stipulated  
8 Servicing Agreements shall be assumed by the Debtors  
9 and assigned to the Purchaser within the meaning of  
10 Section 365 of the Bankruptcy Code as of the final  
11 closing or earlier assignment or transfer, as the case  
12 may be. To the extent such servicing contracts  
13 constitute Exhibit B servicing agreements are severed  
14 from other agreements, if applicable, and such  
15 stipulated servicing agreements shall be assumed by  
16 the Debtors and assigned to the Purchaser within the  
17 meaning of Section 365 of the Bankruptcy Code."

18 Q Okay. Thank you very much. Now, I'd like you to turn to  
19 Exhibit 8. Okay. Can you identify the title of Exhibit 8?

20 A Stipulated Servicing Agreements.

21 Q And is there an exhibit, a pre-marked exhibit item on  
22 there? Just look in the --

23 A Exhibit 8.

24 Q Well, that's what I put on it.

25 A Yeah.

1 Q Is there another exhibit?

2 THE COURT: He's talking about the Exhibit C language  
3 right above --

4 THE WITNESS: Oh. Exhibit C, Stipulated Servicing  
5 Agreements.

6 BY MR. ALFIERI:

7 Q Okay. Now, I would like you to turn within that document  
8 to Page 7.

9 A I have it.

10 Q Okay. Now, I've marked an item on Page 7 for ease of  
11 reference. Can you read into the record -- first of all,  
12 before we do that, is it your testimony that -- to your  
13 knowledge, is this Exhibit C, which is marked as Exhibit 8 in  
14 your hand, is this the Exhibit C subject to the order that we  
15 just went through?

16 A That's my understanding. Yes, sir.

17 Q Okay. So is it your understanding that the servicing  
18 agreements in Exhibit C were purchased by American Home  
19 Mortgage Acquisition?

20 A Yes, sir.

21 Q Okay. Then let's take a look at the first item in our list  
22 on Page 7. Can you read into the record what particular item  
23 there is listed?

24 A (reading)

25 Reconstituted Servicing Agreement dated as of August

1 1, 2006, by and among American Home Mortgage Corp.  
2 ("American Home" or the "Seller"), American Home  
3 Mortgage Servicing, Inc. ("American Home Mortgage  
4 Servicing" or the "Servicer"), Greenwich Capital  
5 Acceptance, Inc. ("GCA" or the "Depositor"), Greenwich  
6 Capital Financial Products, Inc. ("GCFP"), and Wells  
7 Fargo Bank as Master Servicer (in such capacity, the  
8 "Master Servicer") and Securities Administrator (in  
9 such capacity, the "Securities Administrator"), and  
10 acknowledged by Deutsche Bank National Trust Company  
11 as trustee (the "Trustee").

12 Q Is it your understanding that this particular reconstituted  
13 servicing agreement which is listed on Exhibit C to the  
14 bankruptcy court order was purchased by American Mortgage  
15 Acquisition, Inc.?

16 A Yes.

17 Q Okay.

18 A That's my understanding, sir.

19 MR. ALFIERI: I move to admit Exhibits 6 and 8 into  
20 the record.

21 MR. BARTHLOW: No objection.

22 THE COURT: They'll be admitted.

23 (AHMSI Exhibits 6 and 8 are received into evidence.)

24 THE COURT: I appreciate that, by the way, Mr.  
25 Bartholow. I recognize you could have put Mr. Alfieri through

1 more hoops to authenticate them, but it saves us time and I'm  
2 grateful to you, since we know we can get to the Delaware site  
3 and authenticate them ourselves.

4 MR. ALFIERI: I'm now going to turn to Tab 2 in our  
5 books. May I approach the witness, Your Honor?

6 THE COURT: Yes. I'm assuming that all of the copies  
7 of exhibits that have been provided to Mr. Bartholow have the  
8 same highlighting that my copies do?

9 MR. ALFIERI: Yes, sir.

10 THE COURT: All right.

11 BY MR. ALFIERI:

12 Q Can you identify the document I just put in front of you  
13 and marked as Exhibit 2?

14 A It is the Reconstituted Servicing Agreement.

15 Q Can you be a little bit more explicit than that?

16 A For the -- (pause).

17 MR. BARTHLOW: Your Honor, I'm sorry. I'm going to  
18 have to object again on lack of foundation. To the extent that  
19 he wants to identify the title of the document, I have no  
20 problem with that. To the extent that he is stating that he  
21 knows what this document is and what it does, I'd like him to  
22 speak to that issue.

23 THE COURT: I'm assuming that what you're trying to do  
24 is tie Exhibit 2 to the entry in Exhibit 8, and you probably do  
25 need to show how he can put those two together, if indeed he

1 can. Okay?

2 MR. ALFIERI: I was hoping he would read -- be a  
3 little bit more explanatory with respect to --

4 THE COURT: He's welcome to -- you're welcome to have  
5 him read something. I'm not sure that that's going to get you  
6 -- get that tied up, but that's your problem, not mine.

7 MR. ALFIERI: Yes. Okay.

8 BY MR. ALFIERI:

9 Q Mr. Kistler, can you read for me the first paragraph in the  
10 Reconstituted -- in the document I've put in front of you?

11 A (reading)

12 This Reconstituted Servicing Agreement (this  
13 "Agreement") dated as of August 1, 2006 is by and  
14 among American Home Mortgage Corp. ("American Home" or  
15 the "Seller"), American Home Mortgage Servicing, Inc.  
16 ("American Home Mortgage Servicing" or the  
17 "Servicer"), Greenwich Capital Acceptance, Inc. ("GCA"  
18 or the "Depositor"), Greenwich Capital Financial  
19 Products, Inc. ("GCFP") and Wells Fargo Bank, N.A. as  
20 Master Servicer (in such capacity, the "Master  
21 Servicer") and Securities Administrator (in such  
22 capacity, the "Securities Administrator") and is  
23 acknowledged by Deutsche Bank National Trust Company  
24 as Trustee (the "Trustee").

25 Q Okay. Now, to your knowledge, is this Reconstituted

1 Servicing Agreement that I've marked as Exhibit 2, is this the  
2 servicing agreement that was purchased by AHMSI out of the  
3 bankruptcy court?

4 A Yes, sir. That's my understanding.

5 Q Okay. So you would -- so it's your testimony that the  
6 Reconstituted -- that this --

7 MR. BARTHLOW: Objection. Your Honor, I'm sorry.  
8 That question mischaracterized the testimony, because as Mr.  
9 Alfieri has stated, is it your understanding that that is the  
10 servicing agreement that was purchased by AHMSI, and my  
11 understanding is that, in fact, the servicing agreement was  
12 purchased by AH Acquisition Co., and I think that's been the  
13 testimony thus far.

14 THE COURT: Well, that's correct. But let's go ahead.  
15 Take the question with the modification that Mr. Bartholow has  
16 provided, that it's -- let's call it Acquisitions, okay?

17 MR. ALFIERI: Yes, sir.

18 THE COURT: Is that all right?

19 MR. BARTHLOW: Yes, Your Honor.

20 THE COURT: So that this was: Under the order that is  
21 Exhibit 6, it is your understanding that this agreement is the  
22 agreement referred to on Page 7 of Exhibit C, which is our  
23 Exhibit 8, and that this is the same agreement that was listed  
24 there as 1.1-JV. Is that correct?

25 THE WITNESS: Yes, sir. That is correct.

1 THE COURT: All right. Does that --

2 MR. ALFIERI: Okay.

3 THE COURT: -- take care of you? And it's -- you  
4 still haven't gotten it to AHMSI from Acquisitions. Okay?

5 MR. ALFIERI: And let's do so. My oversight. And  
6 this is a good time to do that.

7 BY MR. ALFIERI:

8 Q Explain to me, explain to the Court how it is that the  
9 Movant is American Home Mortgage Servicing, Inc. and yet the  
10 purchaser out of the bankruptcy court is a different entity.  
11 Can you walk us through that?

12 THE COURT: Okay. Wait a minute.

13 MR. BARTHOLOW: And again, I'm going to object for  
14 lack of foundation. I think that -- it may be that this  
15 question can be made more functional, but I think at this point  
16 there has been no testimony by the witness regarding his  
17 knowledge of whatever that transaction would be and why he  
18 would know about that.

19 THE COURT: Well, let's go ahead and -- Mr. Alfieri's  
20 question is pretty broad. This is a bench trial. So let's go  
21 ahead and we'll hear what Mr. Kistler has to say, and we'll  
22 explore it further after that. All right? And I'm not -- I  
23 mean, if you're just saying, "I got a call from my boss and he  
24 said we changed the name," that probably is not going to carry  
25 the day. Okay?

1 BY MR. ALFIERI:

2 Q Mr. Kistler?

3 A Between November 2007 and April 2008, the company operated  
4 under the name of AH Acquisition Company. In April of 2008, at  
5 the legal close of the transaction of the purchase of the  
6 loans, the company name was changed to American Home Mortgage  
7 Servicing, Inc., a Delaware corporation. And I believe the  
8 appropriate documentation has been filed within the -- with the  
9 Delaware Secretary of State officially changing the name of the  
10 company.

11 MR. BARTHLOW: And again, Your Honor, I need to  
12 object to that response to the extent that it's based on  
13 hearsay. The best evidence would be, in fact, the name change.

14 THE COURT: Okay.

15 MR. ALFIERI: May I approach?

16 THE COURT: Go ahead. (Pause.) Have you got a copy  
17 for my law clerks?

18 BY MR. ALFIERI:

19 Q Mr. Kistler, can you tell me, can you identify the document  
20 that I put in front of you?

21 MR. BARTHLOW: Your Honor, again, I'm going to object  
22 to this document to the extent it has not been previously  
23 provided in this case. I've not seen it before at all. And  
24 he's failed to lay any foundation for his ability to  
25 authenticate it.

1 THE COURT: All right. Mr. Alfieri, any response?

2 MR. ALFIERI: Your Honor, this is a filed document.

3 It's true that I haven't previously identified it, but I can  
4 identify -- I wasn't able to anticipate all of the objections  
5 that --

6 THE COURT: Well, --

7 MR. ALFIERI: -- the Debtors might have with respect  
8 to --

9 THE COURT: Is this something that, if we went online,  
10 we could find this?

11 MR. ALFIERI: Yes, sir.

12 THE COURT: All right. All right. Mr. Bartholow, my  
13 reaction is that I can take judicial notice of documents of the  
14 State of Delaware that are online. And I'm inclined to go  
15 forward and let him put this in to save time. If you want to  
16 press that, we can go ahead and get online and check it. But  
17 at this point, it seems to me it's a fair point that the  
18 question has been raised as to whether or not, in fact,  
19 Acquisitions and AHMSI are the same critter, and that question,  
20 having been raised, I'm going to let him close that loop.  
21 Okay?

22 So it's up to you. If you want, we'll get online, we'll  
23 take a recess. But that probably would waste our time unless  
24 you have a reason to believe that this is not accurate.

25 MR. BARTHLOW: Your Honor, I -- you know, looking at

1 these documents, I don't have any specific reason to believe in  
2 its authenticity or inauthenticity. I certainly -- I just --

3 THE COURT: Well, I'll tell you what. You can check  
4 it online yourself after the hearing, and if it turns out Mr.  
5 Alfieri is doing something naughty here, Mr. Alfieri's days of  
6 practicing law will be at an end. And I'm comfortable that he  
7 would not run that risk for AHMSI or any other client. So  
8 let's go ahead. I'm going to admit this, but I'm going to give  
9 you leave, if you check after the hearing, to let me know that  
10 there's a problem with this document. But at this point, we're  
11 trying to close a gap here that it seems to me is going to be  
12 closed. It's just a matter of time. And I'd rather do it in  
13 less rather than more time. Okay?

14 MR. BARTHOLOW: And Your Honor, for the record, I do  
15 not have any reason to doubt --

16 THE COURT: Okay. I understand.

17 MR. BARTHOLOW: -- the authenticity of what Mr.  
18 Alfieri has provided.

19 THE COURT: All right. I understand. And I'm telling  
20 you, though, if it turns out that he's being sneaky or anything  
21 here, you will have your opportunity to get vengeance. All  
22 right? All right. Go ahead, Mr. Alfieri.

23 BY MR. ALFIERI:

24 Q Mr. Kistler, will you turn to Page 3 of the document I put  
25 in front of you?

1 A I have it.

2 Q Okay. And would you please read the four paragraphs that  
3 are on Page 3?

4 MR. BARTHLOW: Your Honor, excuse me. I'm not trying  
5 to be difficult or to delay this. But I'm not sure I  
6 understand which Page 3 he's referring to. I do not --

7 THE COURT: He's referring to the third page of the  
8 document. I don't believe that it is a page labeled as 3.

9 MR. BARTHLOW: Okay.

10 THE COURT: And I do read myself, and I do read that  
11 this is a Certificate of Amendment by AH Mortgage Acquisition  
12 changing its name to American Home Mortgage Servicing, Inc. Do  
13 you need to go farther than that?

14 MR. ALFIERI: No, sir.

15 THE COURT: All right.

16 MR. ALFIERI: If you're satisfied, then --

17 THE COURT: Then proceed.

18 MR. ALFIERI: -- that's fine. Okay.

19 BY MR. ALFIERI:

20 Q So let's go back.

21 THE COURT: And do you want to designate this as an  
22 exhibit and offer it?

23 MR. ALFIERI: Yes, sir. I designated it as Exhibit  
24 14, and I would offer it into evidence right now.

25 THE COURT: Okay.

1 MR. BARTHOLOW: No objection, Your Honor, at this  
2 time, subject to the reservations --

3 THE COURT: I understand. Would be subject to  
4 reservations expressed before. It will be admitted.

5 (Movant AHMSI's Exhibit 14 is received into evidence.)

6 THE COURT: All right. Go ahead.

7 BY MR. ALFIERI:

8 Q Okay. So if you could go back and retrace the history of  
9 American Home Mortgage Servicing, Inc. as it currently exists  
10 now. Can you go back and go through that name change, that  
11 sequence, again for us, please? Just so that I can --

12 A Between November --

13 Q -- figure out where we're at.

14 A -- 2007 and April 2008, --

15 Q Yes. Yes.

16 A -- the company was known as AH Mortgage Acquisition  
17 Company. Roughly in April of 2008, after the legal close  
18 through the Bankruptcy Court in Delaware, the company name was  
19 changed to American Home Mortgage Servicing, Inc., a Delaware  
20 corporation.

21 Q Okay. Do you know why they decided to keep -- to go back  
22 -- to change their name and go back to the old name of the  
23 bankrupt entity?

24 A No, sir. I do not know why they decided to do that.

25 Q Okay.

1 MR. BARTHOLOW: Your Honor, I'm sorry. One more small  
2 comment here is there appear to be several documents attached  
3 to this Exhibit 14. There is an Amendment to Registration that  
4 is the first page that is from the Secretary of State for the  
5 State of Texas. That's actually the first two pages of this  
6 stapled group. The third page, as we've discussed, is the  
7 Delaware Secretary of State name change. But what we have not  
8 discussed are the final three pages of that document. And  
9 again, there may be a very simple explanation for this, but I'm  
10 not clear based on the testimony that's been provided what the  
11 association to the first couple of documents these final three  
12 pages have.

13 THE COURT: All right. Well, we're not going to go  
14 through every document in the case page by page. I have looked  
15 at those. I understand what they are. I think you do, too.  
16 I'm not going to -- at this point, all that I'm concerned with  
17 is this page, the one that says Delaware at the top. If any  
18 other page comes up in the course of Mr. Alfieri's examination  
19 or your cross-examination, I'll worry about it then. At this  
20 point, I'm only worried about that one page. Okay?

21 Go ahead, Mr. Alfieri.

22 MR. ALFIERI: Thank you, Your Honor.

23 BY MR. ALFIERI:

24 Q Now, I would redirect your attention to Exhibit 2, please,  
25 Mr. Kistler. The Reconstituted Servicing Agreement, in the

1 first paragraph of the recitals, refers to a Pooling and  
2 Servicing Agreement. Do you see that?

3 A Yes, sir, I see that.

4 Q Okay. Do you know what that is?

5 A The Pooling and Servicing Agreement?

6 Q Yes, sir.

7 A It is the document that was originated providing guidelines  
8 and guidance to the trustee, the custodian, the master  
9 servicer, the servicer, the seller, the purchaser on this  
10 particular securitization.

11 Q Okay. How do you know that?

12 A I have reviewed portions of the Pooling and Servicing  
13 Agreement as it applies to the custodial responsibilities and  
14 some of the trustee responsibilities.

15 Q So is it correct to say that you are familiar with certain  
16 provisions of the Pooling and Servicing Agreement?

17 A Yes, sir. I am familiar with certain provisions.

18 MR. ALFIERI: May I approach?

19 THE COURT: Please.

20 MR. ALFIERI: Okay. The document that I handed the  
21 witness came out of Tab 1, and I've marked it as Exhibit 1,  
22 Your Honor.

23 THE COURT: Very well. Have you offered 2, by the  
24 way, and do you wish to?

25 MR. ALFIERI: I'm sorry?

1 THE COURT: Have you offered Exhibit 2, and do you  
2 wish to if you have not?

3 MR. ALFIERI: I'll do it in conjunction with this,  
4 Your Honor.

5 THE COURT: All right.

6 BY MR. ALFIERI:

7 Q Now, a bit ago you mentioned that you were familiar -- that  
8 you had knowledge with the Pooling and Servicing Agreements  
9 recited in the Reconstituted Service Agreement, correct?

10 A Yes, sir.

11 Q Now, take a look at Exhibit 1 that I just put in front of  
12 you. Can you tell me what that is?

13 A It is the Pooling and Servicing Agreement for the Harbor  
14 View 2006-7 securitization.

15 Q Okay. Is that the Pooling and Servicing Agreement that is  
16 referred to in the Reconstituted Servicing Agreement?

17 A Yes, sir. This is the document.

18 Q Okay. Now, please tell the Court what particular sections  
19 of this particular Pooling and Servicing Agreement you might be  
20 familiar with.

21 A The sections that deal with endorsements of the note, the  
22 section that entails the naming of a trustee, the custodian,  
23 the master servicer. Those are the sections that I am most  
24 familiar with.

25 Q Okay. Now, to your knowledge, how many notes might be

1 subject to this Pooling and Servicing Agreement?

2 MR. BARTHLOW: Objection. Lack of foundation. We  
3 have no basis for knowing how he knows that.

4 MR. ALFIERI: Okay. Let's ask it a different way.

5 BY MR. ALFIERI:

6 Q As part of your custodial functions, you mentioned earlier  
7 that you often have to deal with certain custodians with  
8 respect to getting original notes. Is that correct?

9 A Yes, sir. That's correct.

10 Q Okay. Have you ever had to -- did you ever have to do this  
11 with the this particular Pooling and Servicing Agreement?

12 A Yes, sir.

13 Q You did?

14 A I did, to obtain the original collateral file for the note  
15 and a deed of trust for the Troutman loan. Yes, sir.

16 Q Okay. Who is identified as the custodian in these Pooling  
17 -- the Pooling and Servicing Agreement?

18 A Deutsche Bank National Trust Company.

19 Q Can you point me to the particular section where that is  
20 stated?

21 A It is on Page 22 of 221, or Page 17. It lists the  
22 custodian as Deutsche Bank National Trust Company, its  
23 successors, and its successors acting as custodian of the  
24 mortgage files.

25 Q Okay.

1 THE WITNESS: Sorry, ma'am.

2 THE COURT: We have an electronic recording system,  
3 and if you don't get on the microphone, you don't get on the  
4 record. And if you don't get on the record, it makes it  
5 difficult later. Okay?

6 THE WITNESS: Yes, sir. My apologies.

7 THE COURT: That's all right.

8 THE WITNESS: It's Page 17 of the document, or I also  
9 identify it as Page 22 of 221.

10 MR. ALFIERI: Okay. And for the record, it is also  
11 identified as AHMSI Troutman Bates Stamp #00650 at the bottom  
12 of the page.

13 BY MR. ALFIERI:

14 Q Now, when you contacted Deutsche as custodian, what did you  
15 ask --

16 MR. BARTHLOW: I'm sorry, Your Honor. This is  
17 leading, and it's testimonial. I think he testified that AHMSI  
18 contacted Deutsche, but I don't believe the testimony was that  
19 he contacted Deutsche.

20 THE COURT: I understood him to be saying he did.

21 Were you the one that contacted Deutsche?

22 THE WITNESS: No, sir. I did not -- I personally did  
23 not contact Deutsche Bank.

24 THE COURT: All right. Then he probably can't --

25 THE WITNESS: Someone in my department.

1 THE COURT: Then he probably can't testify about it.

2 MR. ALFIERI: Pardon me?

3 THE COURT: Go ahead.

4 BY MR. ALFIERI:

5 Q Did someone from your office contact Deutsche Bank?

6 A Yes, sir. Someone on my staff within my department  
7 contacted Deutsche Bank, requesting this file.

8 Q And how is it that that person knew to contact Deutsche  
9 Bank?

10 MR. BARTHLOW: Objection. Hearsay.

11 THE COURT: You can go ahead and answer that one.

12 THE WITNESS: Within our servicing system, we have a  
13 screen within that servicing system that identifies the  
14 individual investor numbers for each securitization, and also  
15 on that screen it provides a field on that screen that has a  
16 numeric identification number identifying which custodian we  
17 should contact for that particular file.

18 THE COURT: And it's your assumption that your  
19 employee went through that to figure out to call Deutsche?

20 THE WITNESS: Yes, sir. That's --

21 THE COURT: All right. Go ahead.

22 MR. ALFIERI: Okay.

23 BY MR. ALFIERI:

24 Q Did you contact Deutsche personally with respect to  
25 obtaining a full schedule of all of the mortgage loans subject

1 to this Pooling and Servicing Agreement?

2 A Yes, sir. I personally contacted Deutsche Bank, asking for  
3 a full pool schedule of this securitization.

4 Q And did they send you a full pool schedule?

5 A Yes, sir. They did.

6 MR. BARTHOLOW: Objection. Also calls for hearsay.  
7 He's testifying to the business record of another entity, and  
8 he's not laid a foundation for his knowledge of the business  
9 practices of that entity that created the record.

10 THE COURT: They sent you something that you got,  
11 right?

12 THE WITNESS: Yes, sir. They sent me --

13 THE COURT: And you assumed it was a listing of the  
14 notes or the transactions covered by the pooling agreement?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Good. Go on.

17 BY MR. ALFIERI:

18 Q Do you have any doubt that the documents that Deutsche sent  
19 to you with respect to these loans are in fact the loans  
20 subject to this Pooling and Servicing Agreement?

21 MR. BARTHOLOW: Objection. Irrelevant as to whether  
22 he has doubts about that.

23 MR. ALFIERI: I think it's perfectly relevant, Your  
24 Honor.

25 THE COURT: I'm going to sustain the objection. Move

1 along.

2 MR. ALFIERI: Okay.

3 BY MR. ALFIERI:

4 Q Okay.

5 THE COURT: Look. It seems to me we've got one loan  
6 at issue. I don't care if he got a complete list of the loans  
7 or not. Okay? What I'm interested in is the loan we're  
8 talking about today. Maybe I'm mistaking something, but I  
9 don't see that whether the list was complete or whether it  
10 included inaccuracies other than with respect to this loan, why  
11 I would care. But go ahead.

12 MR. ALFIERI: Well, then let me tell you, Your Honor.  
13 We have the full loan schedule here. Okay? I did not provide  
14 it to Mr. Bartholow on confidentiality grounds, but I did  
15 provide to him the excerpt from that loan schedule showing the  
16 Troutmans' loan on that schedule. Now, we can do a couple  
17 things. I'll leave it up -- it's obviously up to you on what  
18 you want to do. We can introduce into the record the full loan  
19 schedule, which includes the Troutman loan. We can introduce a  
20 portion of the loan schedule.

21 THE COURT: All right. It would seem to me, and I'm  
22 not going to tell you how -- you guys have got to figure out  
23 how to make your own case. But I'd like it to move reasonably  
24 quickly. And if you were to show him something and say, "Where  
25 did this come from?" and he said, "That is an excerpt that I

1 extracted from the complete list," I would be inclined to  
2 accept that as indicating that it came from the complete list,  
3 without requiring that the complete list be put into the  
4 record.

5 MR. ALFIERI: Okay.

6 THE COURT: Okay?

7 MR. ALFIERI: That's fine.

8 THE COURT: And if you have a problem, you can take it  
9 up on cross. All right?

10 Okay. Go ahead.

11 BY MR. ALFIERI:

12 Q Okay. At this point, then, before we move into the loan, I  
13 would ask you to identify, under the Pooling and Servicing  
14 Agreement, who the trustee is.

15 A The trustee is Deutsche Bank National Trust Company, not in  
16 its individual capacity but solely as trustee and national  
17 banking association, its successor and/or assigns, or any  
18 successor trustee appointed herein provided. That is on Page  
19 49 of the document, or I'll additionally identify it as Page 54  
20 of 221.

21 Q Now, Mr. Kistler, is the Pooling and Servicing Agreement a  
22 publicly-filed document?

23 A Yes, sir, it is.

24 Q And in fact, when you got a copy of the Pooling and  
25 Servicing Agreement, where did you go to obtain that copy?

1 A From the EDGAR Web site to -- is where we went to obtain a  
2 copy of this document.

3 Q Okay. And with respect to the Reconstituted Pooling --  
4 Servicing agreement, --

5 A Same location.

6 Q Okay. You anticipated my question.

7 A The EDGAR --

8 Q Is that --

9 A Yeah, the EDGAR.

10 Q Is that a publicly-filed document as well?

11 A Yes, it is, sir. I'm sorry.

12 Q All right.

13 MR. ALFIERI: At this point, Your Honor, then I would  
14 move to admit Exhibits 1 and 2 into the record.

15 MR. BARTHOLOW: And again, Your Honor, as publicly-  
16 filed documents, I have no objection to them being admitted.  
17 To the extent that this purports to be evidence of anything  
18 other than the existence of this agreement, I object to that.

19 THE COURT: They'll be admitted.

20 MR. ALFIERI: Okay.

21 (Movant AHMSI's Exhibits 1 and 2 are received into  
22 evidence.)

23 MR. ALFIERI: May I approach the witness, Your Honor?

24 THE COURT: Yes.

25 MR. ALFIERI: And here, I am asking the Court to

1 reference Tab 9, which I have marked as Exhibit 9.

2 BY MR. ALFIERI:

3 Q Mr. Kistler, can you identify the document that I've put in  
4 front of you?

5 A It is the --

6 MR. BARTHLOW: Objection. Lack of foundation.

7 THE COURT: Overruled. You can tell us how you -- if  
8 you can identify it.

9 THE WITNESS: It is an excerpt of the pool schedule  
10 for this securitization, sir.

11 MR. BARTHLOW: Objection. Again, hearsay.

12 MR. ALFIERI: Your Honor, it came out of the Pooling  
13 and Servicing Agreement which Mr. Kistler testified he  
14 received.

15 THE COURT: Okay. Did this come out of the Pooling  
16 and Servicing Agreement?

17 THE WITNESS: It came out of the pool schedule, sir.

18 THE COURT: Out of the pool schedule? And this is the  
19 part that you would prefer to keep confidential except for the  
20 specific loan?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Overruled. Go ahead.

23 MR. ALFIERI: Thank you, Your Honor.

24 BY MR. ALFIERI:

25 Q Okay. Again, explain to me again what this document is

1 that I've put in front of you.

2 A It is the pool schedule -- an excerpt from the pool  
3 schedule for the Harbor View 2006-7 securitization.

4 Q And does it show a particular loan?

5 A It shows the Troutman loan as being part of this  
6 securitization.

7 Q Very good.

8 MR. ALFIERI: I move that it be entered into evidence,  
9 Your Honor.

10 MR. BARTHOLOW: Again, I'm going to preserve my  
11 objection that it's hearsay and that he can't authenticate the  
12 business record of another entity.

13 THE COURT: Overruled. But I don't understand how  
14 this relates to the Troutman loan. I don't see anything that  
15 identifies it at this point as such.

16 MR. ALFIERI: As the Troutman loan, Your Honor?

17 THE COURT: Yes. I don't see the name "Troutman" on  
18 it.

19 MR. ALFIERI: Okay. Then let's go through it.

20 BY MR. ALFIERI:

21 Q Now, there are several pages here, Mr. Kistler.

22 A Yes.

23 Q What I would ask you to do is turn to Page -- (pause).

24 Huh. (Continued pause.) Okay. I just put a document in front  
25 of you, Mr. Kistler. Can you briefly describe what that

1 document is?

2 A It is an excerpt of the --

3 MR. BARTHOLOW: Your Honor, --

4 THE COURT: Let him describe it, Mr. Bartholow. Sit  
5 back down.

6 THE WITNESS: It is the -- an excerpt of the pool  
7 schedule for the Harbor View 2006-7 securitization. Line 4379  
8 identifies the --

9 THE COURT: Okay. Now, do you have an objection?

10 MR. BARTHOLOW: May I take him on *voir dire* regarding  
11 his knowledge --

12 THE COURT: Yes, you may.

13 MR. BARTHOLOW: -- of this document?

14 THE COURT: Let him take him on *voir dire*.

15 VOIR DIRE EXAMINATION

16 BY MR. BARTHOLOW:

17 Q Mr. Kistler, you testified earlier that you requested this  
18 document from what entity?

19 A From Deutsche Bank National Trust Company, sir.

20 Q Okay. And did -- so this is not a document that you  
21 prepared, correct?

22 A No, sir. I did not prepare this document.

23 Q Okay. And did you talk to a specific person at Deutsche  
24 Bank when you made the request?

25 A Yes, sir, I did.

1 Q Who was that?

2 A Angel Sanchez.

3 Q Okay. Did Angel Sanchez prepare this document?

4 A No, sir, he did not.

5 Q Okay. Who prepared this document?

6 A I do not know, sir.

7 Q Okay. And do you know where Deutsche Bank obtained the  
8 information that is contained in this document?

9 A It was provided to them as part of the original  
10 securitization, --

11 Q And how --

12 A -- I believe.

13 Q How is it that you know that?

14 A That's normal banking practice and mortgage banking  
15 practices.

16 Q Okay. With regard to this loan, was it AHMSI that provided  
17 that information to Deutsche Bank?

18 MR. ALFIERI: Objection, Your Honor. He needs to  
19 identify the entity --

20 THE COURT: You stand up when you make objections, Mr.  
21 Alfieri.

22 MR. ALFIERI: I'm sorry, Your Honor. I would ask Mr.  
23 Bartholow to please be specific as to the entity he's referring  
24 to in providing the documents -- the information.

25 MR. BARTHLOW: Fair enough. Let me rephrase the

1 question.

2 THE COURT: Go ahead.

3 BY MR. BARTHLOW:

4 Q Do you know what entity specifically provided this  
5 information to Deutsche Bank?

6 A No, sir, I do not know specifically which organization  
7 provided this.

8 THE COURT: Mr. Bartholow, I'm going to let you go  
9 down this road. Why don't you guys come over here, okay?  
10 (Sidebar conference.)

11 MR. BARTHLOW: I guess, Your Honor, at this point I  
12 would conclude *voir dire* with my standing objection noted.

13 THE COURT: All right. As I understand it, basically,  
14 it is the Debtor's contention that the documents being  
15 presented to the Court are improperly presented because not  
16 adequately authenticated. It's my finding that under Rule 901  
17 of the Federal Rules of Evidence that the authentication is  
18 sufficient for my purposes. You may have your standing  
19 objection.

20 You may proceed, Mr. Alfieri.

21 MR. ALFIERI: Your Honor, I apologize for revisiting  
22 an issue. You had said earlier that you didn't see Derek  
23 Troutman's name --

24 THE COURT: No, I do now on this, but I did not on  
25 your Exhibit 9.

1 MR. ALFIERI: Okay. If you take a look at Exhibit 9  
2 again, the second page, Your Honor, up at the top, Loan Number,  
3 --

4 THE COURT: Okay. There it says -- I see it now. It  
5 says "Troutma, Derek."

6 MR. ALFIERI: Yes, sir.

7 THE COURT: Okay. Go on. I want to get done with  
8 this trial before the end of the month.

9 MR. ALFIERI: Yes. I agree, Your Honor.

10 THE COURT: So, move.

11 MR. ALFIERI: At this point, I would move to enter  
12 Exhibit 9 into evidence as -- Exhibit 9 into evidence.

13 THE COURT: All right. Any objection? Subject to  
14 your standing objection?

15 MR. BARTHLOW: Not -- subject only to my standing  
16 objection.

17 THE COURT: It will be admitted.

18 MR. ALFIERI: Thank you, Your Honor.

19 (AHMSI Exhibit 9 is received into evidence.)

20 BY MR. ALFIERI:

21 Q Now, subject to your -- now, based on your knowledge, the  
22 pooling and servicing agreement which is Exhibit 1, who's the  
23 owner of the note? Who is the owner of the notes in the  
24 security that the pooling and servicing agreement governs?

25 MR. BARTHLOW: Objection. I'm not sure that we have

1 laid any foundation as to ownership --

2 THE COURT: Okay.

3 MR. BARTHOLOW: -- of the notes.

4 THE COURT: When you service a mortgage, you pay the  
5 owner of the note, right, when you get money in?

6 THE WITNESS: Yes, sir, we do.

7 THE COURT: Okay. So, do you know who the owners of  
8 the notes are that you're paying?

9 THE WITNESS: The owners of the notes are the Trust,  
10 sir.

11 THE WITNESS: I'm not asking you specifically. You  
12 know who the owners of a note is that you're servicing, right?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. So if you were servicing or if  
15 you thought you were servicing the Troutmans' note, you'd know  
16 who was the owner of that note, right?

17 THE WITNESS: Yes, sir, we do.

18 THE COURT: That's the person -- or, at least the  
19 person you think is the owner of the note. Right?

20 THE WITNESS: Yes, sir, we do.

21 THE COURT: And who do you think is the owner of the  
22 Troutmans' note?

23 THE WITNESS: The securitization is the owner of the  
24 note, and Deutsche Bank National Trust Company as trustee takes  
25 their authority from the securitization of the --

1 THE COURT: Who do you send your checks to?

2 THE WITNESS: We send our checks to the Trust.

3 THE COURT: Okay. To Deutsche Bank, Trustee?

4 THE WITNESS: Deutsche Bank as trustee. Yes, sir.

5 THE COURT: All right. Move.

6 BY MR. ALFIERI:

7 Q And can you point the Court to the section of the pooling  
8 and servicing agreement that gives you the -- that tells you  
9 who the trustee is under this pooling and servicing agreement?

10 A I thought we already did it.

11 Q That's Exhibit 1.

12 A It is on Page 49, further identified as Page 54 of 221.

13 Deutsche Bank, Trustee. Deutsche Bank National Trust Company,  
14 not in its individual capacity but solely as trustee, and  
15 national banking association, its successor or assigns, or any  
16 successor trustee appointed as herein provided.

17 Q Okay. I am now --

18 MR. ALFIERI: I now would direct the Court's attention  
19 to Tab 4. May I approach the witness?

20 THE COURT: Yes.

21 BY MR. ALFIERI:

22 Q Can you identify the document I've placed in front of you?

23 A This is the note for the Troutman loan.

24 Q Is this the note you received from the custodian?

25 A Yes, sir. This is the note we received from the custodian.

1 Q So, is that the original Troutman note?

2 A Yes, sir. This is the original Troutman note.

3 Q Now, how do you know that?

4 A Blue ink signature --

5 THE COURT: Just a minute, just a minute.

6 MR. BARTHLOW: Your Honor, may I simply approach the  
7 witness for a moment just to observe the document --

8 THE COURT: Okay.

9 MR. BARTHLOW: -- that he's been presented with?

10 (Pause.)

11 BY MR. ALFIERI:

12 Q Is that the original Troutman note?

13 A Yes, sir. This is the original Troutman note.

14 Q And how do you know it's the original?

15 A It's the -- it's signed in the original blue ink.

16 MR. ALFIERI: Your Honor, at this time I would enter  
17 the original note, Exhibit 4, into evidence.

18 THE COURT: All right. Any objection?

19 MR. BARTHLOW: No objection, Your Honor.

20 THE COURT: Okay. All right. What we're going to do  
21 is I'm going to let you keep the original note, and the copy  
22 that I have in my book, which I presume is the same as the one  
23 Mr. Bartholow has in his book, --

24 MR. ALFIERI: Yes, sir.

25 THE COURT: -- then it will serve for the record. And

1 let the record reflect that the original note has been provided  
2 to the Court for inspection.

3 MR. ALFIERI: Thank you, Your Honor.

4 THE COURT: All right.

5 (AHMSI Exhibit 4 is received into evidence.)

6 BY MR. ALFIERI:

7 Q Let's take a couple questions on this before I take it back  
8 from you, Mr. Kistler. I want you to take a look at Page 7 of  
9 7 on the note.

10 A Yes, sir.

11 Q Do you see any endorsements on there?

12 A There is an endorsement by American Brokers Conduit to  
13 blank.

14 Q Okay. Now, would this endorsement have been on that note  
15 when Mr. Troutman signed it?

16 A No, sir. It would not have been.

17 Q Why?

18 A This -- the endorsement to a note is added after the  
19 closing, once the note is in the possession of the mortgage  
20 company.

21 Q Okay. So to the extent Mr. Troutman may have his own copy,  
22 it may or may not have an endorsement on it?

23 A It should not -- Mr. Troutman's copy should not have an  
24 endorsement on it, sir.

25 Q Okay. Now, let's talk about -- let's turn to the front

1 page.

2 THE COURT: This is -- you're speaking of the  
3 endorsement that says "Pay to the order of" -- blank?

4 MR. ALFIERI: Yes, sir.

5 THE COURT: "Without resource, by American Brokers  
6 Conduit"?

7 MR. ALFIERI: Yes, sir.

8 THE COURT: All right.

9 MR. ALFIERI: Okay.

10 BY MR. ALFIERI:

11 Q Now, let's take a look at the first page. Who is the  
12 lender identified on the note?

13 A American Brokers Conduit, sir.

14 Q Okay. Do you have knowledge as to who American Brokers  
15 Conduit is?

16 A American Brokers Conduit was a trade name of American Home  
17 Mortgage Corporation out of Melville, New York.

18 Q Okay. Are they still in existence?

19 A No, sir. They were part of the bankruptcy of August 6,  
20 2007.

21 Q Okay. So they were a subsidiary or a -- strike that. They  
22 were a related party of the entity that sold the current  
23 American Home Mortgage Servicing, Inc. the -- their servicing  
24 rights?

25 A Yes, sir.

1 Q Okay.

2 A That is true.

3 MR. ALFIERI: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 MR. ALFIERI: I would refer the Court and Mr.

6 Bartholow to Tab 5.

7 THE COURT: Tab 5?

8 MR. ALFIERI: Tab 5.

9 BY MR. ALFIERI:

10 Q Can you identify this?

11 A It is the deed of trust that secures the note for the  
12 Troutman loan.

13 Q Okay.

14 MR. ALFIERI: I'm going to pull a switch, Your Honor.

15 BY MR. ALFIERI:

16 Q And I would ask you to go to Page 15 of 16 in the deed of  
17 -- in this deed of trust.

18 A Yes, sir.

19 Q Do those appear to be original signatures?

20 A Yes, sir. They're the original blue-ink signatures.

21 Q Okay.

22 THE COURT: Do you want to check those, Mr. Bartholow?

23 MR. BARTHLOW: No, thank you, Your Honor.

24 BY MR. ALFIERI:

25 Q Is it your testimony that this is the original deed of

1 trust?

2 A Yes, sir. This is -- that's my testimony.

3 Q Is it your testimony you received this from the custodian?

4 A Yes, sir. That is my testimony.

5 MR. ALFIERI: At this time, I offer Exhibit 5 into  
6 evidence, Your Honor.

7 MR. BARTHOLOW: No objection.

8 THE COURT: All right. It will be admitted. And  
9 we'll do the same substitution as under the note.

10 (AHMSI Exhibit 5 is received into evidence.)

11 MR. ALFIERI: May I approach, Your Honor?

12 THE COURT: Yes.

13 MR. ALFIERI: And here I'm referring to Tab 3, Your  
14 Honor.

15 BY MR. ALFIERI:

16 Q Now, Mr. Kistler, can you identify the document that I've  
17 put in front of you?

18 A The Master Mortgage Loan Purchase and Servicing Agreement  
19 between American Home Mortgage Corp., Seller, American Home  
20 Mortgage Servicing, Inc., Servicer, Greenwich Capital Financial  
21 Products, Initial Purchaser.

22 Q Can you tell me what this document is?

23 A It is the document that is used to service the loan and  
24 also governs the responsibilities of the master servicer,  
25 trustee and custodian.

1 Q Is this document referenced in the reconstituted servicing  
2 agreement that was entered into --

3 A I believe so. Yes, sir.

4 Q Okay. Would you like to refresh your memory and take a  
5 look at it? It's going to be Exhibit 2.

6 THE COURT: Exhibit what?

7 MR. ALFIERI: 2.

8 (Pause.)

9 THE WITNESS: Yes, sir. It is referenced in the  
10 reconstituted pooling and servicing agreement.

11 BY MR. ALFIERI:

12 Q What does this exhibit -- we'll call it a Master Mortgage  
13 Loan Purchase & Servicing Agreement -- what does it do?

14 A It outlines the responsibilities of all parties within the  
15 securitization as to their responsibilities for handling the  
16 payments of the loans, the servicing of the loan, the trustee  
17 agreements, the custodial agreements.

18 Q Okay. On the cover of the document, it cites American Home  
19 Mortgage Corp. as the Seller.

20 A Yes, sir.

21 Q Do you see that? Do you know what they're selling?

22 A They're selling a group of loans to be put into a  
23 securitization.

24 Q Okay. Do you -- to your knowledge, are they the same loans  
25 that are subject to the pooling schedule?

1 THE COURT: Just a minute.

2 MR. BARTHLOW: Again, objection. Lack of foundation.  
3 We don't know what the witness knows at all about American Home  
4 Mortgage Corp., this entity, and he's provided no foundation  
5 for how he knows what loans are subject to this particular  
6 transaction.

7 THE COURT: Do you want to close the gap, Mr. Alfieri?

8 BY MR. ALFIERI:

9 Q American Home Mortgage Servicing, are they the entity that  
10 the current AHMSI purchased the servicing rights to? From?

11 A Yes, sir.

12 MR. BARTHLOW: Objection. Leading.

13 MR. ALFIERI: I think we have to lead to some degree.

14 THE COURT: Well, that's fair enough, but he's already  
15 answered it, so go ahead.

16 MR. ALFIERI: Okay.

17 BY MR. ALFIERI:

18 Q So, going back, the predecessor to American Home Mortgage  
19 Servicing, Inc., you said that they were -- can you tell me one  
20 more time what this document does?

21 A It outlines the responsibilities of all parties concerning  
22 the servicing and trustee responsibilities, purchaser and  
23 depositor responsibilities for this securitization.

24 Q Okay. And it's -- there is an entity on here selling  
25 loans, correct?

1 A Yes, sir.

2 Q Okay. And who is that entity?

3 A It is American Home Mortgage Corp.

4 Q Okay. And they are selling loans to whom?

5 A To Greenwich Capital Financial Products as the initial  
6 purchaser.

7 Q Okay. And are the loans -- and the loans that are being  
8 sold to -- well, let me go back. Who are they selling the  
9 loans to?

10 A They're selling them to Greenwich Capital Financial  
11 Products Services, as --

12 Q And why are they doing that?

13 A For future inclusion into a securitization.

14 Q Okay. And are the loans that are a part of the pooling  
15 agreement, the pooling schedule that Deutsche Bank sent to you,  
16 the same loans that were sold?

17 THE COURT: Just a minute.

18 MR. BARTHOLOW: Objection. Hearsay and lack of  
19 foundation.

20 THE COURT: What was the question again, Mr. Alfieri?

21 MR. ALFIERI: Are the loans that are highlighted in  
22 the pooling schedule the same loans that were sold by American  
23 Home Mortgage Corp. to Greenwich Capital?

24 THE COURT: How would he know that?

25 MR. ALFIERI: Pardon me?

1 THE COURT: How would he know that?

2 MR. ALFIERI: Well, he may know based on his work with  
3 the pooling -- with Deutsche Bank as custodian and with respect  
4 to his, you know, knowledge of American Brokers Conduit, who  
5 originated the Troutman loan. Now, we know that this document  
6 is referenced in the reconstituted servicing agreement.

7 THE COURT: All right. Show me that.

8 MR. ALFIERI: Okay. Take a look at Exhibit 2,  
9 Reconstituted Servicing Agreement. The second recital  
10 paragraph. (Pause.) You see the definition of service loans.

11 THE COURT: Right. Right.

12 MR. ALFIERI: Okay.

13 THE COURT: All right. And then the pooling and  
14 servicing agreement is the one to which the loans are attached,  
15 the listing of the loans?

16 MR. ALFIERI: Actually, they're attached to all of  
17 them, Your Honor.

18 THE COURT: Well, --

19 MR. ALFIERI: We did not --

20 THE COURT: No. I'm just asking you, the one that  
21 I've got here, what did this come from?

22 MR. ALFIERI: That came from --

23 THE COURT: Speak into the microphone, Mr. Alfieri.

24 MR. ALFIERI: I'm sorry. That came directly from  
25 Deutsche Bank.

1 THE COURT: All right. Where would the listing of the  
2 loans be in reference to the reconstituted servicing agreement?  
3 Isn't that what we were looking at to begin with?

4 MR. ALFIERI: Yes, sir. They would come from -- and  
5 I'd ask Mr. Kistler for this information, but they would come  
6 from Deutsche Bank. I understand your question is, well,  
7 aren't they attached somewhere?

8 THE COURT: No. I'm trying -- what I'm trying to do,  
9 I understand how the Exhibit 3 is attached to Exhibit 2. In  
10 fact, it used to originally be an exhibit to Exhibit 2.

11 MR. ALFIERI: Yes, sir.

12 THE COURT: So I understand how those two tie  
13 together. I want you to refresh my recollection on how those  
14 relate to the list of loans.

15 MR. ALFIERI: Okay.

16 BY MR. ALFIERI:

17 Q Mr. Kistler, can you do that?

18 A The list of loans that you have, sir, are from the pooling  
19 and servicing agreement --

20 THE COURT: Okay.

21 THE WITNESS: -- as an exhibit to that pooling and  
22 servicing agreement.

23 THE COURT: That's what I asked.

24 THE WITNESS: Yes, sir. That's what they are.

25 THE COURT: All right.

1 THE WITNESS: That's where they came from.

2 THE COURT: All right. All right. All right. I'm  
3 going to overrule the objection. You may proceed.

4 How long is your examination going to run, Mr. Alfieri?

5 MR. ALFIERI: I'm almost done, Your Honor.

6 THE COURT: All right. Go ahead, then.

7 MR. ALFIERI: Your Honor, at this time, I move to  
8 enter the Master Mortgage Loan Purchase and Servicing  
9 Agreement, Exhibit 3.

10 MR. BARTHLOW: Objection. Hearsay and lack of  
11 foundation. He's -- again, it's -- certainly, it can be  
12 admitted as a public record. But in terms of the list of loans  
13 actually being attached to this, we have no list of loans  
14 that's been provided.

15 THE COURT: All right. It will be admitted. Go  
16 ahead.

17 (AHMSI Exhibit 3 is received into evidence.)

18 MR. ALFIERI: Thank you, Your Honor.

19 BY MR. ALFIERI:

20 Q Now, let's go back to Exhibit 2. Let's go through the  
21 Reconstituted Servicing Agreement one more time, please.

22 A (Pause.) Exhibit 2? I have it.

23 Q Got it? Okay. Now, I want you to walk me and the Court  
24 through -- well, strike that. Take a look at the first recital  
25 paragraph in the Reconstituted Servicing Agreement.

1 A Yes.

2 Q Please read to me the first and only sentence in that  
3 recital.

4 A (reading) "Whereas GCFP has conveyed the mortgage loans  
5 listed on Exhibit 2 hereto, the "serviced loans," to the  
6 depositor pursuant to a mortgage loan purchase agreement dated  
7 August 1, 2006, the mortgage loan purchase agreement between  
8 GCFP and the depositor, and the depositor in turn has conveyed  
9 the serviced loans to the Trustee pursuant to a Pooling and  
10 Servicing Agreement dated August 1, 2006, the Pooling and  
11 Servicing Agreement among GCFP, GCA, the master servicer, the  
12 securities administrator, Clayton Fixed Income Services, the  
13 Trustee, and the Trustee in its capacity as custodian."

14 Q Okay. So explain to me the chain of title -- tell me  
15 exactly what this is doing with respect to the pooled loans  
16 that we talked about earlier.

17 A It is conveying the loans from GCFP, Greenwich Capital  
18 Financial Products, to the Trust, and then on to the Trustee  
19 and its -- in its capacity to service the loans.

20 Q Okay. Does Exhibit 3 actually do that conveyance?

21 A Exhibit 3?

22 Q The Master Mortgage Loan Purchase and Servicing Agreement.

23 A It takes the loans and transfers them into Greenwich  
24 Capital, yes.

25 Q Okay.

1 A Financial Products.

2 Q All right.

3 THE COURT: Are you saying Exhibit 3 transfers them  
4 into --

5 THE WITNESS: As the -- as initial purchaser, yes,  
6 sir.

7 THE COURT: Go ahead.

8 MR. ALFIERI: I'll pass the witness.

9 THE COURT: All right. We're going to take a ten-  
10 minute recess. We'll resume then.

11 THE CLERK: All rise.

12 (A recess ensued from 3:00 p.m. until 3:12 p.m.)

13 THE COURT: Please be seated. All right. Mr.  
14 Bartholow?

15 CROSS-EXAMINATION

16 BY MR. BARTHOLOW:

17 Q Mr. Kistler, did I take your deposition in this case  
18 previously?

19 A Yes, sir, you did.

20 Q Okay. And at that deposition, did we -- do you recall  
21 discussing an Assignment of Note and Deed of Trust?

22 A Yes, sir.

23 Q Okay. If you would, in the Debtors' exhibit binder, which  
24 is the white binder, if you would please turn to Exhibit G,  
25 which I will apologize to the Court and everyone else here is

1 erroneously marked in the upper right-hand corner as Exhibit E.

2 That should --

3 THE COURT: I'm just grateful that you had them  
4 lettered instead of numbered.

5 MR. BARTHLOW: Thank you.

6 BY MR. BARTHLOW:

7 Q So, taking a look at this Exhibit G, do you recognize that  
8 as the assignment that we discussed at your deposition?

9 A Yes, sir.

10 Q Okay. Initially, --

11 A (louder) Yes, sir.

12 Q I'm sorry?

13 A Yes, sir.

14 Q Okay.

15 A I recognize it.

16 Q Initially at your deposition, you testified that this was  
17 the document that conveyed the mortgage loan to the Trust,  
18 correct?

19 MR. ALFIERI: I'm going to have to object, Your Honor.  
20 I would ask Mr. Bartholow to confront him with his deposition  
21 testimony if that in fact is the case.

22 THE COURT: Well, let's see if there's a problem with  
23 it first.

24 THE WITNESS: I recall testifying that this assignment  
25 transferred within the county records the right to do -- to

1 hold legal action, to take legal action against the loan.

2 BY MR. BARTHOLOW:

3 Q Okay. Just to have it at the ready, Exhibit I, Debtor's  
4 Exhibit I, is the transcript of your deposition. And we'll be  
5 taking a look at that in just a moment. However, let's stay on  
6 Exhibit G for right now. And I would like you to read -- can  
7 you tell the difference between certain lines that are bolded  
8 and others that are not bolded on this exhibit?

9 A I believe I can, sir, yes.

10 Q Okay. Well, maybe I -- I'll ask it this way and you  
11 correct me if I'm wrong. Okay? Does this say that, "For value  
12 received, Mortgage Electronic Registration Systems as Nominee  
13 does hereby grant, convey, assign and transfer to Harbor View  
14 2006-7..." Is that --

15 A Yes, sir. That's what it reflects.

16 Q Okay. And does it say that what's being transferred is all  
17 beneficial interests under that certain note and deed of trust?

18 A Yes, sir. That's what it says.

19 Q Okay. However -- and now I'd like you to turn, please, to  
20 Pages 20 and 21 of your deposition, which are at --

21 THE COURT: These are the, like the quartered pages?  
22 20 and 21?

23 MR. BARTHOLOW: Your Honor, is your exhibit all  
24 quartered?

25 THE COURT: Yes. Like this.

1 MR. BARTHOLOW: Okay. Then, yes, it is the page  
2 numbers identified on each page. And I apologize if you --

3 THE COURT: There are four pages per page, so --

4 MR. BARTHOLOW: I'm sorry. On each quarter.

5 THE COURT: Right. Okay. Thank you.

6 BY MR. BARTHOLOW:

7 Q Okay. And so, looking at the upper right hand page of Page  
8 6 of the quartered section -- I apologize to the extent this is  
9 confusing for the record -- but what are Pages 20 and 21 of the  
10 deposition transcript, --

11 A Yes, sir. I --

12 Q Do you see that?

13 A Yes, sir. I've found those.

14 Q Okay. And -- okay. And if you would, please, briefly read  
15 through -- well, let's just start at the bottom, where the  
16 question says, "Okay. And is it your understanding that this  
17 assignment of note and deed of trust is the document that  
18 conveyed the mortgage loan to this Trust?" And your answer is,  
19 "Yes, sir." Is that correct?

20 A Yes, sir. That's correct.

21 Q Okay. And at that point in the deposition, is it your  
22 recollection that we were discussing this document that's  
23 Exhibit G?

24 A Yes, sir.

25 Q Okay. However, I think you were just clarifying that,

1 later in the deposition, you changed your testimony. Correct?

2 A Yes, sir. That's what I remembered. I did not remember  
3 this.

4 Q Okay. So, later in the deposition, you testified that, in  
5 fact, that this is not the document that conveys all beneficial  
6 interests under the note and deed of trust. Correct?

7 A Yes, sir.

8 Q Okay. And so what this document, this assignment of note  
9 and deed of trust, which is Exhibit G --

10 MR. BARTHOLOW: And actually, I'll move to admit  
11 Exhibit G, Debtor's Exhibit G.

12 THE COURT: Mr. Alfieri?

13 MR. ALFIERI: No objection, Your Honor.

14 THE COURT: Up.

15 MR. ALFIERI: I'm sorry. No objection, Your Honor.

16 THE COURT: It will be admitted.

17 MR. BARTHOLOW: Okay.

18 (Debtor's Exhibit G is received into evidence.)

19 BY MR. BARTHOLOW:

20 Q Okay. And so it's your testimony now that, in fact, this  
21 Assignment of Note and Deed of Trust isn't really what conveyed  
22 the note to the securitized trust, correct?

23 A That is correct, sir.

24 Q Okay. And so -- although would you agree with me that the  
25 language on here indicates that it is purporting to convey an

1 ownership interest in the note and deed of trust?

2 A Yes, sir. I will agree with that.

3 Q Okay. If that's not what it's doing, why does it say that?

4 A I did not prepare this document, sir, so I cannot testify  
5 as to what the understanding of the department that prepared  
6 this and executed it, what their understanding was.

7 Q Okay. Fair enough. Now, you did testify, however, that  
8 Robert Hardeman, the person who appears to have signed this  
9 assignment of note and deed of trust, is an AHMSI employee,  
10 correct?

11 A Yes, sir. He is.

12 Q Okay. And so effectively this was AHMSI assigning the note  
13 and deed of trust to the entity for which AHMSI was servicing  
14 the loan. Is that correct?

15 MR. ALFIERI: Objection, Your Honor. That's not what  
16 the document calls -- says.

17 THE COURT: I'm sorry. Say again, Mr. Alfieri?

18 MR. ALFIERI: That's not -- he's mis... Mr. Bartholow  
19 is misrepresenting what the document says.

20 MR. BARTHOLOW: Your Honor, I've asked the witness  
21 whether or not that was how he would characterize this  
22 document. If he disagrees, --

23 THE COURT: Okay. Overruled. You may answer.

24 THE WITNESS: Would you repeat the question, please,  
25 sir?

1 BY MR. BARTHOLOW:

2 Q The question was, this -- the person who conveyed this loan  
3 worked for AHMSI, right?

4 A Yes, sir. He did.

5 Q Okay. And so, although it says that MERS is assigning a  
6 loan, effectively, a person who works for AHMSI was conveying  
7 the loan, or at least that's what this document says, to a  
8 trust that AHMSI services. Correct?

9 A No, sir. It reflects that MERS is assigning the loan and  
10 that Mr. Hardeman, as an authorized representative of MERS, was  
11 signing the assignment.

12 Q Okay. So, at that moment in time -- which would be May 19,  
13 2008, correct?

14 A Yes, sir. That's correct.

15 Q Okay. Did AHMSI believe that it was the servicer of this  
16 loan on May 19, 2008?

17 A Yes, sir.

18 Q Okay.

19 A AHMSI believed it was the servicer of this loan.

20 Q Did MERS tell Mr. Hardeman to execute this assignment?

21 A No, sir. They did not tell him.

22 Q Okay. Then how did Mr. Hardeman know to execute this  
23 assignment?

24 A Under our agreement with MERS, they -- AHMSI has the  
25 authority to execute an assignment when needed for legal

1 action.

2 Q Okay. So you said AHMSI has authority to execute an  
3 assignment?

4 A As an -- on behalf of MERS, has the authority to execute an  
5 assignment.

6 Q Okay. Is there any requirement of any action from MERS in  
7 order to notify AHMSI that it's necessary to execute an  
8 assignment?

9 A No, sir. Under the servicing agreements that we have, we  
10 have the authority to make that determination ourselves.

11 Q Okay. And are you aware of any document that's been  
12 provided that allows you to make that determination?

13 A We have a corporate resolution with MERS. Yes, sir.

14 Q Okay. I'd like you to turn now to Exhibit -- Debtor's  
15 Exhibit U. Is that the corporate resolution that authorizes  
16 you -- authorizes AHMSI to assign loans?

17 A Yes, sir.

18 Q Okay. What is your understanding of what the meaning of  
19 the term "assign" is?

20 A To transfer the responsibility and authorization to take  
21 legal action against a deed of trust and note.

22 Q Okay. And so, again, I'm sorry, to reclarify, as of May  
23 19, 2008 when this assignment was executed, was MERS the owner  
24 of the loan?

25 A No, sir. MERS was not the owner of the loan.

1 Q Okay. Was the Trust the owner of the loan when this  
2 assignment was executed?

3 A Yes, sir.

4 Q Okay. And now let's go back to those trust agreements that  
5 we were talking about previously. And is it your testimony  
6 that all of those trust agreements -- let's see, Exhibit 2,  
7 which is the Reconstituted Servicing Agreement, and then  
8 Exhibit 3, which is the Master Mortgage Loan Purchase and  
9 Servicing Agreement -- that those are the documents that  
10 provide for how the loan got to the Trust?

11 A Yes, sir.

12 Q Okay. Now, did you also testify at your deposition that  
13 you believed that American Brokers Conduit transferred the loan  
14 to the Trust?

15 A I would have to review my testimony, sir. I don't remember  
16 specifically saying that.

17 Q Okay. Well, let's do just that. Excuse me.

18 (Pause.)

19 Q Let me ask you a different question while we're looking at  
20 that. Do you recall discussing what a depository was at your  
21 deposition?

22 A I -- vaguely.

23 Q Do you recall telling me that you didn't know what a  
24 depository was?

25 A Yes, sir. I believe I did.

1 Q Okay. Do you now know what a depository is?

2 A No, sir.

3 Q Okay. Do you recall looking at Section 2.01 of the Pooling  
4 and Servicing Agreement, which --

5 A May I look at it again?

6 Q You certainly may. That's Exhibit 2, and we'll have to  
7 find 2.01 in Exhibit 2. (Pause.) And that will be on Page 57  
8 of 221, AHMSI Bates Label 00685.

9 THE COURT: This is Exhibit 2?

10 MR. BARTHOLOW: This is -- I'm sorry, Your Honor.  
11 This is Exhibit 1.

12 THE COURT: You said 2.21?

13 MR. BARTHOLOW: 2.01.

14 THE COURT: 2.01?

15 MR. BARTHOLOW: Which is Page 52 of the agreement,  
16 Page 57 of 221 in the upper right-hand corner, and --

17 THE COURT: Okay. I'm okay now.

18 MR. BARTHOLOW: Got it?

19 THE COURT: Yes.

20 MR. BARTHOLOW: Okay.

21 BY MR. BARTHOLOW:

22 Q Now, are we in agreement that the depository identified in  
23 this trust agreement is Greenwich Capital Acceptance, Inc.?

24 A Yes, sir. We can be in agreement with that.

25 Q Okay. And does 2.01 provide that the depositor is who is

1 transferring the loan to the Trust?

2 A Yes, sir.

3 Q Okay. And so if you testified that American Brokers  
4 Conduit transferred the loan to the Trust, that testimony would  
5 be erroneous, correct?

6 A Yes, sir. That would be -- that would be -- I would have  
7 misspoken.

8 Q Okay. Well, just to identify where in your deposition  
9 testimony, Page 36 of the deposition, which is Page 10 of the  
10 quartered version of the deposition, at Line 4 I ask, "Is it  
11 your understanding that American Brokers Conduit sold this loan  
12 to this trust?" And your answer was, "Yes, sir." Correct?

13 A I found that. Yes, sir.

14 Q Okay. And at that time, are we talking about the  
15 securitized trust that is the subject of this motion?

16 A Yes, sir.

17 Q Okay. And that's the securitized trust that is established  
18 by virtue of Exhibit 1, correct?

19 A Yes, sir. That's correct.

20 Q Okay. So initially you testified that this assignment  
21 document transferred the loan to the Trust, correct?

22 A Yes, sir.

23 Q Okay. And then you testified that American Brokers Conduit  
24 transferred the loan to the Trust, correct?

25 A Yes, sir.

1 Q Okay. And now your testimony is that the depositor  
2 transferred the loan to the Trust. Is that correct?

3 A Yes, sir.

4 Q Okay. Now, what is the date of the -- let's turn back to  
5 Exhibit 3. That's the Master Mortgage Loan Purchase and  
6 Servicing Agreement. That's dated May 1, 2006, correct?

7 A Yes, sir. That's the date of the document.

8 Q Okay. And you testified earlier that all of the loans that  
9 are listed on the schedule that was admitted otherwise were  
10 also subject to this agreement, correct?

11 A Yes, sir.

12 Q Okay. And so that would include, in your opinion, the  
13 Troutman loan, correct?

14 A Yes, sir.

15 Q Okay. Now, it's dated as of May 1, 2006. Is that when  
16 this agreement actually happened?

17 A That's when this agreement was put together for the concept  
18 of creating the securitization. Yes, sir.

19 Q Okay. And on May 1, 2006, were all of the loans in this  
20 deal?

21 A I do not know that, sir.

22 Q You do not know that?

23 A I do not know if all of the loans that ended up in the  
24 final securitization were included in with the initial  
25 securitization-listed loans. No, sir.

1 Q Okay. Well, but the list of loans was attached to this  
2 document, correct?

3 A I would assume that there was a list of loans attached to  
4 this document. Yes, sir.

5 Q Okay. Now, but you testified earlier that it was the same  
6 list, right?

7 A The list, it's the list of loans that was on the final  
8 secur... on the final purchasing, yes, sir.

9 Q Okay. Was also attached to this document?

10 A Yes, sir.

11 Q Okay. And now I'd just like you to turn to Exhibit #4,  
12 please.

13 A Which one is Exhibit 4, sir?

14 Q That would be the adjustable rate note.

15 A I do not have a copy of that, sir. He took it back. I do  
16 not have a copy of that, sir.

17 Q Okay. Let me see if I've got it in my exhibits.

18 MR. BARTHOLOW: Or may I approach, Your Honor?

19 THE COURT: Yes.

20 MR. BARTHOLOW: Okay.

21 BY MR. BARTHOLOW:

22 Q All right. Mr. Kistler, what exhibit are you looking at  
23 right now?

24 A I am looking at Exhibit #4.

25 Q Okay. And is that the same note that you saw the original

1 of with the original blue ink --

2 A Yes, sir.

3 Q -- blue ink signature?

4 A Yes, sir. It's the same one.

5 Q And what is the date of that note?

6 A May 5, 2006.

7 Q Thank you. Mr. Kistler, were you involved in putting  
8 together any of these securitization transactions?

9 A No, sir. I was not.

10 Q Okay. And you testified earlier that you were not the  
11 person that actually requested the note in this case, right?

12 A No, sir. I did not request the file from the -- personally  
13 request the file from custodian.

14 Q Okay. And you testified also that AHMSI came into  
15 existence in -- as it currently exists, came into existence on  
16 April 14th, is that correct, --

17 A I said --

18 Q -- of 2008?

19 A I don't know if I specified a date in April, but I did say  
20 April 2008. Yes, sir.

21 Q April 2008?

22 A Yes, sir.

23 Q Not March?

24 A No, sir.

25 Q Okay. I'd like you to turn back to Exhibit U real quick.

1 And if you'll look towards the bottom of this corporate  
2 resolution, do you see a date?

3 A It says the 25th day of March 2008.

4 Q Okay. So the company you worked for didn't exist then,  
5 right?

6 A It existed under -- my understanding of it is it existed  
7 under AH Mortgage Acquisition Company at that time.

8 Q Okay. But if we look back at the top of this page, this is  
9 identifying American Home Mortgage Servicing, Inc., isn't it?

10 A Yes, sir. It is.

11 Q Okay. But that's not the company that you worked for,  
12 right? As in, that version of the company? Or that -- the  
13 version -- let me -- strike that. Excuse me. Did the version  
14 of the company you worked for exist on March 25, 2008?

15 A It's not my understanding that they did, sir, no.

16 Q Okay. Now, I'd like you to turn to the second page of  
17 Exhibit U. That identifies two certifying officers. Were  
18 there just two certifying officers on here?

19 A No, sir. There was more than that.

20 Q Okay. About how many?

21 A I do not remember, sir.

22 Q Okay. But you were one of the MERS certifying officers  
23 listed here, right?

24 A Yes, sir. I am.

25 Q Okay. And is that other person Robert Hardeman?

1 A Yes, sir. It is.

2 Q Okay. And that's the person that signed this assignment  
3 document, right?

4 A Yes, sir. It is.

5 Q Okay. And do you recall when this property was posted for  
6 foreclosure before the bankruptcy was filed?

7 A No, sir. I do not know that information.

8 MR. BARTHLOW: I have nothing further.

9 MR. ALFIERI: Just a few questions.

10 THE COURT: Go ahead, Mr. Alfieri.

11 REDIRECT EXAMINATION

12 BY MR. ALFIERI:

13 Q Just a couple things, Mr. Kistler. Mr. Bartholow pointed  
14 out some inconsistencies in your testimony in your deposition.  
15 Can you tell us, the Court, today definitively who the  
16 depositor was, who the depositor is in this case?

17 A The depositor, according to the documentation, is Greenwich  
18 Capital Acceptance.

19 Q Okay. Did you have an opportunity to review those  
20 documents during your deposition?

21 A I had a chance to review the pooling and servicing  
22 agreement, yes, sir.

23 Q Okay. Did you look at the pooling and servicing agreement  
24 at the time Mr. Bartholow was asking you those questions?

25 A I do not believe I did, sir.

1 Q Okay. Was your -- okay. I think that's enough on that  
2 one. Let's take a look at Exhibit 3, please. Now, this is  
3 that master mortgage loan purchase and servicing agreement.

4 A Yes, Sir.

5 Q Okay. Now, I want you to listen closely to what I'm asking  
6 you. You note on the first page, dated as of May 1, 2006.

7 Okay. To your knowledge, does that mean that all of the loans  
8 subject to this master mortgage loan purchase and servicing  
9 agreement had to have been closed by May 1, 2006?

10 A No, sir. That does not mean they had to be closed by May  
11 1, 2006.

12 Q What does it mean?

13 A It means that this is the date that the concept for the  
14 securitization was originated, and that they started the  
15 initial work to be able to form the securitization based on a  
16 list of loans that was being supplied.

17 Q Okay. So, loans that were closed subsequent to May 1, 2006  
18 may be subject to this master mortgage loan purchase and  
19 servicing agreement?

20 A Yes, sir.

21 Q Okay. And so, because the Troutmans' loan -- let's be  
22 specific here -- because the Troutmans' loan was closed on or  
23 about May 5th or 6th, if I recall, 2006, that would not exempt  
24 it from this master mortgage loan purchase and servicing  
25 agreement?

1 A No, sir. That would not do that.

2 Q Okay.

3 MR. ALFIERI: No further questions.

4 THE COURT: Mr. Bartholow?

5 RECROSS-EXAMINATION

6 BY MR. BARTHLOW:

7 Q Mr. Kistler, did you review this Exhibit 3 before coming  
8 here today?

9 A No, sir.

10 Q Have you ever seen it before today?

11 A No, sir.

12 Q So your testimony is that this Exhibit 3 is the document  
13 that conveyed the loans to the depository, correct?

14 A Yes, sir. That's my testimony.

15 Q Okay. And I'm sorry. Refresh my recollection on how it is  
16 that you know that.

17 A It is referenced in the pooling and servicing agreement as  
18 the purchasing agreement for the securitization.

19 Q Okay. So you saw that it was mentioned in another  
20 document, is what you're saying?

21 A Yes, sir.

22 Q Okay. And so, having seen this document for the first time  
23 today, you're not able to tell me whether there is any  
24 provision in it that would allow for subsequent loans to be  
25 added to the pool, right?

1 A If you look at the pooling schedule that was supplied for  
2 -- as testimony today, you will see that loans all the way up  
3 through May 18th have been added to the securitization, sir.

4 Q Okay. But you also testified earlier, did you not, that  
5 that schedule was attached to this document, right?

6 A There was a schedule attached to this document. Yes, sir.  
7 I'm not --

8 Q Okay. But it wasn't that schedule?

9 A It wasn't the final schedule.

10 Q Okay. When was the Troutman loan made a part of this  
11 transaction?

12 A According to the document here, this was made part of the  
13 securitization on 5/8/2006.

14 Q 5/8/2006?

15 A Yes, sir.

16 Q Okay. And do you know where the information came from that  
17 would have allowed somebody to put that entry into that  
18 document?

19 A No, sir. I do not -- I was not involved in the make-up of  
20 this securitization.

21 Q Okay. And you're not aware of any provision in this  
22 agreement, specific provision that allows for that, right?

23 A I would have to review the whole document, paragraph by  
24 paragraph.

25 Q Which you have not done, right?

1 A Which I have not done.

2 Q Okay.

3 A No, sir.

4 Q Thank you.

5 THE COURT: Mr. Alfieri, anything further?

6 MR. ALFIERI: No further questions.

7 THE COURT: All right. Thank you, Mr. Kistler. You  
8 may step down.

9 (The witness steps down.)

10 THE COURT: Who do you have next, Mr. Alfieri?

11 MR. ALFIERI: I call Derek Troutman to the stand.

12 THE COURT: All right. Mr. Troutman, if you'll step  
13 over here, the court reporter will swear you in, and then you  
14 may be seated.

15 DEREK TODD TROUTMAN, MOVANT AHMSI'S WITNESS, SWORN

16 THE COURT: I'll tell you what. Before we start this,  
17 I want to visit with Mr. Alfieri and Mr. Bartholow in chambers  
18 for a minute. Let's go talk for a minute.

19 THE CLERK: All rise.

20 (Chambers conference from 3:38 p.m. until 4:13 p.m.)

21 THE COURT: Please be seated. All right, Mr. Alfieri.

22 MR. ALFIERI: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 BY MR. ALFIERI:

1 Q Mr. Troutman, I handed you a document that was previously  
2 admitted into evidence, Exhibit 4. Do you recognize that?

3 A I do.

4 Q Okay. I'd like you to turn to Page 7 of 7, and there's a  
5 blue signature there. Do you recognize that?

6 A I do.

7 Q Is that your signature, Mr. Troutman?

8 A It is.

9 Q Okay. Do you recognize that as your signature on an  
10 adjustable rate note?

11 A Yes.

12 Q And you understand that, in signing that document, you  
13 promised to pay a sum certain as outlined in that note?

14 A Well, I know that's what my signature requires, but as I  
15 look back through my loan, it's not exactly what I thought it  
16 was.

17 MR. ALFIERI: I'm sorry. I'm going to have to object  
18 to nonresponsive, --

19 THE COURT: Sustained.

20 MR. ALFIERI: -- as being nonresponsive.

21 BY MR. ALFIERI:

22 Q Are you liable under that note?

23 A If my signature says that I am, then I am.

24 Q All right. I'll take that as a yes. How much -- how many  
25 months --

1 (Court reporter advises Court of static.)

2 THE COURT: Yes. Somebody has a BlackBerry close to  
3 the microphone? Any of you? Mr. Troutman? Anyone have a  
4 BlackBerry? All right.

5 MR. ALFIERI: I'm sorry, Your Honor. I thought it was  
6 turned off.

7 BY MR. ALFIERI:

8 Q Are you in arrears on this note, Mr. Troutman?

9 A I believe that I am.

10 Q How many months?

11 A I don't know that exactly.

12 Q More than 10?

13 A I don't know that exactly.

14 Q You don't have any idea how many months in arrears you are  
15 on this loan?

16 A The exact months, no, I do not know.

17 Q Okay.

18 A The last I heard, it was probably -- I think it was 10.

19 Q Okay. When was the last time that you paid on the loan?

20 A Well, the last time I paid on the loan was the last time  
21 that American Home Mortgage allowed me to pay on the loan.

22 Q Okay. And when was that?

23 A That was back in April of last year, I believe.

24 Q Okay. Were you current on the mortgage when you paid in  
25 April of last year?

1 A I was not.

2 Q Okay. How many -- when you paid in April of last year, how  
3 many months delinquent were you?

4 A I believe it was three months.

5 Q Okay. And so when you paid in April of last year, just  
6 doing a mental calculation, it would sound like you would be in  
7 arrears about 15 months. Does that sound right?

8 A If -- yeah. That's probably about right.

9 Q Okay. And what have you been doing with the money that you  
10 have not been paying under your mortgage note?

11 A I've been putting it aside because I've tried to pay  
12 American Home Mortgage and they've not allowed me to do that.  
13 So I've put it aside in different investment opportunities.

14 Q What kind of -- what do you mean by "aside"?

15 A So, the money is there. I'm sorry.

16 THE COURT: Okay. Now, wait a minute. Wait a minute.  
17 You ask a question. He answers the question. Let him finish,  
18 then you ask another question. When he's talking, you don't  
19 talk.

20 THE WITNESS: Yes, sir.

21 THE COURT: Go ahead.

22 BY MR. ALFIERI:

23 Q When you say you've put it aside, where did you put it?

24 A I've put it in stocks, I've put it in 401(k) retirement,  
25 I've given money to Thad Bartholow in a trust.

1 Q But you haven't paid Deutsche Bank, correct?

2 A That's not who, under my understanding, who I was supposed  
3 to be paying. I was supposed to be paying American Home  
4 Mortgage as my servicer, which would not allow me to make a  
5 payment.

6 Q Okay.

7 A Or that -- or the payment would be -- would have been made.

8 Q And how do you mean American Home Mortgage Servicing hasn't  
9 allowed you to make your payment?

10 A Because whenever my wife and I tried to do a loan  
11 modification -- for over a year we tried to do a loan  
12 modification with American Home Mortgage. The phone calls that  
13 we've made, the amount of time that we've had to wait on the  
14 phone and people telling us, "Sorry, we're just not going to  
15 help you." They told us, in order to be -- to do a loan  
16 modification, you would have to be at least six months behind  
17 on your mortgage. So, to do that, that was kind of a light  
18 that went on that says, "You know what? If I end up having to  
19 miss a couple of payments for somebody to listen to me to do a  
20 loan modification, then that may be what I need to do."

21 So once I went three months behind, then all of a sudden  
22 they would not let me make a payment anymore when I said, "You  
23 know what? They're still not going to work with me. Maybe I'd  
24 better get this caught up." And that's when they said, "We're  
25 not allowing you to make a payment anymore."

1 Q So it's your testimony that American Home Mortgage  
2 Servicing, Inc. will not take any of your payments?

3 A That's exactly what I'm testifying. I've tried to.

4 Q And is it your testimony that you haven't made a mortgage  
5 payment because American Home Mortgage wouldn't take it and  
6 because you couldn't get a loan modification worked out?

7 A Because American Home Mortgage would not take my payment,  
8 regardless of the loan modification. That's what we were  
9 hoping to do, to make this crazy loan that I have an affordable  
10 and fair loan. I've tried to make the payment on several  
11 occasions. They have returned my payment.

12 Q Okay. About three minutes ago, I talked to you about doing  
13 a loan modification and told you that American Home --

14 THE COURT: Just a minute. What?

15 MR. BARTHOLOW: Objection. He's discussing settlement  
16 negotiations in court.

17 THE COURT: Sustained.

18 MR. ALFIERI: Okay.

19 BY MR. ALFIERI:

20 Q What is it about the loan that that you dispute, about the  
21 loan payment that you dispute?

22 A There's a few things. I'm not sure who I'm really supposed  
23 to be paying, the servicer of the loan. I don't agree with the  
24 payment of the loan. Those are two of the big things.

25 Q And if the Court decides today that you are to pay American

1 Home Mortgage Servicing, then would you be amenable to paying  
2 American Home Mortgage Servicing?

3 A I have money to be able to stay in my house. I don't agree  
4 with the amount of the payment that I need to be paying to live  
5 in my house.

6 Q Okay. Then let's go to that question. What is your  
7 dispute with respect to the payment?

8 A Well, my payment was \$3,200 and it was a negative am loan.  
9 That \$3,200 was a payment that they said that I owed them. And  
10 then all of a sudden when we get behind three months and I try  
11 to make my payment, all of a sudden my payment is \$5,400 a  
12 month. It's a matter of a negative am loan that every single  
13 month that I made my house payment, American Home Mortgage was  
14 adding \$2,000 onto the top of my house, of what I owe on  
15 principal.

16 Q And what was the \$2,000 related to?

17 A The difference in a payment. That's just it. I'm not  
18 exactly sure what that was.

19 Q Okay. Okay. You understand, though, you're obligated to  
20 make a payment under the terms of the note?

21 A I understand that, and what I'm trying to tell you is that  
22 I'm more than willing to make a payment. But a \$5,400 payment  
23 for the house that I live in just doesn't make any sense.

24 Q And why doesn't it make any sense?

25 A That house, from when I purchased -- when I purchased that

1 house at the amount that I purchased it at should not  
2 constitute a \$5,400 payment. Anybody can probably do the math  
3 on that and they can see that.

4 Q And what do you base your conclusion on?

5 A I base it on people that I know within my neighborhood,  
6 what their payments are versus what they owe on their home. I  
7 base that on properties around my house that are for lease-  
8 purchase that the payment is about in line with that \$3,200 a  
9 month.

10 Q Are those payments of your neighbors upon which you're  
11 basing your opinion, are they negative am loans?

12 A That, I do not know.

13 A Okay. Do you know if the neighbors upon whom you are  
14 basing your opinion, whether they are paying the same principal  
15 balance that you're paying?

16 A I would -- yeah, I do. On some of those, I do.

17 Q Okay. And so it's your testimony that some loans in your  
18 neighborhood, the borrowers who have outstanding balances  
19 similar to yours are paying amounts lower than yours. Is that  
20 correct?

21 A That's correct.

22 Q Okay. Do you know what the interest rates are on those  
23 loans?

24 A I don't.

25 Q Okay. All right.

1 MR. ALFIERI: I'll pass the witness, Your Honor.

2 THE COURT: Mr. Bartholow?

3 CROSS-EXAMINATION

4 BY MR. BARTHOLOW:

5 Q Mr. Troutman, do you intend to pay for your house?

6 A Absolutely.

7 Q Okay. And do you agree that you borrowed the money that is  
8 represented in that note?

9 A Absolutely.

10 Q Okay. And so your position is simply that you want to know  
11 what the correct payment amount is, right?

12 A That is correct.

13 Q Okay. And at this time, you do not agree that the \$5,400,  
14 approximately, number that's been claimed in some of the  
15 documents in this case is correct?

16 A That is correct.

17 MR. BARTHOLOW: Nothing further.

18 THE COURT: Mr. Alfieri, anything further?

19 MR. ALFIERI: No, Your Honor.

20 THE COURT: Okay.

21 EXAMINATION BY THE COURT

22 THE COURT: Mr. Troutman, how much of the taxes on  
23 your house?

24 THE WITNESS: About roughly 15. About \$15,000 a year.

25 THE COURT: \$15,000 a year?

1 THE WITNESS: Yes, sir.

2 THE COURT: And what's the insurance cost?

3 THE WITNESS: Insurance, I think we looked that up.  
4 It was about \$2,600 a year.

5 THE COURT: Okay. So, a total of about \$18,000  
6 between the two?

7 THE WITNESS: Yes, sir.

8 THE COURT: Yes, Mr. Bartholow?

9 MR. BARTHLOW: Your Honor, my understanding is that  
10 the Troutmans pay their own insurance.

11 THE COURT: All right. Does your -- who pays the  
12 taxes? Do you pay the taxes directly, or do you escrow against  
13 them?

14 THE WITNESS: Escrow.

15 THE COURT: Okay. All right. And as I understand it,  
16 looking at Exhibit 4, it appears to me that commencing June 1,  
17 2006, you have agreed to pay interest at a yearly rate of  
18 7.553%. Is that correct?

19 THE WITNESS: Yes, Your Honor. If it's in this  
20 document, yes.

21 THE COURT: All right. All right. Thank you. You  
22 may step down.

23 Oh, one last thing. Mr. Troutman, you've indicated in your  
24 affidavit filed in connection with this case that you believe  
25 the value of the home is about \$800,000. Is that correct?

1 THE WITNESS: Pretty close. Yes, Your Honor.

2 THE COURT: Okay.

3 THE WITNESS: It's -- may I also speak?

4 THE COURT: Go ahead.

5 THE WITNESS: It's not just the value of the house.

6 The value has -- the house has increased in value. It has. It  
7 comes down to the importance of the house for me of what I've  
8 -- the money that I've put into it myself.

9 THE COURT: I'm not asking you about that.

10 THE WITNESS: Okay.

11 THE COURT: I'm just trying to determine the value of  
12 the house. What does the taxing authority estimate the value  
13 at? Do you know?

14 THE WITNESS: I'm not sure.

15 THE COURT: All right.

16 THE WITNESS: I'm not sure exactly.

17 THE COURT: All right. Well, hopefully you have  
18 better luck with them than I do. I would sell my house to them  
19 for what they value it at, but they don't want to buy it. They  
20 just want the taxes.

21 Thank you, Mr. Troutman.

22 THE WITNESS: Thank you.

23 THE COURT: You may step down.

24 (The witness steps down.)

25 THE COURT: Okay. Who will you have next, Mr.

1 Alfieri?

2 MR. ALFIERI: That's all I have, Your Honor.

3 THE COURT: Okay. Mr. Bartholow?

4 MR. BARTHOLOW: I'll call Tish Troutman.

5 THE COURT: All right. Mrs. Troutman, if you'll come  
6 up here, the court reporter will swear you in, and then you may  
7 be seated.

8 LETITIA ROSHELLE TROUTMAN, DEBTORS' WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. BARTHOLOW:

11 Q Please state your name for the record.

12 A Letitia Troutman.

13 Q Okay. And what is your address, ma'am?

14 A 105 Wilmington Court, Southlake, Texas 76092.

15 Q And are you one of the Debtors in this case?

16 A Yes.

17 Q Okay. Ms. Troutman, did you hear your husband's testimony  
18 regarding the value of the property a moment ago?

19 A I did.

20 Q Okay. And he testified that it was approximately \$800,000.  
21 Correct?

22 A Correct.

23 Q Okay. What was the original purchase price for this  
24 property?

25 A \$590,000, or, I'm sorry, \$597,000, I believe. Derek?

1 Q Okay.

2 A I can't remember exactly. I'd have to look up -- oh, wait.  
3 Don't I have papers? It's probably here somewhere.

4 Q But a little bit less than \$600,000?

5 A Yes. Sorry. Yes.

6 Q Okay. And did you move here from Atlanta?

7 A We did.

8 Q Okay. When you lived in Atlanta, what was the value of  
9 your property?

10 A We had a home that was \$850,000.

11 Q Okay. And what was the reason that you moved here?

12 A We moved here to get back close to home. We're originally  
13 from Oklahoma. But on top of that, we wanted to downsize our  
14 property and come to a very good school district.

15 Q Okay. And Mr. Troutman testified a moment ago that you had  
16 attempted to modify your loan. Did you attempt to modify the  
17 loan prior to filing bankruptcy?

18 A Several times.

19 Q Okay. When you say "several," could you estimate about how  
20 many times you tried to modify --

21 A I would say at least four times.

22 Q Okay. And what is the reason why you ultimately ended up  
23 having to file a bankruptcy?

24 A American Home Mortgage Servicing was telling us through our  
25 other attorney that they were going to modify our loan. And

1 they kept telling us that over the course of months and months  
2 and months. So we were at a point where we were holding,  
3 trying to figure out what we were supposed to pay and how much.  
4 And at the end of the day, they had a court date for  
5 foreclosure -- I'm sorry, a sale date, I believe, on a Tuesday.  
6 And up until that Saturday prior to that Tuesday sale, they  
7 kept saying they were going to modify for us, talking to our  
8 other attorney. And they would never send over paperwork, they  
9 would never give us the final numbers, they would never talk to  
10 us about anything specific.

11 So the day of -- the last day we actually had conversations  
12 with them, we were literally in the bankruptcy office, and we  
13 had no intention whatsoever of not paying our other creditors  
14 or being in this situation to begin with. We literally had to  
15 do it to stop the sale.

16 Q When you began negotiating your loan modification with  
17 AHMSI, were you current on your mortgage payments?

18 A Yes. Well, let me back that -- let me restate that. When  
19 I first kept calling -- well, I'll go back a little bit  
20 further. Originally on the note, we were told we would have a  
21 one-year prepayment penalty. And come to find out, after that  
22 first year, when I called them and said, "We're ready to do  
23 something, modify this loan, we realize it's not a great loan,"  
24 they said, "Well, you need to be six months behind before we  
25 can talk to you."

1 So, not that it was a great decision, but at that point,  
2 looking at the numbers, for us to even go refinance would have  
3 been several thousand dollars out of pocket. So, looking at  
4 those options, we decided to be late on our payment for three  
5 months. We've had perfect credit for 25 years, so we thought  
6 three months isn't going to hurt us. So we did that first.

7 And then in that third month, when I called them back, they  
8 started to talk a little bit better with us. But as we got  
9 down to trying to get actual paperwork in and numbers to them,  
10 they would shut the door again and not talk to me. I would  
11 call them and sit on hold for 20 minutes before I could talk to  
12 the first person. It was absolutely crazy. And then once we  
13 got to the point where we had hired an attorney, then they  
14 started talking. They started finally talking to him, but he  
15 also got the runaround.

16 And so that's where we got into the bankruptcy office,  
17 because that runaround happened over the course of months and  
18 we never got anywhere.

19 Q Okay. Now, have you made any improvements to your property  
20 since moving in?

21 A We've made several improvements. This is the home we want  
22 to stay in. We came here for the schools, and we love this  
23 house. We painted the inside. We've done about \$150,000 worth  
24 of improvements in the inside and out.

25 Q And could you just briefly describe what those improvements

1 entail?

2 A Well, we painted the entire home. We put wood floors in  
3 upstairs so the kids could keep clean carpet. We didn't want  
4 to worry about the carpet. We did a pool in the back yard. We  
5 did an outdoor kitchen and fireplace. We did landscaping in  
6 the back. And just we put in some wood trim. Coming from our  
7 past home, what we had put in was relevant to what the home  
8 that we had bought. We had bought a home that was 10 years  
9 old. We didn't go for a brand new home, so we had some  
10 improvements we needed to make.

11 Q Okay. And were those all made before you got behind on the  
12 loan?

13 A Absolutely.

14 Q Okay.

15 A Well, no, let me back that up, because we did have some  
16 work we did in the back yard during the time that we were  
17 trying to modify the loan. So we had every intention to  
18 believe that we were going to still get the modification, so we  
19 weren't afraid to put money into the home. We didn't think we  
20 were going to end up in a bankruptcy or anything. So we had  
21 every intention of making the property better.

22 Q Have you ever filed a bankruptcy before?

23 A No.

24 Q Okay. And if we knew what the precise amount was that you  
25 would need to pay to come current on this loan, would you be

1 able to afford -- do you estimate that you would be able to  
2 afford to do that?

3 A Yes.

4 MR. BARTHLOW: Nothing further.

5 THE COURT: Mr. Alfieri?

6 MR. ALFIERI: Your Honor, first of all, I'd like -- I  
7 think I need to correct the record. You stated that Mr.  
8 Troutman submitted an affidavit. He did not.

9 THE COURT: Well, there was an affidavit that was  
10 submitted by someone where the loan was listed or the value was  
11 listed --

12 MR. ALFIERI: I believe it's an unsworn declaration.

13 THE COURT: Don't interrupt me, Mr. Alfieri.

14 MR. ALFIERI: I'm sorry.

15 THE COURT: That's fine. It has the same effect. I  
16 thought the unsworn declaration was Mr. Bartholow's, but that's  
17 fine.

18 CROSS-EXAMINATION

19 BY MR. ALFIERI:

20 Q Ms. Troutman, with respect to the modification that you  
21 assert you tried to get from AHMSI, tell me about that process.

22 A Well, we actually -- I would call and I'd ask to speak to  
23 the modification department. Oftentimes, the person on the  
24 phone acted like they didn't know there was such a department,  
25 and that may be because at that time it wasn't as much of a

1 buzzword as it is today. However, when I continued to pursue  
2 it, at times I would get through. When I got through, they  
3 would tell me, you know, "Well, you might not be qualified to  
4 do this, but you need to fill out paperwork." So I would  
5 request the paperwork, I would wait for it to come, and it  
6 never came. So then I would call back again and again. Every  
7 time I'm calling this office, I'm sitting for 20 -- 18 to 22  
8 minutes. And it got to the point where I started documenting  
9 and writing down what was going on. What time I called, who I  
10 talked to. It was a nightmare, to be honest.

11 And all along, I kept saying to them on the phone, "This is  
12 our home. We want to stay here. We just want to make it  
13 right. Tell us how much we owe. Tell us who we owe." I would  
14 ask them, "Who is our mortgage holder?" They would not tell  
15 me.

16 Then it got to the point where we were behind in payments.  
17 And I called and said, "Hey, you know, we want to work this  
18 out." I did everything I could to work with them.

19 Q Okay.

20 A And so it got to the point then where, you know, we're  
21 hearing about the foreclosure and we don't want that to happen,  
22 so we called them and they said, "Send us a payment. But you  
23 have to wire it." Okay. So we decided we would do that. Then  
24 I get a Western Union statement from my bank and it says the  
25 payment went to Option One mortgage. Now I'm really confused.

1 So then I'm thinking, who are these payments going to? And,  
2 should I continue to trust these people? Because they keep  
3 telling me they're going to do the modification and they don't.  
4 And no offense, but even talking about it today, how am I  
5 supposed to know you mean what you say? Because we've heard  
6 this and heard this and heard this, and now we're in  
7 bankruptcy.

8 Q When you stated that in doing the loan modification it  
9 concerned you who the holder was -- do you remember making that  
10 statement?

11 A I do.

12 Q Okay. How does that -- what does that have to do with  
13 doing a loan modification?

14 A Well, it goes back to the fact when we hired an attorney to  
15 talk to AHMSI about a modification, he did an audit of our loan  
16 and found several TILA violations. At that point, I thought  
17 that would help them work with us, because there were problems  
18 in the loan. And so at that point I thought, well, they're not  
19 willing to work with me, so is something squirrely here, is  
20 something going on? Are they really the people who own our  
21 loan? Because they're not willing to do anything. So I'm just  
22 not real trusting at this moment.

23 Q Did you ever fill out a modification -- any of the forms  
24 for a loan modification?

25 A We did. We sent them through our attorney. And I believe

1 it was November of '08, so it was even still after -- we were  
2 trying to work it out after we had already filed the bankruptcy  
3 and affected our credit. But at that point, that was -- again,  
4 we never heard anything back from it. And working through an  
5 attorney, we were trusting that this is going to all be worked  
6 out. And here we are.

7 Q So it's your testimony that you did submit a completed loan  
8 modification package?

9 A We did it more than once.

10 Q Okay. It's your testimony that, on more than one occasion,  
11 you submitted a completed loan modification package but that  
12 you never heard back from American Home Mortgage Servicing at  
13 all?

14 A Well, we heard back through our attorney the last time, --

15 Q Okay.

16 A -- which is when we were literally sitting in the  
17 bankruptcy office.

18 Q All right. And what was it that you heard?

19 A Well, they were still at that point saying, "We'll work  
20 with you." But they're not -- they weren't willing to fax  
21 anything to us to show our attorney what the terms would be.  
22 There was nothing. It was all words. There was nothing  
23 written down. Nobody would tell us where are we going with  
24 this. So literally we got to the eleventh hour and we couldn't  
25 wait until Tuesday for a sale on our home.

1 Q Another question for you. When you said that you made a  
2 payment and was confused as to who that payment went to, did  
3 you ever check your loan statements to make sure they were  
4 credited against your loan balance?

5 A I'll be real honest with you. At that time, we were  
6 getting statements that did not make any sense to me, which is  
7 why, when we filed the bankruptcy, the attorney that we were --  
8 filed bankruptcy under said we had to use that last statement  
9 which gave us that full payment amount. Because we were  
10 telling him, "Our payment is supposed to be \$3,200, so it  
11 affects our bankruptcy plan." But at the time, the bankruptcy  
12 attorney said, "You need to put down what is on this  
13 statement," because this is what the last statement says.

14 So the reality is we want to pay all our debts. I mean,  
15 really, there's no question about whether or not we're going to  
16 make payments. I mean, we have made our payments on time for,  
17 like I said, many, many years. And I'm in some ways very -- in  
18 a lot of ways, very, very upset that I'm sitting here today.

19 Q I understand.

20 MR. ALFIERI: No further questions, Your Honor.

21 THE COURT: Mr. Bartholow?

22 MR. BARTHLOW: Nothing further.

23 THE COURT: All right.

24 EXAMINATION BY THE COURT

25 THE COURT: Did I -- I just want to make sure that I'm

1 correct. I think your husband said the taxes were about  
2 \$15,000 a year on the house?

3 THE WITNESS: I believe they are.

4 THE COURT: All right. All right. Thank you.

5 THE WITNESS: Thank you.

6 THE COURT: You may step down.

7 (The witness steps down.)

8 THE COURT: Anything further from the Debtors?

9 MR. BARTHOLLOW: No, Your Honor.

10 THE COURT: All right. The Debtors have reflected on  
11 their schedules that were filed as of the date of the filing of  
12 the petition \$651,000 due to AHMSI as servicing agent. I'm not  
13 going to use that number for what I am now going to calculate.  
14 All right? But I wanted to tell you that because you aren't  
15 going to like the number that I'm going to calculate. And what  
16 I'm going to do is I'm going to direct a monthly payment that  
17 is going to start being made now to AHMSI, and AHMSI is going  
18 to provide evidence that it's being credited against the  
19 Debtors' mortgage. And I'm going to direct that the parties  
20 will go to mediation to resolve any remaining disputes  
21 concerning the amount that is owed.

22 As a mediator, I'm going to give you the option of  
23 splitting the costs of a mediator 50/50, or I will send you to  
24 J. Douglas Cortes, who used to be my law clerk and is trying to  
25 become a mediator and has volunteered to do mediations cheaply

1 or for free.

2 Now, I'm not telling you to go to him. I don't really  
3 care. But I'm not going to ask in this case one of my  
4 colleagues, one of my fellow judges, to serve as a for-free  
5 mediator. So, if you want one for free, it's going to be J.  
6 Douglas Cortes and that's it. Okay? And if you want to pay,  
7 that's okay by me, too. I don't care. You may, however,  
8 report to me which one you want, and I will do an appropriate  
9 order.

10 And you will have someone present at that mediation who can  
11 make decisions if Mr. Kistler or whoever else is in Dallas  
12 cannot, and I will expect one or both of the Troutmans to be  
13 there.

14 Now, what I did to come up with my number is I took the  
15 number \$593,750, which was the original principal amount of the  
16 loan as reflected on the promissory note and which is  
17 approximately \$60,000 less than the scheduled amount and, by  
18 extension, considering roughly 15 percent interest that would  
19 have accrued over the two years since filing, probably a total  
20 of about \$150,000 less than the amount that arguably is owed  
21 here. I multiplied \$593,750 by .07553, and that is the  
22 interest rate that is payable on the note beginning June 1st of  
23 2006. The product of that multiplication was \$3,737.16. I'm  
24 going to add to that \$1,250, representing the taxes that would  
25 be currently escrowed. So that's -- and that results in a

1 total payment of \$4,987.16, and that will be the monthly  
2 payment going forward as adequate protection to the lender,  
3 pending completion of the mediation.

4 Now, from the perspective of the lender, it would seem to  
5 me that gives you some incentive to resolve this. From the  
6 perspective of the Debtor, it certainly does. Because when you  
7 come to the end of the term of your Chapter 13 plan, that will  
8 result in the entirety of your note being due and payable to  
9 whomever may be the proper holder of it. All right?

10 I'm going to ask Mr. Alfieri, at no cost to the Debtors, to  
11 prepare an order reflecting, number one, the amount that I've  
12 come up with -- \$4,987.16 -- as a monthly payment to be made.  
13 And I'll give you the option, Mr. Bartholow. You can make it  
14 to Mr. Alfieri as opposed to AHMSI, if you wish. It's up to  
15 you and your clients. All right? You let Mr. Alfieri know.  
16 And number two, requiring that the parties proceed to  
17 mediation. And number three, requiring that they submit a name  
18 to me, let us say by June 2nd, of the mediator that they will  
19 have selected.

20 And again, you may, if you choose, use J. Douglas Cortes.  
21 You do not need to use him. I'm not imposing him on you. It's  
22 just that I know he will do it for free, and I'm trying to save  
23 the Troutmans as well as your client a little bit of money  
24 there. If you would rather pay some more, have at it. Mike  
25 McConnell or Steve Felsenthal are superb mediators, and

1 expensive ones. And I'm sure they'd be glad to have the fee.

2 Any questions?

3 MR. ALFIERI: Your Honor, Mr. Bartholow has been  
4 collecting I think at least two months' adequate protection.

5 THE COURT: No. We're starting as of today. So we're  
6 going to begin with a monthly payment, and monthly payments  
7 will be due -- today is the 24th, so monthly payments will be  
8 due on the 24th day of each month, under this order. And I  
9 want you to understand. That's not preventing you from  
10 entering into another arrangement based on the mediation. But  
11 when you come out of the mediation, hopefully this will all be  
12 straightened out. All right? Any questions?

13 MR. BARTHLOW: Your Honor, my only question would be  
14 as to how the Court wishes to take up the sanctions issue  
15 presented.

16 THE COURT: At this point, let's see what happens with  
17 the mediation. All right?

18 MR. BARTHLOW: Fair enough.

19 THE COURT: All right. We'll be adjourned.

20 MR. ALFIERI: Thank you, Your Honor.

21 THE CLERK: All rise.

22 (Proceedings concluded at 4:45 p.m.)

23 --oOo--

24 CERTIFICATE

25 I certify that the foregoing is a correct transcript from

1 the electronic sound recording of the proceedings in the above-  
2 entitled matter.

3 *Kathy Rehling*

Digitally signed by Kathy Rehling  
DN: cn=Kathy Rehling, c=US, o=Transcription  
Service, email=kathy.rehling@tx.rr.com  
Date: 2010.06.27 17:35:06 -05'00'

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4  
5 Kathy Rehling  
6 Certified Electronic Court Transcriber  
7 CET\*\*D-444

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Date

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