

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - ATLANTIC COUNTY
DOCKET NO. F-10209-08

BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATE HOLDERS CWABS,
INC. ASSET-BACKED CERTIFICATES,
SERIES 2005-AB3

Plaintiff(s),

vs.

VICTOR and ENOABASI UKPE

Defendant(s).

VICTOR and ENOABASI UKPE

Counterclaimants and
Third Party Plaintiffs,

vs.

BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATE HOLDERS CWABS,
INC. ASSET-BACKED CERTIFICATES,
SERIES 2005-AB3

Defendants on the Counterclaim,

and

AMERICA'S WHOLESALE LENDER;
COUNTRYWIDE HOME LOANS, INC.;
MORGAN FUNDING CORPORATION,
ROBERT CHILDERS; COUNTRYWIDE
HOME LOANS SERVICING LP,
PHELAN, HALLINAN & SCHMIEG,
P.C.,

Third Party Defendants

March 16, 2010

1 Oral sworn deposition of GLENN MITCHELL,
2 taken in the law office of Archer & Greiner, 1
3 Centennial Square, Haddonfield, New Jersey, before
4 Michelle M. Downes, a Certified Court Reporter and
5 Notary Public of the State of New Jersey, commencing
6 at 9:20 a.m. on the above date, there being present:

7 GOODWIN & PROCTER, LLP
8 BY: RICHARD A. OETHEIMER, ESQUIRE
9 Attorneys for Plaintiffs Bank of New York
10 as Trustee for the Certificate Holders
11 CWABS, Inc. Asset-Backed Certificates,
12 Series 2005-AB3 and Countrywide as Third
13 Party Defendants

14 LAW OFFICES OF JAMES F. VILLERE, JR.
15 BY: JAMES F. VILLERE, JR., ESQUIRE
16 MARK J. MALONE, ESQUIRE
17 Attorneys for Ukpes as Defendants and
18 Third Party Plaintiffs

19 SOUTH JERSEY LEGAL
20 BY: ABIGAIL SULLIVAN, ESQUIRE
21 Attorneys for Ukpes as Defendants and
22 Third Party Plaintiffs

23 WILENTZ, GOLDMAN & SPITZER
24 BY: DASHIKA R. WELLINGTON, ESQUIRE
25 Attorneys for Third Party Defendant

Also present: Tyler J. Kandel, Esquire
Sean T. O'Meara, Esquire
Judy Romano, Esquire

1 (By agreement of counsel, the
 2 signing, sealing and certification of the deposition
 3 were waived, and all objections, except as to the form
 4 of the questions, were reserved to the time of trial.)
 5
 6

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1 GLENN MITCHELL,
2 having been duly sworn, was examined
3 and testified as follows:
4 (Mitchell-1, Notice in Lieu of
5 Subpoena, was marked for identification.)

6 BY MR. MALONE:

7 Q. State your full name, please.

8 A. Glenn Mitchell.

9 Q. Middle initial?

10 A. E.

11 Q. Mr. Mitchell, you're appearing today as
12 a representative witness of the plaintiff, Bank of New
13 York as Trustee for the Certificate Holder CWABS, Inc.
14 Asset-Backed Certificates, Series 2005-AB3, is that
15 correct?

16 A. That is correct.

17 Q. You understand your testimony today is
18 going to bind the plaintiff?

19 MR. OETHEIMER: Objection.

20 THE WITNESS: I know I'm here to
21 provide testimony. I don't know.

22 BY MR. MALONE:

23 Q. By whom are you employed?

24 A. The Bank of New York Mellon.

25 Q. And is the Bank of New York Mellon the

1 trustee for the securitized trust in this case, the
2 trust I just named?

3 A. Yes.

4 Q. I've had a copy of the Notice in Lieu
5 of Subpoena marked as Exhibit 1. It's been previously
6 marked, everybody has a copy, I marked it as
7 Mitchell-1 for today's deposition. Have you seen that
8 Notice in Lieu of Subpoena prior to today?

9 A. Let me see. Yes, I have.

10 Q. And did you make an effort to identify
11 the documents that were identified in the Notice in
12 Lieu of Subpoena?

13 MR. OETHEIMER: Objection. Not the
14 witness' obligation to do so. We've had
15 correspondence about this. This is a notice,
16 deposition notice to the party in lieu of subpoena,
17 you did not provide 45 days to produce documents. I
18 know your position is all these documents have
19 previously been requested, and our position is we've
20 produced everything that we know of that relates to
21 the securitization. So I believe you have the
22 documents that relate to Mr. Mitchell's testimony. I
23 actually don't know if he had seen the notice, but I
24 know I did give him a copy of Ms. Sullivan's letter.

25 MR. MALONE: And your objection is

1 noted on the record. And I appreciate your
2 representation that you believe we have the documents.
3 It's the witness who is testifying under oath and who
4 binds the plaintiff, so I want to ask the witness.

5 BY MR. MALONE:

6 Q. Did you attempt to review any documents
7 identified in the Notice in Lieu of Subpoena in
8 preparation for appearing today?

9 A. I looked briefly at the Pooling and
10 Servicing Agreement.

11 Q. Did you look at any other documents
12 before today in preparation for today's appearance?

13 A. There are some bank records that I
14 looked at.

15 Q. What bank records did you look at?

16 A. Some records about the holdings of
17 documents in our custodial files.

18 Q. And have you brought those documents,
19 those copies with you, those documents you looked at?

20 A. I have, I have some copies of them.

21 Q. Okay. Would you produce them, please?

22 MR. MALONE: I want to see what he
23 reviewed.

24 (Mitchell-2, Letter dated 3/2/10, was
25 marked for identification.)

1 MR. OETHEIMER: Off the record a
2 moment.

3 (Discussion off the record.)

4 MR. MALONE: The witness has brought
5 with him a group of documents he has, at my request,
6 he reviewed prior to today. We're about to have those
7 premarked and copies for all counsel. Mr. Oetheimer
8 has, in his review, removed one document and I've
9 asked him to put on the record the reasons for that
10 removal.

11 MR. OETHEIMER: Yeah. Actually, just
12 so the record's accurate, I actually removed two.
13 There were, there were two copies of Ms. Sullivan's
14 March 2, 2010 letter. One that the witness had made a
15 few annotations on and one that was clean, so what we
16 included and marked as an exhibit was the clean copy,
17 and I did remove an exchange of e-mails between
18 myself, Mr. Mitchell, Tyler Kandel over the last --
19 March 11th and I think it includes an e-mail with
20 in-house counsel for Bank of New York which is sort of
21 how Mr. Mitchell came to be here.

22 MR. MALONE: And except for the
23 documents that have been removed, and I've attempted
24 to staple the documents as contiguous documents. If
25 I've done that in error in some way, we'll correct it

1 during the course of the day. I'm handing the court
2 reporter the documents in the order in which I
3 received them, and I'm going to ask that they be
4 premarked as exhibits Mitchell-3 through whatever the
5 last number is, and we'll have them copied so all
6 counsel have copies.

7 MS. WELLINGTON: What was Mitchell-2.

8 MR. MALONE: Mitchell-2 we haven't
9 addressed yet, but it is Ms. Sullivan's letter of
10 March 2, 2010, our copy of it.

11 (Mitchell-3, Final Certification of
12 Trustee dated 3/27/06, was marked for
13 identification; Mitchell-4, Letter dated
14 9/27/05, was marked for identification;
15 Mitchell-5, Article V, The Certificates, was
16 marked for identification; Mitchell-6, Letter
17 dated 3/2/10, was marked for identification;
18 Mitchell-7, Activity Journal screen shots,
19 was marked for identification; Mitchell-8,
20 Cross Receipts dated 9/27/05, was marked for
21 identification; Mitchell-9, Mortgage, was
22 marked for identification; Mitchell-10,
23 Working Party List dated 9/13/05, was marked
24 for identification; Mitchell-11, Interim
25 Certification of Trustee dated 10/27/05, was

1 marked for identification.)

2 BY MR. MALONE:

3 Q. Mr. Mitchell, I show you what has been
4 marked as Mitchell Exhibit 2, copy of a March 2nd,
5 2010 letter to Mr. Oetheimer from Abigail Sullivan and
6 ask you if that is a copy of the letter that you had
7 seen prior to today.

8 A. I believe it to be.

9 Q. Do you want to look at the letter that
10 was removed that has your notes on it to be sure?

11 A. I don't.

12 MR. OETHEIMER: It's the same letter.

13 THE WITNESS: Okay. I'm positive.

14 BY MR. MALONE:

15 Q. Can you tell us approximately when did
16 you receive that letter?

17 A. I first saw this letter on Friday the
18 12th of March.

19 Q. Would you tell us what you did with
20 respect to the letter, if anything, in terms of
21 preparing for today?

22 A. I read it.

23 Q. In addition to reading it, did you do
24 anything else?

25 A. No. Well, then with the knowledge of

1 the letter, I thought about responses.

2 Q. Did you do anything else other than
3 think about responses?

4 A. No, I did not.

5 MR. OETHEIMER: Objection.

6 BY MR. MALONE:

7 Q. Did you ask anyone to get any documents
8 for you?

9 A. No, I did not.

10 Q. Did you make any effort on your own to
11 identify any documents?

12 A. No.

13 Q. Did you alert your employer that you
14 had been given a letter that required you to appear
15 and testify about subject matters relevant to your
16 employer?

17 MR. OETHEIMER: Objection. I don't
18 want discussions with counsel, but I think, I think --
19 I don't think he heard about this from us.

20 MR. MALONE: Well, I'll ask if he told
21 his employer.

22 MR. OETHEIMER: Well, or his employer
23 told him is maybe the other way around.

24 MR. MALONE: There's one question
25 pending. Please answer the question.

1 THE WITNESS: I did not have any
2 discussion with my employer about the content of the
3 letter.

4 BY MR. MALONE:

5 Q. Did anyone provide you with documents
6 in preparation, in preparation for your appearance
7 today?

8 MR. OETHEIMER: Yes, you can answer
9 that question yes or no.

10 BY MR. MALONE:

11 Q. Just answer it yes or no.

12 A. Yes.

13 Q. Who provided you the documents?

14 A. Counsel provided copies of some
15 documentation.

16 Q. Counsel being Mr. Oetheimer?

17 A. Yes.

18 Q. Did anyone else other than counsel
19 provide any documents to you?

20 A. No.

21 Q. Now, turning to Mitchell Exhibit 2,
22 Ms. Sullivan's letter, the first item in the subject
23 matter that called for testimony involved, addresses
24 "the creation, processing, handling, safeguarding and
25 storage of the Ukpe defendants' original promissory

1 note including any endorsements and assignments of the
2 note evidencing ownership or transfer of the note."

3 Did I summarize that correctly?

4 A. Yes.

5 Q. Okay. And would you tell us your
6 knowledge about that subject matter?

7 MR. OETHEIMER: Objection. Form.

8 MR. MALONE: Please answer the
9 question.

10 THE WITNESS: Countrywide. The
11 creation would be by the, by the originator.

12 BY MR. MALONE:

13 Q. Who would that be in this case?

14 A. Countrywide.

15 Q. Countrywide who? There are three
16 parties identified as Countrywide. Countrywide Home
17 Loans, Countrywide Home Loans Servicing, and America's
18 Wholesale Lender collectively as Countrywide. I must
19 ask you to the extent you can to specify which entity
20 you're referring to, if you know.

21 A. The latter was?

22 Q. America's Wholesale Lender was the
23 third entity I named.

24 MR. OETHEIMER: Objection.

25 THE WITNESS: I believe that's the name

1 that appears in the original documentation, note.

2 BY MR. MALONE:

3 Q. And your basis for that belief, did you
4 review the note before coming today?

5 A. Briefly.

6 Q. Okay. Is the note among the materials
7 you presented today? I did not see it.

8 MR. OETHEIMER: I don't know.

9 THE WITNESS: I believe it is.

10 BY MR. MALONE:

11 Q. Okay.

12 A. The mortgage.

13 Q. The mortgage, okay. Let's go to the
14 basics. This question asks about the note. Do you
15 understand that?

16 A. Okay.

17 Q. And there's a later question that asks
18 about the mortgage. Do you recall reviewing the note
19 prior to today?

20 MR. OETHEIMER: Objection.

21 BY MR. MALONE:

22 Q. Versus the mortgage?

23 A. No.

24 MR. OETHEIMER: Okay, I was going to
25 say are you -- I think you should specify. It may be

1 no anyway, but the original note --

2 MR. MALONE: Please, please, improper.
3 Improper. You're coaching the witness. This is a
4 very sensitive area.

5 BY MR. MALONE:

6 Q. Do you have any knowledge of when the
7 original note was executed?

8 A. No.

9 Q. Do you have any knowledge of what
10 endorsements, if any, appear on the original note?

11 A. I have seen a copy, and which has an
12 endorsement.

13 Q. And who showed you that copy?

14 A. Counsel.

15 Q. When were you shown that by counsel?

16 A. Friday, March 12th.

17 Q. And were any representations made to
18 you by counsel? Without telling me what they were,
19 were any representations made to you by counsel about
20 the endorsement?

21 MR. OETHEIMER: Objection. Instruct
22 the witness not to answer on the grounds of
23 attorney/client privilege.

24 MR. MALONE: Okay. Your objection is
25 noted. I'm not asking for the communication, I'm just

1 asking if there were communications with regard to the
2 endorsement. Just yes or no.

3 THE WITNESS: No.

4 BY MR. MALONE:

5 Q. Other than having been shown that note
6 by counsel last Friday, do you have any independent
7 knowledge of the endorsement that appeared on the copy
8 you were shown?

9 A. No.

10 MR. OETHEIMER: Objection. Sir, would
11 you give me a chance to make objections for the
12 record?

13 THE WITNESS: I'm sorry.

14 BY MR. MALONE:

15 Q. Do you have any independent knowledge
16 when the endorsement that you saw and was copied,
17 correct?

18 MR. OETHEIMER: I'm just going to --
19 one thing I'd like the witness reminded that he is
20 here as a representative of the entity, so your
21 questions, Mark, when you're asking independent
22 knowledge, I'm going to object and maybe you can
23 clarify. I don't want the witness interpreting that
24 you were only asking for his personal knowledge as
25 opposed to knowledge he may -- company knowledge that

1 he may be aware of. Independent I think is ambiguous.

2 MR. MALONE: All of my questions will
3 be directed towards the broader.

4 BY MR. MALONE:

5 Q. Do you have independent knowledge or
6 company knowledge as a representative as to how that
7 endorsement got to be placed on the copy of the note
8 that you saw last Friday?

9 A. No.

10 Q. Do you have any independent knowledge
11 or company knowledge as to when that endorsement was
12 placed on the note, copy of the note you saw last
13 Friday?

14 MR. OETHEIMER: Objection. You may
15 answer.

16 THE WITNESS: No.

17 BY MR. MALONE:

18 Q. Could you tell from the copy of the
19 note whether the endorsement was a stamp, a facsimile
20 print, or an original ink endorsement on the original?

21 A. No.

22 Q. Are you familiar with the practice of
23 endorsing notes that go into trusts for which your
24 employer is the trustee?

25 A. Yes.

1 Q. Would you describe that practice for
2 us, please?

3 A. Generally, a stamp is used to indicate
4 who is endorsing, and typically, on the original, it
5 would have a signature, an authorized signature of
6 whoever was making the endorsement.

7 Q. Okay. And would that typically --
8 would that authorized signature be an original ink
9 signature?

10 MR. OETHEIMER: Objection.

11 BY MR. MALONE:

12 Q. If you know, what's the practice?

13 MR. OETHEIMER: Well, objection.

14 BY MR. MALONE:

15 Q. Please answer the question.

16 A. Often it is, sometimes it's not,
17 depending upon what is the authorized signature of the
18 person.

19 Q. Okay. And in this case, do you know
20 who the authorized signature was?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: No.

23 BY MR. MALONE:

24 Q. In your review of the PSA, did you
25 review relevant sections of the PSA dealing with

1 endorsements on the note?

2 A. No.

3 Q. Typically, in your experience, how many
4 endorsements are on a note at the time it becomes part
5 of the trust corpus? At the time it is deposited into
6 the trust by the deposit?

7 MR. OETHEIMER: Objection.

8 BY MR. MALONE:

9 Q. Answer the question, please.

10 A. It may vary, and it does vary.

11 Q. Okay. And tell us how it varies.

12 MR. OETHEIMER: Objection.

13 THE WITNESS: There may be intervening
14 endorsements.

15 BY MR. MALONE:

16 Q. What is an intervening endorsement?

17 A. It may have passed from one party to
18 another.

19 Q. And when it passes from one party to
20 another, is there normally an intervening endorsement?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: Sometimes.

23 BY MR. MALONE:

24 Q. Sometimes not?

25 A. Yes.

1 Q. Okay. Tell us what the difference is.
2 Why is there sometimes an intervening endorsement when
3 it passes from one party to the next and sometimes
4 there is not an intervening endorsement?

5 MR. OETHEIMER: Objection.

6 THE WITNESS: If the endorsement is to
7 a party, and then it's going to pass to another party,
8 then that party will have to endorse. Sometimes it's
9 in blank.

10 BY MR. MALONE:

11 Q. In the PSA in this case that you
12 reviewed, how many parties were participants to the
13 PSA?

14 MR. OETHEIMER: Objection.

15 THE WITNESS: I don't know the exact
16 number.

17 BY MR. MALONE:

18 Q. After the note was executed by the
19 Ukpes, what physically happened to it?

20 MR. OETHEIMER: Objection.

21 THE WITNESS: I don't have personal
22 knowledge of what happened to it.

23 BY MR. MALONE:

24 Q. As a corporate representative, please
25 tell us on behalf of your company --

1 MR. OETHEIMER: Objection.

2 BY MR. MALONE:

3 Q. -- what happened.

4 A. After it is executed, we would have no
5 knowledge of what the originator was doing with the
6 note, where it is, and what they do with the note.

7 Q. As trustee, are you responsible for
8 seeing that the note is properly negotiated from the
9 originator through any intervening parties before it
10 enters the trust?

11 MR. OETHEIMER: Objection. You can
12 answer.

13 THE WITNESS: When we look, when the
14 note is delivered to us, we do look to see if there is
15 a -- if it is endorsed, and if the chain is there.

16 Q. And in a securitized trust, does the
17 chain involve, at a minimum, the originator, the
18 depositor, and the trust?

19 MR. OETHEIMER: Objection.

20 THE WITNESS: Not necessarily.

21 BY MR. MALONE:

22 Q. It could be less. If it's not those
23 three at a minimum, what would the chain be for a
24 securitized trust?

25 MR. OETHEIMER: Objection.

1 THE WITNESS: That it's endorsed to the
2 trust, which is obvious, and that the chain goes back
3 to the origination, however many there may be.

4 BY MR. MALONE:

5 Q. Well, in this -- let's do this case.
6 In this case, how many transfers were there of the
7 note after the Ukpes executed it until it was
8 deposited into the trust?

9 MR. OETHEIMER: Objection. I'm going
10 to object unless the note is before the witness.

11 MR. MALONE: You can object, I'm asking
12 his general knowledge. Under the PSA.

13 MR. OETHEIMER: Objection.

14 MR. MALONE: I'm asking what the PSA
15 required.

16 THE WITNESS: I believe there was one
17 endorsement.

18 BY MR. MALONE:

19 Q. As based on your review of the PSA?

20 MR. OETHEIMER: Objection.

21 THE WITNESS: No.

22 BY MR. MALONE:

23 Q. That's based on your review of the
24 note --

25 MR. OETHEIMER: Objection.

1 BY MR. MALONE:

2 Q. -- Mr. Oetheimer showed you? What is
3 your --

4 A. Yes.

5 Q. Okay. Were there any -- as custodian,
6 did you receive any receipts reflecting the first
7 transfer of the note in this case? And by that I mean
8 was there a transfer from the originator to the
9 depositor?

10 MR. OETHEIMER: Objection. An
11 objection to the term custodian. We went through this
12 last week, but there is a cotrustee, and Mr. Mitchell
13 is not an employee of the cotrustee.

14 BY MR. MALONE:

15 Q. Answer the question, please.

16 A. Could you repeat the question?

17 MR. MALONE: Sure, can I have it read
18 back.

19 (The stenographer read back the
20 following:

21 "Q. Were there any -- as custodian,
22 did you receive any receipts reflecting the
23 first transfer of the note in this case? And
24 by that I mean was there a transfer from the
25 originator to the depositor?")

1 MR. MALONE: I'll refrain my question
2 to make it as trustee, thank you.

3 MR. OETHEIMER: And cures one
4 objection, but I'm still objecting on the grounds.

5 THE WITNESS: I don't know.

6 BY MR. MALONE:

7 Q. Typically, does the trustee receive and
8 maintain the transfer receipts when a transfer of a
9 negotiable instrument is made from one party in a
10 securitized trust to another party?

11 MR. OETHEIMER: Objection.

12 THE WITNESS: Can I ask a
13 clarification?

14 MR. MALONE: Yes, you can. If you
15 don't understand the question, you can ask for a
16 clarification.

17 THE WITNESS: That's for the receipt of
18 the note or that note and notes?

19 BY MR. MALONE:

20 Q. Well, I'll break it down to two parts.
21 First receipt of notes generally, is that documented
22 by some kind of piece of paper, a receipt or transfer
23 document?

24 MR. OETHEIMER: Objection.

25 BY MR. MALONE:

1 Q. Normally.

2 A. The trustee, there's a cross receipt at
3 the closing of the securitization of the trustee
4 vouches receipt of the mortgage documents. The loan
5 files.

6 Q. Does anyone maintain receipts prior to
7 that receipt you've mentioned?

8 A. I do not know.

9 Q. For the record, I'm showing you a cover
10 sheet of the Pooling and Servicing Agreement and
11 Execution Copy, it's previously been marked as an
12 exhibit, I don't have the exhibit numbers, but it was
13 marked during Mr. Juarez's deposition, and in the
14 upper right hand corner, it says Execution Copy, and
15 can you just tell us, based on your understanding, who
16 the originator was of the parties listed on the cover
17 page of the execution copy? Who is the originator in
18 the Ukpe case?

19 A. I don't believe that any of those
20 parties were actually the originator of --

21 MR. OETHEIMER: The originator of the
22 Ukpe loan?

23 THE WITNESS: Of the Ukpe loan.

24 BY MR. MALONE:

25 Q. To your understanding then, do you have

1 any knowledge as to how, if none of these parties were
2 the originator of the Ukpe loan, any of these parties
3 listed on the Pooling and Servicing Agreement came
4 into possession of the Ukpe note?

5 MR. OETHEIMER: Objection.

6 THE WITNESS: Well, CWABS, Inc. is a
7 depositor. They deposited the note into the trust.

8 BY MR. MALONE:

9 Q. Okay. I understand. So we have the
10 trust down here, we have the depositor here making the
11 deposit of a note. How does the depositor get the
12 note? From whom does the deposit -- does the
13 depositor get the note from any of the parties listed
14 on the cover page of the execution copy, if you know?

15 THE WITNESS: I believe they get the
16 note from the seller.

17 BY MR. MALONE:

18 Q. Okay. And do you have any idea who the
19 seller was of the Ukpe's note under this PSA?

20 MR. OETHEIMER: Objection.

21 THE WITNESS: Well, just based on the
22 document, it's Countrywide Home Loans, Inc.

23 BY MR. MALONE:

24 Q. Based on your reading the cover page,
25 the execution page, Countrywide Home Loans. Do you

1 have any idea how Countrywide Home Loans came into
2 possession of the Ukpe's note if it was not the
3 originator?

4 MR. OETHEIMER: Objection.

5 THE WITNESS: No.

6 BY MR. MALONE:

7 Q. Now, if Countrywide Home Loans came
8 into possession of the note, would they have to prove
9 ownership of the note --

10 MR. OETHEIMER: Objection.

11 BY MR. MALONE:

12 Q. -- to you as the trustee?

13 A. When the transaction closes, it is
14 established that they, they are the owner.

15 Q. And how is it established that
16 Countrywide Home Loans was the owner at the time the
17 note was deposited into the trust?

18 A. Well --

19 MR. OETHEIMER: Objection. Again, I'm
20 going to continue to object unless you show him the
21 note which I think is here and we certainly have
22 copies.

23 THE WITNESS: I'm not an attorney.

24 BY MR. MALONE:

25 Q. I understand. You're here as a

1 representative witness of the trust, so I'm asking
2 your knowledge as a representative witness to the
3 trust or your personal knowledge based on your years
4 experience in working for your employer.

5 MR. OETHEIMER: Well, objection. It
6 still follows we need to see this note.

7 MR. MALONE: We'll get there, Richard.
8 Please be patient.

9 BY MR. MALONE:

10 Q. Do you know if any consideration, any
11 money of any kind was paid by Countrywide Home Loans,
12 Inc. to the originator when Countrywide Home Loans,
13 Inc. came into possession of the note?

14 A. That, I don't know.

15 MR. OETHEIMER: Objection.

16 THE WITNESS: I do not.

17 BY MR. MALONE:

18 Q. Now, are you familiar with the term
19 true sales?

20 A. Yes.

21 MR. OETHEIMER: Objection.

22 BY MR. MALONE:

23 Q. Are you familiar with the term REMIC,
24 R-E-M-I-C?

25 A. Yes.

1 Q. First off, give us your understanding,
2 tell us your understanding of what a true sale is in
3 the context of the trust.

4 MR. OETHEIMER: Objection.

5 MR. MALONE: And securitization.

6 MR. OETHEIMER: Objection, calls for
7 legal opinion. The witness is not an attorney.

8 BY MR. MALONE:

9 Q. Please give us your understanding of
10 the term true sale.

11 A. Well, there is -- there isn't a legal
12 opinion.

13 Q. I understand it's not a legal opinion.

14 A. I mean there is a part of the closing
15 documents.

16 Q. What is your understanding, based on
17 your knowledge and experience, of what is meant by the
18 term true sale?

19 MR. OETHEIMER: Continue to note an
20 objection.

21 THE WITNESS: Once that occurs, it no
22 longer is owned by the person who sold it and there
23 was no recourse.

24 BY MR. MALONE:

25 Q. And the term REMIC, what is your

1 understanding of what a REMIC is, R-E-M-I-C?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: It's a Real Estate
4 Mortgage Investment Conduit.

5 BY MR. MALONE:

6 Q. Is this particular trust a REMIC
7 qualified trust, if you know?

8 A. Yes.

9 Q. And to become REMIC qualified, did
10 there have to be a certain number of true sales, if
11 you know?

12 A. I don't know.

13 Q. In the configuration as reflected on
14 the execution of the PSA, to your knowledge, was there
15 a true sale from Countrywide Home Loans, Inc. of the
16 Ukpe's promissory note to the depositor, CWABS, Inc.?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: I don't know if there was
19 between those two parties.

20 BY MR. MALONE:

21 Q. Who would know in your organization?

22 MR. OETHEIMER: Objection.

23 THE WITNESS: We would defer to
24 counsel.

25 BY MR. MALONE:

1 Q. Mr. Oetheimer?

2 MR. OETHEIMER: Objection.

3 BY MR. MALONE:

4 Q. Mr. Oetheimer's not in your
5 organization.

6 A. No, legal department.

7 Q. Legal department of your organization,
8 thank you. To your knowledge, did CWABS, Inc., the
9 depositor, pay any consideration to Countrywide Home
10 Loans, Inc., the seller, for the Ukpe's promissory
11 note?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: I don't know.

14 BY MR. MALONE:

15 Q. Who in your organization would know
16 that?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: I would have to ask the
19 legal department.

20 BY MR. MALONE:

21 Q. Now, did the trust, to your knowledge,
22 purchase the Ukpe's promissory note?

23 MR. OETHEIMER: Objection.

24 THE WITNESS: The note was deposited
25 into the trust.

1 BY MR. MALONE:

2 Q. Was it just given? Was it a charitable
3 donation or was there a purchase transaction involved
4 with your understanding that the Ukpe's note was
5 deposited into the trust?

6 MR. OETHEIMER: Objection.

7 THE WITNESS: The note and other notes
8 were deposited into the trust. The trust issued then
9 trust certificates, and those certificates were given
10 to the depositor.

11 BY MR. MALONE:

12 Q. Were the certificates that were issued
13 representing these notes, including the Ukpe's note,
14 given in consideration for the deposit of the Ukpe's
15 note into the trust?

16 MR. OETHEIMER: Objection.

17 THE WITNESS: I don't know if that
18 constitutes consideration.

19 BY MR. MALONE:

20 Q. Does the trust own the Ukpe's note?

21 A. The trust holds the -- I believe that's
22 a legal. My understanding is the trust, the trust
23 owns the note.

24 Q. And my question is simply what, if
25 anything, did the trust pay for the Ukpe's note, if

1 you know?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: The certificates
4 representing the trust were exchanged for the deposit
5 of the note.

6 BY MR. MALONE:

7 Q. And to your knowledge, were
8 certificates actually issued in this case, that is for
9 the deposit of the Ukpe's note into the trust?

10 MR. OETHEIMER: Objection.

11 THE WITNESS: I believe so.

12 BY MR. MALONE:

13 Q. What is the basis for your belief?

14 MR. OETHEIMER: Objection.

15 THE WITNESS: The certificates, my
16 understanding is the certificates exist. They were
17 issued at the time of closing.

18 BY MR. MALONE:

19 Q. And what is the basis for your
20 understanding of that?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: General knowledge that
23 every transaction, the certificates, and that there is
24 a cross receipt that states that there was.

25 MR. MALONE: Have you produced that

1 cross receipt today?

2 MR. OETHEIMER: It's been produced in
3 discovery.

4 THE WITNESS: Yes.

5 MR. MALONE: Oh, you have?

6 MR. OETHEIMER: It's actually been
7 previously produced in discovery, it was also in the
8 documents.

9 THE WITNESS: It was one of the
10 documents I looked at.

11 BY MR. MALONE:

12 Q. In here, that we're getting to?

13 A. Yes.

14 Q. Good. That cross receipt reflects that
15 certificates were actually issued when the Ukpe's note
16 was deposited into this trust, the CWABS, Inc.
17 2005-AB3 trust?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: I believe it does.

20 BY MR. MALONE:

21 Q. And have you ever seen any of the
22 certificates?

23 A. No.

24 Q. Have you ever -- do you know any of the
25 certificate numbers?

1 A. No.

2 Q. Do you know if the certificates were
3 ever purchased by anyone?

4 A. I don't have knowledge of that.

5 Q. Based on your experience, did the
6 Ukpe's promissory note, when it comes into the trust,
7 your employer has responsibility for it, can it be in
8 two different trusts at the same time?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: I don't believe that
11 would happen.

12 BY MR. MALONE:

13 Q. And your experience, if it can happen,
14 what would that mean to you?

15 MR. OETHEIMER: Objection.

16 THE WITNESS: I would question if that
17 was a fact.

18 BY MR. MALONE:

19 Q. And if paperwork showed that, in fact,
20 the note was in two different trusts at the same time,
21 what would you then do?

22 MR. OETHEIMER: Objection.

23 THE WITNESS: I would investigate the
24 matter to determine the belief that it should just be
25 in one.

1 BY MR. MALONE:

2 Q. Does the -- does the appearance the
3 paperwork could be in two places at once, would that
4 raise any concern on your part?

5 MR. OETHEIMER: Objection. Unless you
6 show him the paperwork.

7 THE WITNESS: We would investigate the
8 matter and determine what the, what the facts were.

9 BY MR. MALONE:

10 Q. Now, you've indicated that the, to your
11 knowledge, your understanding, the trust in this case,
12 the trust named in the complaint, represented by the
13 plaintiff, actually issued certificates in return for
14 the deposit of the Ukpe's note, correct?

15 A. Yes.

16 MR. OETHEIMER: Objection.

17 BY MR. MALONE:

18 Q. To your knowledge.

19 MR. OETHEIMER: Just Ukpe's note and
20 all the other notes in the pool?

21 MR. MALONE: We're focusing on the
22 Ukpe. The notes that were deposited.

23 BY MR. MALONE:

24 Q. How many notes were deposited in
25 connection with this particular trust?

1 A. I don't know the exact number.

2 Q. What was the closing date of the trust?

3 MR. OETHEIMER: Objection. Unless you
4 show him the documents.

5 THE WITNESS: I believe it was at the
6 end of September 2005.

7 BY MR. MALONE:

8 Q. Okay. Now, the Pooling and Servicing
9 Agreement, the execution copy I showed you, is dated
10 September 1st, 2005, is that correct?

11 A. Yes.

12 Q. Typically, does the Pooling and
13 Servicing Agreement contain a definition of the
14 closing date?

15 A. Yes, it does.

16 Q. And have you reviewed the definition
17 with regard to this particular PSA, and I invite your
18 attention to page 16. Do you see the entry "closing
19 date?"

20 A. I see it.

21 Q. And it is September 27, 2005, is that
22 correct?

23 A. Yes.

24 Q. And what does the closing date mean to
25 you in your experience?

1 MR. OETHEIMER: Objection.

2 THE WITNESS: The date of the
3 certificates being issued and the establishment of the
4 trust.

5 BY MR. MALONE:

6 Q. If the certificates are issued, does
7 that mean in your understanding that the notes have
8 been deposited into the trust?

9 A. Yes. That would occur on the closing
10 date.

11 Q. Did they occur simultaneously?

12 A. Yes, simultaneous transaction.

13 Q. Almost instantaneous?

14 A. Yes, right.

15 Q. But the notes have to go in first, is
16 that correct? Into the trust before the trust issues
17 the certificates?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: Well, it is considered
20 simultaneous.

21 BY MR. MALONE:

22 Q. In no event -- well, does the trust
23 ever issue the certificates before it has possession
24 of the notes?

25 MR. OETHEIMER: Objection.

1 THE WITNESS: The certificates would
2 not be delivered without possession of the notes.

3 BY MR. MALONE:

4 Q. So is it your understanding that the
5 Ukpe's note was in the trust, the Asset-Backed
6 Certificates Series 2005-AB3 CWABS trust as of
7 September 27, 2005?

8 A. Yes.

9 MR. OETHEIMER: Objection.

10 BY MR. MALONE:

11 Q. I'm sorry, I didn't -- yes?

12 A. Yes.

13 Q. Did you do any search before you came
14 today to determine what trust, if any, held the Ukpe's
15 promissory note?

16 MR. OETHEIMER: Objection.

17 THE WITNESS: I had some discussion
18 with counsel based on some of the documents.

19 BY MR. MALONE:

20 Q. Unless counsel okays you to tell me
21 what the discussion is, we want to steer clear of
22 that. And the question, I'm not asking you for
23 discussion of counsel, so if you have to answer it by
24 telling me what discussion of counsel, please alert
25 me.

1 A. I don't know.

2 Q. My question was did you do any search
3 to determine if the Ukpe's note was held by any trust
4 administered by your employer?

5 A. Yes.

6 Q. What search did you do?

7 A. I had a discussion with one of our
8 officers who works on the administration of these
9 trusts.

10 Q. And who is that officer? What's the
11 name?

12 A. Michael Cerchio.

13 Q. And tell us what you said to
14 Mr. Cerchio and what he said to you as the
15 conversation unfolded.

16 MR. OETHEIMER: I want to clarify. I
17 assume, to your understanding, he is not in the legal
18 department of the bank?

19 THE WITNESS: He is not in the legal
20 department of the bank.

21 BY MR. MALONE:

22 Q. What department is he in?

23 A. He's in the trust department as I am.

24 Q. Please answer the question.

25 A. I asked him the designation of LFT

1 trust, or the LFTs.

2 Q. And why did you ask him that?

3 A. I needed a refresher of the
4 nomenclature.

5 Q. And where did the phrase LFT trust come
6 from?

7 A. It's a Liquidity Funding Trust.

8 Q. How were you aware of it? Why are you
9 asking about an LFT trust in connection with -- in
10 connection to this case?

11 A. Well, I am familiar with them, I just
12 wanted clarification that it was a Liquidity Funding
13 Trust.

14 Q. Did something about this case trigger
15 that inquiry by you of Mr. Cerchio as to what an LFT
16 trust was or did that just happen to happen?

17 MR. OETHEIMER: I don't want him to
18 reveal any communications. He has documents.

19 MR. MALONE: I'm asking if something
20 happened.

21 MR. OETHEIMER: I don't know whether it
22 was conversation or the documents.

23 THE WITNESS: I just couldn't -- it was
24 a question there about what was an LFT.

25 BY MR. MALONE:

1 Q. And where did that question come from?

2 A. I don't recall.

3 Q. Did the question about an LFT have
4 something to do with this case, to your knowledge?

5 A. I believe so.

6 Q. And what is the basis for your belief?

7 A. Just my recollection.

8 Q. All right. Proceed, please. Did you
9 approach Mr. Cerchio, or did you call him to the
10 phone, or how did you and he communicate on this?

11 A. Just a brief conversation in the
12 office.

13 Q. His office, your office?

14 A. Well, we have cubicles, you know, in
15 our office.

16 Q. Okay. Relate the conversation, please.

17 A. That LFT indicates Liquidity Funding
18 Trust.

19 Q. And does a Liquidity Funding Trust have
20 anything to do with this lawsuit you're here to
21 testify about today?

22 MR. OETHEIMER: Again, objection,
23 unless you're going to show him the documents.

24 MR. MALONE: I'm asking. We'll get to
25 the documents, but to your knowledge, without looking

1 at documents.

2 THE WITNESS: Can I --

3 BY MR. MALONE:

4 Q. No, sorry, you can't. Unless you want
5 to talk about a privilege, no. Is the answer
6 privileged?

7 A. I don't recall.

8 Q. Okay. Would you tell us what
9 Mr. Cerchio said in response to your inquiry about an
10 LFT trust?

11 A. It's a Liquidity Funding Trust.

12 Q. Did he say anything else other than an
13 LFT trust is a Liquidity Funding Trust? Did he say
14 anything else beyond that?

15 A. No.

16 Q. Did he connect in any way the phrase
17 Liquidity Funding Trust to the Ukpe's promissory note?

18 A. No.

19 Q. Did he suggest in any way that the
20 Ukpe's promissory note was held by a Liquidity Funding
21 Trust?

22 A. No.

23 Q. To your knowledge, independently of
24 your conversation with Mr. Cerchio, was the Ukpe's
25 promissory note ever held by a Liquidity Funding

1 Trust?

2 MR. OETHEIMER: Objection, unless
3 you're going to show him the document.

4 MR. MALONE: Asking his knowledge.
5 Don't look to counsel.

6 MR. OETHEIMER: I don't want you to
7 reveal our conversations.

8 THE WITNESS: I don't know. I'm not an
9 attorney. I believe it may be privileged.

10 BY MR. MALONE:

11 Q. Other than conversations you had with
12 counsel, do you have any knowledge if the Ukpe's
13 promissory note was held by a Liquidity Funding Trust?

14 A. I believe some of our custodial records
15 show that it was held by a Liquidity Funding Trust.

16 Q. Have you reviewed those custodial
17 records prior to today?

18 A. Recently, yes.

19 Q. How recently?

20 A. Friday, March 12th.

21 Q. And are they included in the package of
22 documents you brought with you today?

23 A. I believe so.

24 MR. OETHEIMER: Mark, I was going to
25 say, can we take five minutes?

1 MR. MALONE: Sure, this would be a good
2 time.

3 (Brief recess.)

4 BY MR. MALONE:

5 Q. During the break, Mr. Mitchell, did you
6 discuss your testimony with counsel?

7 MR. OETHEIMER: You can answer yes or
8 no.

9 THE WITNESS: Yes.

10 BY MR. MALONE:

11 Q. With whom did you have a discussion?

12 MR. OETHEIMER: You can identify the
13 discussants.

14 THE WITNESS: These two gentlemen.

15 BY MR. MALONE:

16 Q. Mr. Oetheimer and the other gentleman.
17 Do you know the other gentleman?

18 A. Yes.

19 Q. What's his name?

20 A. It's --

21 MR. OETHEIMER: Mr. Kandel.

22 THE WITNESS: Tyler Kandel.

23 MR. MALONE: Thank you. Mr. Oetheimer,
24 please. Stop answering for the witness. For the
25 record, Counsel, under the rules 4:14-3(f) dealing

1 with Consultation With the Deponent, "Once the
2 deponent has been sworn, there shall be no
3 communication between the deponent and counsel during
4 the course of the deposition while testimony is being
5 taken except with regard to assertion of a claim of
6 privilege, a right to confidentiality, or limitation
7 pursuant to a previously entered court order." The
8 communication you just had with counsel during the
9 break, did it involve any of these subject matters of
10 privilege or any of the others? Just yes or no.

11 THE WITNESS: Yes.

12 BY MR. MALONE:

13 Q. Before the break, we had been
14 discussing an LFT trust, is that correct?

15 A. That's correct.

16 Q. And beyond your conversation with
17 Mr. Cerchio, do you have any knowledge of what an LFT
18 trust is?

19 A. Yes, I do.

20 Q. And what's your knowledge?

21 A. A Liquidity Funding Trust is a
22 designation, and my familiarity is with the
23 Countrywide Liquidity Funding Trust provides for a
24 mechanism to finance large inventory in the time
25 between when the loan is created and the time at which

1 it is deposited into a trust for the ultimate term
2 securitization.

3 Q. And when did you acquire this knowledge
4 about a Liquidity Funding Trust that you just told us
5 on the record?

6 A. 2002.

7 Q. For whom were you working in 2002?

8 A. The Bank of New York.

9 Q. For how long have you worked for the
10 Bank of New York?

11 A. Since April 2002.

12 Q. And before that, by whom were you
13 employed?

14 A. United States Trust Company of New
15 York.

16 Q. And before that, by whom were you
17 employed?

18 A. The First National Bank of Chicago.

19 Q. For how long were you employed by U.S.
20 Trust?

21 A. About two and a half years.

22 Q. And for how long were you employed by
23 the First National Bank of Chicago?

24 A. About a year and a half.

25 Q. And before that, by whom were you

1 employed?

2 A. Banker's Trust Company.

3 Q. For how long were you employed by
4 Banker's Trust Company?

5 A. Four years.

6 Q. And before that, by whom were you
7 employed?

8 A. The Bank of New York.

9 Q. And during that earlier stint with the
10 Bank of New York, for how long did you work for them?

11 A. About two years.

12 Q. And before that earlier time of
13 employment with the Bank of New York, for whom did you
14 work?

15 A. Security Pacific bank.

16 Q. And how long had you worked for
17 Security Pacific Bank?

18 A. Seven years.

19 Q. And before that, who did you work for?

20 A. Banker's Trust Company.

21 Q. And for how long did you work for
22 Banker's Trust Company?

23 A. Three and a half years.

24 Q. And before that, by whom were you
25 employed?

1 A. Chemical Bank.

2 Q. How long did you work for Chemical
3 Bank?

4 A. One year.

5 Q. Before that, by whom were you employed?

6 A. The Bank of Tokyo Trust Company.

7 Q. For how long did you work for them?

8 A. Seven years.

9 Q. And before that, by whom were you
10 employed?

11 A. I was a student in college.

12 Q. Where did you go to college?

13 A. Fairleigh Dickinson University.

14 Q. And when did you graduate from
15 Fairleigh Dickinson?

16 A. 1977.

17 Q. And where did you graduate from high
18 school?

19 A. Bergen Catholic High School in Oradell,
20 New Jersey.

21 Q. What year was that?

22 A. 1971.

23 Q. Now, you indicated in 2002 you required
24 knowledge regarding LFT trust. Could you relate for
25 us the circumstances which you acquired that

1 knowledge?

2 A. I was aware that one of our clients,
3 Countrywide Mortgage, was engaged in these
4 transactions.

5 Q. And back in 2002, who was the client
6 again?

7 A. Countrywide.

8 Q. No, I'm sorry, who were you working
9 for?

10 A. The Bank of New York.

11 Q. And other than that experience you had
12 in 2002, did you have any other experiences with LFT
13 or learn anything more about Liquidity Funding Trust
14 up to the present?

15 A. Not really.

16 MR. OETHEIMER: Objection.

17 THE WITNESS: Not really.

18 MR. OETHEIMER: Again, just pause if
19 you would for me.

20 THE WITNESS: Okay, I will.

21 BY MR. MALONE:

22 Q. And if you can just expand a little bit
23 on your answer. I'm trying to understand the role of
24 Liquidity Funding Trust in terms of a securitized
25 trust such as the trust that claims to own these

1 promissory notes as reflected in the Pooling and
2 Servicing Agreement in this case.

3 MR. OETHEIMER: Objection. Form. But
4 you can answer.

5 THE WITNESS: Liquidity Funding Trust
6 is where loans are collateral for notes that are
7 issued under an indenture. And the purpose -- my
8 understanding, the purpose is to provide a vehicle to
9 finance those assets during the period of time called
10 in the industry the gestation period.

11 MR. MALONE: Can I have that answer red
12 back, please?

13 (The stenographer read back the
14 last answer.)

15 BY MR. MALONE:

16 Q. With regard to the Ukpe's promissory
17 note, was there what you describe as a gestation
18 period?

19 MR. OETHEIMER: Objection.

20 THE WITNESS: In the records, the loan
21 was part of a -- some of the corporate records
22 indicated it was part of a Liquidity Funding Trust.

23 BY MR. MALONE:

24 Q. Does that indicate then there was such
25 a gestation period?

1 MR. OETHEIMER: Objection.

2 BY MR. MALONE:

3 Q. Or were the Ukpe's note in this LFT
4 trust for some other reason other than the gestation
5 period?

6 MR. OETHEIMER: Objection.

7 THE WITNESS: I know the period, I'm
8 aware of the period of time it was in the Liquidity
9 Funding Trust.

10 BY MR. MALONE:

11 Q. Before moving on to the period of time,
12 my question is simply was there a gestation period
13 with regard to the Ukpe's note in connection with the
14 trust in this case?

15 A. I believe so.

16 Q. Okay. When was that gestation period?

17 MR. OETHEIMER: Objection. You can
18 answer.

19 THE WITNESS: I'd have to review some
20 documents for the precise dates. I don't know how
21 precise you want me to be with the dates.

22 BY MR. MALONE:

23 Q. Your best recollection.

24 MR. OETHEIMER: Objection.

25 BY MR. MALONE:

1 Q. If you have one.

2 A. From the point of time it was
3 originated.

4 Q. It being?

5 A. The Ukpe he loan.

6 Q. Do you know when it was originated?

7 A. I want to take a look at the -- for the
8 exact date in 2005.

9 Q. Go ahead. From that point in time --
10 I'm sorry, I interrupted your answer. What happened
11 in relation to a gestation period, if anything.

12 MR. OETHEIMER: Objection. You can
13 answer.

14 THE WITNESS: Well, you would only know
15 what happened at the point at which the loan was
16 delivered to us when the Liquidity Funding Trust was
17 created.

18 BY MR. MALONE:

19 Q. And you mentioned loan delivered to us.
20 And by us are you also including your cotrustee, the
21 Bank of New York Trust Company, NA?

22 A. Yes.

23 Q. Are they an affiliated company?

24 A. They are, they are.

25 MR. OETHEIMER: Objection. If you

1 know.

2 THE WITNESS: Yeah, they are. Yes,
3 they are.

4 BY MR. MALONE:

5 Q. Do they have common ownership?

6 A. Joint, yes.

7 Q. And you and the trust department for
8 the Bank of New York, do you frequently communicate
9 with your colleagues in the custody department of the
10 Bank of New York Trust Company?

11 A. Yes.

12 Q. Is there a computer network by which
13 you communicate with them?

14 A. I do not -- no.

15 Q. You've indicated earlier that the
16 Liquidity Funding Trust issued notes, is that correct?

17 A. Yes.

18 Q. And were notes issued by this Liquidity
19 Funding Trust?

20 A. I believe so.

21 Q. Are those notes still outstanding?

22 A. No.

23 Q. What happened to them?

24 A. They will be retired prior to the trust
25 being terminated, and then the Liquidity Funding Trust

1 is terminated prior to the creation of or simultaneous
2 with the creation of a term securitization.

3 Q. And the notes that are issued by the
4 Liquidity Funding Trust, are they sold to the
5 marketplace? Do people buy them?

6 MR. OETHEIMER: Objection.

7 BY MR. MALONE:

8 Q. If you know.

9 A. I don't know precisely.

10 Q. Well, you indicated that the Liquidity
11 Funding Trust has a funding role, is that correct?

12 A. Right.

13 Q. How does it get funds? Does it sell
14 the notes or --

15 MR. OETHEIMER: Objection.

16 BY MR. MALONE:

17 Q. -- pledge them as collateral for a
18 loan, if you know?

19 A. Well, the trustee is not involved in
20 that particular transaction as far as notes are, are
21 used for funding. It may be a private -- I believe it
22 to be a private transaction.

23 Q. The LFT trust in this case then, do I
24 understand you that the Bank of New York, your
25 employer, was not a trustee for it?

1 MR. OETHEIMER: Objection. That's not
2 what he said.

3 THE WITNESS: We were trustee.

4 BY MR. MALONE:

5 Q. So you were involved in the LFT trust,
6 your employer?

7 A. Yes, the issuance of the notes, yes.

8 Q. When were the notes issued that were
9 backed up by promissory notes, including the Ukpe's
10 promissory note?

11 A. Well, I might have to look at the
12 documents to have the exact date.

13 Q. Without looking at the documents.

14 A. August 2005.

15 Q. And when were the notes retired, the
16 notes issued by the LFT that were backed up by
17 promissory notes including the Ukpe's promissory note?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: I don't have actual
20 knowledge of when they were retired. They would be --
21 they are retired prior to the, or at the time of the
22 creation of the new trust.

23 BY MR. MALONE:

24 Q. Okay. Would that be September 27,
25 2005, based on your understanding of the closing date?

1 A. Based on the understanding, yes.

2 Q. Are the notes retired -- strike that.

3 Are the promissory notes that are the collateral for
4 the notes issued by the Liquidity Funding Trust, are
5 those promissory notes released from the Liquidity
6 Funding Trust before the notes are retired?

7 MR. OETHEIMER: Objection.

8 THE WITNESS: The collateral, the
9 notes.

10 BY MR. MALONE:

11 Q. Promissory notes versus the --

12 A. Oh yeah, the promissory notes, when
13 they go into the new trust.

14 Q. In this case?

15 A. 2005-AB3 would have to be, in our part
16 of the closing process, released and free and clear of
17 any lien.

18 Q. By the way, based on your many years
19 experience in the industry, including your employment
20 with the plaintiff, trustee in this case, how does a
21 trust get its name?

22 MR. OETHEIMER: Objection. You can
23 answer. I don't know if there is a --

24 BY MR. MALONE:

25 Q. If you know.

1 A. As far as I know, the nomenclature is
2 there is, if you will, general industry practice as to
3 how to name a trust.

4 Q. What is your understanding of the
5 general industry practice as to how to name a trust?

6 A. It would indicate the depositor, the
7 type of security, and then the date and the series
8 designation.

9 Q. In this particular case, the caption of
10 the case is Bank of New York as Trustee for the
11 Certificate Holders CWABS, Inc. Is CWABS, Inc. the
12 depositor, to your knowledge, under the Pooling and
13 Servicing Agreement?

14 A. Yes.

15 Q. And does the phrase Asset-Backed
16 Certificate describe the type of security?

17 A. To me, yes.

18 Q. And can you briefly describe your
19 understanding of what an Asset-Backed Certificate is?

20 A. Well, it's a very general term for
21 certificates issued by a trust, and that would be a
22 pass-through trust.

23 Q. Briefly, without giving us a legal
24 definition, would you give us your understanding of
25 what is meant by a pass-through trust?

1 A. That the certificates are not debt.
2 They are not bonds or notes. They represent the fact
3 that there is a Pooling and Servicing Agreement, the
4 trust owns the assets, the holders of the certificates
5 have an interest in the trust.

6 Q. And is there a difference between
7 Asset-Backed Certificates and Asset-Backed Securities?

8 MR. OETHEIMER: Objection. You can
9 answer.

10 THE WITNESS: Again, it's industry
11 terminology.

12 BY MR. MALONE:

13 Q. When the term Asset-Backed Securities
14 is used within industry terminology, what does that
15 mean?

16 A. That would include certificates, it
17 would also include other types of securities such as
18 notes. The main distinction between a security that's
19 considered a debt or security that's considered an
20 ownership in the trust.

21 Q. So the certificate indicates ownership
22 in a trust?

23 MR. OETHEIMER: Objection. You can
24 answer.

25 THE WITNESS: Typically, yes.

1 BY MR. MALONE:

2 Q. And does the use of the word
3 Asset-Backed Security, the word security indicates
4 debt?

5 MR. OETHEIMER: Objection.

6 MR. MALONE: Typically.

7 MR. OETHEIMER: Objection.

8 THE WITNESS: It's not specific as
9 to -- it's more general. That wouldn't indicate
10 necessarily debt.

11 BY MR. MALONE:

12 Q. And you further indicated that the name
13 of the trust, typically in terms of industry practice,
14 has something in terms of a date. Do you see the date
15 in this case?

16 A. 2005.

17 Q. And does that reflect the --

18 A. That would be the calendar year
19 typically that the trust was established.

20 Q. And last, the designation, AB3 in this
21 case, what does that represent happened or what does
22 that tell us about the trust?

23 MR. OETHEIMER: Objection. You can
24 answer.

25 THE WITNESS: It's, well, it's the

1 sequentially, it's the third time of that type of
2 security issued in that calendar year.

3 BY MR. MALONE:

4 Q. Were the securities in this case issued
5 pursuant to a registration with the Securities and
6 Exchange Commission?

7 MR. OETHEIMER: Objection. You called
8 them security certificates.

9 BY MR. MALONE:

10 Q. Were the certificates issued in this
11 case issued in connection with a registration with the
12 Securities and Exchange Commission?

13 A. I'm not certain.

14 Q. Do you know if the security
15 certificates issued in this case were part of a public
16 offering?

17 A. I'm not certain. It's basically the
18 same question.

19 Q. Do you know if the certificates issued
20 in the Ukpe's case were issued as part of a private
21 offering?

22 A. I'm not certain. I'd have to look at
23 the documents to refresh my memory.

24 Q. What documents would you look at to
25 refresh your recollection whether or not the Ukpe's --

1 the certificates in the Ukpe case were issued as part
2 of a registration with the SEC or as part of a private
3 offering?

4 A. The prospectus supplement would
5 indicate that it's issued as a public security.

6 Q. And if a prospectus supplement
7 indicates that security is issued as a public
8 security, does the name of the subsequent certificates
9 that are issued to the public have to reflect the name
10 on the registration statement, the name of the
11 depositor on the registration statement, if you know?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: I'm not -- I don't
14 believe I'm qualified to answer that question.

15 BY MR. MALONE:

16 Q. And in your experience, or many year's
17 experience, do you have any knowledge if there is a
18 legal requirement under the securities laws that the
19 name of a trust, a trust issuing securities to the
20 public, certificates to the public, that, that name
21 has to correspond with the name of the depositor and
22 the registration statement?

23 MR. OETHEIMER: Objection.

24 BY MR. MALONE:

25 Q. If you know.

1 A. It's a legal question.

2 Q. I'll jump ahead a little bit to
3 Mitchell-7, and I'll ask you to take a look at it and
4 ask if that's the document you were referring to
5 earlier that you thought had some relationship to the
6 LFT discussion.

7 A. Yes.

8 Q. And can you tell us, to your knowledge,
9 what Mitchell-7 is?

10 A. They are screen prints used by our
11 operations area to indicate notations on our internal
12 computer system.

13 Q. And when did you receive Mitchell-7?

14 A. Friday, March 12th.

15 Q. And did you receive that from counsel?

16 A. Yes.

17 Q. Did counsel -- just answer yes or no.
18 Did counsel make any representations to you about the
19 contents of Mitchell-7?

20 MR. OETHEIMER: Objection.

21 BY MR. MALONE:

22 Q. Just yes or no.

23 A. Yes.

24 Q. Other than having seen Mitchell-7 last
25 Friday for the first time, are you familiar, based on

1 your own experience, your own duties, with the types
2 of screens that are contained on Mitchell-7?

3 A. I have seen them before.

4 Q. When is the last time you saw one?

5 A. In general?

6 Q. Yes.

7 A. Perhaps a year ago.

8 Q. Is it a screen you frequently have
9 dealings with?

10 A. No.

11 Q. Do you have any idea when the screens,
12 the information on the screens reflected on
13 Mitchell-7, came into existence?

14 MR. OETHEIMER: Objection.

15 BY MR. MALONE:

16 Q. Without looking at the document, do you
17 have anything --

18 MR. OETHEIMER: Objection.

19 BY MR. MALONE:

20 Q. Do you have any knowledge whether the
21 screens came into existence last week or three years
22 ago or somewhere in between?

23 MR. OETHEIMER: Objection.

24 THE WITNESS: Well, they can be, they
25 can be printed at any time.

1 BY MR. MALONE:

2 Q. Okay. Do you know when Mitchell-7 was
3 printed, based on your own independent knowledge?

4 A. No.

5 Q. Do you know when Mitchell-7 was created
6 based on your own independent knowledge?

7 MR. OETHEIMER: Objection. Mitchell-7
8 consists of different documents created at different
9 times, Mark.

10 MR. MALONE: Okay. I'll get into that
11 then, then he can say he doesn't know or he does know.

12 THE WITNESS: It would be -- it would
13 correspond to the dates on the, on the documents.

14 BY MR. MALONE:

15 Q. And then I understand your knowledge of
16 when this document Mitchell-7 -- let's go through them
17 one by one. The first page of Mitchell-7 is marked at
18 the bottom BoNY 782. Do you see that?

19 MR. OETHEIMER: Referring to this?

20 THE WITNESS: Yes, I see it, yes.

21 BY MR. MALONE:

22 Q. Other than a date that appears on BoNY
23 782, independently, do you have any knowledge of when
24 the document was created?

25 A. No.

1 Q. Do you have any knowledge of how it was
2 created?

3 MR. OETHEIMER: Objection.

4 THE WITNESS: No.

5 MR. MALONE: In this area we previously
6 asked for metadata concerning documents. We're going
7 to make a specific request for metadata as to BoNY 782
8 through 787 on Mitchell-7.

9 Q. Do you know anything about the computer
10 system used to create Mitchell-7?

11 A. I have some knowledge of it.

12 Q. What is the computer system? Hardware
13 and software.

14 MR. OETHEIMER: Objection.

15 THE WITNESS: I believe that this is
16 from a system called Win CMS.

17 BY MR. MALONE:

18 Q. And that's the software package?

19 A. Yes.

20 Q. And what's the hardware?

21 A. I don't know.

22 Q. Do you have any idea of who inputs the
23 data?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: Employees located in

1 our -- in the facility in Cypress, California.

2 BY MR. MALONE:

3 Q. And what is your basis of understanding
4 that the information on this particular screen was
5 inputted by an employee located in Cypress,
6 California?

7 A. Based on my understanding that, that
8 would be the only people who have access to the
9 system. The system is controlled. Access is
10 controlled.

11 Q. Okay. And what kind of security
12 measures does the system have in terms of access?

13 A. I don't know.

14 MR. OETHEIMER: Objection.

15 BY MR. MALONE:

16 Q. And what kind of measures prevent an
17 operator with access from going in and changing the
18 contents of a record at any point in time?

19 MR. OETHEIMER: Objection.

20 THE WITNESS: I don't know.

21 BY MR. MALONE:

22 Q. Could you tell us what knowledge you
23 have about the security, the computer security that is
24 employed by your employer with regard to its business
25 records regarding its role as trustee of securities?

1 MR. OETHEIMER: I'm sorry, can I
2 interrupt, can I hear the question back?

3 (The stenographer read back the
4 pending question.)

5 MR. OETHEIMER: Now you're changing --
6 your question is to his employer and these records are
7 not his Bank of New York Trustee records. We produced
8 the witness last week, Lester Juarez, to testify about
9 these records. So I'm going to note a continuing
10 objection to questioning Mr. Mitchell about the
11 computer system of Bank of New York Trust Company.
12 You can ask him about Bank of New York Trustee.

13 MR. MALONE: Your objection will be
14 noted and I believe previously in discovery made in
15 this case, Mr. Juarez was identified as an employer of
16 the Bank of New York. Employee, employee of the Bank
17 of New York.

18 MR. OETHEIMER: Who was, Mr. Juarez?

19 MR. MALONE: The witness. No, he was
20 quite clear that he was an employee.

21 MR. OETHEIMER: The documents will
22 speak for themselves. He testified that he was an
23 employee.

24 MR. MALONE: I understand.

25 MR. OETHEIMER: Can you let me finish,

1 Mark?

2 MR. MALONE: Sure.

3 MR. OETHEIMER: He testified at
4 deposition under oath that he was an employee of Bank
5 of New York Trust Company, Mr. Juarez did, and he was
6 examined on these documents and the system which are
7 Bank of New York Trust Company records. So I'm going
8 to note a continuing objection to asking this witness
9 for details of a computer system that's operated by
10 people with Bank of New York Trust Company in
11 California when this witness works for Bank of New
12 York in New York.

13 BY MR. MALONE:

14 Q. You heard counsel's objection. Do you
15 know if this computer system is maintained by your
16 employer or someone else's employer? The computer
17 system that made the record on Mitchell-7.

18 MR. OETHEIMER: Objection. Go ahead.

19 THE WITNESS: I don't know.

20 BY MR. MALONE:

21 Q. Do you know anything about the
22 integrity of this record, that is when it was made,
23 who made it, or whether anyone had access to it after
24 it was made, whether it was ever altered, whether
25 there was security in place to prevent it from being

1 altered?

2 MR. OETHEIMER: Objection. How many
3 questions is that?

4 MR. MALONE: Let's take them one by
5 one. Let's start with -- can I have the question read
6 back? I did ask a lot of questions.

7 (The stenographer read back the
8 pending question.)

9 MR. OETHEIMER: May I ask you what
10 reason you have to believe or to allege any of that?

11 MR. MALONE: I don't have to do that,
12 so no.

13 MR. OETHEIMER: And I have an
14 objection.

15 BY MR. MALONE:

16 Q. Let's break that down into a series of
17 questions. First generally, do you have any knowledge
18 of the integrity of this record?

19 MR. OETHEIMER: Objection, vague.

20 THE WITNESS: Of this record?

21 BY MR. MALONE:

22 Q. Yes.

23 A. No.

24 Q. Do you have any knowledge of who made
25 it other than looking at what the record says?

1 A. No.

2 Q. Do you have any knowledge of when it
3 was made?

4 A. No.

5 Q. Do you have any knowledge of whether
6 it's been altered from the time it was initially made?

7 MR. OETHEIMER: Objection.

8 THE WITNESS: I have no knowledge.

9 BY MR. MALONE:

10 Q. Do you have any knowledge of what
11 security measures were in place to maintain the
12 integrity of the record when it was initially made?

13 MR. OETHEIMER: Objection.

14 THE WITNESS: Well, when you say any
15 knowledge in that the bank does have policies about
16 computer integrity, and it would be my belief that it
17 would be subject to bank policies.

18 BY MR. MALONE:

19 Q. Which bank are you talking about? Your
20 employer or somebody else's employer?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: The policies are of the
23 Bank of New York Mellon, and similar policies exist
24 for the affiliate, which at the time, I think, was
25 being called BNY Western Trust Company.

1 Q. And the affiliate, is that the
2 cotrustee in this case or some other entity?

3 A. I believe, my recollection is they
4 are -- my recollection is they are a cotrustee.

5 MR. MALONE: Can I have that previous
6 answer read back?

7 (The stenographer read back the
8 following:

9 "A. The policies are of the Bank of
10 New York Mellon, and similar policies exist
11 for the affiliate, which at the time, I
12 think, was being called BNY Western Trust
13 Company.")

14 BY MR. MALONE:

15 Q. What is BNY Western Trust Company?

16 A. The prior name to the Bank of New York
17 Trust Company, NA.

18 Q. When did the name change, if you know?

19 A. I'm not certain.

20 Q. Approximately.

21 A. I believe it might have been 2004 or
22 2005 which would be close to the time that this
23 transaction closed.

24 Q. After 2004 or 2005, whenever the name
25 change took place, did the Bank of New York Western

1 conduct any business under that name, to your
2 knowledge?

3 MR. OETHEIMER: Objection.

4 THE WITNESS: I don't know.

5 BY MR. MALONE:

6 Q. Now, is Mitchell-7 someone else's
7 record, a record of someone other than a record of
8 your employer?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: I believe it to be a
11 record of the Bank of New York Trust Company, NA in
12 California.

13 BY MR. MALONE:

14 Q. And that Bank of New York Trust
15 Company, NA is not your employer, is that correct?

16 A. That is correct.

17 Q. Do you believe -- so I think you've
18 answered my question but I'd like a simple yes or no,
19 if you can. Is Mitchell-7 the record of someone other
20 than your employer?

21 MR. OETHEIMER: Objection. Asked and
22 answered.

23 THE WITNESS: Yes.

24 BY MR. MALONE:

25 Q. Now, do you have access to, from your

1 computer terminal, documents maintained and created by
2 the Bank of New York Trust Company, NA?

3 A. No.

4 MR. OETHEIMER: Objection.

5 BY MR. MALONE:

6 Q. When you were given Mitchell-7 last
7 Friday by counsel, did you review it?

8 A. I looked at it, yes.

9 Q. Did you look at it with anyone? Was
10 anyone with you when you reviewed it?

11 A. With counsel.

12 Q. Where did that take place?

13 A. At the offices of Emmet, Marvin and
14 Martin.

15 Q. In New York City?

16 A. Yes.

17 Q. Who was present?

18 MR. OETHEIMER: You can answer.

19 MR. MALONE: You're pointing to
20 Mr. Oetheimer and Mr. Tyler Kandel?

21 A. Kandel, yes.

22 Q. Anyone else?

23 A. No.

24 Q. Did they tell you anything about the
25 document when you were discussing it?

1 MR. OETHEIMER: Objection.

2 BY MR. MALONE:

3 Q. Just yes or no.

4 MR. OETHEIMER: I'm still going to
5 object to the phrasing of the question. You can
6 answer yes or no as to whether we discussed the
7 document.

8 THE WITNESS: Yes.

9 BY MR. MALONE:

10 Q. In reviewing Mitchell-7 and the
11 individual pages, were there discussions about the
12 date entries contained on the screen shots of
13 Mitchell-7?

14 MR. OETHEIMER: I'm going to now object
15 and assert attorney/client privilege and instruct the
16 witness not to answer as to the substance and details
17 of conversations. I think if you begin to go down
18 this road and ask whether this aspect of the document
19 was discussed, was that aspect discussed is impinging
20 on attorney/client privilege.

21 MR. MALONE: I don't agree with you,
22 but I'll move on for purposes of we have territory to
23 cover.

24 BY MR. MALONE:

25 Q. There are certain dates reflected on

1 BoNY 782 of Mitchell-7. Before I get into specific
2 dates, do you have any general knowledge of what those
3 date entries mean?

4 MR. OETHEIMER: Objection, again,
5 unless I can have a continuing objection. These are
6 records of Bank of New York Trust Company, not on the
7 witness' system. So I mean we -- he has seen the
8 documents, you can certainly ask him about his
9 knowledge of the documents, but I'm going to object to
10 questions that go into the specifics of how entries
11 were made, what they represent.

12 MR. MALONE: You have tendered him as a
13 witness today to answer questions and you gave him
14 these documents to review. Your objection is noted,
15 but please answer the question.

16 MR. OETHEIMER: He's tendered as a
17 witness on behalf of the Bank of New York Trust
18 Company as Trustee. Certain matters are the trustee's
19 responsibility under the trust, certain are the
20 cotrustee's. The trustee relies upon the activity of
21 the cotrustee. By giving the witness the document, it
22 doesn't mean I proffered him as a witness. We already
23 proffered a witness who we flew in from California,
24 I'll remind you, to testify about these specific
25 documents. My objection's noted.

1 MR. MALONE: Thank you. Do you need
2 the question read back?

3 THE WITNESS: Yes, please.

4 (The stenographer read back the
5 following:

6 "Q. There are certain dates reflected
7 on BoNY 782 of Mitchell-7. Before I get into
8 specific dates, do you have any general
9 knowledge of what those date entries mean?")

10 THE WITNESS: I don't use this
11 particular system. It is used by the people in the
12 facility that do the operational work for this
13 particular -- for this service, and I am not familiar
14 with what the specific dates may reflect.

15 MR. MALONE: Okay. May I have a moment
16 to speak with counsel?

17 (Discussion off the record.)

18 BY MR. MALONE:

19 Q. On Mitchell-7, BoNY 782, there is a
20 notation, Description, Deposit. Do you see it there
21 towards the top of the page?

22 A. Yes, I do.

23 Q. And what does that mean to you, if
24 anything?

25 MR. OETHEIMER: Objection.

1 THE WITNESS: That would mean that the
2 loan was deposited on September 21, 2005.

3 BY MR. MALONE:

4 Q. And what loan are we talking about?

5 A. Loan by -- it has here collateral ID,
6 111615840.

7 Q. Okay. Do you know what that collateral
8 ID relates to?

9 A. Well, based on some documents I looked
10 at, including the mortgage loan schedule, I believe
11 that to be the Ukpe loan.

12 Q. Does the mortgage loan schedule contain
13 a loan number?

14 A. Yes.

15 Q. And does it contain a unique loan
16 number that relates to the Ukpe's loan?

17 A. Yes.

18 Q. And to your knowledge, is that unique
19 loan number reflected on Mitchell-7, BoNY 782 as the
20 number you just read?

21 A. I believe that to be the number that
22 also appears on this loan schedule.

23 Q. You mentioned looking at a mortgage
24 loan schedule. Is that correct? Just now?

25 A. Yes.

1 Q. When did you look at the mortgage loan
2 schedule?

3 A. On Friday, March 12th.

4 Q. Is that something counsel showed to
5 you?

6 A. Yes.

7 Q. Is that mortgage loan schedule in the
8 package of documents you brought today?

9 A. I don't believe so.

10 MR. MALONE: Can I ask that the
11 mortgage loan schedule that was shown to the witness
12 last Friday by counsel be produced.

13 MR. OETHEIMER: You have it.

14 MR. MALONE: I want to see the one that
15 was shown to the witness.

16 MR. OETHEIMER: It's the redacted copy.

17 MR. MALONE: I want to see the one that
18 was shown to the witness. Sorry, Mr. Oetheimer.

19 BY MR. MALONE:

20 Q. Can you describe for us the document
21 you saw you're saying is a mortgage loan schedule?
22 What did it look like?

23 A. Well, it was a photocopy or image,
24 parts of which were blacked out, and it showed the one
25 line.

1 Q. Do you know if it was a document
2 created by your employer?

3 MR. OETHEIMER: I'm sorry, can we --
4 the mortgage loan schedule or the redacted copy that
5 he was shown? You understand my difficulty?

6 MR. MALONE: Yes, very fine line, but
7 fair.

8 BY MR. MALONE:

9 Q. The mortgage loan schedule, before
10 redactions had been -- do you know what we mean by
11 redaction?

12 A. Yes, I do.

13 Q. Before redactions were deleted, do you
14 know if the mortgage loan schedule was created by your
15 employer?

16 A. It is not created by my employer.

17 Q. Do you know who created it?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: No.

20 BY MR. MALONE:

21 Q. Do you know when it was created?

22 A. It would be created at the time --

23 Q. Do you know when it was created?

24 MR. OETHEIMER: I'm going to object to
25 not letting the witness finish his answer.

1 MR. MALONE: Go ahead. I'm sorry, I
2 interrupted. Please go ahead.

3 THE WITNESS: The mortgage loan
4 schedule.

5 BY MR. MALONE:

6 Q. That you were shown on Friday.

7 MR. OETHEIMER: Well now you're
8 confusing it again because he was shown a redacted
9 copy. Your question relates to the original mortgage
10 loan schedule, right?

11 MR. MALONE: Yes.

12 BY MR. MALONE:

13 Q. Before it was redacted, there was a
14 mortgage loan schedule. Do you know when it was
15 initially created?

16 A. The closing date.

17 Q. And how do you know that?

18 A. That is when the transaction closes.
19 It's an exhibit to the Pooling and Servicing
20 Agreement.

21 Q. I understand you're saying it's an
22 exhibit, but were you at the closing?

23 A. No.

24 Q. Do you know if any exhibits were
25 included with the Pooling and Servicing Agreement at

1 the closing on September 27, 2005?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: I don't have personal
4 knowledge.

5 BY MR. MALONE:

6 Q. Do you know if a loan schedule of any
7 kind was included as an exhibit to the Pooling and
8 Servicing Agreement at the closing on September 27,
9 2005?

10 MR. OETHEIMER: Objection.

11 THE WITNESS: I did review our bank
12 records to determine that.

13 BY MR. MALONE:

14 Q. And by our bank records, your
15 employer's bank records?

16 A. Yes.

17 Q. And what bank records did you review to
18 determine there was a loan schedule as part of the
19 Pooling and Servicing Agreement at the closing on
20 September 27, 2005?

21 A. The transaction would not close without
22 the exhibit being attached.

23 Q. I heard you, but a moment ago you said
24 you reviewed some bank records. What records did you
25 review?

1 A. Well, I did look at the Pooling and
2 Servicing Agreement.

3 Q. When did you look at the Pooling and
4 Servicing Agreement?

5 A. As best I can recall, two weeks ago.

6 Q. Were you with someone when you saw it?

7 A. No, I was it was on my desk.

8 Q. It was on your desk?

9 A. I was at my desk.

10 Q. How did you get it? Did you go to a
11 library and get it, was it on your shelf all along?
12 How did you get the Pooling and Servicing Agreement
13 that you looked at two weeks ago?

14 A. It's in electronic form. It's retained
15 on bank records.

16 Q. Okay. And so you pulled up an
17 electronic copy of the Pooling and Servicing
18 Agreement?

19 A. Yes, I did.

20 Q. And did you review the loan schedule to
21 that PSA?

22 A. No, I did not.

23 Q. Do you know if there was a loan
24 schedule attached?

25 A. I don't know.

1 Q. Have you, in the course of your duties
2 with the bank, have you had occasion to review loan
3 schedules attached to PSAs?

4 A. Yes.

5 Q. And we've been provided an execution
6 copy of the Pooling and Servicing Agreement. Does
7 that reflect to you that it's been signed and
8 executed?

9 A. That would indicate that it's a copy
10 that is signed.

11 Q. Okay. And if the closing is on
12 September 27th, would it be your understanding that's
13 when the PSA signatures would appear?

14 A. Oh, yes.

15 Q. Okay. And is it your understanding
16 that the mortgage loan schedule, when that PSA is
17 signed, would be an exhibit attached to the PSA?

18 A. It would be on the closing table. It
19 may be not necessarily affixed to it, but it would be
20 on the closing table, and that's common practice.

21 Q. Okay.

22 A. Or it might be in electronic form.

23 Q. Do you know what the loan schedule is?
24 What exhibit the loan schedule is supposed to be in
25 this case to the Pooling and Servicing Agreement?

1 A. No.

2 Q. Inviting your attention to Pooling and
3 Servicing Agreement that's been previously marked page
4 F-1, the upper right hand corner, it says exhibits F-1
5 and F-2, do you see that?

6 A. Yes.

7 Q. Can you read into the record the next
8 two lines?

9 A. "Exhibits F-1 and F-2 are schedules of
10 mortgage loans delivered to the trustee at closing and
11 on file with the trustee."

12 Q. So is it your understanding that if
13 this trust closed, and as part of it there would be an
14 exhibit marked either Exhibit F-1 or Exhibit F-2 that
15 would be a schedule of the mortgage loan?

16 A. Yes.

17 Q. And have you ever seen a schedule
18 marked Exhibit F-1 or Exhibit F-2?

19 MR. OETHEIMER: Objection.

20 THE WITNESS: No.

21 BY MR. MALONE:

22 Q. Now, the document you saw a couple of
23 weeks ago, how did you come to be looking at it?
24 Someone ask you to look at it?

25 MR. OETHEIMER: You asked a

1 nonspecific, he said PSA.

2 BY MR. MALONE:

3 Q. The Pooling and Servicing Agreement you
4 looked at a couple weeks ago, how did you come to be
5 looking at it? Did someone ask you to look at it?

6 A. No.

7 Q. In your experience, if a loan schedule
8 is, in fact, part of the, of a PSA, does that schedule
9 bear the identification, the exhibit numbers that
10 correspond to the text of the PSA?

11 MR. OETHEIMER: Objection.

12 THE WITNESS: They would.

13 BY MR. MALONE:

14 Q. And in your experience, does the PSA
15 specify the contents of the loan schedule?

16 MR. OETHEIMER: Objection.

17 THE WITNESS: It would depict the
18 information that needs to be in the mortgage loan
19 schedule.

20 BY MR. MALONE:

21 Q. And did you make any effort to match up
22 what the PSA should be and the contents of the
23 mortgage loan schedule with the contents of the
24 document that was shown to you last Friday and
25 represented -- the redacted mortgage loan schedule you

1 were shown.

2 MR. OETHEIMER: Objection.

3 THE WITNESS: No.

4 BY MR. MALONE:

5 Q. Do you know if the contents of the
6 redacted mortgage loan schedule shown to you last
7 Friday match with the requirements of the PSA for the
8 contents of a mortgage loan schedule?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: No, I do not.

11 BY MR. MALONE:

12 Q. By the way, who are the investors of
13 this trust?

14 MR. OETHEIMER: Objection.

15 THE WITNESS: We don't have records of
16 who the actual beneficial -- or what we call
17 beneficial owners are who would be the investors in
18 the certificates. Those, we, we don't have the
19 records of the ultimate beneficial owner who are the
20 investors.

21 BY MR. MALONE:

22 Q. The ultimate beneficial owners are the
23 people you represent as trustee, correct?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: We represent the trust of

1 the certificate holders, yes.

2 BY MR. MALONE:

3 Q. And those are the ultimate
4 beneficiaries, correct?

5 A. Yes.

6 Q. But you don't know who they are?

7 MR. OETHEIMER: Objection.

8 THE WITNESS: We don't have their
9 specific identities on our records.

10 BY MR. MALONE:

11 Q. What identities do you have?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: These are book entry
14 securities and they are held in nominee name by the
15 depositary.

16 BY MR. MALONE:

17 Q. Can you explain that, please?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: The depositary is
20 Depository Trust Company whose service they provide is
21 allow the securities to exist in book entry form. And
22 our records represent that they are in the name of the
23 depositary as a nominee for the people who participate
24 in the depositary.

25 BY MR. MALONE:

1 Q. And when you, as trustee, receive
2 payments from the, the people who executed the notes
3 such as, in this case, when the Ukpes make a mortgage
4 payment, who distributes that, that payment to the
5 ultimate beneficiaries?

6 MR. OETHEIMER: First objection. Your
7 question says when they. I assume you mean back when
8 the trustee receives the payments and you know that
9 the payments are not received by Bank of New York
10 Trustee in the first instance.

11 MR. MALONE: Let me.

12 BY MR. MALONE:

13 Q. Does the Bank of New York ever receive
14 any payments on behalf of the beneficiaries for whom
15 it is the trustee?

16 A. The servicer for the portfolio of loans
17 remit to the trustee all the funds that are collected
18 or otherwise coming in on the loans is remitted to the
19 trustee.

20 Q. Okay. So on a monthly basis, just
21 taking an example, if the Ukpes made a mortgage
22 payment on January 1st, 2006, for example, normally
23 would they submit that monthly mortgage payment to the
24 mortgage servicer to begin with? To your knowledge.

25 A. Yes.

1 Q. And would the mortgage servicer make
2 certain deductions of the payment, take out something
3 it's owed, perhaps take out something dealing for
4 escrow funds, and would then remit the balance to the
5 trustee?

6 MR. OETHEIMER: Objection, if you know.
7 As far as deductions.

8 BY MR. MALONE:

9 Q. If you know.

10 A. The Pooling and Servicing Agreement
11 would speak to the fact that there were certain fees
12 and expenses that they may deduct. So what comes to
13 us is typically net of such deductions.

14 Q. When you receive the net amount, is it
15 deposited into a trust fund?

16 A. It goes directly into a trust account.

17 Q. Trust account, okay. And how is it
18 then distributed?

19 MR. OETHEIMER: Objection. Vague. You
20 can answer.

21 THE WITNESS: We do -- we are the
22 registrar for the investors, and we do know of the
23 various classes of certificates that are issued at the
24 time of closing, and we calculate the amounts due each
25 class, and on the 25th of the month that, that

1 distribution is made.

2 BY MR. MALONE:

3 Q. To whom?

4 A. To the registered holder that appears
5 on our records which is the nominee of the depository.

6 Q. And who is the registered holder in
7 this case?

8 A. Cede.

9 Q. How is that spelled?

10 A. C-E-D-E & C-O.

11 Q. C-E?

12 A. C-E-D-E & C-O.

13 Q. To your knowledge, what is Cede & Co.?

14 MR. OETHEIMER: Objection.

15 THE WITNESS: I don't know if it really
16 means anything other than that it is the commonly used
17 nominee name for a Depository Trust Company.

18 BY MR. MALONE:

19 Q. Now, say, for example, a Teachers
20 Pension Fund bought one of the certificates that were
21 purportedly issued by this trust. How does the money
22 get from Cede & Co. to the Teachers Pension Fund?

23 MR. OETHEIMER: Objection. If you
24 know.

25 THE WITNESS: The Depository Trust

1 Company for every piece has a list of which their
2 participants have positions in that security. DTC
3 then credits those participants with the funds.

4 BY MR. MALONE:

5 Q. So if I understand you correctly, with
6 regard to the Ukpe's monthly payment, it would be
7 deposited to a trustee account managed by your
8 employer, correct?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: We administer, we hold
11 it, yeah.

12 BY MR. MALONE:

13 Q. And is the, is the trust account named
14 in the name of the PSA?

15 A. There is a naming nomenclature and it
16 would indicate CWABS 2005-AB3.

17 Q. So again, there would be a subaccount
18 relating to this trust, is that correct?

19 A. There has to be one distinct account
20 with the trust.

21 Q. And out of that one distinct subaccount
22 maintained by your employer, checks would be issued to
23 Cede & Co.?

24 MR. OETHEIMER: Objection.

25 BY MR. MALONE:

1 Q. Is that correct, on a monthly basis?

2 A. That isn't what happens.

3 Q. What happens?

4 A. Well, the funds are transferred between
5 banks.

6 Q. Electronically transferred?

7 A. Electronically, yes.

8 Q. On a monthly basis then, are electronic
9 transfers initiated from the trust account held in the
10 name of the subaccount, in the name of this trust, and
11 transferred to Cede & Co. for the further distribution
12 to beneficiaries?

13 A. That is correct.

14 Q. To your knowledge, have any payments
15 been made by the servicer to your employer and
16 deposited into a subaccount in the name of this trust?

17 MR. OETHEIMER: I'm sorry, any payments
18 on this trust? You're not on the Ukpe now, your
19 questions are broader as to --

20 MR. MALONE: Let's start with the Ukpe
21 loan.

22 MR. OETHEIMER: I don't know. Go
23 ahead.

24 THE WITNESS: Could you -- I need some
25 clarification.

1 BY MR. MALONE:

2 Q. Mr. and Mrs. Ukpe write a check on
3 January 1, 2006, let's say hypothetically it's for
4 \$1,400, whatever it is. Goes to the servicer.

5 A. Right.

6 Q. The servicer takes out a certain
7 amount, there's a net amount that comes up to your
8 employer according to your testimony. And is this
9 based on your general understanding or do you know
10 this actually happened?

11 MR. OETHEIMER: Objection.

12 BY MR. MALONE:

13 Q. Something like, is this the way?

14 A. That's the way it happens.

15 Q. That's the way it happens, okay. So
16 the Ukpe's check, a net amount is forwarded to your
17 employer, correct?

18 MR. OETHEIMER: Objection. I don't
19 think so, but go ahead.

20 THE WITNESS: Well, what --

21 MR. MALONE: Go ahead.

22 MR. OETHEIMER: Go ahead, explain.

23 THE WITNESS: On the day before we
24 distribute on the 25th, on the day before on the 24th,
25 the servicer will remit to us one amount which

1 represents the net collections and on a scheduled
2 basis, which typically means whether or not the funds
3 were collected or not on that loan, the servicer sends
4 us everything that's due on all the loans that day in
5 one wire.

6 BY MR. MALONE:

7 Q. And if the Ukpes had made their monthly
8 payment, would some net amount from the Ukpe's payment
9 be included in that one amount you just mentioned the
10 servicer tenders to your employer?

11 A. Yes.

12 Q. And would your employer take anything
13 out of that net amount tendered by the servicer before
14 making a deposit into the trust account, subaccount
15 named after this trust?

16 A. The Pooling and Servicing Agreement
17 requires that there may be some deductions, one of
18 which would be the standard trustee fee. There may be
19 some expenses of the trust that can be taken out as
20 part of our duty as to make sure that expenses and
21 whatever payments are provided for in the Pooling and
22 Servicing Agreement are deducted.

23 Q. And when those deductions are made, do
24 they reflect they're being made in connection with the
25 Pooling and Servicing Agreement?

1 MR. OETHEIMER: Objection. You can
2 answer.

3 THE WITNESS: Well, each particular
4 trust will have -- they may differ from trust to
5 trust. They will have what deductions are made into
6 the amounts specific to that trust.

7 BY MR. MALONE:

8 Q. So in other cases, have you seen
9 records of that where deductions were made from the
10 servicer and charged to the trust for payments that
11 your employer was entitled to?

12 MR. OETHEIMER: Objection. Mark, maybe
13 you want to hear it back. I think you -- you're
14 asking about deductions by the trustee and your
15 question referred to deductions by the servicer, which
16 we've also established, but.

17 MR. MALONE: Thank you, let me rephrase
18 it then.

19 BY MR. MALONE:

20 Q. Have you seen records where when a
21 payment comes from the servicer, your employer takes
22 deductions it's entitled to under the Pooling and
23 Servicing Agreement, and into those records reflect
24 that the deductions relate to a specific trust?

25 A. They are deductions that are required

1 to be made, and they will be specific to each trust.

2 Q. Do you know if in this case, the Ukpe
3 case, any such payments were ever received by the
4 servicer for deposit into a subaccount in the name of
5 the trust in this case?

6 MR. OETHEIMER: Objection. This is
7 where we started. Any payments from the servicer
8 related to this trust? I mean that would happen if
9 the Ukpes never made a payment, I assume. So your
10 question is not tied to the loan specifically, it's
11 tied to the trust, is that right?

12 MR. MALONE: Well, let's take it in two
13 parts because you're correct, and that was the
14 question I was asking first with regard to the trust
15 named in this case, the CWABS, Inc. Asset-Backed
16 Certificates, Series 2005-AB3.

17 BY MR. MALONE:

18 Q. Do you know if an account exists, a
19 subaccount exists within your employer's trust
20 records?

21 A. Yes.

22 Q. How do you know that?

23 A. It appears on our system.

24 Q. You've seen it?

25 A. I have not seen it on the system, no.

1 Q. How do you know it appears?

2 A. General knowledge that we have been
3 making distributions from this for this trust.

4 Q. What is the general knowledge that.
5 You referenced general knowledge. What is the general
6 knowledge that your employer has been making
7 distributions for a trust identified as CWABS, Inc.
8 Asset-Backed Certificates, Series 2005-AB3?

9 A. On the 25th of every month, an account
10 that exists for each trust receives and then
11 distributes the funds that are payable. I have not --
12 I have not seen that happen for this trust.

13 Q. And my earlier question, I asked
14 whether you've seen any record even indicating there
15 is a subaccount named after this trust. Do you recall
16 that?

17 A. I have not seen that record, no.

18 Q. Do you know if one exists?

19 A. I believe one exists.

20 Q. What is the basis for your belief that
21 one exists?

22 A. That when the trust is created, that
23 account has to be established according to policy and
24 strict procedure.

25 Q. And do you know, based on your personal

1 knowledge or your experience or your employer, your
2 review of records, whether the trust that's named in
3 this case was ever created?

4 MR. OETHEIMER: Objection.

5 THE WITNESS: My personal knowledge?

6 BY MR. MALONE:

7 Q. Yes.

8 A. I do not know.

9 MR. MALONE: We're going to ask, and in
10 fact, I think we have asked previously, that any
11 records of payment of the Ukpe's note that went into a
12 trust account maintained by Mr. Mitchell's employer be
13 produced, and any distributions coming out of that
14 account, subaccount in the name of this trust to be
15 produced. There shouldn't be any confidentiality as
16 to that because they're just relating to certificate
17 numbers at the point of distribution.

18 MR. OETHEIMER: I'll take this under
19 advisement, but I honestly did not understand that
20 this was an issue. I guess everything's an issue.
21 The trust certainly exists. The Ukpe loan is what is
22 testified, you know. You're not -- and I think he
23 said this, nothing is identified as when the payments
24 come, it's sort of inclusive as he testified, so the
25 servicer remits a monthly payment to the trustee, who

1 remits a monthly payment to the depository. So your
2 question is you want to basically look for some
3 evidence that this account exists and that these
4 distributions are being made.

5 MR. MALONE: Correct. And for the
6 record, it's very much an issue whether this trust
7 exists, and it's also very much an issue whether the
8 Ukpe note is part of this trust if this trust exists.

9 MR. OETHEIMER: I understood you to be
10 raising the latter issue, whether the Ukpe note was in
11 this trust. I did not understand you to be raising an
12 issue as to whether the trust exists. I don't think
13 you have any basis for questioning that, but in any
14 event, I will take that request under consideration.

15 MR. MALONE: For the record, our
16 document request in interrogatories go to both
17 inquiries.

18 MR. OETHEIMER: While we're having this
19 colloquy -- off the record.

20 (Discussion off the record.)

21 BY MR. MALONE:

22 Q. Inviting your attention again to BoNY
23 782. There is a date, or actually there are two dates
24 indicated towards the top center. One is effective
25 date 9/21/2005, is that correct?

1 MR. OETHEIMER: Well, document speaks
2 for itself.

3 THE WITNESS: Yes.

4 BY MR. MALONE:

5 Q. One is Trans, T-R-A-N-S, date
6 9/21/2005.

7 A. Right.

8 MR. OETHEIMER: Objection again. The
9 witness has already testified how this document is
10 created by someone else, not in his area, but.

11 BY MR. MALONE:

12 Q. Is this document a business record that
13 you use in the course of your business?

14 MR. OETHEIMER: Objection. Again, it's
15 a document of Bank of New York Trust Company.

16 BY MR. MALONE:

17 Q. Please answer the question.

18 A. Typically, no.

19 Q. Have there been instances in the past
20 when you've had occasion to use this type of document
21 as a business record in conducting your
22 responsibilities for your employer?

23 MR. OETHEIMER: Objection.

24 THE WITNESS: Yes, some.

25 BY MR. MALONE:

1 Q. And how often?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: Infrequently.

4 BY MR. MALONE:

5 Q. Do you have an understanding of the
6 information, the entries that are made on the record?

7 MR. OETHEIMER: Objection.

8 THE WITNESS: I have somewhat of a
9 working knowledge.

10 BY MR. MALONE:

11 Q. Okay. Do you have any working
12 knowledge of the significance of the two dates that
13 are mentioned after Trans Date and Effective Date and
14 in both the date is September 21, 2005, is that
15 correct?

16 A. Yes.

17 Q. Do you have any knowledge?

18 MR. OETHEIMER: The question, that
19 question was simply are those the dates. You led into
20 that with a question I was going to object to. I
21 don't object to asking him if that's the date that's
22 there.

23 BY MR. MALONE:

24 Q. Those are the dates, September 21,
25 2005, and do you have any working knowledge of the

1 significance of the date, September 21, 2005?

2 MR. OETHEIMER: That's the question I
3 object to.

4 BY MR. MALONE:

5 Q. And the answer? Your answer?

6 A. No.

7 Q. Do you have any working knowledge of
8 the significance of any of the dates reflected on any
9 of the pages of Mitchell-7, BoNY 782 through BoNY 787?

10 MR. OETHEIMER: Objection, and take a
11 moment to look through the exhibit.

12 THE WITNESS: Not specifically.

13 BY MR. MALONE:

14 Q. Generally, do you have any working
15 knowledge of the dates?

16 MR. OETHEIMER: Objection.

17 THE WITNESS: Well generally, the
18 effective date would be the day that, that it is
19 deposited into the trust or into that other account
20 that's being moved.

21 BY MR. MALONE:

22 Q. And in this case, the trust is a trust
23 designated CWLFT-2005-1?

24 MR. OETHEIMER: Objection. Your
25 question related to all the entire exhibit, now --

1 MR. MALONE: Referring to an effective
2 date.

3 MR. OETHEIMER: -- you're asking about
4 that entry.

5 BY MR. MALONE:

6 Q. Is that what you're referring to when
7 you mentioned effective date? There is a reference to
8 an effective date on Mitchell-7, BoNY 782. Is that
9 the date you were referring to when you mentioned
10 effective date?

11 A. Yes.

12 Q. That's the date then that the Ukpe's
13 note was deposited into the CWLFT, CWLFT-2005-1 trust?

14 MR. OETHEIMER: Objection.

15 THE WITNESS: That's what I would
16 interpret this to mean.

17 BY MR. MALONE:

18 Q. And you're interpreting that based on
19 your knowledge and experience in the industry?

20 A. Yes.

21 Q. And having dealt with this kind of
22 record occasionally?

23 A. Right.

24 MR. OETHEIMER: Objection.

25 BY MR. MALONE:

1 Q. Then could I ask you to turn to BoNY
2 783 within Mitchell-7. And do you see that this
3 document, BoNY 783 in Mitchell-7, again refers to the
4 same pool number, the CWLFT-2005-1?

5 A. Yes.

6 Q. And there's a date above of October 6,
7 2005, and that's indicated to be the effective date,
8 do you see that?

9 A. Yes, I see that.

10 Q. And can you tell us what is effective
11 on that date? What happened according to your
12 understanding of this record?

13 MR. OETHEIMER: Objection.

14 THE WITNESS: My understanding is
15 that's the date that this system reflected the
16 movement to this account.

17 BY MR. MALONE:

18 Q. To, to the CWLFT account being
19 deposited?

20 A. To.

21 Q. Do you see above where it says
22 Description, Release (Int to Ext). Do you have any
23 understanding of what that description means?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: Release would be that it

1 is no longer in this account.

2 BY MR. MALONE:

3 Q. Is it your understanding then from
4 reviewing the records that between the time of the
5 effective deposit, September 21, 2005, until the time
6 of the effective release, October 6, 2005, that the
7 Ukpe's note was in this CWLFT-2005-1 trust?

8 MR. OETHEIMER: Objection.

9 THE WITNESS: My understanding is
10 that's when this entry was made on the system to
11 reflect the movement.

12 BY MR. MALONE:

13 Q. And does the entry being made on the
14 system have something to do with the reality of what's
15 happening with the note?

16 MR. OETHEIMER: Objection.

17 THE WITNESS: Generally, they would be
18 about the same time. It could be that in the
19 course -- operationally, in the course of processing
20 the paperwork, the date on the system may, may follow
21 if the paperwork didn't get processed that day or it's
22 a Friday opposed to a Monday.

23 BY MR. MALONE:

24 Q. Do you know if that, in fact, happened
25 in this case or are you just speculating?

1 A. I do not know.

2 Q. You're speculating?

3 MR. OETHEIMER: Objection.

4 BY MR. MALONE:

5 Q. Are you speculating?

6 A. I based it on my knowledge of things
7 that happened.

8 Q. Do you know when the Ukpe's note was
9 released from this trust CWLFT-2005-1?

10 MR. OETHEIMER: Objection.

11 THE WITNESS: I don't know.

12 BY MR. MALONE:

13 Q. Do you know if any, if any payments
14 were made by the Ukpes during the period when the note
15 was in this trust were deposited into a trust account,
16 subaccount with the name CWLFT-2005-1?

17 A. I don't know.

18 Q. In the ordinary course, if payments
19 were made during the period from when the note, the
20 Ukpe's note was deposited into the CWLFT-2005-1 trust,
21 up until the time it was released from the
22 CWLFT-2005-1 trust, would those payments go into a
23 subaccount being obtained by your employer designated
24 as a CWLFT-2005-1 subtrust account?

25 MR. OETHEIMER: Objection.

1 THE WITNESS: I don't know for certain.

2 BY MR. MALONE:

3 Q. In your general knowledge of the
4 business, would that be the case?

5 MR. OETHEIMER: Objection.

6 THE WITNESS: It's hard to say. It's
7 hard to say how it was structured at the time, given
8 the brief nature of the LFT trust.

9 MR. MALONE: Okay. We're going to ask
10 that any records of the Ukpe's payments made during
11 the period that these records, that is reflected on
12 Mitchell-7, show that the Ukpe's note was in a
13 CWLFT-2005-1 trust, that any records that would have
14 payment into a subaccount with that trust name be
15 produced. Similarly we're going to ask that any
16 distributions from the subaccount to Cede & Co. or
17 anyone else.

18 MR. OETHEIMER: You haven't established
19 that's where anything would go.

20 MR. MALONE: You have your hand raised.

21 THE WITNESS: Oh.

22 BY MR. MALONE:

23 Q. Do you want to clarify something?

24 A. The notes for the LFT -- well, the
25 notes for the 2005-AB3 book entry at the depository

1 and would have been -- payment would have been made to
2 Cede. I'm not certain about the note. I didn't speak
3 to the notes from the LFT trust.

4 Q. At this point, I'm going to ask you to
5 speak to the notes for the CWLFT trust 2005-1. What
6 do you know about those notes?

7 MR. OETHEIMER: Objection. We're not
8 talking about the notes deposited, we're talking about
9 the notes issued.

10 MR. MALONE: Correct. Thank you.

11 MR. OETHEIMER: I'm really trying to
12 keep a clean record here.

13 THE WITNESS: I don't have specific
14 knowledge of exactly how those notes were registered
15 when they were issued.

16 BY MR. MALONE:

17 Q. In terms of payments received from the
18 Ukpes, nevertheless, would there be a subaccount
19 maintained by your employer in the name of this trust?

20 MR. OETHEIMER: Objection. I don't
21 know if it would be related to the Ukpes, but again,
22 my objection to the question. You can answer.

23 THE WITNESS: Again, I don't know if
24 this particular trust that, that account was open, but
25 there would be an account into which remittances from

1 the servicer would be deposited, which are the amounts
2 due on the loans.

3 MR. MALONE: We're going to request
4 those records.

5 Q. And do the records BoNY 787 reflect
6 what happened to the Ukpe's promissory note after it
7 was released from the CWLFT trust 2005-1 effective
8 date October 6, 2005?

9 MR. OETHEIMER: Hold on a second, I
10 think, I think you misspoke, Mark.

11 THE WITNESS: 787?

12 MR. OETHEIMER: You referred to 787
13 which is the 2009.

14 MR. MALONE: 783.

15 MR. OETHEIMER: And objection to the
16 question.

17 THE WITNESS: This record would
18 indicate that the record was -- it was noted on,
19 reflected on the system of the release on October 6th
20 '05.

21 BY MR. MALONE:

22 Q. Does it indicate where it was released
23 to?

24 MR. OETHEIMER: Just on this page?

25 MR. MALONE: On this page.

1 THE WITNESS: I don't see where it
2 would indicate where it's released to.

3 BY MR. MALONE:

4 Q. Does it indicate a reason for the
5 release?

6 MR. OETHEIMER: Objection. Speaks for
7 itself.

8 THE WITNESS: There is a code, seven.

9 BY MR. MALONE:

10 Q. Would you read the code please, the
11 full code into the record?

12 A. DFLT-7. Well actually, /7-7 then it
13 continues, C-O-N.

14 Q. Does it indicate -- does OES it reflect
15 here that -- does it indicate to you that some of the
16 entry's been cutoff after the C-O-N?

17 MR. OETHEIMER: Objection.

18 BY MR. MALONE:

19 Q. Or do you know if that's the complete
20 entry?

21 A. I don't know.

22 Q. What does that entry mean DFLT/7-7 --

23 MR. OETHEIMER: Objection.

24 BY MR. MALONE:

25 Q. -- to you, if anything?

1 A. I don't know.

2 Q. Who would know what that represents?

3 What that code represents?

4 MR. OETHEIMER: Objection.

5 THE WITNESS: The staff that maintain
6 this system.

7 MR. MALONE: We're going to ask that an
8 explanation, a listing of the codes that explains this
9 particular code be produced as well as if there is
10 more to the entry than appears on this screen shot,
11 that the entire entry be produced.

12 BY MR. MALONE:

13 Q. In your, in your experience in banking,
14 do the initials DFLT, are they an abbreviation for the
15 word default?

16 MR. OETHEIMER: Objection.

17 THE WITNESS: I would not -- I would
18 not believe that, that would be the indication.

19 BY MR. MALONE:

20 Q. Do you have any idea what the
21 indication is DFLT?

22 MR. OETHEIMER: Objection.

23 BY MR. MALONE:

24 Q. Any idea at all?

25 MR. OETHEIMER: Asked and answered.

1 THE WITNESS: I don't know.

2 (Luncheon recess.)

3 BY MR. MALONE:

4 Q. For the record, I'm referring to what
5 has been identified captioned as the Amended Responses
6 to Defendant's Third Party Plaintiffs First Set of
7 Interrogatories, and it's the plaintiff's
8 counterclaim, defendant Bank of New York as Trustee
9 Certificate Holder CWABS, Inc. Asset-Backed
10 Certificates, Series 2005-AB3's amended response.
11 It's a document that is not dated, but signed by
12 Dashika Wellington, and I believe the record will
13 reflect it was received by us sometime around
14 October 9, 2009. And in the answers to
15 interrogatories, interrogatory number one, it
16 reflects, "the following individuals assisted or
17 provided information used in the preparation of these
18 responses to all factual interrogatories, and are
19 authorized to do so." The first is a Michael Cerchio,
20 and he is identified as Vice President of the Bank of
21 New York Mellon Global Trust Company. Do you know
22 Mr. Cerchio?

23 A. Yes, I do.

24 Q. Do you work with him?

25 A. Yes, I do.

1 Q. What is your relationship? Do you have
2 a reporting relationship with him?

3 A. No.

4 Q. Is he a colleague, coworker?

5 A. He's a colleague. I have a slightly
6 different function, but he's a colleague.

7 Q. And what is your function versus his
8 function?

9 A. I am in what is referred to as the
10 Transaction Management Group. And I work on generally
11 new transactions that are coming into the department,
12 and help to get them set up and closed. I work with
13 the attorneys who work on the deal, just get
14 everything done administratively and up to the
15 closing, and if issues come up, I help with what
16 Cerchio would do on some administrative matters.

17 Q. Okay. I'm sorry, I didn't complete. I
18 didn't read after vice president it says, "the Bank of
19 New York Mellon Global Corporate Trust." Is that a
20 different division or different entity or if you know?

21 A. It's the Bank of New York Mellon and
22 the overall sector of the bank is Global Corporate
23 Trust.

24 Q. And what are the responsibilities, if
25 you know, of Global Corporate Trust?

1 A. Global Corporate Trust is traditionally
2 referred to as part of the trust department of the
3 bank. We are officers, we are trust officers of the
4 bank as opposed to, if you may know, a commercial
5 banking officer. We work on the trust side of the
6 bank. And there are various units within that Global
7 Corporate Trust.

8 Q. The next individual identified in the
9 interrogatory answer number one is Lester Juarez,
10 Account Administrator, the Bank of New York Mellon, it
11 gives an address of Cypress, California. Is
12 Mr. Juarez, to your knowledge, an employee of the Bank
13 of New York Mellon?

14 MS. WELLINGTON: Objection.

15 MR. MALONE: I'm asking the witness.

16 MS. WELLINGTON: I know, and I'm
17 objecting.

18 MR. OETHEIMER: As am I. I don't know
19 what happened here. I don't know.

20 (Discussion off the record.)

21 THE WITNESS: I don't know his
22 personnel record exactly who, what entity he's
23 employed by.

24 BY MR. MALONE:

25 Q. And do you know a Devra Lindgren?

1 A. No, I do not.

2 MR. MALONE: Can I have -- actually,
3 I'll hold it. I'm looking for Mitchell-3.

4 MR. OETHEIMER: March 27, 2006.

5 BY MR. MALONE:

6 Q. Inviting your attention to Mitchell-2,
7 the letter that you reviewed before. The second
8 numbered paragraph called for testimony concerning,
9 "the process by which plaintiff came into possession
10 of the Ukpe's original promissory note, including the
11 process of documenting transfers and assignments of
12 the note from the note's originator to plaintiff."

13 I'd like to start with the beginning of that process
14 from the moment the Ukpes signed the note at the
15 closing and received the mortgage money to buy their
16 house. Do you have any knowledge of what first
17 happened with the note?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: No.

20 BY MR. MALONE:

21 Q. Are you familiar with an entity known
22 as Recon Trust?

23 A. I understand that to be a bank who
24 provides some custodial facilities to Countrywide.

25 Q. Are they similar in the sense of

1 providing custodial facilities similar to what your
2 employer does?

3 MR. OETHEIMER: Objection.

4 THE WITNESS: I don't know exactly what
5 they do.

6 MR. MALONE: Could I have this marked
7 as the next exhibit, please.

8 (Mitchell-12, Servicing Transfer
9 Disclosure, was marked for identification.)

10 MR. OETHEIMER: I recognize 10 as being
11 a document that was produced, and 11.

12 MR. MALONE: Let me take them through.

13 MR. OETHEIMER: So I think it's
14 everything.

15 MR. MALONE: Yeah. Mitchell-4 through
16 Mitchell-11.

17 MR. OETHEIMER: 4 through 11? No,
18 that's not right, because isn't there three? Three is
19 before him, and that was, this was also.

20 MR. MALONE: I'm sorry. I had asked
21 about that a moment ago.

22 MR. OETHEIMER: So you had marked the
23 notice and the letter, March 2nd letter, so 3 through
24 11 are what he produced this morning.

25 MR. MALONE: Right.

1 MR. OETHEIMER: And let me have this.
2 You can go through them now or not. I wanted the
3 record clear as to which documents came with him
4 today.

5 BY MR. MALONE:

6 Q. And just in summary fashion, the series
7 of documents have been matched -- have been
8 identified, marked Mitchell-3 through Mitchell-11, and
9 could I ask you to look at these and just tell us are
10 these the documents that you produced this morning?

11 A. Yes.

12 Q. And some of those documents have what
13 we call Bates stamp numbers at the bottom. Do you see
14 where it says CW Ukpe 02180, for example?

15 A. Yes.

16 Q. And documents that have Bates stamp
17 numbers marked CW Ukpe and a number that follows, are
18 those documents you received from counsel?

19 A. I believe so.

20 Q. And other of the documents have a Bates
21 stamp number BoNY 782, such as example Mitchell-7.
22 Are they also documents that you received from
23 counsel?

24 A. I believe so.

25 Q. And some of the documents did not have

1 any Bates stamp numbers on them at the bottom. Are
2 those documents that you, yourself, obtained in the
3 course of preparing for today?

4 A. Yes.

5 MR. OETHEIMER: Which documents do not
6 have Bates numbers? Is it only 10?

7 MR. MALONE: 4 doesn't have a Bates
8 number, maybe mixed up a little bit. 4, 6, 7, 8, 9,
9 10, 11. I'm missing --

10 MR. OETHEIMER: 5 is stapled to 4.

11 MR. MALONE: 4, 5, 6 do not have Bates
12 stamp numbers. 9 does not have Bates stamp numbers.

13 MR. OETHEIMER: I think that's wrong.
14 It does. Do you need glasses?

15 MR. MALONE: I'm sorry, very fine. 9
16 does have Bates stamp numbers, thank you. 10 does not
17 have Bates stamp numbers, and 11 does.

18 MR. OETHEIMER: And just on 6, 6 does
19 not have Bates stamp numbers, but 6 is Ms. Sullivan's
20 letter which certainly came from counsel but is not a
21 discovery document.

22 MR. MALONE: Good.

23 BY MR. MALONE:

24 Q. Okay. Now, we have copies of -- I
25 invite your attention to the document marked as

1 Mitchell-12. Do you recall if you've seen this
2 document before today?

3 A. I recognize it, I think, as one of the
4 documents. I didn't really review it.

5 Q. And briefly, are you familiar with a
6 document captioned such as this, Servicing Transfer
7 Disclosure? Is it something you have dealings with?

8 MR. OETHEIMER: Did you pick up my copy
9 of 4?

10 MR. MALONE: Hold on a second. Here's
11 a copy of 12, I have a copy of 12, and I have a copy
12 of 4.

13 MR. OETHEIMER: I'm missing 4 and 5. I
14 think I put them on the table and you grabbed them.

15 MR. MALONE: I'm sorry.

16 THE WITNESS: I'm not very familiar
17 with this document.

18 BY MR. MALONE:

19 Q. Okay. You see the signatures and date
20 on the second page, the date of July 29, 2005?

21 A. Yes, I do.

22 Q. And do you know if this is a document
23 that would normally be signed at the closing on a
24 loan?

25 MR. OETHEIMER: Objection.

1 BY MR. MALONE:

2 Q. If you know.

3 A. I don't know.

4 Q. At the top of the first page of the
5 exhibit, right hand corner, says America's Wholesale
6 Lender. Do you see that?

7 A. Yes.

8 Q. Do you know what connection America's
9 Wholesale Lender had with the loan transaction?

10 MR. OETHEIMER: Objection.

11 THE WITNESS: I believe the documents I
12 saw that America's Wholesale Lender is a, what you
13 call a d/b/a for Countrywide.

14 BY MR. MALONE:

15 Q. And what is a d/b/a? What is your
16 understanding of what its role was in connection with
17 the loan?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: Just that Countrywide was
20 doing business with another -- using another name.

21 BY MR. MALONE:

22 Q. And I understand that, but --

23 A. It's a d/b/a.

24 Q. Did either Countrywide or America's
25 Wholesale Lender have any connection to the Ukpe's

1 loan, to your knowledge?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: I don't know.

4 BY MR. MALONE:

5 Q. Turning to the second page, inviting
6 your attention to the caption Loan Servicing
7 Reconveyance Fee Disclosure. Do you see that?

8 A. Yes.

9 Q. And it says, "Recon Trust Company, NA
10 has been designated as the trustee for this loan." Do
11 you see that?

12 A. I'm sorry? Oh, down the loan
13 servicing.

14 Q. The first sentence under the heading.

15 A. Yes, I see it. Yeah, yeah.

16 Q. In the context of a closing on a
17 residential loan, does it mean anything to you that
18 someone has been designated as the trustee for the
19 loan?

20 MR. OETHEIMER: Objection.

21 THE WITNESS: I believe, I'm not an
22 attorney, I believe in the mortgage, there was a
23 trustee mortgage that is unrelated to the trustee work
24 that we do for the securitizations.

25 BY MR. MALONE:

1 Q. And is it your understanding that this
2 trustee, Recon Trust, initially would have taken
3 possession of the Ukpe's note?

4 MR. OETHEIMER: Objection.

5 THE WITNESS: I have no way of knowing.

6 BY MR. MALONE:

7 Q. To your knowledge, if they did take,
8 that is Recon Trust did take possession of the Ukpe's
9 note, is it typical for a trust company to go through
10 the kind of documentation you were describing earlier,
11 that is someone noting the deposit of the note into
12 the trust?

13 MR. OETHEIMER: Objection.

14 THE WITNESS: I really don't know the
15 role of Recon Trust Company here prior to our
16 involvement with this loan, so I don't know.

17 BY MR. MALONE:

18 Q. And do you know if Recon Trust has ever
19 released the Ukpe's note to anyone?

20 MR. OETHEIMER: Objection.

21 THE WITNESS: I have no knowledge.

22 BY MR. MALONE:

23 Q. Turning to paragraph three of the
24 letter to Mr. Oetheimer marked -- the letter's been
25 marked as Mitchell-2, calls for testimony about,

1 "payments made to any party relevant to the Pooling
2 and Servicing Agreement in connection with plaintiff
3 acquiring physical custody of the note, including
4 payments to purchase any interest in the note." Can
5 you tell us what knowledge you have responsive to that
6 request?

7 MR. OETHEIMER: Objection. Asked and
8 answered. I think we went through that this morning.

9 BY MR. MALONE:

10 Q. We did go through part of it so let me
11 ask in addition to what you testified to this morning,
12 do you have any other knowledge of payments made to
13 any party as called for in this paragraph?

14 A. No.

15 Q. Paragraph four calls for testimony
16 regarding "the distribution of any payments made on
17 the note by the Ukpe defendants to any owner or owners
18 of the note, including beneficial owners." There has
19 been some testimony by you already. In addition to
20 the testimony you've given already, do you have any
21 other information relevant to this matter?

22 A. No.

23 Q. Paragraph five of the letter asks for
24 you to testify about your "knowledge of any facts
25 establishing that the plaintiff is the legal,

1 beneficial, or equitable owner of the promissory note
2 that is the subject of the Ukpe foreclosure case."

3 Let me break them down into three separate inquiries.

4 Do you have any knowledge of facts establishing that
5 plaintiff is the legal owner of the Ukpe's promissory
6 note?

7 MR. OETHEIMER: Objection. Calls for a
8 legal conclusion, also I think asked and answered.
9 There was testimony this morning.

10 MR. MALONE: Please answer the
11 question.

12 THE WITNESS: My understanding is that
13 the trust is the owner of the note. Again, I'm not an
14 attorney.

15 BY MR. MALONE:

16 Q. And now I'm asking for your
17 understanding, I'm asking for your knowledge of facts
18 establishing that your employer is the owner.

19 MR. OETHEIMER: Objection.

20 BY MR. MALONE:

21 Q. Otherwise, other than what you
22 testified to this morning, do you have any other facts
23 establishing that your employer owns the Ukpe's note?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: No.

1 BY MR. MALONE:

2 Q. Paragraph six asks for your employer's
3 "knowledge about all intervening receipts of delivery
4 and acceptance showing a complete chain of such
5 receipts from the loan originator to the person
6 accepting the Ukpe defendant's promissory note for the
7 plaintiff." Would you please tell us what knowledge
8 you have about that subject matter?

9 MR. OETHEIMER: Objection. Vague. I
10 think there's been testimony about the process of
11 endorsement. So again, I'm going to object to this
12 line of questioning that just asks the witness for
13 anything else, the subjects.

14 MR. MALONE: I haven't asked for
15 anything else, I've asked had for his knowledge on
16 this.

17 MR. OETHEIMER: And I'm objecting to
18 the question as vague.

19 MR. MALONE: Please answer the
20 question.

21 THE WITNESS: That if I don't have any
22 knowledge of intervening receipts, only of the
23 endorsements that clearly show that it is endorsed to
24 the trust.

25 BY MR. MALONE:

1 Q. You said the endorsements show it was
2 endorsed to the trust. What does the endorsement say
3 showing it's endorsed to the trust?

4 A. It's actually in blank, but it was in
5 our possession.

6 Q. The term delivery and acceptance
7 receipts, does it -- is it a term you're familiar with
8 in your business?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: Is that in this document?

11 BY MR. MALONE:

12 Q. Paragraph six.

13 A. Six, oh.

14 MR. OETHEIMER: My objection stands.

15 THE WITNESS: No.

16 BY MR. MALONE:

17 Q. Paragraph seven calls for "knowledge
18 about compliance with policies and procedures for
19 verification that there were no breaks in the chain of
20 assignments of the original mortgage from the original
21 mortgagee of record to plaintiff." Can you tell us
22 what knowledge you have regarding that subject matter
23 area?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: That upon the review of

1 the documents deposited with us, we would determine
2 that the assignments -- that there was no break in the
3 chain of assignments from the original originator to
4 the trust.

5 BY MR. MALONE:

6 Q. And what policies and procedures govern
7 that?

8 A. Well, the policies and procedures for
9 doing the work reside in the facility, the operations
10 facility, that custodial facility in Cypress,
11 California.

12 Q. Is that a facility controlled by
13 someone other than your employer?

14 MR. OETHEIMER: Objection.

15 THE WITNESS: That's controlled by --
16 that's part of the, the Bank of New York Trust
17 Company, Bank of New York Mellon Trust Company, NA.

18 BY MR. MALONE:

19 Q. And that's a different employer than
20 your employer, correct?

21 A. That's correct.

22 Q. Are you familiar with the policies and
23 procedures of that other employer?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: No.

1 BY MR. MALONE:

2 Q. Do you know if those policies and
3 procedures were complied with in this case, if in
4 fact, the Ukpe note made it into the designated trust
5 in this case?

6 MR. OETHEIMER: Objection.

7 THE WITNESS: I don't have a specific
8 knowledge as to this particular note.

9 BY MR. MALONE:

10 Q. Paragraph eight calls for knowledge
11 about "the creation, processing, handling,
12 safeguarding and storage of the Ukpe defendant's
13 original mortgage, including any assignments of the
14 mortgage evidencing ownership or transfer of the
15 mortgage." Can you tell us what knowledge you have
16 regarding that subject matter?

17 A. That the Pooling and Servicing
18 Agreement would require that the trustee -- that's one
19 of the documents that the trustee would have in the
20 mortgage loan file in our possession.

21 Q. We can skip paragraph nine and invite
22 your attention to paragraph ten of the letter,
23 Mitchell-2. Withdrawn. Inviting your attention to
24 paragraph 11 of the letter calling for knowledge about
25 "plaintiff's compliance with the requirements of the

1 PSA applicable to the mortgage loan file associated
2 with the Ukpe defendants." Can you tell us what
3 knowledge you have regarding that?

4 MR. OETHEIMER: Objection. Vague.

5 THE WITNESS: All the loans for that
6 trust would be received and held and in the manner
7 described in the Pooling and Servicing Agreement.

8 BY MR. MALONE:

9 Q. And is that your belief that happened
10 or you have actual knowledge of that happened in this
11 case?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: Well, I have seen the
14 final certification that is delivered that indicated
15 that we had all the loans with certain exceptions.

16 BY MR. MALONE:

17 Q. Okay. Is that final certification in
18 the documents you produced today?

19 A. Yes.

20 Q. Could we -- what document is that?

21 A. Mitchell-3.

22 Q. Let's turn to Mitchell-3. It's a two
23 page document with Bates stamp numbers CW Ukpe
24 2182-2184 inclusive. Actually it's a three page
25 document. Also has at the bottom the numbers H-1, H-2

1 and H-3. Is that correct?

2 A. Yes.

3 Q. Have you read this final certification
4 before today? You said you saw it, but I'm asking
5 have you read it?

6 A. I'm familiar with this document. I
7 haven't read this one.

8 Q. It's signed by a Maria Tokarz,
9 T-O-K-A-R-Z. Is she a colleague of yours?

10 A. She was. She's a former employee.

11 Q. Do you know where she is now?

12 A. No, I do not.

13 Q. The day of the final certification is
14 March 27, 2006. Is that correct?

15 A. Yes.

16 Q. And inviting your attention to
17 paragraph one -- I'm sorry, subparagraph (i), do you
18 see that beginning the original mortgage note?

19 A. Right.

20 Q. And this is reflecting that the trustee
21 has received a series of documents, is that correct?
22 This certification?

23 A. Yes, that we have them.

24 Q. And this certification, by the way, is
25 dated March 27, 2006, correct?

1 A. Correct.

2 Q. So this certification was created some
3 six months approximately from the closing date of the
4 trust?

5 A. Yes, as the Pooling and Servicing
6 Agreement calls for it to occur at that point in time.

7 Q. And in the final certification,
8 Ms. Tokarz, in subparagraph (i) is saying that we've
9 received the original note endorsed by the seller or
10 originator of such mortgage loan without recourse in
11 the following form. Do you see that?

12 A. Yes.

13 Q. And she talks about the form of an
14 endorsement. Do you see where it says "Pay to the
15 order of blank without recourse?"

16 A. Right.

17 Q. Okay. And does it continue "with all
18 intervening endorsements that show a complete chain of
19 endorsement from the originator to the seller, or if
20 the original mortgage note has been lost or destroyed
21 and not replaced, an original lost note affidavit from
22 the seller stating that the original mortgage note was
23 lost or destroyed together with a copy of the related
24 mortgage note." Did I read that correctly?

25 MR. OETHEIMER: Objection. Speaks for

1 itself.

2 BY MR. MALONE:

3 Q. Just did I read it correctly?

4 A. Yes.

5 Q. Now, what does it mean to endorse a
6 note from the originator to the seller? Who was the
7 originator in this case and who's the seller under the
8 trust that you're here testifying about?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: I don't know.

11 MR. OETHEIMER: Why are you showing him
12 the trust? You're asking about the Ukpe loan.

13 MR. MALONE: Yeah. And I'm asking who
14 the -- this is a certification by the trustee.

15 MR. OETHEIMER: Show him the Ukpe note
16 then.

17 MR. MALONE: I'll show him what I want
18 to show him, please.

19 BY MR. MALONE:

20 Q. Under this certification, who is the
21 originator of the note and who is the seller of the
22 note?

23 MR. OETHEIMER: Objection. There's no
24 way to tell from this document. There's more than one
25 seller.

1 MR. MALONE: Well, thank you for
2 providing an answer, but I'm asking for his answer.

3 MR. OETHEIMER: It's a question that is
4 not answerable.

5 MR. MALONE: He can say that.

6 MR. OETHEIMER: Objection.

7 MR. MALONE: He can say I can't answer
8 it if you don't know who the seller is.

9 THE WITNESS: The seller, as defined in
10 the Pooling and Servicing Agreement, could be one or
11 more parties.

12 BY MR. MALONE:

13 Q. We discussed it earlier today?

14 A. Right.

15 Q. Who did you define -- who is the
16 seller?

17 A. Well, they have -- you have Countrywide
18 Home Loans, Park Monaco, and Park Sienna.

19 Q. Which of those three is the seller
20 according to your understanding?

21 MR. OETHEIMER: Objection. Are you
22 asking him of the Ukpe loan?

23 MR. MALONE: Yeah.

24 MR. OETHEIMER: Because you understand
25 that there are different loans in the pool and

1 different sellers.

2 THE WITNESS: I do not know.

3 BY MR. MALONE:

4 Q. Thank you. But, and now more
5 fundamental question. If there's a complete chain of
6 endorsement from the originator to the seller, does
7 that indicate the seller's getting it from the
8 originator?

9 MR. OETHEIMER: Objection.

10 BY MR. MALONE:

11 Q. Do you know what that language means?

12 A. The attorney would have to -- I don't
13 know who the originator is.

14 Q. So in any event, according to
15 Ms. Tokarz, there is an endorsement from the
16 originator to the seller on the notes that are
17 reflected in a loan schedule, is that right? She's
18 talking about a mortgage loan schedule?

19 MR. OETHEIMER: Objection, it doesn't
20 say that at all. You have not read it correctly now.

21 MR. MALONE: Okay. Let's have the
22 witness say.

23 BY MR. MALONE:

24 Q. Withdrawn. I'm going back to the top.
25 Let's start with the first paragraph. To the extent

1 that Ms. Tokarz is preparing a Final Certification of
2 Trustee, is she certifying that to each mortgage loan
3 listed in a mortgage loan schedule, certain things
4 have happened including the endorsements we were just
5 talking about?

6 A. That's what it would indicate, yes.

7 Q. And we've discussed a mortgage loan
8 schedule earlier today?

9 A. Right.

10 Q. And do you have any other knowledge of
11 what mortgage loan schedule she's talking about other
12 than what you discussed earlier today?

13 MR. OETHEIMER: Objection.

14 THE WITNESS: It is a defined term from
15 the document. It is the schedule we discussed
16 earlier.

17 BY MR. MALONE:

18 Q. Do you have anything additional to say
19 about that schedule other than to say what you said
20 earlier today?

21 A. No.

22 MR. OETHEIMER: Objection.

23 BY MR. MALONE:

24 Q. And from looking at this document, can
25 you tell what mortgage loan schedule she's talking

1 about? Does it refer to a particular schedule such as
2 Exhibit F-1 or Exhibit F-2?

3 MR. OETHEIMER: Objection.

4 THE WITNESS: Well, the reference is
5 made to this transaction. 2005-AB3. And the mortgage
6 loan schedule in the body of the letter is the defined
7 term for the Pooling and Servicing Agreement for this
8 transaction. That would be my interpretation.

9 BY MR. MALONE:

10 Q. And now following the reference to an
11 endorsement from the originator to the seller --

12 MR. OETHEIMER: It doesn't say that.

13 MR. MALONE: Okay. I'll start again.

14 MR. OETHEIMER: "The original mortgage
15 note endorsed by the seller or the originator of such
16 mortgage loan without recourse in the following form:
17 Paid to the order of blank without recourse."

18 MR. MALONE: Let me finish.

19 BY MR. MALONE:

20 Q. Reading the quote after Mr. Oetheimer
21 had said without recourse, it continues, "with all
22 intervening endorsements that show a complete chain of
23 endorsement from the originator to the seller." In
24 this case, in your experience, what would a complete
25 chain of endorsements show from the originator to the

1 seller?

2 MR. OETHEIMER: Objection, unless
3 you're going to show him documents to show him who the
4 originator was. I mean you're trying to trick him.
5 If the originator is the seller, then I don't
6 understand.

7 MR. MALONE: Either he knows or he
8 doesn't know.

9 THE WITNESS: I don't know.

10 BY MR. MALONE:

11 Q. Now, subparagraph two of Mitchell-3
12 refers to mortgage loan that is not a MERS mortgage
13 loan. My first question to you is does the phrase
14 MERS mortgage loan mean anything to you?

15 A. Yes, it does.

16 Q. Okay. And tell us what you understand
17 a MERS mortgage loan is.

18 A. A MERS, I believe it's the Mortgage
19 Electronic Recording System, is similar to DTC for
20 securities is a depository. The Bank of New York
21 Mellon is a member of MERS. It allows the mortgage to
22 be assigned to MERS, and that each time there is a
23 transfer of ownership, it then appears on the records
24 of MERS as a change that they recognize of beneficial
25 ownership, and doesn't require another assignment to

1 be done. It doesn't require more recording or
2 repeated recording.

3 Q. So the MERS records would reflect the
4 assignment of the mortgage, is that correct?

5 MR. OETHEIMER: Objection.

6 THE WITNESS: My understanding is MERS'
7 records will always reflect who they have on record as
8 an owner, beneficial owner of that.

9 BY MR. MALONE:

10 Q. And have you had occasion to, in your
11 work, examine the MERS records, for instance, to
12 determine who was the beneficial owner?

13 MR. OETHEIMER: Objection.

14 THE WITNESS: No.

15 BY MR. MALONE:

16 Q. Do you rely on those, to your
17 knowledge, does your employer rely on the MERS records
18 to determine who is a beneficial owner?

19 MR. OETHEIMER: Objection. You can
20 answer.

21 THE WITNESS: Yes, I believe we do.

22 BY MR. MALONE:

23 Q. And what is the basis for your belief?

24 A. Is that we have an area, an operations
25 area that keeps track of MERS, and keeps track of what

1 loans we have in MERS, and on a continuous basis
2 operationally is confirming that with MERS.

3 Q. Who inputs the data into the MERS
4 system as to who, who has the ownership interest in a
5 mortgage at any given time?

6 MR. OETHEIMER: Objection.

7 THE WITNESS: I don't know.

8 BY MR. MALONE:

9 Q. Do you know if anyone from your
10 employer's group inputs that information?

11 MR. OETHEIMER: Objection.

12 THE WITNESS: That operational event, I
13 don't know exactly who does that.

14 BY MR. MALONE:

15 Q. Is it your understanding it's done
16 within some operational section of your employer?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: It could be done either
19 by us or we can communicate with MERS and instruct
20 them in writing to make changes on their system.

21 BY MR. MALONE:

22 Q. So is it your understanding that, that
23 a MERS employee would make changes in the system?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: I don't know. I don't

1 know for certain.

2 BY MR. MALONE:

3 Q. Are you familiar with the term MERS
4 Milestone Report?

5 A. No.

6 Q. In this particular case, to your
7 knowledge, was the Ukpe's mortgage a MERS mortgage?

8 MR. OETHEIMER: Objection. Unless you
9 show him the mortgage.

10 MR. MALONE: To his knowledge.

11 MR. OETHEIMER: My objection to the
12 witness shouldn't have to memorize everything in these
13 documents.

14 MR. MALONE: I'm asking his knowledge.

15 MR. OETHEIMER: Okay.

16 THE WITNESS: I have information that
17 it was, yes.

18 BY MR. MALONE:

19 Q. Then, then if it was, subparagraph (ii)
20 on the first page would not apply, is that correct?
21 That relates to a situation where something is not a
22 MERS mortgage?

23 MR. OETHEIMER: Objection. That's not
24 entirely true.

25 MR. MALONE: Oh, let me ask you then.

1 BY MR. MALONE:

2 Q. Does subparagraph two have potential
3 applicability to the Ukpe's mortgage?

4 MR. OETHEIMER: Objection. Document
5 speaks for itself. Would you repeat the question
6 please?

7 BY MR. MALONE:

8 Q. Does subparagraph (ii), the roman
9 numeral two at the bottom of the exhibit Mitchell-3,
10 page CW Ukpe 02182 have any applicability to the
11 Ukpe's mortgage?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: It would only apply if
14 the, if the loan is not a MERS loan.

15 BY MR. MALONE:

16 Q. And my question was proceeding under
17 your understanding, which I think is correct that it
18 was a MERS loan. If it is a MERS loan, subparagraph
19 two would not be applicable?

20 MR. OETHEIMER: Objection.

21 THE WITNESS: As long as it is a MERS
22 loan, because loans can be removed from MERS. It
23 doesn't have to be a MERS loan for its entire life.
24 It can be removed at some point at which time then
25 MERS would prepare an assignment to the trustee.

1 BY MR. MALONE:

2 Q. At the point in time that the Ukpe's
3 loan went into the trust, to your knowledge, was it a
4 MERS loan?

5 A. I believe so.

6 Q. And if it was a MERS loan, at the time
7 of the final certification of Ms. Tokarz, would
8 subparagraph two have any applicability to the Ukpe's
9 mortgage?

10 MR. OETHEIMER: Objection.

11 THE WITNESS: As it reads, it would
12 not, it wouldn't apply to a MERS loan.

13 BY MR. MALONE:

14 Q. Okay. Similarly, turning to the next
15 page, small (iii) also talks about situations where
16 the mortgage loan is not a MERS mortgage loan. Based
17 on the assumptions that have been given to you and
18 your understanding, does subparagraph (iii) have any
19 applicability to the Ukpe's mortgage loan at the time
20 Ms. Tokarz signed the certification?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: I believe not.

23 BY MR. MALONE:

24 Q. Does subparagraph (iv) apply to the
25 Ukpe's mortgage loan?

1 MR. OETHEIMER: Objection.

2 THE WITNESS: I believe that it does,
3 although it would be, it would be the MERS loan. It
4 would be the MERS mortgage.

5 BY MR. MALONE:

6 Q. Going down to the next to the last
7 paragraph, and page we're looking at page H-2, the
8 first sentence says, "The trustee has made no
9 independent examination of any documents contained in
10 each mortgage file beyond the review specifically
11 required in the above referenced Pooling and Servicing
12 Agreement." Do you see that?

13 A. Yes, I do.

14 Q. And the reference to the trustee, do
15 you know what examination the trustee made, your
16 employer made?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: No, I don't. Other than,
19 I'd like to say, I would need to see the definition of
20 trustee in the Pooling and Servicing Agreement.

21 BY MR. MALONE:

22 Q. Turning to paragraph 12 of the letter
23 to Mr. Oetheimer, calls for "Plaintiff's knowledge
24 about the contents of the fully executed Pooling and
25 Servicing Agreement for the trust and all schedules,

1 attachments, addendums and amendments thereto
2 including all mortgage loan schedules." Do you see
3 that?

4 A. Yes, I do.

5 Q. And can you tell us your knowledge of
6 the contents of the fully executed Pooling and
7 Servicing Agreement?

8 MR. OETHEIMER: Objection.

9 THE WITNESS: Well, first of all, all
10 the documents related to this transaction, including
11 the Pooling and Servicing Agreement, are maintained
12 electronically for reference in what would be
13 described as our library, which is folders on the bank
14 records. You've looked at the Pooling and Servicing
15 Agreement, I've looked at some of the other documents,
16 but generally speaking, the process is to refer to
17 those documents maintained on our systems for each
18 transaction when necessary.

19 BY MR. MALONE:

20 Q. And I think earlier today you testified
21 that you hadn't reviewed the Pooling and Servicing
22 Agreement, but my recollection is you said you hadn't
23 reviewed any of the exhibits. If I'm wrong, please
24 correct me.

25 A. I merely -- I don't think -- my

1 recollection is I didn't really look at the exhibits.

2 I wanted to look at some of the provisions of the

3 Pooling and Servicing Agreement.

4 Q. Do you know, in the library maintained
5 by your employer, Exhibits A-1 through Exhibit A-14 --
6 well let me rephrase that. Based on the review you
7 did do, do I understand you that you did not review
8 Exhibits A-1 through A-14 to the Pooling and Servicing
9 Agreement?

10 A. Correct.

11 Q. Do you know if photocopies of such
12 certificates as evidenced by Exhibits A-1 through A-14
13 are part of any exhibit to the Pooling and Servicing
14 Agreement?

15 MR. OETHEIMER: Objection. You said
16 such certificates as evidenced. I don't have it in
17 front of me, but Exhibits A-1 through A-14 are not all
18 certificates, are they?

19 MR. MALONE: Yeah, let me just -- I'd
20 ask you to read into the record from the execution
21 copy, from page A-1, the upper right hand corner, it
22 says exhibit A-1 through A-14, and could you read into
23 the record the caption of the exhibit, please?

24 THE WITNESS: "Exhibits A-1 through
25 A-14 are photocopies of such certificates as

1 delivered."

2 BY MR. MALONE:

3 Q. Now, those photocopies of the
4 certificates that were delivered, are these the
5 certificates that were delivered on September 27, 2005
6 at the closing of the trust?

7 A. Yes. This would indicate that there
8 were 14 different certificates.

9 MR. MALONE: We have not received those
10 certificates. So we're going to submit a written
11 request. We have asked for them, but have not
12 received them. We'll request four of those
13 photocopies.

14 BY MR. MALONE:

15 Q. Those certificates, will they have
16 unique CUSIP numbers to them?

17 A. They would.

18 Q. And for the record, would you tell us
19 what a CUSIP number is?

20 A. A CUSIP number is a unique identifier
21 used throughout the securities industry. They're
22 actually the keeper and the provider of CUSIP numbers
23 is affiliate of standard import, so it's one place to
24 get a CUSIP number. And that is assigned to every
25 distinct security that is issued.

1 Q. Just going back a moment, you mentioned
2 that your employer maintains a library of the PSAs, is
3 that correct?

4 A. The computer files, yes.

5 Q. And does it also maintain as part of
6 that library fully executed copies of the exhibits?

7 A. They would be at least scans of those
8 from the closing.

9 Q. And when you -- if you went and looked
10 for Exhibit A-1, would you expect to see an exhibit
11 captioned in the same manner as it's captioned in the
12 PSA I just showed you?

13 MR. OETHEIMER: Objection.

14 MR. MALONE: In your experience.

15 MR. OETHEIMER: Objection.

16 THE WITNESS: The certificate, the
17 exhibit will say exhibit.

18 BY MR. MALONE:

19 Q. Will it say exhibit what?

20 MR. OETHEIMER: Objection.

21 THE WITNESS: Exhibit A-1 will be the
22 certificate that is Exhibit A-1. The actual
23 certificate should not say exhibit.

24 BY MR. MALONE:

25 Q. I understand. And Exhibit A-14, will

1 that be, something marked Exhibit A-14 that will be a
2 certificate?

3 MR. OETHEIMER: No, objection. He just
4 said the opposite, didn't he?

5 MR. MALONE: I'm asking if there's an
6 exhibit marked A-14. I have a photocopy of the
7 exhibit.

8 THE WITNESS: Yeah, the exhibit to the
9 Pooling and Servicing Agreement would be identified as
10 A-14.

11 BY MR. MALONE:

12 Q. And that's the way you're able to
13 correlate a piece of paper to the PSA, is that
14 correct?

15 A. Correct. In that the PSA will identify
16 all the certificates that are issued by the trust.

17 Q. Now, you mentioned a moment ago you're
18 a member of the MERS system, is that correct?

19 A. Correct.

20 Q. And does your computer system also, if
21 you know, interface with the Countrywide Home Loans
22 service?

23 MR. OETHEIMER: Objection, if you know.

24 THE WITNESS: My understanding is we do
25 not have a direct link to their servicing system.

1 BY MR. MALONE:

2 Q. Who else, to your knowledge, maintains
3 a library of PSAs?

4 MR. OETHEIMER: Objection.

5 MR. MALONE: Let me rephrase the
6 question.

7 MR. OETHEIMER: PSAs with Bank of New
8 York as Trustee?

9 BY MR. MALONE:

10 Q. Does anyone else, to your knowledge,
11 maintain a library of PSAs where Bank of New York is
12 the trustee?

13 MR. OETHEIMER: Objection.

14 THE WITNESS: Well, the closing law
15 firms would have their library record of the closing
16 documents, transactions for all trustees --

17 BY MR. MALONE:

18 Q. Anyone else?

19 A. -- that they worked with.

20 Q. Anyone else?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: I don't know.

23 BY MR. MALONE:

24 Q. Now, in terms of the parties to this
25 PSA as Liquidity Funding Trust on the first page, your

1 employer --

2 MR. OETHEIMER: Can we move this out?

3 BY MR. MALONE:

4 Q. -- your employer, the Bank of New York
5 maintains a library of PSAs for which your employer is
6 the trustee?

7 A. Right.

8 Q. Does anyone else, to your knowledge, on
9 this cover list maintain a library of PSAs for which
10 the Bank of New York trustee is the, is the trustee?

11 MR. OETHEIMER: Objection.

12 THE WITNESS: I wouldn't know their
13 document retention practices.

14 BY MR. MALONE:

15 Q. Okay. So if one of these parties
16 wanted a copy of an executed PSA, would they, in the
17 ordinary course, go to your employer to obtain that
18 copy?

19 MR. OETHEIMER: Objection.

20 THE WITNESS: That's one way to get a
21 copy of the PSA.

22 BY MR. MALONE:

23 Q. What other ways can you, based on your
24 experience, would want to go about getting an executed
25 copy of the PSA?

1 MR. OETHEIMER: Objection.

2 THE WITNESS: I actually don't know to
3 get an executed copy of the PSA. Or can you clarify
4 what is called an execution copy or what is a copy
5 that has -- that actually bears signatures?

6 BY MR. MALONE:

7 Q. Let's take it both ways. Let's take
8 what is called an execution copy. I take it that
9 means without signatures?

10 MR. OETHEIMER: Objection.

11 BY MR. MALONE:

12 Q. You were making a distinction between
13 something with signatures and without signatures.

14 MR. OETHEIMER: Objection.

15 THE WITNESS: In practice, I know that
16 a form of the execution copy is sometimes acquired by
17 people from the Securities and Exchange Commission,
18 and my experience is that it doesn't necessarily have
19 signatures on it.

20 BY MR. MALONE:

21 Q. And if one wanted to obtain earlier
22 drafts of the PSA, does your employer maintain drafts
23 of the PSA, if you know?

24 A. Prior to closing, the drafter of the
25 Pooling and Servicing Agreement will circulate copies

1 reflecting marked changes from perhaps a previous one,
2 whatever. Those are reviewed by our counsel. They
3 are reviewed by people like me to make sure that the
4 dates and the facts, the business people look at them,
5 too.

6 Q. And are those drafts maintained in the
7 ordinary course of business by your employer?

8 MR. OETHEIMER: Objection.

9 BY MR. MALONE:

10 Q. If you know.

11 A. Typically, they would be utilized
12 during the closing process.

13 Q. And once the closing process was
14 completed, would the drafts be maintained?

15 MR. OETHEIMER: Objection.

16 THE WITNESS: It's possible.

17 BY MR. MALONE:

18 Q. In your experience, if you had reason
19 to go back a couple years after a trust closed and
20 wanted to see drafts, how would you go about doing
21 that?

22 MR. OETHEIMER: Objection.

23 THE WITNESS: My experience is
24 generally we are looking back at the contracts that
25 are executed. Otherwise, I don't know. I believe

1 that attorneys are required to keep some drafts. I
2 don't know that for certain.

3 BY MR. MALONE:

4 Q. If an executed copy of a Pooling and
5 Servicing Agreement existed at a point in time and
6 litigation was going on, and an inquiry was made for
7 the Pooling and Servicing Agreement showing that the
8 trust owned a particular note, in your experience,
9 would a draft document be provided or would an
10 executed copy of the Pooling and Servicing Agreement
11 be provided, marked in box request?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: I'm sorry, clarification.
14 What would be provided or typically is provided?

15 BY MR. MALONE:

16 Q. What typically is provided?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: All right. In the course
19 of business, you would look at an executed version.

20 BY MR. MALONE:

21 Q. Until you see the executed version, do
22 you have any knowledge or facts whether the PSA is
23 ever closed, the trust is ever closed?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: Well, practice, I'm not

1 at the closing. The practice is, transaction does not
2 close without the delivery of the signature pages for
3 the Pooling and Servicing Agreement.

4 BY MR. MALONE:

5 Q. So if you saw a draft, and that was the
6 only document that you were ever given, would that
7 prove anything in terms as to ownership of a
8 particular note?

9 MR. OETHEIMER: Objection.

10 MR. MALONE: A nonexecuted draft.

11 MR. OETHEIMER: Objection.

12 THE WITNESS: I would just note that it
13 was a draft, and I would then in turn look for -- it
14 would be an indication, but I would seek out the
15 executed version.

16 MR. OETHEIMER: Can I interrupt? I'm
17 not sure what the issue is, I was not obviously
18 counsel for Bank of New York at the time the documents
19 were initially produced. But I thought that BoNY 555
20 was an executed PSA. Is there some issue about that?

21 MR. MALONE: Yeah. The initial
22 document that was produced in discovery is an
23 unexecuted draft.

24 MR. OETHEIMER: So an unexecuted copy
25 of the PSA was produced prior to the time that the

1 executed PSA was produced.

2 MR. MALONE: In sequence, I think
3 that's a description.

4 MR. OETHEIMER: But the PSA was
5 produced by the Wilentz firm.

6 MR. MALONE: An executed PSA was
7 eventually produced, yes.

8 MR. OETHEIMER: All right. That was
9 before my time.

10 BY MR. MALONE:

11 Q. Turning to paragraph 14 of the letter.
12 "Whether at any time the Ukpe defendant's mortgage
13 loan was drawn out of the original pool of securities
14 and swapped, traded, leveraged or sold to another
15 entity." Would you tell us what knowledge you have on
16 that subject matter?

17 MR. OETHEIMER: Objection. You can
18 answer.

19 THE WITNESS: The normal course of
20 business, I wouldn't know the disposition of one
21 mortgage in a trust.

22 BY MR. MALONE:

23 Q. Did you do anything in this case to
24 determine?

25 A. Well, I determined that it was a

1 Countrywide securitization, that the trust was a
2 REMIC, which is an indication to me, in practice, that
3 it's what, it's a static pool that the loans are
4 deposited and generally the provisions restrict
5 movement of the loan.

6 Q. And you say you determined that. How
7 did you determine that it was a Countrywide
8 securitization?

9 A. Well, I looked at the PSA.

10 Q. What you told us about earlier, which
11 you had in your desk?

12 A. The records available to me,
13 electronically, which I sometimes will print.

14 Q. Okay. You testified about that
15 earlier. Did you look at anything beyond what you
16 testified about earlier to determine that it was a
17 Countrywide securitization?

18 A. No.

19 Q. And you noticed that it was a REMIC
20 that would indicate a static pool. Is it from looking
21 at the electronic version of the PSA that you
22 determined it was a REMIC?

23 A. Yes.

24 Q. And in your system, is it possible to
25 just punch in the Ukpe's loan number and get a

1 complete transaction history for the Ukpe loan?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: I don't know the system
4 that well.

5 BY MR. MALONE:

6 Q. Have you ever asked anyone can I find
7 out what's happened with the loan, the history of a
8 loan by punching in the loan number?

9 MR. OETHEIMER: Objection. And you're
10 referring to his, Bank of New York as Trustee because
11 we've looked at a document that -- I'm guessing that's
12 exactly how that document was generated, 782 to 787,
13 but not his system.

14 THE WITNESS: I expect that there is a
15 report that I could get that would indicate to me the
16 history of the loan on our system.

17 BY MR. MALONE:

18 Q. From your system.

19 A. From the system maintained in
20 California at the custodial office.

21 Q. Aside from the system in California,
22 which is going to be the custodial part, I'm asking
23 for the whole history of the loan, from your end as
24 the trustee, do you maintain a record of a loan
25 transaction? The Ukpe loan as trustee.

1 MR. OETHEIMER: Objection.

2 THE WITNESS: The record in this case,
3 I used the word custodian. But we are holding the
4 mortgages as a trustee and perhaps in doing so, as
5 cotrustee. The certification is made by the trustee.
6 So the record out there is a record that we utilize to
7 maintain what loans are currently in the trust.

8 BY MR. MALONE:

9 Q. Okay. Do you utilize any other record
10 other than what's maintained, the record maintained
11 out in California?

12 A. There is another record.

13 Q. What is the other record?

14 A. And that speaks to our duties to
15 determine the amount of the distributions to the
16 different certificates. We get the servicer
17 information every month. We independently keep a
18 record of all the whole loans that are in the trust on
19 a computer system. And when loans are paid off or
20 repurchased from the trust, it will keep track of the
21 current status of that loan, each loan, in each trust.

22 Q. What is that record called?

23 A. We have a computer system, a particular
24 platform, a computer system -- the name escapes me for
25 the moment, I'll remember it -- that is maintained by

1 another department that works directly in unison with
2 us. They specialize in getting servicer information,
3 maintaining those records, loan level records, and
4 producing the distribution report that the PSA calls
5 for, and the system is referred to as -- and I believe
6 all Countrywide are all on the WS, or WSA system which
7 is the name of the Wall Street Analytics which is the
8 vendor for that system.

9 Q. And the name of the report that's
10 generated by that system, does it have a name; summary
11 report, distribution report?

12 A. The Pooling and Servicing Agreement
13 will have a section that talks about the report. The
14 certificate holders, and that's that report.

15 Q. So is it a monthly report to the
16 certificate holders?

17 A. Yes.

18 Q. So in your understanding, with regard
19 to this trust and any information involving the Ukpe
20 note, there would be a monthly report going out to the
21 certificate holders?

22 MR. OETHEIMER: Objection.

23 THE WITNESS: My understanding is there
24 is a monthly report going out every month to the
25 certificate holders.

1 BY MR. MALONE:

2 Q. What would the monthly report be
3 captioned? Does it have a caption in the name of the
4 trust?

5 A. Their form differs. In Countrywide, I
6 believe, the caption is the name of the trust.

7 Q. We haven't received those monthly
8 distribution reports, is that what they are, to the
9 certificate holders?

10 A. Yes, and they're actually, they're
11 delivered to the certificate holder which is DTC.
12 They're also, as part of our service, posted and
13 available on our website, and the website for that
14 purpose.

15 Q. And is that website publicly
16 accessible?

17 A. Yes.

18 Q. And if you went on the website and
19 looked for the loan, would you expect to see the
20 particular loan file with a caption of the name of the
21 trust in this case, that is the certificate holders
22 CWABS, Inc. Asset-Backed Certificates, Series
23 2005-AB3?

24 A. Definitely.

25 Q. Have you made any effort to locate such

1 a trust report on the public website?

2 A. I did not look at the certificate
3 holder report for this transaction.

4 Q. Do you know if there is a certificate
5 holder report for this transaction?

6 A. I only know that every -- our policies
7 or procedures, every transaction of this nature must
8 have, a certificate holder report is produced and it
9 is put on the website.

10 Q. And my question is do you know if there
11 is one for this trust, certificate holder reports,
12 monthly reports?

13 A. I did not look for it, so I can't tell
14 you that I've seen it. It should be there.

15 Q. And if it's not there, what would that
16 indicate to you?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: That would indicate
19 administrative error because it's supposed to be
20 there.

21 BY MR. MALONE:

22 Q. Could it also indicate that the trust
23 never closed?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: I have to speculate.

1 That would be speculation.

2 BY MR. MALONE:

3 Q. Okay. And your answer administrative
4 error, is that speculation also?

5 MR. OETHEIMER: Objection. It's
6 argumentative.

7 THE WITNESS: I believe that the
8 transaction closed because I've seen the closing file,
9 electronic file of the documents.

10 BY MR. MALONE:

11 Q. I'm sorry, let's go back again and
12 revisit that again. I thought you had seen a copy of
13 the PSA but had not seen any of the exhibits?

14 A. I mean look at the electronic library.
15 The closing documents which are all there, they are
16 provided to us by closing counsel after the closing.

17 Q. What closing documents are you talking
18 about? I'm not familiar with them.

19 A. It's a long list of documents that
20 would be in the closing memorandum for the
21 transaction.

22 Q. And you've seen those for this trust?

23 A. I've seen that there are a large number
24 of these documents indicated in the closing set, if
25 you want to call it, the electronic binder from the

1 attorneys.

2 MR. MALONE: We previously asked for
3 electronic data in this case and I believe if such a
4 document as the witness describes exist, we should
5 have received it but have not.

6 BY MR. MALONE:

7 Q. Can you tell us, from your recollection
8 of whatever it is you looked at, did you look at this
9 on a computer screen?

10 A. Yes.

11 Q. What did the computer screen say that
12 leads you to believe there are a series of documents
13 related to a closing?

14 A. Well, there's the standard form, the
15 various documents, the rating letters, the opinion
16 letters, the encumbrancy certificates, the various
17 closing documents.

18 MR. OETHEIMER: Many of which have been
19 produced in paper. I mean somebody, I assume, printed
20 them off a system, but we provided opinion letters and
21 rating agency letters, so I mean this just sort of
22 marvelous to me that the trust --

23 MR. MALONE: It's kind of marvelous to
24 me because I don't recall. I don't recall seeing any
25 rating agency letters.

1 MR. OETHEIMER: It's in the document
2 production.

3 MR. MALONE: I heard you, but in terms
4 of the document production, to just, just dump
5 documents on us -- if you made a request, here's the
6 request they will relate to, and we haven't gotten
7 anything like that. Our review of the unredacted
8 documents you sent us does not disclose, to my
9 recollection, so we're going to ask you to please
10 provide, as called for by previous court order in
11 federal court, if you're producing documents you're
12 saying that are relevant to a document request or
13 interrogatory, you identify what documents they are as
14 Mr. Nardi did up through --

15 MR. OETHEIMER: The rating agency
16 letters are CW Ukpe 2117 through 2117.

17 MR. MALONE: Those are documents
18 received since Mr. Nardi left and we have not received
19 any explanation that a particular document relates to
20 a particular interrogatory request, so we're going to
21 ask that in accordance with the order entered in
22 federal court, if we need to go to state court we'll
23 do it, that if you're saying a particular document
24 relates to a particular interrogatory answer or other
25 document request, you identify, otherwise --

1 MR. OETHEIMER: We didn't even have --
2 when we produced documents, we did not have either the
3 Notice in Lieu of Subpoena or the March 2nd letter.

4 MR. MALONE: No, no, no, rating
5 agencies were specifically asked for in our
6 interrogatories and/or document request. And you've
7 dumped -- strike that. Dump was a phrase used by the
8 magistrate when he heard 1200 documents.

9 MR. OETHEIMER: No, he did not, you're
10 mischaracterizing.

11 MR. MALONE: Well, in any event, we
12 only have the index from Mr. Nardi up through a
13 certain number. A thousand plus documents have been
14 given to us since then. If your position is that they
15 relate to a particular document request or
16 interrogatory, we're entitled to a description of how
17 the document -- what documents relate to
18 interrogatories. Could I have those rating agency
19 numbers again, please?

20 MR. OETHEIMER: 21 off the index, 2117
21 through 2117.

22 BY MR. MALONE:

23 Q. To your knowledge, is the Ukpe's loan
24 presently in the CWABS, Inc. Asset-Backed
25 Certificates, Series 2005-AB3 trust?

1 A. I believe that the -- I believe it is.

2 Q. And the basis for that belief?

3 MR. OETHEIMER: Objection.

4 THE WITNESS: Some of the documents
5 indicate that it's held in our custodial facility.

6 BY MR. MALONE:

7 Q. The documents referred to previously in
8 Mitchell-7?

9 A. Yes.

10 Q. Any other documents other than
11 Mitchell-7?

12 A. No.

13 MR. OETHEIMER: At some point Mark, do
14 you want to take five minutes?

15 MR. MALONE: Sure, why don't we deal
16 with the one dealing with rating agency.

17 BY MR. MALONE:

18 Q. Paragraph 15 of the letter calls for
19 "Communications involving the Ukpe defendant's note
20 and mortgage with any investment rating agency."
21 Would you tell us what knowledge you have with regard
22 to that subject matter?

23 A. The rating agency will rate the
24 particular certificates issued by the trust, and we
25 were looking at the exhibit before had certificates 1

1 through 14. Some or most of those will be rated,
2 depending upon which cash goes to them. And the
3 rating agency's analyzed the transaction based on
4 information on the portfolio. So I'm not -- I know of
5 no communication involving any, any singular note or
6 mortgage.

7 Q. Do you know any communications
8 involving certificates for which the Ukpe's note is
9 part of the trust corpus?

10 A. Only that at the closing, the rating
11 agencies will deliver their rating letters for the
12 transactions. The trustee is generally not actively
13 involved in the process with the rating agencies.

14 Q. And therefore, based on your
15 experience, you would expect to see a rating agency
16 letter dated no later than September 27, 2005, the
17 closing date of the trust?

18 A. I would expect, yes.

19 Q. And would that rating agency letter
20 identify the CUSIP numbers of the certificates to be
21 issued?

22 MR. OETHEIMER: Objection.

23 MR. MALONE: If you know.

24 THE WITNESS: I don't know.

25 MR. MALONE: Okay. Good time to take a

1 break.

2 (Brief recess.)

3 BY MR. MALONE:

4 Q. Okay. Turning next to paragraph 16 of
5 the letter to Mr. Oetheimer dealing with the Opinion
6 of Counsel.

7 MR. MALONE: First off, Mr. Oetheimer,
8 before I think you were looking at a chart or an index
9 of documents. Mr. Nardi had provided us with a chart
10 or index indicating which particular documents related
11 to interrogatory answers or document request. Is that
12 a similar chart and if it is, we'd ask you to make a
13 copy available to us so we can move faster.

14 MR. OETHEIMER: It is not.

15 MR. MALONE: It is not. Okay. And
16 does one exist, a chart similar to what Mr. Nardi
17 created?

18 MR. OETHEIMER: I didn't see what
19 Mr. Nardi created or produced to you, that I recall,
20 so I do not have -- I'm not aware of a chart that
21 correlates things. Actually, I think I did see his
22 letter at one point, he provided something, but no, I
23 know I do not have a chart like that for any
24 subsequent production.

25 MR. MALONE: Before asking the witness

1 any questions, are there any documents that have been
2 disclosed, Mr. Oetheimer, that you're aware that
3 relate to --

4 MR. OETHEIMER: An Opinion of Counsel?

5 MR. MALONE: Yes.

6 MR. OETHEIMER: Offhand, I do not
7 recall.

8 BY MR. MALONE:

9 Q. And now asking your information on this
10 subject matter, the Opinion of Counsel, could you tell
11 us what knowledge you have regarding paragraph 16 of
12 the letter of that subject matter?

13 A. Well, the REMIC provisions are a very
14 complicated part of the IRS Code. So that a tax
15 attorney who reviews the closing document, I don't
16 know exactly what they review, but the Opinion of
17 Counsel would be given as to certain issues related to
18 the REMIC tax status of the trust.

19 Q. Do you know if an Opinion of Counsel is
20 issued in this case?

21 A. I didn't see it. I didn't really look
22 for it.

23 Q. Okay. Again, we've received over a
24 thousand documents in the last two weeks.

25 MR. OETHEIMER: When you say a thousand

1 documents, you mean a thousand pages, not a thousand
2 documents.

3 MR. MALONE: Yes.

4 MR. OETHEIMER: In my neck of the
5 woods, a thousand pages of documents is, you know,
6 reading on the, you know, the sofa watching the ball
7 game. That isn't much.

8 MR. MALONE: From your perspective,
9 your neck of the woods with the 900 law firm
10 employees, you have a little different resources
11 available. Simply, the point is, if it has been
12 produced, whatever Opinion of Counsel, we'd ask that
13 the Bates stamp numbers have been provided so we can
14 locate it, and if it hasn't been produced, we ask that
15 it be produced.

16 BY MR. MALONE:

17 Q. But to your knowledge, Mr. Mitchell,
18 you do not know if an Opinion of Counsel was, in fact,
19 issued with regard to this trust?

20 A. No.

21 Q. Did you make any effort to determine if
22 one had been issued with regard to this trust?

23 A. No.

24 Q. Now, turning to paragraph 17, "The
25 creation and maintenance of the mortgage loan schedule

1 referenced in the PSA." Would you tell us what
2 knowledge you have about that, beyond which you've
3 already testified to today?

4 MR. OETHEIMER: Objection.

5 MR. MALONE: Or you can tell us, if you
6 want to, what knowledge you have.

7 MR. OETHEIMER: Obviously he testified
8 they didn't create it, and I don't know exactly what
9 else.

10 THE WITNESS: It's delivered to us. It
11 is delivered to us to constitute the assets that are
12 being deposited into the trust.

13 BY MR. MALONE:

14 Q. And do you know if, in fact, a mortgage
15 loan schedule was, in fact, delivered in connection
16 with the trust in this case?

17 A. I did not check to see that there was
18 one.

19 Q. If I recall earlier, there was some
20 discussion of counsel had shown you a redacted version
21 of a document, is that correct?

22 A. Right.

23 Q. And your understanding was that
24 redacted document related to a mortgage loan schedule
25 connected to the PSA in this case?

1 A. Right.

2 Q. And can you tell us what it was about
3 the document that led you to believe that it had a
4 connection, if any, to the PSA in this case?

5 A. Well, the transaction when it closes
6 will have a mortgage loan schedule. That's not a --
7 that does not occur in these transactions. And it had
8 the type of information that is, that is generally the
9 eight to ten pieces of information that would be found
10 in a mortgage loan schedule.

11 Q. Okay. Did you compare the headings on
12 the redacted -- I've asked already, but you said since
13 you've answered, had the type of headings, do you know
14 if, in fact, the headings were the headings? Do you
15 know if, in fact, the headings on the redacted
16 document shown to you were, in fact, the headings
17 called for by the PSA?

18 A. No. The mortgage loan schedule -- the
19 PSA called for the certain number of pieces of
20 information. Often, the mortgage loan schedule has
21 more than that, extraneous information, but I did not
22 check to make certain.

23 Q. And if it has less, is that -- is that
24 an incomplete mortgage schedule then? Less than
25 what's called for by the Pooling and Servicing

1 Agreement?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: Well, that would be
4 reviewed and addressed at the closing.

5 BY MR. MALONE:

6 Q. Regarding paragraph 18 of the letter,
7 "Whether the Ukpe defendant's mortgage loan was
8 pledged as security for any loan, including any loan
9 from a Federal Home Loan Bank." Can you tell us what
10 knowledge you have regarding that?

11 A. I do know that the loan was in the LFT
12 trust, which is a financing type transaction, and I
13 believe, again, I'm not an attorney, that would be a
14 pledge type of transaction. I don't know whether at
15 all the Federal Home Loan Bank was involved in that
16 process.

17 Q. And if there was a pledging of a note
18 from that CWLFT trust we discussed earlier today,
19 would there be -- would the securities that were
20 pledged, the notes that were pledged, would they have
21 individual CUSIP numbers also? Distinct CUSIP
22 numbers?

23 MR. OETHEIMER: Objection.

24 THE WITNESS: Well, the pledge would be
25 to the trust would issue the notes, the notes -- I

1 don't know. It's possible that they could, or in some
2 cases they would, in some cases they would not have a
3 CUSIP number.

4 BY MR. MALONE:

5 Q. And with regard to the CWLFT 2005-1
6 trust that the Ukpe notes spent some time in, how
7 would you find out whether the notes issued by that
8 trust had CUSIP numbers?

9 A. I would -- I would look at the form of
10 the note or a copy of the note to indicate that if it
11 does have a CUSIP number, it's supposed to be
12 reflected on the face of the note. And also, we
13 maintain a very large system that the bank has to
14 record all the securities that are outstanding, and
15 that system is driven by the CUSIP numbers.

16 MR. MALONE: We're going to ask you or
17 request Mr. Oetheimer to produce copies of any notes
18 that were issued backed up by mortgage notes including
19 the Ukpe's mortgage note and provide CUSIP numbers if
20 there were related CUSIP numbers with those notes.

21 MR. OETHEIMER: Just for the record, I
22 am listening, paying attention, but I'm not agreeing
23 on the record today to produce anything.

24 MR. MALONE: Understood.

25 MR. OETHEIMER: And I will get the

1 transcript back certainly and review it.

2 BY MR. MALONE:

3 Q. The next item, paragraph 18 asks
4 "Whether any certificates referenced in the PSA" --
5 I'm sorry, item 19. "Whether any certificates
6 referenced in the PSA and issued by the trust were
7 purchased by any investors." Can you tell us what
8 knowledge you have about that?

9 MR. OETHEIMER: Objection. Asked and
10 answered. Though I understand that you questioned him
11 divorced from the letter before and now you're going
12 back through it to see if we covered things, so I
13 think there was testimony that he said that they don't
14 have knowledge of who the end holders are. Is this
15 the depositary? I forget. Book records?

16 THE WITNESS: The investment banker
17 will sell, will distribute, sell the securities that
18 are issued. Again, we are not involved directly in
19 that particular process.

20 BY MR. MALONE:

21 Q. Who was the investment banker -- who
22 were the investment bankers involved in this
23 transaction?

24 A. I would have to go back and look at the
25 disclosure documents to verify exactly who that was in

1 this case.

2 Q. And even though the investment bankers
3 are the ones doing the sale, this particular subject
4 matter is just whether, to your knowledge, your
5 employer's knowledge, any certificates referenced in
6 the PSA and issued by the trust were purchased by
7 investors.

8 A. I have no particular knowledge of that,
9 no.

10 Q. If certificates had been purchased by
11 investors, what kind of record would your employer
12 keep, if any?

13 A. We will indicate on our system at the
14 time of closing, there is a process with the
15 Depository Trust Company where the securities are
16 secreted in our account at DTC and upon closing, they
17 move to the account of the investment bankers, in a
18 free transaction.

19 Q. Now, the purchasers of those
20 certificates issued by the trust, which you are the
21 trustee, are the beneficiaries of the trust, is that
22 correct?

23 MR. OETHEIMER: Objection. Legal
24 conclusion.

25 THE WITNESS: Yeah. The certificate

1 holders are the beneficial owners of the trust. And
2 then they're potential owners on their records
3 possibly.

4 BY MR. MALONE:

5 Q. How do you track -- as the trustee, how
6 do you track the flow of money that you receive as
7 trustee to make sure it does get to the appropriate
8 beneficial owners?

9 A. Well, the registered holder that
10 appears on our records as the registrar and transfer
11 agent of those securities is the Depository Trust
12 Company and the registered -- Cede & Co., the nominee,
13 and all of our payments go to them.

14 Q. And after you've given your payments to
15 them, is there any check, audit, review made to make
16 sure that the beneficiary of the trust actually gets
17 the payment, if you know?

18 MR. OETHEIMER: Objection. By the
19 trustee?

20 MR. MALONE: By the trustee, yes.

21 THE WITNESS: No.

22 BY MR. MALONE:

23 Q. And I'm sorry, I don't know if I really
24 caught the testimony, understood completely earlier,
25 but when a payment is made by the trustee to the

1 depository, is it a lump sum payment? Just one
2 monthly payment and then does the depository then make
3 the distributions?

4 A. Currently, that's how it works in that
5 all the securities are held in book entry form and all
6 the payments go to the depository. There may be one
7 or two REMIC classes from deal to deal, I don't know
8 about Ukpe. That is what you call physical form, and
9 there would be a wire going to them directly from us.

10 Q. What happens in the case such as the
11 Ukpe's case where they allegedly default, they stop
12 making payments. Does that affect the payment made,
13 first off, from the servicer to the trustee?

14 MR. OETHEIMER: Objection. You can
15 answer.

16 BY MR. MALONE:

17 Q. If you know.

18 A. The way it works, and what's required
19 by the Pooling and Servicing Agreement is this is what
20 in the industry is called a scheduled transaction.
21 And the servicer will make remittance to the trustee
22 of each payment when scheduled whether or not they
23 have received it until such point that, as defined in
24 the PSA, there are provisions that require them --
25 that expect they can stop doing that. So we're

1 getting the scheduled payments, not necessarily
2 knowing what is collected and what is referred to as a
3 servicing advance.

4 Q. And under the PSA, if I understood you,
5 there will come a point where the mortgage, if a
6 homeowner has stopped making payments, the servicer
7 can stop making advances related to that particular
8 mortgage?

9 MR. OETHEIMER: Objection. You can
10 answer.

11 THE WITNESS: Yes.

12 BY MR. MALONE:

13 Q. And then do you, in turn, reduce the
14 amount that's remitted to the depository institution?

15 A. Each transaction is different. There
16 are mathematical calculations that are done that
17 determines the amount going out, and in most cases,
18 the answer to that is no. Because some of the cash
19 flow is enough to make the payments due on all the
20 certificates to the holders can still be made, even
21 though there is a shortfall of some payments.

22 Q. Turning now to paragraph 20 of the
23 letter we've discussed about distributions briefly a
24 moment ago, and you've indicated that there are
25 monthly reports made and we've asked for those monthly

1 reports. I think you've also indicated that you have
2 not actually seen a monthly report relating to this
3 trust, is that correct?

4 A. That's correct.

5 Q. And are those reports called
6 Certificate Holder Monthly Distribution Summaries?

7 MR. OETHEIMER: Objection.

8 BY MR. MALONE:

9 Q. If you know.

10 A. I have to look at the document to see
11 if there's a defined term. I don't recall it being
12 that term, but it could be.

13 Q. What term do you recall it being?

14 A. Generally speaking, in the industry, it
15 would be the certificate holder's report, certificate
16 holder's monthly statement. I'd have to look at
17 exactly what Countrywide's nomenclature is.

18 Q. Turning then to paragraph 22 of the
19 letter, asking for knowledge about the Tax Matters
20 Person Certificate referenced in the PSA. Can you
21 tell us your knowledge on that subject matter?

22 MR. OETHEIMER: Objection. Go ahead.

23 THE WITNESS: 2005, we prepare and file
24 the REMIC tax return Form 1066. In order to do that,
25 the tax matters person has to do that. So generally,

1 there is a very, very, very small certificate of a
2 small percentage of the residual interest in the REMIC
3 is that placed in the name of the trustee. So that
4 under REMIC, my understanding is under REMIC tax
5 provisions, we then take on responsibility of the tax
6 matters person so that we can perform the service for
7 the trust of doing the taxes.

8 BY MR. MALONE:

9 Q. And do you know if there is a
10 certificate that's part of the Tax Matters Person
11 Certificate that's part of the exhibits or attachments
12 to the PSA at the time of the closing date?

13 A. It's generally one of the residual
14 certificates.

15 Q. And by residual certificates, what do
16 you mean?

17 A. REMIC allows the issuance of various
18 classes, as you know. There is always one class in a
19 REMIC that is referred to as the residual.

20 Q. And do you know if such a Tax Matters
21 Person Certificate letter was issued and included as
22 part of the trust regarding the residuals?

23 A. I'd have to check the records, but for
24 us to be tax matters person, there would be such a
25 certificate.

1 Q. And do you know if you are, in fact,
2 the tax matters persons for this trust?

3 A. I would have to check the records to
4 determine that. I don't know for a fact.

5 Q. Do you know if you have filed a REMIC
6 tax return Form 1066 at any point in connection with
7 this trust?

8 A. I would have to check the records, but
9 I could do so quickly.

10 MR. MALONE: Mr. Oetheimer, based on
11 the discovery you have turned over, can you represent
12 if there are any documents, to your knowledge, that
13 relate to this subject matter which also is part of
14 the Notice in Lieu of Subpoena, paragraph 36, which I
15 don't have the corresponding reference. It was either
16 in a document request or an interrogatory previously.

17 MR. OETHEIMER: From memory, I can't
18 say offhand whether a Tax Matters Person Certificate
19 was produced. I know that although a copy of the PSA
20 had been produced initially by the Wilentz firm, I
21 know that subsequently, and maybe fairly recently, we
22 produced additional securitization, I'm calling it
23 sort of under the broad group of securitization
24 documents for the CWABS 2005-AB3 trust, for that
25 matter for the CWLFT-2005-1 Liquidity Funding Trust as

1 well. And I don't know what all of those are from
2 recollection, I mean offering documents, and there are
3 some are probably exhibits to the PSA and some may not
4 be, but I know we've attempted to produce documents
5 related to the securitization of that trust.

6 MR. MALONE: Again, we'll send a
7 follow-up letter requesting the appropriate
8 certificate.

9 BY MR. MALONE:

10 Q. In addition to the certificate, turning
11 to paragraph 23, can you tell us what your knowledge
12 is of the tax matters person referenced in the PSA?

13 MR. OETHEIMER: I was going to ask is
14 that a different question? Is that the person rather
15 than the certificate?

16 MR. MALONE: Correct.

17 THE WITNESS: It would be the holder of
18 the certificate, tax matters certificate.

19 BY MR. MALONE:

20 Q. And is that the trustee?

21 A. I believe so.

22 Q. Paragraph 24 calling for "knowledge
23 about whether the Ukpe's loan was at any time an
24 outstanding mortgage loan or a liquidated mortgage
25 loan as referenced in the PSA." Can you tell us what

1 your knowledge is with regard to that?

2 MR. OETHEIMER: Objection. Are those
3 defined terms in the PSA?

4 THE WITNESS: Those are defined terms
5 in the PSA. And an outstanding -- a loan is an
6 outstanding mortgage loan in the trust until such time
7 as the loan is liquidated. My understanding is the
8 loan has not been liquidated so it continues to be an
9 outstanding mortgage loan.

10 BY MR. MALONE:

11 Q. Turning then to paragraphs 25 and 26
12 and 27, and dealing with insurance. First off,
13 paragraph 25 asks for your knowledge about any
14 insurance policies covering the trust liability in
15 this litigation. Do you have any knowledge regarding
16 that?

17 A. No.

18 Q. Did you do anything to determine
19 whether the trust has insurance that would provide for
20 coverage in this litigation?

21 MR. OETHEIMER: Objection. Asked,
22 again, about liability insurance.

23 THE WITNESS: We have an insurance
24 department that covers the liability of the bank and
25 I'm not privy to exactly what they -- what coverage

1 there is.

2 BY MR. MALONE:

3 Q. Turning then to paragraph 26 calls for
4 knowledge about a different kind of insurance policy,
5 that is insurance policies covering any default on a
6 mortgage loan held in the mortgage pool by your
7 employer regarding this trust. Can you tell us your
8 knowledge on that subject matter?

9 A. I know that there are some loans in
10 this transaction that at the time of the transaction,
11 or concurrently with the closing of the transaction,
12 to satisfy a certain credit issue that the investment
13 bankers had and getting the securities rated, secured
14 mortgage insurance for some of the loans which is a
15 standard practice in the industry.

16 Q. And first off, do you know if the
17 Ukpe's loan was one of those loans?

18 A. I don't know.

19 Q. And how would you find out?

20 A. There are several sources. One would
21 be the area that does the -- keeps the service of
22 record, calculates the payment for distribution, would
23 have a record of which loans in the pool have had
24 mortgage insurance placed on them.

25 Q. And how would you go into your system

1 to make that inquiry?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: I would make an inquiry
4 to the people who have access to that system. It's
5 very secure. I don't have direct access to that
6 system.

7 BY MR. MALONE:

8 Q. And I take it, based on your answer,
9 you have not done that yet in this case?

10 A. No.

11 Q. And we're going to ask that either that
12 be done in this case or a witness be produced who will
13 or can do it. Turning to paragraph 27 calls for
14 knowledge regarding the "mortgage insurance policy
15 referenced in the PSA, any payments made to purchase
16 such insurance, any claims made under the mortgage
17 insurance policy relating to the Ukpe defendant's
18 mortgage loan, including claims made to Mortgage
19 Guaranty Insurance Corporation." Would you tell us
20 your knowledge with regard to that subject matter?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: Well, that process, the
23 claims, the payments, is performed by the servicer for
24 the loan. The trust, being the beneficiary of the
25 insurance, is required to make, from the cash flow,

1 periodic payments of the insurance premiums to the
2 insurer.

3 BY MR. MALONE:

4 Q. To your knowledge, have such periodic
5 payments been made in connection with this trust, the
6 CWABS, Inc. 2005-AB3 trust?

7 A. This is a case where I wouldn't have --
8 I don't have actual knowledge except that, that is
9 procedure, and that is a compliance issue, and I would
10 know of -- I would know of exceptions to the process.

11 Q. Just so we're crystal clear, there's an
12 issue about whether the trust in this case is even
13 bona fide, so that's why we're asking.

14 MR. OETHEIMER: Absolutely objection on
15 the record. There is absolutely no issue about that.

16 MR. MALONE: Well, we discussed it.

17 MR. OETHEIMER: It's not appropriate
18 for you to theorize. Ask questions. Don't preach to
19 the witness.

20 MR. MALONE: I'm not preaching to the
21 witness, but I want the witness to understand that
22 whether a policy exists is important.

23 MR. OETHEIMER: I understand. You can
24 ask him questions about that.

25 MR. MALONE: The witness has not

1 complied with the Notice in Lieu of Subpoena.

2 MR. OETHEIMER: The Notice in Lieu of
3 Subpoena --

4 MR. MALONE: We had every right,
5 entitlement to expect someone to come in today and
6 talk about this subject matter. If you wanted to
7 object it was too broad or relevant or something
8 else --

9 MR. OETHEIMER: We did.

10 MR. MALONE: But --

11 MR. OETHEIMER: No, I'm sorry. I don't
12 want to interrupt you. Finish speaking and let me
13 make a statement.

14 MR. MALONE: If the witness has not
15 done it, we're entitled to someone who has done it
16 because these are not irrelevant questions. We're not
17 spinning our wheels and we have a reason for asking
18 them, and the absence of a documentation to us is
19 proof that the transaction didn't occur. So as long
20 as you understand our perspective. And counsel at the
21 end can snicker if they want. We want the evidence.

22 MR. OETHEIMER: We have objected to the
23 Notice in Lieu of Subpoena as I've never seen anything
24 like it in all my years of practice, and at some point
25 we may see what the judge thinks of it. But 102

1 categories of documents. I did appreciate
2 Ms. Sullivan's letter which was, at least, much more
3 manageable to review and prepare the witness, and
4 counsel doesn't seem to appreciate that these are, you
5 know, large corporate parties with different
6 departments and different people have different roles
7 in the Pooling and Servicing Agreement. I think we've
8 done human efforts to be responsive here. We've
9 produced more documents apparently than you're able to
10 read. So you can continue questioning the witness,
11 I'm taking notes on your questions, and we certainly
12 can discuss that. And you said you're going to send
13 me correspondence, we'll follow-up. I don't have a
14 problem with you asking the witness questions, I do
15 have a problem with you sort of, you know, making
16 closing arguments to the witness or what your views of
17 the case are. That's completely inappropriate and you
18 know it.

19 MR. MALONE: The documents you
20 produced, have you produced any documents relating to
21 the mortgage insurance policy? Let me ask that first,
22 and if there are, what are the document numbers?

23 MR. OETHEIMER: I don't know that.

24 MR. MALONE: Our document requests go
25 back at least until July of last year. If you

1 provided any documents relating to this, it would have
2 been in the last two weeks, and although we've tried
3 to look at them all.

4 MR. OETHEIMER: I will tell you that I
5 do not -- I could be wrong, but I do not recall seeing
6 a mortgage insurance policy as such. Although I would
7 go through the records and be certain of that.

8 MS. WELLINGTON: I do recall seeing
9 some documents, it will say MGIC at the top. I did
10 see some of those that were recently produced.

11 MR. OETHEIMER: You're absolutely
12 right.

13 MS. WELLINGTON: There's another one
14 below it I think.

15 MR. OETHEIMER: So the answer is the
16 documents have been produced.

17 MR. MALONE: What are the document
18 numbers?

19 MR. OETHEIMER: CW 1865. Thank you,
20 Ms. Wellington.

21 MS. WELLINGTON: And there's another
22 one.

23 MR. OETHEIMER: That one is 1865
24 through 1899. There's another one at 1900 are
25 declaration pages, 1900 through 1923.

1 MR. MALONE: Any others?

2 MR. OETHEIMER: I don't know, I'm not
3 going to go through the whole stack for you.

4 MR. MALONE: May I see your copies?

5 MR. OETHEIMER: You couldn't prepare
6 for the deposition on your own?

7 MR. MALONE: I did. If you had done
8 what you were supposed to do in terms of providing an
9 index.

10 MR. OETHEIMER: I don't know that,
11 that's -- I don't know that I'm under an obligation to
12 basically play your associate here, Mark. Did you
13 bring your copies of the documents? Did you even
14 bring documents that we produced?

15 MR. MALONE: I brought plenty of
16 documents. I can only carry so much. May I see your
17 documents so I may ask the witness about them? The
18 insurance document, the ones marked MGIC.

19 MR. OETHEIMER: I don't know why I'm
20 required to produce them to you.

21 MR. MALONE: I'm asking you to do it so
22 we can move along in the deposition.

23 MR. OETHEIMER: Do you have copies of
24 the documents, Ms. Sullivan?

25 MS. SULLIVAN: Do I have them? Not

1 with me.

2 MR. OETHEIMER: You weren't expecting
3 to ask about the securitization documents today?

4 MR. MALONE: We were expecting to ask
5 about them in terms of our resources and document
6 review.

7 MR. OETHEIMER: I'm not particularly
8 sympathetic to your resources issue.

9 MR. MALONE: I understand.

10 MR. OETHEIMER: You got three people
11 working on the case sitting through every deposition.
12 You had more staffing than our side has. I don't have
13 three people from my law firm here, so I think you can
14 do your own homework. The answer is that we've
15 produced the documents, it's your responsibility to
16 prepare for the deposition.

17 MR. MALONE: So the answer is no, I may
18 not see your copies for purposes of questioning the
19 witness? That's fine. If these documents had been
20 provided in the timely manner in response to our
21 July 2009 document request and subpoenas --

22 MR. OETHEIMER: Well then that I'm
23 reminded of that, these were produced -- we produced
24 the CWLFT documents I think on the 5th. These were
25 produced prior to that. But I do appreciate that they

1 are part of a supplemental production, so I will
2 reconsider and I will provide them to you.

3 MR. MALONE: Thank you. For the
4 record, Mr. Oetheimer has produced two documents, the
5 first is captioned in the upper left hand corner,
6 Mortgage Guaranty Insurance Corporation with the
7 initials MGIC, and it's Bates stamped numbers CW Ukpe
8 01865 through 01899, and the second document is
9 captioned in the upper left hand corner, it's smaller
10 font, Mortgage Guaranty Insurance Corporation, has the
11 initials MGIC, and CW Ukpe 01900 through 01923. Thank
12 you.

13 BY MR. MALONE:

14 Q. Under the Pooling and Servicing
15 Agreement, were the investors notified that a policy
16 issued by, issued by MGIC, M-G-I-C, would provide
17 coverage?

18 MR. OETHEIMER: Objection.

19 BY MR. MALONE:

20 Q. In the event of a default?

21 MR. OETHEIMER: Still objection. If
22 you know.

23 THE WITNESS: The application of
24 mortgage insurance on loans in the portfolio going
25 into the trust, that disclosure is made in the

1 document that the investment bankers have. They have
2 the responsibility to disclose to potential investors,
3 and that disclosure would be in the, in the prospectus
4 supplement or in a private, some kind of circular,
5 depending upon whether there's a public or private
6 security.

7 BY MR. MALONE:

8 Q. Have any claims been made under either
9 of those two insurance policies that Mr. Oetheimer
10 just showed us with regard to the Ukpe defendant's
11 mortgage loan?

12 A. I do not know.

13 Q. How would you find out?

14 A. I would inquire with my department that
15 keeps track of the payments that come in on each loan
16 who also has the ability to communicate with the
17 servicer, and that is the servicer who is processing
18 the claims.

19 Q. Did you make any effort today to
20 determine whether any claims had been made with
21 respect to the Ukpe loan?

22 A. No.

23 Q. If there was insurance for the Ukpe
24 loan, would that be important to your beneficiaries?
25 Are the beneficiaries, do they get the insurance

1 proceeds?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: The insurance proceeds
4 would come in on the loan to cover whatever the terms
5 of the policy are, and then those insurance proceeds
6 would flow through and go all the way through and out
7 to the investors.

8 BY MR. MALONE:

9 Q. The beneficiaries?

10 A. Yes, yes.

11 MR. MALONE: We're going to ask for any
12 documents relating to that, any proof that's actually
13 happened in this case with respect to the Ukpe
14 mortgage loan.

15 MR. OETHEIMER: Proof that it's
16 happened? I'm not --

17 MR. MALONE: There's been an alleged
18 default since --

19 MR. OETHEIMER: Which doesn't mean that
20 there's been a claim on insurance.

21 MR. MALONE: Doesn't mean it, no, no.
22 First question was any claim was made.

23 MR. OETHEIMER: I understand. You
24 suggested it proves that it happened as if somebody
25 claimed that it happened.

1 MR. MALONE: No, no, if a claim was
2 made and benefits were received.

3 MR. OETHEIMER: I wasn't here, did you
4 ask -- well whatever, it sounds like the servicer
5 would handle it. I wasn't here for the servicer
6 deposition, but in any event, I understand the
7 request.

8 BY MR. MALONE:

9 Q. Turning to paragraph 28 of the request
10 regarding your employer's knowledge of and
11 participation in the foreclosure lawsuit brought by
12 your employer against the Ukpe defendants. Would you
13 testify -- would you tell us about your knowledge in
14 that area?

15 MR. OETHEIMER: Objection. Vague.

16 THE WITNESS: I know that my legal
17 department approached me and indicated that there
18 was -- that this matter did exist.

19 MR. OETHEIMER: No specifics, but,
20 okay. So he was made aware by the legal department of
21 this lawsuit.

22 BY MR. MALONE:

23 Q. That was fairly recently.
24 Approximately when was that?

25 A. Weeks, some weeks ago.

1 Q. Some weeks ago? Sometime around
2 February or March of 2010?

3 A. Sounds, sounds so.

4 Q. Prior to your legal department coming
5 to you sometime around February or March of 2010, what
6 knowledge do you have, if any, regarding your
7 employer's participation in the foreclosure lawsuit
8 and knowledge of the foreclosure lawsuit?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: None.

11 BY MR. MALONE:

12 Q. To your knowledge, did the employer,
13 the plaintiff retain the law firm who brought this
14 suit?

15 MR. OETHEIMER: Objection. Do you want
16 to identify who that is?

17 BY MR. MALONE:

18 Q. Law firm named Phelan, Hallinan, and
19 Schmieg, PC.

20 A. The servicer will engage attorneys for
21 the purposes of foreclosure actions. And the Pooling
22 and Servicing Agreement gives them that
23 responsibility.

24 Q. To your knowledge, is there a retainer
25 agreement between the plaintiff, your employer, and

1 the law firm who brought the foreclosure action?

2 MR. OETHEIMER: The Phelan firm.

3 MR. MALONE: Phelan firm.

4 THE WITNESS: Phelan firm. I have no
5 knowledge of any retainer.

6 BY MR. MALONE:

7 Q. The next subject matter involves any
8 other litigation other than this lawsuit in which the
9 Bank of New York as Trustee for the certificate
10 holders of the particular trust, the Certificate
11 Holders CWABS, Inc. Asset-Backed Certificates, Series
12 2005-AB3 is a party. To your knowledge, are there any
13 other suits?

14 A. I don't know of any.

15 Q. Did you make any inquiry of your law
16 department to determine if that was the case?

17 A. No, I did not.

18 MR. OETHEIMER: And we covered this,
19 but we object. I'm not aware of any, but we object to
20 discovery regarding other, other lawsuits, other
21 foreclosures.

22 MR. MALONE: Involving this trust.

23 MR. OETHEIMER: In this trust.

24 MR. MALONE: Okay. We'll make the
25 request. Note the objection.

1 BY MR. MALONE:

2 Q. Similarly, paragraph 30 calls for
3 knowledge of other litigation in which any signatory
4 to the PSA is a party and the subject matter of the
5 litigation involves this trust.

6 A. I know of none.

7 Q. And did you make any inquiry?

8 A. No.

9 Q. Turning to paragraph 31 of the letter,
10 it asks about your knowledge about the -- your
11 employer's "knowledge about the creation of the
12 March 14, 2008 assignment of the Ukpe defendant's
13 mortgage and note referenced in the foreclosure
14 complaint filed in plaintiff's name against the Ukpe
15 defendants." Can you tell us what knowledge you have,
16 if any, about that assignment?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: The knowledge I have is
19 that would be the assignment to remove the mortgage
20 from the MERS system.

21 BY MR. MALONE:

22 Q. And could you explain that a little bit
23 more, please? Why is there an assignment at the
24 beginning of the foreclosure action to remove a
25 mortgage from the MERS system, if you know?

1 MR. OETHEIMER: Objection. Calls for
2 legal testimony, but subject to that, he can answer.

3 THE WITNESS: In terms of business
4 practice, MERS is used as a depository, and they
5 recognize us as the beneficiary. And again, attorneys
6 will expect that for foreclosures, they would want to
7 have an assignment that, to the trustee, and
8 therefore, it's removed from the depository system.

9 BY MR. MALONE:

10 Q. Is MERS a repository on the mortgage --

11 MR. OETHEIMER: Objection. You can
12 answer.

13 BY MR. MALONE:

14 Q. -- in this case? Was MERS a repository
15 on the mortgage?

16 A. I believe so.

17 MR. OETHEIMER: Asked and answered.

18 BY MR. MALONE:

19 Q. Was MERS a repository on the note in
20 this case?

21 MR. OETHEIMER: Objection.

22 THE WITNESS: Only that MERS does
23 not -- my understanding is MERS does not actually keep
24 the notes.

25 BY MR. MALONE:

1 Q. So in terms of an assignment, out of
2 the repository, would you expect to see an assignment
3 of the mortgage from MERS?

4 MR. OETHEIMER: Objection.

5 THE WITNESS: That's the typical.

6 BY MR. MALONE:

7 Q. And in terms of the note, would you
8 expect to see an assignment of the note from MERS to
9 the trust since the trust already has the note?

10 MR. OETHEIMER: Objection.

11 THE WITNESS: No, I would not.

12 BY MR. MALONE:

13 Q. Whatever MERS assigned to you, the
14 assignment recites the payment of consideration. Do
15 you know what, if any, consideration was paid to MERS
16 in connection with the assignment?

17 MR. OETHEIMER: Objection. And I don't
18 even know if he seen the assignment, but put it in
19 front of him. In any event, the question is does he
20 know what, if any, consideration was paid to MERS.

21 THE WITNESS: No.

22 BY MR. MALONE:

23 Q. The law firm Phelan, Hallinan, and
24 Schmieg brought the lawsuit in the trust's name
25 attached to document captioned Fair Debt Collection

1 Practices Act Notice to the Complaint. Do you have
2 any knowledge of, of that Fair Debt Collection
3 Practices Act Notice as called for in paragraph 32 in
4 the letter?

5 A. No.

6 MR. OETHEIMER: And objection. To be
7 fair, the witness already answered. You can send a
8 letter and ask for testimony from the plaintiff, but
9 that doesn't mean that matters are within the
10 plaintiff's knowledge.

11 MR. MALONE: Fair enough.

12 MR. OETHEIMER: Testified that the
13 servicer --

14 MR. MALONE: It is a lawsuit brought in
15 the plaintiff's name so I think it's a fair question,
16 but.

17 MR. OETHEIMER: I understand. The
18 witness has testified that the servicer basically
19 handles the foreclosure, so.

20 BY MR. MALONE:

21 Q. Similarly, with regard to paragraph 33,
22 there was an amount set forth in that Fair Debt
23 Collection Practices Act Notice that said the amount
24 was owed to the plaintiff, the trust. Do you have any
25 knowledge about how that amount was calculated?

1 A. That amount would be computed by the
2 servicer for the loan.

3 Q. Paragraph 34 asks for any "knowledge
4 about facts establishing the plaintiff's legal status
5 entitling the plaintiff to commence a legal action in
6 New Jersey." Can you tell us your knowledge about
7 what facts establish your employer's legal status to
8 commence a legal action in New Jersey?

9 MR. OETHEIMER: Objection. You know,
10 calls for legal opinion.

11 BY MR. MALONE:

12 Q. You can answer the question.

13 A. I wouldn't know about legal status in
14 New Jersey.

15 Q. Who in the company would know about
16 whether the company satisfies New Jersey's
17 requirements for bringing an action?

18 A. I would refer to my legal department.

19 MR. MALONE: This is a request that I
20 believe the judge has also made in the case, it's not
21 just coming from us.

22 MR. OETHEIMER: Can I ask, is the
23 issue, is there some issue in New Jersey whether a
24 trustee can --

25 MR. MALONE: Whether an out of state

1 trustee, simply are you registered, notified, is the
2 trust located in New Jersey.

3 MR. OETHEIMER: I'm trying to
4 understand what this separate and apart, sort of this
5 standing issue, whether the trust holds the note?

6 MR. MALONE: Correct.

7 MR. OETHEIMER: It's a capacity issue.

8 MR. MALONE: Yes, it's a capacity
9 issue. Have you complied with what New Jersey says
10 you have to do to bring a lawsuit. The witness has
11 asked to testify about it, he doesn't know, we're
12 going to ask you to provide whatever establishes your
13 ability to, as an out of state company, to bring an
14 action.

15 BY MR. MALONE:

16 Q. Turning to paragraph 36 of the letter,
17 asking for agreements between your employer and other
18 entities that reference in any way the mortgage loan
19 at issue in this litigation. And that's the Ukpe's
20 mortgage loan. To your knowledge, are there any such
21 agreements with other entities that reference the
22 Ukpe's mortgage loan?

23 MR. OETHEIMER: Objection. Objection.
24 Related to -- the agreements related to the PSA or
25 somehow specific to the loan? Are you including

1 agreements related to the PSA of which the loan is one
2 of the loans in the trust or are you specifically
3 asking about agreements that somehow are specific to
4 the Ukpe loan?

5 MR. MALONE: Actually, both. If it's
6 an agreement that in some way references the Ukpe's
7 mortgage loan, either by way of an exhibit, insurance
8 policy that would refer the loan is covered, that's
9 what we're seeking. Something that would establish
10 the normal economic activity of the trust.

11 MR. OETHEIMER: I'm not sure that's
12 clarified things, but I'll let you answer.

13 BY MR. MALONE:

14 Q. Are you aware of any other -- any
15 agreements?

16 A. Nothing related to any particular loan
17 including the Ukpe loan. I do know that there was a
18 structure of this transaction, there was an interest
19 rate agreement --

20 MR. OETHEIMER: Excuse me one second.

21 MR. MALONE: Hold on a second.

22 (Mr. Kandel leaves the deposition.)

23 (Discussion off the record.)

24 MR. OETHEIMER: Sorry, I apologize. He
25 needed to leave. I wanted to speak to Tyler before he

1 left. Can I have read back, he started his answer and
2 I stopped him.

3 (The stenographer read back the
4 last answer.)

5 THE WITNESS: As often the case, there
6 was some manual rate loans in this trust, and to
7 create a fixed rate certificate, brought in to the
8 transaction is what is commonly referred to as an
9 interest rate swap. It's a financial vehicle to allow
10 for continued fixed rate payments based on an
11 adjustable rate coming in on the assets owned by the
12 trust.

13 BY MR. MALONE:

14 Q. To your knowledge, was an interest rate
15 swap agreement executed in connection with this
16 Pooling and Servicing Agreement?

17 A. Yes.

18 Q. And have you seen that document?

19 A. Yes, I have.

20 Q. Did you review it before coming today?

21 A. I saw it last week.

22 Q. We'd ask that it be produced. The swap
23 document.

24 MR. OETHEIMER: Is it one of the
25 documents here?

1 THE WITNESS: I don't think so.

2 MR. OETHEIMER: If he saw it, that
3 means it was produced.

4 THE WITNESS: Part of the corridor
5 contract.

6 MR. MALONE: It's called corridor
7 contract?

8 MR. OETHEIMER: Corridor contract.

9 MS. WELLINGTON: I think it was
10 produced with the same batch of MGIC stuff.

11 MR. OETHEIMER: It was. I have no idea
12 what it was.

13 MR. MALONE: I have no idea what the
14 Bates stamp number was.

15 MS. WELLINGTON: It should be right
16 around those MGIC documents.

17 MR. OETHEIMER: CW Ukpe 1970 through
18 2017. That's off my -- that's just off an index, but
19 it's in Bates range. Glad to see Wellington's reading
20 the documents.

21 MS. WELLINGTON: I read every single
22 one of them when they came in. And it's just me,
23 nobody else.

24 BY MR. MALONE:

25 Q. Turning to the documents again that you

1 produced today, we've discussed Mitchell-3 already.
2 Turning to what's been marked as Mitchell-4, it's a
3 document on the letterhead Sidley, Austin, Brown and
4 Wood dated September 27, 2005, and can you tell us
5 what this document is?

6 A. I'm not sure. Just give me a second.

7 Q. Sure.

8 A. This is the REMIC opinion, or was the
9 opinions of the attorneys that speaks to the fact that
10 it's a REMIC. And it does state it's a public deal,
11 so that was registered with the SEC.

12 Q. So that answers the question earlier,
13 this is a deal registered with the SEC?

14 A. Some of these opinions can very quickly
15 provide information about the specifics of the
16 transaction.

17 Q. I believe Mitchell Exhibit 5 is
18 attached at the back there. Can you tell us what
19 Mitchell Exhibit 5 is, please?

20 A. Well, it appears to be Article V of the
21 Pooling and Servicing Agreement.

22 Q. And does it deal with the topic of the
23 certificates?

24 A. Yes.

25 Q. And are these -- are these the

1 certificates that you indicated earlier today you had
2 not seen?

3 A. That's correct.

4 Q. Turning to Mitchell-6, no need to
5 discuss that. We've covered that. That's the letter
6 from Ms. Sullivan.

7 MR. OETHEIMER: Okay, yep.

8 BY MR. MALONE:

9 Q. Turning to Mitchell-7, we discussed
10 that already. Next, Mitchell-8, a document captioned
11 Cross Receipt and dated September 27, 2005. It's
12 multiple pages from CW Ukpe 1960 through 1969 and can
13 you tell us what this document represents?

14 A. This document, again, is one that I
15 would take from the closing set, which would provide
16 me with a certain amount of information about, about
17 this particular trust. Indicates some of the parties,
18 and identifies the size and the type of the
19 transaction, and the nature of the certificates
20 issued.

21 Q. And turning to within that document,
22 Mitchell-8, CW Ukpe 01963 and 01964, there are
23 references to Classes of Certificates?

24 MR. OETHEIMER: Hold on. Yes, those
25 pages.

1 BY MR. MALONE:

2 Q. There are references to Principal
3 Amount on the left hand, on pages 01963, Principal
4 Amount/Percentage Interest and the next column is
5 Class of Certificates. First off, can you tell us
6 what these principal amounts represent? How they
7 relate to the class of the certificates?

8 A. The total of the principal amount of
9 the certificates, in these trusts, done by
10 Countrywide, is equal to the unpaid principal balance
11 of all the mortgages deposited into the trust, give or
12 take a possible slight variation. Not less, but
13 perhaps equal to or sometimes somewhat more.

14 Q. And could you explain please, and let's
15 take, for example, the Class 1-A-1 Class of
16 Certificates under the column Principal
17 Amounts/Percentage Interest, the figure is
18 \$324,864,000. Does this mean that 324,864,000 --

19 MR. OETHEIMER: Millions. I assume
20 these are millions.

21 BY MR. MALONE:

22 Q. \$324,864,000 worth of mortgage notes
23 are set aside in connection with Class 1-A
24 certificates?

25 A. Generally speaking, no.

1 Q. Okay. What does it mean?

2 A. It means if -- just let me look at it
3 for a second. Each one of these has a structure, and
4 it indicates that the entire pool would be the total
5 of this, and the Class A-1 is that dollar amount of
6 the total. It also represents their interest in the
7 pool in that it could be considered a fractional
8 undivided interest in the pool.

9 Q. So if I follow that, whatever the total
10 number of mortgage notes, total dollar value of
11 mortgage notes in the pool, the Class 1-A-1 investors
12 have purchased 324,800 -- \$324,864,000 of that total?

13 A. Yes.

14 MR. OETHEIMER: Objection.

15 THE WITNESS: Yes.

16 BY MR. MALONE:

17 Q. Turning to CW Ukpe 01966 within the
18 exhibit, this deals with the principal amount of the
19 Class of Certificates Class B, correct?

20 MR. OETHEIMER: He's not on the right
21 page.

22 BY MR. MALONE:

23 Q. 09166.

24 A. I just went to the next -- oh, 66.

25 Q. The Class B certificates.

1 A. Yes.

2 Q. And with regard to this class of
3 certificates, the depositor in the cross receipt is
4 acknowledging receipt of the funds from the purchaser,
5 is that correct?

6 A. Representing payment in full of the
7 purchase price for the principal amount of
8 certificates.

9 MR. OETHEIMER: Objection.

10 THE WITNESS: That's what it says.

11 BY MR. MALONE:

12 Q. And so does that mean that, in fact,
13 the depositor, CWABS, Inc. received \$6,500,000 from
14 the purchaser for the Class B certificates?

15 MR. OETHEIMER: Objection.

16 THE WITNESS: I don't know what the
17 purchase price between those two parties was.

18 BY MR. MALONE:

19 Q. Oh, the purchase price might be
20 something less than the principal amount or more than
21 the principal amount? Different than the principal
22 amount?

23 MR. OETHEIMER: Objection.

24 BY MR. MALONE:

25 Q. If you know.

1 A. It could be different. It could be the
2 same, could be different.

3 Q. Now, in this case, the Class B
4 certificates were purchased by Countrywide Securities
5 Corporation, is that correct?

6 A. Correct.

7 Q. And the Class A-R certificates, were
8 they purchased by -- I'm referring to 01968 -- were
9 they purchased by CW Securities Holdings?

10 A. These are the residuals, yes, the A-R.

11 Q. And CW Securities Holdings, is that a
12 Countrywide-related company?

13 MR. OETHEIMER: Objection.

14 THE WITNESS: I believe it to be.

15 BY MR. MALONE:

16 Q. And Countrywide Securities Corporation,
17 is that a Countrywide-related company?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: I believe it is.

20 MR. OETHEIMER: You know, I just need a
21 break whenever you're --

22 MR. MALONE: Sure, this is a good time.

23 (Brief recess.)

24 BY MR. MALONE:

25 Q. Still with Exhibit 8. What kind of

1 record would be made of the actual deposit of the
2 moneys reflected in these cross receipts?

3 MR. OETHEIMER: Objection.

4 THE WITNESS: Trustee is actually not
5 involved in the settlement of any of these
6 transactions, so we don't see any of the money.

7 BY MR. MALONE:

8 Q. To your knowledge, from the trustee's
9 viewpoint, did any of the money reflected in the cross
10 receipts actually transfer? That is did someone on
11 behalf of the trust make a payment to the depositor as
12 reflected in each of the cross receipts?

13 MR. OETHEIMER: Objection.

14 MR. MALONE: If you know.

15 MR. OETHEIMER: You just said the
16 trustee was not involved.

17 MR. MALONE: I understand. I'm asking
18 if he has any knowledge.

19 MR. OETHEIMER: That the payment
20 doesn't come from the trust.

21 THE WITNESS: The answer is no.
22 Because we are not involved in those aspects of the
23 transaction.

24 BY MR. MALONE:

25 Q. Are these receipts reflecting more than

1 the actual receipt of the certificates? By that I
2 mean first off, do these receipts reflect the receipt
3 of certificates?

4 A. Yes.

5 Q. And what, in addition, do the receipts
6 reflect in addition to the receipt of the
7 certificates?

8 MR. OETHEIMER: Objection.

9 THE WITNESS: All I know is they were
10 represented, the certificates, and initially basically
11 all the certificates of the trust, and then those
12 involved with the underwriter, which is what it says,
13 and then the various parties who received the Class B
14 and the residuals.

15 BY MR. MALONE:

16 Q. And by the way, is this document an
17 exhibit to the Pooling and Servicing Agreement, do you
18 know?

19 A. I believe it is not.

20 Q. Turning then to Mitchell-9, it has on
21 the top of it an exhibit stamp Hallinan-9, at least
22 the first page does. And towards the bottom right, it
23 has a series of Bates numbers, BoNY 1 through BoNY 58.
24 Do you have Exhibit 9 in front of you? Your counsel
25 has it.

1 MR. OETHEIMER: I have a copy.

2 MR. MALONE: I'm sorry, I have nine.

3 BY MR. MALONE:

4 Q. Can you tell us, was this part of the
5 documents we received last week?

6 A. I may have received this prior to that.
7 I often would want to just have a copy of the note and
8 mortgage. Since they're critical documents at my
9 disposal, I often ask for them.

10 Q. And are these critical documents
11 available to you in your own employer's library?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: Well, we do, we maintain
14 our custodial file. If I needed to, I could request a
15 copy of that.

16 BY MR. MALONE:

17 Q. Turning to what's marked as BoNY 15
18 within the exhibit, bottom right hand corner. Is it
19 the mortgage, first page of the mortgage?

20 A. Oh, oh, page.

21 MR. OETHEIMER: He's looking at the
22 bottom right hand corner.

23 THE WITNESS: Yeah, okay.

24 BY MR. MALONE:

25 Q. Do you see where subparagraph D

1 identifies the lender document?

2 A. Yes.

3 Q. And the lender is identified as
4 America's Wholesale Lender, is that correct?

5 MR. OETHEIMER: Objection. Speaks for
6 itself.

7 THE WITNESS: That's what it says.

8 BY MR. MALONE:

9 Q. And lender is a corporation organized
10 in existing under the laws of New York?

11 MR. OETHEIMER: Objection.

12 BY MR. MALONE:

13 Q. Do you know if, in fact, it is a
14 corporation organized and existing under the laws of
15 New York?

16 A. I have no knowledge.

17 Q. Do you have any knowledge whether, in
18 fact, America's Wholesale Lender loaned \$224,000 in
19 this case?

20 MR. OETHEIMER: Objection. He's
21 already testified to his knowledge for America's
22 Wholesale Lender, that it's a d/b/a of Countrywide
23 Home Loans.

24 THE WITNESS: I don't know.

25 BY MR. MALONE:

1 Q. You heard counsel's objection. My
2 question is that there is money passes at the closing,
3 correct? Was the money given in the name of America's
4 Wholesale Lender or was the money given in the name of
5 some other entity, if you know?

6 MR. OETHEIMER: Objection. Why don't
7 you show him the note rather than the mortgage.

8 THE WITNESS: When the note closes,
9 we're not involved at all in that transaction.

10 BY MR. MALONE:

11 Q. Turning to BoNY 29, there is a title
12 policy, a Loan Policy of Title Insurance, is that
13 correct?

14 A. Yes, that's what it is.

15 Q. Is the original title policy one of the
16 mortgage loan documents identified in the Pooling and
17 Servicing Agreement?

18 MR. OETHEIMER: Objection. If you
19 know.

20 THE WITNESS: I can check as to
21 specifics, but typically, either the original or a
22 copy would be required.

23 BY MR. MALONE:

24 Q. And in this case, the Loan Policy of
25 Title Insurance was issued by Lawyers Title Insurance

1 Company, Land America Lawyers Title. Did your
2 employer have any role in selecting the title
3 insurance company?

4 A. None.

5 Q. Now, turning to the same exhibit, BoNY
6 40, bottom right hand corner. It's captioned Interest
7 Only Adjustable Rate Note. And turning to the third
8 page of the note, it's marked BoNY 42 in the bottom.
9 Earlier today you testified about seeing an
10 endorsement. Is that the endorsement you were
11 referring to?

12 A. That is the one I recall.

13 Q. And again, other than what you've
14 testified to already today, do you have any additional
15 knowledge about how that endorsement came to be put on
16 the note and when it came to be put on the note?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: No.

19 BY MR. MALONE:

20 Q. Next, turning to Mitchell-10, exhibit
21 Mitchell-10. I'll ask you to take a look at that.
22 This is one of the documents you provided today, is
23 that correct?

24 A. Correct.

25 Q. Can you describe for us briefly what

1 the document is? What it's about?

2 A. It's part of the closing set of
3 documents provided by the closing attorneys. In an
4 effort to, again, familiarize myself with the
5 transaction, it's often useful to look at all the
6 different parties involved in the overall transaction,
7 and this is a quick way to do that.

8 Q. And can you tell us where you got this
9 document?

10 A. My recollection is that this was one of
11 the many documents that we have in electronic form, in
12 what I refer to as our library, closing documents.

13 Q. And do you know if this Working Party
14 List would differ from series to series? And by that
15 I mean this is Series 2005-AB3. Is it your
16 understanding there was a series 2005-AB1 and 2005-AB2
17 issued prior to this one in the year 2005?

18 A. That is the practice.

19 Q. Okay. And does the Working Party List
20 change from --

21 A. Typically, it does.

22 Q. And there is notation at the bottom on
23 the first page, black dot. Do you see that?

24 A. Yes.

25 Q. A bullet.

1 A. Yes, sure.

2 Q. And next to the bullet says, "Receives
3 electronic copies of all deal documents." Is that
4 correct?

5 A. That is correct.

6 Q. And just below that is kind of a cross
7 symbol which indicates, "Main recipient in the event
8 of hard copy deliveries via overnight courier," this
9 is someone who gets hot off the press?

10 A. That's lawyers.

11 Q. Okay. So am I correct, turning to the
12 second page of the exhibit, that three people from
13 Countrywide Home Loans -- I'm sorry, four people from
14 Countrywide Home Loans, Inc. would have received
15 electronic copies of all the deal documents in
16 connection with the closing of this trust?

17 A. Well, they would be receiving the
18 drafts, and when they are being turned leading up to
19 the closing. And actually, not necessarily receiving
20 all the documents from the closing in the closing set.

21 Q. So the term deal documents doesn't mean
22 the executed document, it means drafts?

23 A. That's my --

24 MR. OETHEIMER: Objection.

25 THE WITNESS: That's my understanding.

1 BY MR. MALONE:

2 Q. Is there some indication who gets the
3 executed documents in this Working Party List?

4 A. No, this wouldn't speak to who -- how
5 many counterparts of the documents, executed
6 documents. Actually, what we do is we make sure that
7 every party -- every document we are a party to, we
8 have an original.

9 Q. I'm sorry, you have a what?

10 A. That there's an original at the closing
11 if we're a party to a document.

12 Q. And in terms of the closing,
13 particularly the mortgage loan schedule that would
14 have been present on September 27, 2005 at the
15 closing, who would have received copies of the
16 mortgage loan schedule present at the closing on
17 September 27, 2005?

18 MR. OETHEIMER: Objection.

19 THE WITNESS: Who would have would be
20 every party to the Pooling and Servicing Agreement is
21 expected to get a copy, original counterpart of that.
22 We would get it, we would make sure we got it with the
23 Pooling and Servicing Agreement.

24 BY MR. MALONE:

25 Q. So if, if the law firm retained by the

1 servicer to bring a foreclosure action wanted a copy
2 of the mortgage loan schedule that was part of the
3 closing package on September 27, 2005, they could go
4 to -- they could go to the servicer, Countrywide Home
5 Loans Servicing, LP because they're a signatory on the
6 PSA, is that correct?

7 MS. WELLINGTON: Objection.

8 MR. OETHEIMER: Objection.

9 THE WITNESS: I wouldn't really know
10 what they would do.

11 BY MR. MALONE:

12 Q. I'm just asking, but if they did that,
13 the servicer should be able to provide them with a
14 copy of the loan schedule, is that correct?

15 MR. OETHEIMER: Objection.

16 THE WITNESS: I believe that they have
17 one. Whether they would give it to the law firm doing
18 one foreclosure, I don't know.

19 BY MR. MALONE:

20 Q. And similarly, the execution copy, does
21 the servicer get a copy of the execution copy from the
22 September 27, 2005 closing?

23 MR. OETHEIMER: Objection.

24 MR. MALONE: If you know.

25 MR. OETHEIMER: Execution copy of what?

1 MR. MALONE: The PSA.

2 MR. OETHEIMER: Oh, from the PSA.

3 THE WITNESS: From the closing?

4 BY MR. MALONE:

5 Q. Yes.

6 A. No. Counterparts of that document are
7 in the closing room and then the parties to the
8 transaction would get possession of their documents.

9 Q. So when they leave the room, each of
10 the parties listed on the front page of the PSA should
11 have a full set of the documents?

12 A. Or their counsel does since not too
13 many people go to the room anymore.

14 Q. Do you know if any of the people on
15 this Working Party List, Mitchell-10, actually did any
16 work on the Pooling and Servicing Agreement in this
17 case?

18 A. I wouldn't be able to have an opinion
19 or knowledge of who actually worked on it except, I'll
20 look at the trustee people.

21 Q. Could you give me a page number at the
22 bottom there?

23 A. Oh, 12, I'm sorry. For the Bank of New
24 York, basically all these people with the exception of
25 Diane Pickett would have been involved to some level

1 in the closing and set up of this new account.

2 Q. And are you basing that on looking at
3 the document or have you actually talked with any of
4 the five people listed on page 12 of Mitchell-10 and
5 asked them whether they worked, actually worked on it,
6 this Pooling and Servicing Agreement?

7 A. I didn't talk to them about this
8 transaction.

9 Q. Do you know if any of them actually
10 worked on this transaction, the Pooling and Servicing
11 Agreement in this case?

12 A. Well, what knowledge I have is Courtney
13 Bartholomew was the manager of the section at the time
14 and she would have been involved.

15 Q. I understand she would be involved. My
16 question is do you know?

17 A. I don't know, I don't know.

18 Q. And just referring back to earlier
19 testimony, the cotrustee custodian, BNY Western Trust
20 Company, does that indicate that at this point in
21 time, BNY Western Trust Company was providing the
22 custodial services for Pooling and Servicing
23 Agreements?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: That, that entity is

1 where the custodial facility is, so they would be
2 handling the physical documents.

3 BY MR. MALONE:

4 Q. And my question is was that the entity
5 back in 2005?

6 A. Oh, yes, yes, yes.

7 Q. Turning to Mitchell-11 then, this
8 document is captioned Interim Certification of
9 Trustee, is that correct?

10 A. Yes.

11 Q. And earlier we had discussion -- what
12 exhibit was it, Exhibit 3?

13 MR. OETHEIMER: 3.

14 BY MR. MALONE:

15 Q. Do you have 3 over there?

16 A. Yes.

17 Q. And which certificate was Exhibit 3?

18 A. Final Certification of Trustee.

19 Q. And the Interim Certification is dated
20 October 27, 2005. Again, signed by Maria Tokarz, is
21 that correct?

22 A. Yes.

23 Q. And the Interim Certificate from
24 October in the subject heading, the re heading,
25 reflects BNY Western Trust Company as cotrustee. Do

1 you see that?

2 A. Yes.

3 Q. And the Final Certification of Trustee
4 dated March 27, 2006 doesn't reflect BNY Western Trust
5 Company as the cotrustee. Does it reflect anyone as
6 the cotrustee in the subject heading?

7 MR. OETHEIMER: Objection.

8 THE WITNESS: No.

9 BY MR. MALONE:

10 Q. And can you tell us why these
11 certificates are addressed to the three parties that
12 they are addressed to, and by that I mean Mitchell-3
13 is addressed to Countrywide Securities Corporation,
14 it's also addressed to CWMBBS, Inc. and it's also
15 addressed to Countrywide Home Loans, and Mitchell-11
16 is addressed to the same three entities.

17 A. I don't know why these particular
18 entities were selected to be the addressees on these
19 certifications, although that was established at the
20 time of the closing of the transaction as the form of
21 these documents was established.

22 Q. Do you know what role, if any, CWMBBS,
23 Inc. had in connection with the trust in this case?

24 A. No, I don't.

25 Q. Okay. Have you ever worked for a

1 company named EFG Wealth Management Limited?

2 A. EFG? No.

3 Q. Now, we've gone through the list of
4 documents you've produced today. I do not believe
5 there was a copy of the redacted mortgage schedule
6 that you referenced. If I'm incorrect on that, please
7 correct me.

8 MR. OETHEIMER: No, nor was there a
9 copy of the PSA that he said he looked at.

10 MR. MALONE: And at this time, could I
11 have this document marked as our next exhibit, please.

12 (Mitchell-13, Mortgage Loan Schedule,
13 Bates BoNY 342, was marked for
14 identification.)

15 BY MR. MALONE:

16 Q. I show you what has been marked
17 Mitchell-13. Can you tell us when you first saw this
18 exhibit in its present form? That is with the word
19 redacted stamped on it?

20 A. I don't believe I've seen this before,
21 with the word redacted stamped on it.

22 Q. Can you tell us what you have seen
23 before by way of a mortgage loan schedule?

24 MR. OETHEIMER: What's the number of
25 that?

1 MR. MALONE: BoNY 342.

2 MR. OETHEIMER: This is not -- I mean
3 this is a new and improvement, I don't believe this is
4 what the witness was shown on Friday. But I think he
5 was shown what was originally produced. So I think
6 he's mistaken about that, there's no other.

7 THE WITNESS: Oh, okay.

8 BY MR. MALONE:

9 Q. Counsel is showing you another copy of
10 the document BoNY, beginning BoNY 342 and the bottom
11 right hand corner, but it also has an exhibit sticker
12 of Hallinan-10. Do you recall seeing that prior to
13 today?

14 A. I don't recall. I don't recall seeing
15 that.

16 Q. Even though you don't recall seeing
17 it --

18 MR. OETHEIMER: I'm going to say, I
19 don't know if it had an exhibit sticker. I mean I
20 got -- I certainly showed him the mortgage loan
21 schedule, but you can't even read this, but just
22 basically just to show him the entry for the Ukpe
23 loan.

24 THE WITNESS: I wouldn't necessarily
25 know what that was.

1 MR. MALONE: Understood.

2 BY MR. MALONE:

3 Q. We did have discussion about a mortgage
4 loan schedule earlier today without showing you an
5 exhibit. Is this the mortgage loan schedule --

6 MR. OETHEIMER: And you can ask him,
7 quite honestly, I have the unredacted mortgage loan
8 schedule. I think he testified he thought he had seen
9 a redacted, but because this wasn't readable, I don't
10 know whether I actually showed him the first page of
11 the unredacted schedule just because it was more
12 legible than the copy we are all working with until I
13 had that copy made. So I really don't recall.

14 MS. WELLINGTON: I thought the earlier
15 testimony, and maybe you can go back and check, I
16 thought it was that he thought he saw something that
17 was all blacked out.

18 MR. MALONE: He did.

19 MR. OETHEIMER: He did, he saw a
20 blacked out, he may be confusing. I also have --
21 there are other documents that were produced with what
22 you called blacked out, the exception reports.

23 THE WITNESS: Oh, oh, oh.

24 MR. OETHEIMER: And I have those with
25 me. He doesn't have them in his file.

1 MR. MALONE: What we're trying to
2 determine is what mortgage loan schedule he did look
3 at.

4 MR. OETHEIMER: And I'm not certain,
5 because I may have actually shown him the unredacted
6 mortgage loan schedule. We wouldn't have flipped
7 through it because the Ukpe loan is on the first page.

8 THE WITNESS: I recognize some of the
9 headings.

10 BY MR. MALONE:

11 Q. Being in the document you looked at?

12 A. Yeah.

13 Q. And again, your testimony earlier
14 today, correct me if my memory's wrong, was you hadn't
15 compared those headings to the PSA heading, correct?

16 A. Correct.

17 Q. And again, I recall your testimony, we
18 can -- I don't want to go back over it completely, but
19 other than counsel showing you this mortgage loan
20 schedule --

21 MR. OETHEIMER: In some iteration.

22 BY MR. MALONE:

23 Q. Marked BoNY 342, now marked Mitchell-13
24 for your examination, have you seen the mortgage loan
25 schedule that supposedly exists relating to this PSA?

1 A. I did not look at it.

2 Q. And do you have any -- I think I've
3 asked, but just to be clear, do you have any knowledge
4 of how this document, Mitchell-13, came into
5 existence?

6 A. No.

7 Q. On the mortgage loan schedule, it
8 reflects that you see under the third column Loan
9 Group?

10 A. Yes.

11 Q. Down, is line 66 the line that relates
12 to the Ukpe's loan on the exhibit?

13 A. That's what I believe that to be since
14 the loan number is what I recall it to be their loan
15 number.

16 Q. And to your knowledge, is the Ukpe loan
17 part of Loan Group 1 as defined in the deal documents?

18 A. Yes, yes.

19 Q. And what is, what is Loan Group 1?
20 What does that relate to, if you know?

21 A. I would need to look at the Pooling and
22 Servicing Agreement. Sometimes there is either one or
23 more than one group of loans in a securitization.

24 Q. The Pooling and Servicing Agreement, at
25 least in terms of the definitions, defines Loan Group

1 1 as the group one mortgage loans.

2 MR. OETHEIMER: Only lawyers, huh?

3 BY MR. MALONE:

4 Q. Not terribly helpful. But do you know
5 if there's something in the prospectus that further
6 identifies?

7 A. I don't know. There should be. If
8 there's a group one and a group two, then throughout
9 the schedule, it will just identify whether that
10 particular loan on that line is part of group one and
11 group two.

12 Q. Do you know what the term conforming
13 balance adjustable rate mortgage loan means?

14 MR. OETHEIMER: Objection.

15 THE WITNESS: I know what an adjustable
16 rate mortgage is.

17 BY MR. MALONE:

18 Q. Do you know what the phrase conforming
19 balance means?

20 A. Not, no.

21 Q. By the way, turning to the PSA, and I
22 have an excerpt from the BoNY exhibit, BoNY (2) 588,
23 and 589 references the mortgage loan schedule and it
24 says it is attached hereto as exhibit F-1. Do you see
25 that?

1 A. Yes.

2 Q. And do you see any reference to an
3 exhibit F-1 on the document Mitchell-13?

4 A. No.

5 MR. MALONE: Okay. Mr. Oetheimer, I
6 could ask you to present or if you're not in a
7 position to, the photocopy, other than redacting
8 entries as to individual loans, has any other
9 information been redacted from the schedule?

10 MR. OETHEIMER: No. The trust heading
11 is on it, I don't think there's an exhibit label or
12 number on the copy that I have. It was copied from
13 the copy I have, it's label at the top CWABS 2005-AB3
14 mortgage loan schedule.

15 MR. MALONE: So it does not have an
16 exhibit?

17 MR. OETHEIMER: The copy that I have
18 does not have an exhibit designation or label.

19 BY MR. MALONE:

20 Q. Okay. However, the PSA -- I'm sorry, I
21 didn't mean to take it from you. I wanted to -- the
22 mortgage loan schedule that the PSA references says
23 it's attached hereto as exhibit F-1, correct?

24 A. Yes.

25 Q. And your earlier testimony, is there

1 any change to your earlier testimony that you would
2 expect the mortgage loan schedule attached to the PSA
3 to have a caption on it exhibit F-1?

4 MR. OETHEIMER: Objection.

5 THE WITNESS: It would. I don't know
6 if it would be on every page.

7 BY MR. MALONE:

8 Q. But it would be on the first page?

9 A. I would expect it to be.

10 MR. OETHEIMER: Can I ask, since
11 Mr. Villere told me last week that depositions go to 5
12 o'clock in New Jersey --

13 MR. VILLERE: Did I?

14 MR. OETHEIMER: You did, when you
15 reminded me that, that is a normal deposition, normal
16 deposition day. So I'd, since it's a couple minutes
17 of 5:00, I'd like to know if you are close to being
18 finished.

19 MR. MALONE: I have a bit more, and we
20 did have some, some breaks.

21 MR. OETHEIMER: There are always breaks
22 in deposition. Do you do depositions without breaks?

23 MR. MALONE: No, no, some longer than
24 usual breaks. So I probably have another 15 minutes.

25 MR. OETHEIMER: Okay.

1 (Mitchell-14, Letter dated 11/18/08,
2 was marked for identification; Mitchell-15,
3 Exhibit H, PSA dated 9/1/05, was marked for
4 identification.)

5 MR. MALONE: These are exhibits what
6 now?

7 MR. OETHEIMER: 14 and 15. Mark, can I
8 ask you, do you want him to read this three page
9 letter or basically --

10 MR. MALONE: First I'm going to ask him
11 if he seen it before today.

12 MR. OETHEIMER: I know the answer to
13 that.

14 BY MR. MALONE:

15 Q. First exhibit, M-14.

16 A. No.

17 Q. And then exhibit, Exhibit H is marked
18 M-15. Mitchell 15.

19 MR. OETHEIMER: What is it Exhibit H
20 to?

21 MR. MALONE: It's Exhibit H to M-14.

22 MR. OETHEIMER: Yep.

23 BY MR. MALONE:

24 Q. Have you seen exhibit M-15 before
25 today?

1 A. No.

2 Q. And turning to exhibit M-15, in the
3 upper right hand corner of the second page, do you see
4 where it says SABW draft 9/19/05?

5 A. Yes, I do.

6 Q. Do you know what the initials SABW
7 mean?

8 A. Sidley, Austin, Brown and Wood.

9 Q. And do you have an idea where the law
10 firm, the Phelan, Hallinan and Schmieg law firm that
11 provided Exhibit H as an exhibit to this letter, the
12 November 18th letter marked M-14, where the law firm
13 got the draft document with the initials SABW?

14 A. No.

15 Q. Do you know an Ely Harless?

16 MR. OETHEIMER: Sorry?

17 MR. MALONE: Ely Harless.

18 MR. OETHEIMER: Is that a person?

19 MR. MALONE: Yes, E-L-Y H-A-R-L-E-S-S.

20 And in a court filing he identified himself as an
21 authorized representative of Bank of New York as
22 Trustee for the Certificate Holders CWABS, Inc.
23 Asset-Backed Certificates, Series 2005-AB3.

24 MR. OETHEIMER: Thank you.

25 THE WITNESS: No.

1 BY MR. MALONE:

2 Q. Do you know an Amber Hurst?

3 A. No.

4 MR. MALONE: Inviting your attention to
5 the PSA again, Article II, I'm going to have an
6 excerpt from the execution copy of the PSA marked.
7 It's BoNY (2) 555 is the cover page, and the included
8 excerpt includes BoNY -- when I say two it's
9 parentheses (2) 610 to 622. Could I have that marked
10 as an exhibit, please.

11 (Mitchell-16, Article II to PSA, was
12 marked for identification.)

13 BY MR. MALONE:

14 Q. Without even looking at the exhibit,
15 first off, do you know if representations and
16 warranties were made to the trustee by the sellers of
17 the Ukpe's loan?

18 MR. OETHEIMER: Objection. You can
19 answer.

20 THE WITNESS: That is common.

21 BY MR. MALONE:

22 Q. And inviting your attention to
23 Mitchell-16, pages BoNY (2) 610 through 612, does it
24 contain some of the representations and warranties by
25 the sellers?

1 A. Yes, it does.

2 Q. And I can't find it at the moment, but
3 do you know if it's a standard provision in a Pooling
4 and Servicing Agreement that there are no predatory
5 loans included in the loan pool?

6 MR. OETHEIMER: Objection.

7 MR. MALONE: If you know.

8 THE WITNESS: Actually, I don't know.

9 BY MR. MALONE:

10 Q. Now, could I invite your attention,
11 please, to BoNY (2) page 613, the bottom right hand
12 corner.

13 A. Okay.

14 Q. Focusing on subparagraph G (i), do you
15 see that?

16 A. Mm-hmm.

17 Q. And this talks about?

18 MR. OETHEIMER: What page of the PSA?

19 MR. MALONE: Page 53.

20 BY MR. MALONE:

21 Q. This subparagraph, G (i) talks about
22 the "Original mortgage note, endorsed by manual or
23 facsimile signature in blank in the following form:
24 "Pay to the order of blank without recourse," with all
25 intervening endorsements showing a complete chain of

1 endorsement from the originator to the person
2 endorsing the mortgage note." Do you see that
3 language?

4 A. Yes, I do.

5 MR. OETHEIMER: Speaks for itself.

6 BY MR. MALONE:

7 Q. And do you recall that, that language
8 is different from the endorsement language we're
9 looking at earlier which talked about endorsement from
10 the originator to the seller?

11 MR. OETHEIMER: Objection. Where was
12 the language that you looked at before?

13 MR. MALONE: The certificates we looked
14 at earlier.

15 THE WITNESS: Certifications.

16 MR. MALONE: Certifications.

17 BY MR. MALONE:

18 Q. For example, Mitchell-13, after the
19 phrase "pay to the order of blank without recourse,"
20 as with all intervening endorsements that show a
21 complete chain of endorsement from the originator to
22 the seller?

23 MR. OETHEIMER: It says -- okay, the
24 language, I'm reading here says that the person
25 endorsing the mortgage note.

1 MR. MALONE: That's correct. The PSA
2 language is different and I'm asking the witness first
3 off, do you recognize the difference?

4 THE WITNESS: I recognize the
5 difference, yes.

6 BY MR. MALONE:

7 Q. Can you explain why there is a
8 difference between the language of the PSA at BONY (2)
9 613 and the certificate that you've produced?

10 MR. OETHEIMER: And I'm going to
11 object. Unless you want to show him the PSA and note,
12 this is all completely immaterial.

13 MR. MALONE: Certificate being
14 Mitchell-3 and another certificate being Mitchell-11.

15 MR. OETHEIMER: Right, but you have the
16 note. You have the note showing the endorsement here.

17 MR. MALONE: I understand. I was
18 asking the language of the PSA, the certificate
19 language is different than the language of the PSA.

20 THE WITNESS: I don't know the
21 difference other than that they've used the defined
22 term here person in the context of the Pooling and
23 Servicing Agreement.

24 BY MR. MALONE:

25 Q. And does that term mean anything to

1 you?

2 MR. OETHEIMER: Objection.

3 THE WITNESS: I would need to look at
4 the definition of person in the Pooling and Servicing
5 Agreement.

6 MR. MALONE: Now, we've been provided
7 in discovery with an execution copy of CWABS II, Inc.
8 as depositor, it's a Sale and Servicing Agreement
9 dated September 19, 2005, from Mortgage Loans LFT
10 Trust Notes In Series, and it's CW Ukpe 02513 through
11 02595.

12 (Mitchell-17, Sale and Servicing
13 Agreement dated September 19, 2005, was
14 marked for identification.)

15 BY MR. MALONE:

16 Q. It's identified as excerpts and it
17 includes pages 02513, 02517, 02524, 02594, and 02595
18 on Mitchell-17. This is an execution copy, correct?

19 MR. OETHEIMER: Objection.

20 BY MR. MALONE:

21 Q. It's identified as an execution copy.

22 A. It says it up top.

23 Q. But in the back two pages, it doesn't
24 have any signatures, correct?

25 A. Right.

1 Q. And does this document relate to, if
2 you know, the CWLFT 2005-1 trust that there was
3 testimony about earlier today concerning the Ukpe's
4 mortgage note?

5 A. It says that. I don't know for
6 certain.

7 Q. Are you familiar with a trust called
8 Countrywide Home Loans, LP?

9 MR. OETHEIMER: Familiar with what?

10 MR. MALONE: Well, let me have this
11 marked as an exhibit, please.

12 (Mitchell-18, Countywide Home Loans LP
13 Asset-Backed Securities summary documents,
14 were marked for identification.)

15 BY MR. MALONE:

16 Q. I'll ask you to take a moment to look
17 at Mitchell-18.

18 A. I don't know all of the Countrywide
19 corporate entity names.

20 Q. Are you familiar with a Countrywide
21 corporate entity called Countrywide Home Loans, LP?

22 MR. OETHEIMER: Objection.

23 THE WITNESS: I'm not.

24 BY MR. MALONE:

25 Q. Are you familiar with the trust

1 Countrywide Home Loans, LP Asset-Backed Securities
2 Series 2005-AB3?

3 MR. OETHEIMER: Objection.

4 THE WITNESS: I'm familiar with the
5 Asset-Backed Securities 2005-AB3, as there is a
6 Countrywide ABS transaction of that title.

7 BY MR. MALONE:

8 Q. Yes. Are you familiar with the
9 depositor for that trust being Countrywide Home Loans,
10 LP?

11 MR. OETHEIMER: Objection.

12 THE WITNESS: No.

13 BY MR. MALONE:

14 Q. This particular trust has a caption
15 Asset-Backed Securities as opposed to Asset-Backed
16 Certificates as is the case with the Ukpe trust, is
17 that correct?

18 MR. OETHEIMER: Well, objection. He
19 called it that. Whether --

20 BY MR. MALONE:

21 Q. And you indicated earlier that may
22 reflect there is the presence of some debt in the
23 securitization?

24 MR. OETHEIMER: Objection.

25 THE WITNESS: Asset-Backed Securities

1 would include both some type of debt or certificates.

2 It's more of a general term.

3 BY MR. MALONE:

4 Q. They're blended together?

5 MR. OETHEIMER: Objection.

6 BY MR. MALONE:

7 Q. Is that correct?

8 A. Not necessarily, no.

9 Q. Not necessarily. There may be debt
10 alone?

11 MR. OETHEIMER: Objection.

12 THE WITNESS: It would be either or.

13 BY MR. MALONE:

14 Q. Either or.

15 A. Either a debt type structure or a
16 pass-through type structure.

17 Q. For securities?

18 MR. OETHEIMER: Objection.

19 BY MR. MALONE:

20 Q. Earlier I believe your testimony was
21 for certificate holders it would be a pass-through
22 security.

23 A. That's right, Asset-Backed Securities
24 is a very general term.

25 MR. OETHEIMER: It also says

1 certificate holder along with distribution.

2 THE WITNESS: And Asset-Backed
3 Securities could be either that transaction using that
4 reference, could be either a debt or pass-through.
5 It's not specific enough to define it as either.

6 BY MR. MALONE:

7 Q. Now, earlier your testimony reflects
8 that at some point that the Ukpe's note resided in the
9 CWLFT 2005-1 trust, is that correct?

10 A. Yes.

11 Q. And your understanding, from looking at
12 records, the records you were shown, is that
13 presently, the Ukpe's mortgage note resides in a trust
14 captioned, in this case, the CWABS certificate
15 holders, CWABS, Inc. Certificate Holders 2005-AB3?

16 A. Correct.

17 Q. To your knowledge, has the Ukpe's note
18 ever resided in the trust captioned Countrywide Home
19 Loans, LP Asset-Backed Securities, Series 2005-AB3?

20 MR. OETHEIMER: Objection. Foundation.
21 Question assumes that there is a trust by that name,
22 which you haven't proved just because somebody
23 prepares a document that wasn't as precise as they
24 could have been, so, you know.

25 THE WITNESS: I don't know.

1 MR. OETHEIMER: That this document
2 proves anything.

3 THE WITNESS: This is the report I
4 referred to earlier.

5 BY MR. MALONE:

6 Q. This is the report posted -- this is a
7 report posted by your employer, is that correct?

8 A. Yes.

9 Q. And is it a report sent to investors?

10 MR. OETHEIMER: Objection.

11 THE WITNESS: I believe it to be one
12 that's made available, sent to the investors.

13 BY MR. MALONE:

14 Q. And in fact, this document is a
15 Certificate Holder Monthly Distribution Summary,
16 correct?

17 MR. OETHEIMER: Objection.

18 THE WITNESS: It appears to be. It's
19 in the form consistent with what they are.

20 BY MR. MALONE:

21 Q. Who's responsibility for, first off,
22 creating such reports, the Certificate Holder Monthly
23 Distribution Summary?

24 A. The trustee.

25 Q. Okay. Is it a business record of your

1 employer, these reports?

2 MR. OETHEIMER: Objection. Legal
3 conclusion.

4 THE WITNESS: I don't know what you
5 would -- I don't know.

6 BY MR. MALONE:

7 Q. Are these reports made in the ordinary
8 course of business?

9 MR. OETHEIMER: Objection.

10 THE WITNESS: Reports are made every
11 month.

12 BY MR. MALONE:

13 Q. Are these Certificate Holder Monthly
14 Distribution Summaries prepared in the regular course
15 of business?

16 A. Yes.

17 Q. Are they kept in the regular course of
18 business?

19 MR. OETHEIMER: Objection.

20 THE WITNESS: We maintain the record.
21 We maintain these records, yeah.

22 BY MR. MALONE:

23 Q. And to your knowledge, is someone
24 responsible within the organization for accurately
25 capturing the information contained on the report?

1 A. Yes, there is a team, a unit that does
2 this calculation work.

3 Q. Okay. And do you know if the CUSIP
4 numbers reflected on this report -- I'm sorry what's
5 the exhibit number again?

6 MS. WELLINGTON: 18.

7 BY MR. MALONE:

8 Q. -- have anything to do with the
9 certificate numbers you believe were issued in
10 connection with the trust in the Ukpe case we've been
11 discussing all day?

12 MR. OETHEIMER: Objection.

13 THE WITNESS: I had not seen the CUSIP
14 numbers relating to the other, the trust we're talking
15 about, so I don't know how these would relate to the
16 trust.

17 MR. MALONE: Okay. We'll be asking --
18 I think we already asked for the CUSIP numbers and we
19 have these CUSIP numbers.

20 MR. OETHEIMER: I imagine these are
21 them, but. We'll go back. This is -- I have to
22 believe.

23 THE WITNESS: CUSIP numbers are in the
24 public domain, so.

25 MR. OETHEIMER: Right.

1 BY MR. MALONE:

2 Q. The CUSIP numbers are in the public
3 domain? What do you mean by that?

4 A. Well, they're published, it's
5 knowledge. People have them on the systems, you can,
6 I believe you can go on Bloomberg.

7 Q. So if one put in a CUSIP number here,
8 would it tell you what the trust issued?

9 A. To the extent that Bloomberg is
10 identifying it, yes.

11 MR. MALONE: And we're going to ask for
12 any information related to the Countrywide Home Loans,
13 LP Asset-Backed Securities, Series 2005-AB3 trust,
14 when the notes were deposited into the trust and
15 whether they're still there today.

16 MR. OETHEIMER: I'll go back and look
17 at his document. I certainly don't know that there is
18 such a trust simply because this document is headed
19 Countrywide Home Loans as opposed to Countrywide, LP
20 rather than Countrywide Home Loans, Inc. and call it
21 Asset-Backed Securities rather than Asset-Backed
22 Certificate, you know, we'll look into this, but I
23 don't know that there is a different trust and
24 certainly, our understanding is that the Ukpe loan is
25 in the CWABS 2005-AB3 trust and no other.

1 BY MR. MALONE:

2 Q. To your knowledge, is Countrywide Home
3 Loans, LP a d/b/a for CWABS, Inc.?

4 A. I have no idea.

5 Q. Can you use a d/b/a for a securities
6 issue that's publicly registered?

7 MR. OETHEIMER: Objection. Legal
8 opinion.

9 BY MR. MALONE:

10 Q. If you know.

11 A. I would think not.

12 MR. MALONE: Okay. I'm through, thank
13 you very much.

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C E R T I F I C A T I O N

STATE OF NEW JERSEY

SS.

COUNTY OF BURLINGTON

I, Michelle M. Downes, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that I reported the deposition in the above-captioned matter; that the said witness was duly sworn by me; that the reading and signing of the deposition were waived by said witness and by counsel for the respective parties; that the foregoing is a true and correct transcript of the stenographic notes of testimony taken by me in the above-captioned matter.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

Michelle M. Downes, CCR #XI001596

Dated: March 27, 2010