

Capital Reporting Company

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MARYLAND

CLAYONIA T. COLBERT DORSEY, *

Debtor *

vs. *

*

WELLS FARGO BANK, NA, *

Defendant *

* Case No. 07-10744-PM

*

Thursday, August 28, 2008

Catonsville, Maryland

Deposition of:

DAVID THURSTON

called for oral examination by counsel for Debtor,
pursuant to notice, at the Offices of Crown Title, One
Sanford Avenue, Baltimore, Maryland before Barbara J.
Shaulis of Capital Reporting, a Notary Public in and
for the State of Maryland, beginning at 11:00 a.m.,
when were present on behalf of the respective parties:

1 On behalf of Debtor:

2 ROBERT HAEGER, ESQ.

3 9535 Fern Hollow Way

4 Gaithersburg, Maryland 20886

5 (301) 670-9787

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7
8
9
10 On behalf of Defendant:

11 DANIEL COLLINS, ESQ.

12 McNamee, Hosea,

13 Jernigan, Kim, Greenan & Walker, P.A.

14 6411 Ivy Lane- Ste. 200

15 Greenbelt, Maryland 20770

16 (301) 441-2420
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18
19
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21
22

C O N T E N T S

PAGE

Examination by Mr. Haeger

4

E X H I B I T S*

1A Subpoena

4

1B Amended Notice

4

2 First American Title Insurance Commitment

13

3 Closing Protection Letter

23

4 Title Policy

24

5 *Previously Marked

6 Deed of Trust

27

7 Welcome Letter

12

8 HUD 1

8

9 Disbursement Statement

30

10 Disbursement Statement of August 2004

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(*Exhibits to be attached to transcript)

1 P R O C E E D I N G S

2 WHEREUPON,

3 DAVID THURSTON

4 called as a witness, was duly sworn according to law,
5 and testified as follows:

6 EXAMINATION BY COUNSEL FOR DEBTOR

7 BY MR. HAEGER:

8 Q. Mr. Thurston, have you ever given a
9 deposition before?

10 A. Yes.

11 Q. And how many times have you been deposed?

12 A. Two or three.

13 Q. And when was the last time?

14 A. Probably maybe 2002, 2003 maybe.

15 Q. Okay. And would the reporter please hand the
16 witness and opposing counsel Exhibits 1 and 1B.

17 Exhibit 1 is the Subpoena, and Exhibit 1B is
18 the Amended Notice.

19 (There was an off the record discussion.)

20 (Thurston Exhibits Nos. 1A & 1B

21 were marked for identification.)

22 BY MR. HAEGER:

1 Q. For the record, I think these will be marked
2 Exhibits Nos. 1A and 1B. And so Mr. Thurston, do you
3 have Exhibits 1A and 1B?

4 A. Yes, sir.

5 Q. And did you receive those documents prior to
6 today's deposition?

7 A. Yes, sir.

8 Q. And do I understand that you have been
9 designated by Crown Title to testify on its behalf
10 relative to the areas of inquiry contained in the
11 deposition notice?

12 A. Yes.

13 Q. And do you believe you are the person that
14 can provide the requested information as outlined in
15 the notice?

16 A. Yes, sir.

17 Q. Can you please tell me your educational and
18 professional credentials?

19 A. I am a member of the Maryland Bar. I have
20 owned Crown Title since 1992. My practice consists
21 primarily of real estate law in the State of Maryland.

22 Q. And how long has Crown Title been in

1 business?

2 A. 1992.

3 Q. And where does Crown Title do business?

4 A. Where are we licensed to do business?

5 Q. Let's start there.

6 A. We are licensed I believe in about twenty
7 different states, primarily east of the Mississippi.

8 Q. Where do you primarily practice?

9 A. Well, our main office is in Maryland.

10 Q. Do you have any other offices?

11 A. No, just Maryland offices right now.

12 Q. And did you bring your files with you this
13 morning?

14 A. Yes.

15 Q. And when I say your file, I am talking about
16 file number 47446-04?

17 A. Yes.

18 Q. And can you identify that file by stating the
19 borrower's name, the address of the property, the
20 lender's name, and the settlement date?

21 A. Hold on.

22 MR. COLLINS: Bob, I am going to insert my

1 objection at this point for relevance. Objection to
2 the entire taking of this deposition.

3 Basically, the truth and lending count of
4 your complaints, as you know partial summary judgment
5 was entered in favor of Wells Fargo.

6 In review of your additional counts of your
7 complaints, I see nothing else in there to cause this
8 deposition to be relevant.

9 Your breach of contract counts, and your
10 consumer protection act counts seeing that the TILA
11 claim is dismissed at the moment.

12 This deposition, the entire taking is
13 objected to by Wells Fargo, and I think you are
14 probably going to hear me object a lot about this.

15 I could just go on the record, and have a
16 continuing objection if that is all right with you.

17 MR. HAEGER: That would be fine. Your
18 objection is noted.

19 MR. COLLINS: Very good. Thank you.

20 THE WITNESS: Back to your question. Bob.

21 My borrowers were Niel E. Dorsey and Clayonia
22 T. Colbert Dorsey, and Wells Fargo was the lender. It

1 is unit seven through nine, 17 Hyacinth Court,
2 Gaithersburg, Maryland 20878 was the file information.

3 BY MR. HAEGER:

4 Q. What was the settlement date?

5 A. 7/29/04.

6 Q. Will the reporter please hand out Exhibit 8
7 which is the HUD1.

8 (Thurston Exhibit Number 8
9 was marked for identification.)

10 A. Got it.

11 Q. Mr. Collins, do you have a copy?

12 MR. COLLINS: I do.

13 BY MR. HAEGER:

14 Q. Mr. Thurston, please identify Exhibit 8 for
15 us.

16 A. It is a settlement sheet from the 7/29/2004
17 closing.

18 Q. That is the settlement sheet in connection
19 with your file that you brought with you this morning,
20 and the transaction that we just noted?

21 A. Yes.

22 Q. Just for nomenclature, the subject

1 transaction is the transaction that is stated in
2 Exhibit 8 for purposes of this deposition, and Mr.
3 Thurston, when I say you, I am referring to both you
4 personally and to the Corporation, Crown Title.

5 A. Okay.

6 Q. Okay. Let's see. Mr. Thurston, did you send
7 me a complete copy of your file for the subject
8 transaction on or about July 10, 2007?

9 A. I believe so.

10 Q. And did you send attorney Michael Pate a
11 complete copy of your file in response to his subpoena
12 dated March 31, 2008?

13 A. I believe so.

14 Q. Will the reporter please hand out Exhibit 7,
15 and that is Crown's welcome letter?

16 A. Okay.

17 Q. And let me know when everybody has that.

18 A. Got it.

19 Q. Mr. Collins?

20 MR. COLLINS: Yes.

21 BY MR. HAEGER:

22 Q. And Mr. Thurston, can you please identify

1 Exhibit 7 for us?

2 A. It is a letter that we send upon receiving an
3 application from a borrower for a refinance or
4 purchase, which introduces our company and provides
5 them contact information with their, the manager of
6 their case file.

7 Q. And is that a true and correct copy of what
8 you sent out in this case?

9 A. Yes.

10 Q. And can you explain why you did not send me
11 or Mr. Pate a copy of Exhibit 7 when you sent each of
12 us a copy of your complete file?

13 A. Because you both asked for the hard copies of
14 the file, and this is electronically stored within our
15 data base.

16 Q. Okay. So, you don't make a hard copy of
17 that?

18 A. No, it is automatically stored through a
19 scanning system within our data base. We send it out
20 on every file.

21 Q. Okay. Can you expand on that a little bit?
22 Can you explain how the document is created and

1 stored?

2 You create a hard copy, is that correct?

3 A. I am not an IT guy. In this particular
4 situation Rachel Hetterman was the case manager. When
5 she opens the file, this automatically prints, and she
6 mails it with a copy of her business card so they know
7 who to contact, it makes answering the phone much
8 easier, but she does not print this and put it in the
9 file. It is stored electronically, and we have certain
10 other marketing letters and introduction letters that
11 are also stored electronically, but they are not
12 relevant to the file for us, to the case file.

13 Q. And what evidence do you have that Exhibit 7
14 was actually sent to Mr. Dorsey?

15 A. Well, I think just a pattern that we do it on
16 every file, and we have done it for five or six years
17 now.

18 Q. And when did it start?

19 A. It started some time in '02.

20 Q. And was that a result of your involvement
21 with HUD?

22 A. Yes.

1 Q. And HUD required that you add this language
2 in their title policies, is that correct?

3 A. No, HUD required that we adopt a system to
4 communicate certain information about the settlement
5 process to their borrowers, and we adopted that process
6 with our non-HUD borrowers and buyers.

7 Q. A-ha. And did that process include advising
8 customers about the reissue rate?

9 A. Absolutely.

10 Q. And did you send, I am going to call this
11 welcome letter, Exhibit 7, refer to it as the welcome
12 letter.

13 (Thurston Exhibit Number 7
14 was marked for identification.)

15 Q. I understand that is what you referred to it
16 as, is that correct?

17 A. Correct.

18 Q. Did you send a welcome letter to Clayonia,
19 Colbert Dorsey, Niel Dorsey's wife?

20 A. No, I think the way the system was working at
21 the time it would only go to the primary borrower, and
22 I believe Niel's name is listed first.

1 Q. At what point in time do you send these out?

2 A. When we receive the application.

3 Q. And when you receive the application, how
4 does that, I mean what does it normally look like?
5 What does an application normally look like? Is it a
6 phone call or a letter?

7 A. It could be various ways. It could be
8 electronically submitted from the mortgage lender
9 through one of several software systems, or it could
10 just be something as simple as a fax with the 1003
11 information in there.

12 Q. Now, when did you issue the title in this
13 case?

14 A. The title commitment?

15 Q. Yes.

16 A. I would not know unless I looked in my
17 computer data base what day that was issued.

18 Q. Is the issue date the same as the affective
19 date?

20 A. No.

21 Q. If we can, madam reporter, if you can please
22 hand out Exhibit 2.

1 (Thurston Exhibit Number 2
2 was marked for identification.)

3 A. I got it. I got it, Bob.

4 Q. And if you could please identify that.

5 A. It is a First American title Insurance
6 commitment for the property we are discussing.

7 Q. And is that a true and correct copy of the
8 title commitment that you issued in connection with
9 this transaction?

10 A. I believe so.

11 Q. And so you will note on the third page of
12 this exhibit it is schedule A, and it states on the
13 affective date January 28, 2004, how was that date
14 determined?

15 A. This is the date that the land records are
16 current at that particular time, so when we sent
17 someone to Montgomery County to search this property to
18 do a title abstract on this property. Montgomery
19 County had only posted recorded documents through
20 January 28th of '04.

21 It is very common for the courthouses to be,
22 at that time, because of the volume of refinances some

1 courthouses were eight months behind.

2 It looks like Montgomery County was six
3 months or five months, but that was very common.

4 Q. And could you please explain your
5 understanding of what the conditions are for the
6 Dorsey's to get the reissue rate for title insurance in
7 the subject transaction?

8 A. Well, they would have to provide an owners
9 policy that is less than ten years old for a reissuing,
10 and then they would have gotten, had they been able to
11 do that, they would have gotten basically a hundred and
12 twelve dollar credit, because assuming most owners
13 policies are issued for the contract price of the
14 property.

15 It appears to me that on April 6th of 1995
16 they paid a hundred and twelve thousand, five hundred
17 dollars, so had they been able to produce an owners
18 policy of that amount, they would have received a
19 hundred and twelve dollar credit.

20 Now, that is not always, that doesn't always
21 hold true. It could be they elected not to buy a
22 policy. It could be they elected to take a policy for

1 less than the contract price, so we would not know
2 until they produced it.

3 Now, I also know that, you know, we did a lot
4 of training back in '02 and '03 with our mortgage
5 brokers, and they were accustomed when they visited the
6 borrower's homes, or took the application to go through
7 their settlement files and try to pull the owners
8 policies out, you know, we were desperate to get them
9 because it really cut down not only our work, but or
10 risk, so, you know, my brokers were trained to do that,
11 and neither my broker nor this particular borrower
12 produced the policy.

13 Q. One of your brokers, the broker that is
14 involved in this transaction?

15 A. Yes, not one of my brokers. I don't have any
16 ownership or any relation other than the fact they have
17 done business for a few years together.

18 Q. Well, when you say your broker, it would not
19 include the broker involved here?

20 A. No, the broker involved here is someone I
21 have had a business relationship with, not an
22 affiliation or ownership situation, just someone who

1 has used Crown in the past, and one of the owners is
2 actually a gentleman I went to high school with, so I
3 know that they were trained to ask for the policy at
4 the time of application.

5 Q. But you have no record of having received
6 that from either the broker or from the borrower?

7 A. No, but I can tell you on a lot of files,
8 this particular broker was CPA Mortgage, and on a lot
9 of files they do provide them. They want to provide
10 them. It helps everybody. Number one, they wanted to
11 close quicker, and if they can give me a policy, and I
12 have less of a gap period to cover, it can close
13 quicker, which is really one of the primary things they
14 care about.

15 Q. So, they are motivated?

16 A. They are motivated to get me a policy,
17 believe me, because any time it is quicker or cheaper,
18 they want it to happen.

19 Q. And you say that the conditions for the
20 reissue rate is a prior owners policy. Are there any
21 other conditions for getting the reissue rate other
22 than a prior owners policy?

1 A. Well, you can have a lender substitution
2 rate.

3 Q. Can you explain what that is?

4 A. Well, my understanding, I haven't reviewed
5 the manuals in a while, but my understanding, if you
6 have, if you are borrowing money from a current lender
7 that already holds a lenders policy, you can give them
8 the reissue rate, but it is not called a reissue rate.

9 My understanding it is called lender
10 substitution rate. So, again I haven't looked at the
11 manual in a few years, you know, but when I think of
12 reissue rate I think of only providing owners policies,
13 and when I think of substitution rates I think of being
14 able to use the lender policy to make the process a
15 little bit cheaper.

16 Q. So, your understanding of the lenders
17 substitution rate, what are the parameters for that?

18 A. Bob, I really haven't looked at the manual,
19 so I really don't know, but I do know, I believe, you
20 know, based on my recollection, it has to be the same
21 lender to the same lender.

22 Q. So, that if the prior policy insured a lender

1 that was different than a lender in the subject
2 transaction, then --

3 A. It doesn't, my understanding that doesn't
4 qualify, and the reason it doesn't qualify is because
5 there is no privity of contract, you know, with the
6 prior lender. It is a completely separate
7 transaction. It is not a note modification or a
8 substitution of consideration or collateral. It is a
9 completely different transaction with a different
10 lender, and the second lender is not insured through
11 the first.

12 They can't take an assignment of that policy
13 if there is new consideration issued. That is my
14 understanding of it, but I don't -- that is not
15 something I get involved with on a day to day basis.

16 Q. And at what point in the transaction do you
17 require evidence of the prior title insurance policy?

18 A. Well, they could submit any time up to
19 closing. It helps me tremendously if they can give it
20 to me at application because it cuts down what I need
21 to do, but we have had situations where people bring it
22 to closing, hey, I forgot to fax it to you, and we give

1 them the reissue rate.

2 Q. And what evidence of a prior title policy do
3 you accept?

4 A. Well, we would accept a prior HUD1 would be
5 the weakest form of evidence, but we have permission to
6 accept it. We would accept a copy of the policy. If
7 we got a copy of commitment, we would call that
8 underwriter and have them scan us or fax us a copy of
9 the policy.

10 Q. Now, I understand that as a title agent you
11 have access to prior title insurance policies on the
12 web site maintained by Chicago Title and First American
13 Title, is that correct?

14 A. For some periods we do, but again, I don't
15 process the files on a day-to-day basis, so I am not
16 sure. They are called starter systems, starter
17 finance. Both Chicago and First American have starter
18 plans, but I am not sure what periods of time those
19 policies are scanned in.

20 Q. Do you know whether or not it started before
21 2004?

22 A. Oh, absolutely. It started in the mid

1 nineties for sure.

2 Q. So, it has been available since the mid
3 nineties?

4 A. Chicago has for sure. I wouldn't a hundred
5 percent, I wouldn't tell you First American has, but
6 Chicago has had it since the late nineteen eighties I
7 believe.

8 Q. And have you helped some of your clients by
9 getting a copy of their prior title policies for them
10 by going to these web sites?

11 A. Yes.

12 Q. Okay. And did you do that for the Dorseys?

13 A. Yes, we couldn't find one.

14 Q. You did look?

15 A. Yes.

16 Q. And where did you look?

17 A. We were looking at Chicago starter system.

18 Q. Okay. And do you -- okay.

19 A. I mean again that is electronic function, so
20 there is no proof in the file. You are not going to
21 see that in the file, but as a matter of course our
22 processors would try to do that, and again from their

1 stand point, if our processors can get a prior policy
2 that is less work and less judgments they have to
3 clear.

4 Q. And can you explain that?

5 A. Yes, when you search title you have to clear
6 judgments on anybody that has been in the chain of
7 title for twenty years so they can get a policy that is
8 ten years old. They can assume within that policy,
9 they don't have to clear the back ten years which are
10 the hardest ten to clear.

11 So, they don't have me yelling at them that
12 they are behind in their work, so they are killing
13 themselves to try to get a private policy.

14 Q. This would only apply if prior judgments
15 showed up in the title work?

16 A. You have to clear them either way. We can't
17 assume, we can't assume that it is clear because we
18 have to do twenty years worth of the work. It used to
19 be sixty, now it is twenty, so with that policy since
20 we can assume within that policy, you wouldn't have to
21 clear, like in your situation, had they been able to
22 provide the 1995 policy, we would have only had to

1 clear from '95 to 2004. We could have reinsured the
2 back ten years, right?

3 Q. I am not sure. This is your area, not mine.

4 Let me ask you this. Have you ever seen a
5 Fannie Mae or Freddie Mac conforming loan that was made
6 without lenders title insurance?

7 A. No. I have been practicing for fifteen
8 years, sixteen years. I am on file number sixty eight
9 thousand. I don't think I have ever had a loan that
10 has ever had the lenders waive title insurance, with
11 the exception of some very small seconds.

12 Q. But not first?

13 A. No.

14 Q. Would the reporter please hand out Exhibit 3,
15 the closing protection letter.

16 (Thurston Exhibit Number 3
17 was marked for identification.)

18 A. I got it.

19 Q. Is that a true and correct copy of the
20 closing protection letter issued in this transaction?

21 A. Yes.

22 Q. Let me ask you. What additional work was

1 required beyond what you did to issue the title
2 insurance commitment to issue the title insurance
3 policy in this case?

4 What additional work was required beyond what
5 you did to issue the title insurance commitment? To
6 issue the title insurance policy in this case.

7 A. You want to go step by step?

8 Q. Yes.

9 A. Well, off the top of my head, without looking
10 at the file, you have to conduct the closing.

11 Q. I am talking specifically about issuing the
12 policy itself.

13 A. I understand.

14 Q. Okay. Conduct the closing.

15 A. You conduct the closing, you balance your
16 file. You vouch the receipts of the proceeds you need
17 to have good funds. You disperse the checks. You
18 record the documents.

19 You do a second title search to bring your
20 gap current, and then you issue your policy.

21 Q. Would the reporter please hand out Exhibit 4
22 of the title policy.

1 (Thurston Exhibit Number 4
2 was marked for identification.)

3 A. I got it, Bob.

4 Q. Is that a true and correct copy of the title
5 policy that you issued in this case?

6 A. I believe so.

7 Q. And when you compare the title policy that
8 was issued here with the title commitment that was
9 issued as set forth in Exhibit 2, what information is
10 different between the two?

11 Do you follow my question?

12 A. Well, it brings your title current. The
13 lender needs to know they are in first place. You give
14 them information showing A, that you have paid off all
15 liens on the property to put that in first place. And
16 you did in fact record their lien which is in fact in
17 first place.

18 Q. That is the difference between the commitment
19 and the policy?

20 A. Well, the commitment promises you are going
21 to do it, and the policy insures that you are going to
22 do it, or I guess the commitment really promises you

1 are going to insure the property, and then the policy
2 is the actual insurance vehicle.

3 Q. Now, did you examine the title to the subject
4 property?

5 A. Did I personally, or did my company do it?

6 Q. When I say you, I am referring to Crown
7 and/or to you personally?

8 A. I don't think I personally did it, but I am
9 sure somebody here did it.

10 Q. So, Crown did examine the title, and how much
11 did Crown charge for that service?

12 A. I don't know. I have to look on the
13 settlement sheet.

14 Q. Line 1103 on Exhibit 8?

15 A. Four twenty five.

16 Q. And what is the typical and customary charge
17 that Crown has for title examinations in residential
18 mortgage refinances?

19 A. I think four twenty five. I mean, I think is
20 a pretty standard charge, pretty standard.

21 Q. Okay. And when did you become aware that
22 there was a prior recorded outstanding mortgage lien on

1 the subject property?

2 A. I don't understand your question, Bob.

3 Q. Okay. Was there a prior recorded outstanding
4 mortgage lien on the property?

5 A. Well, we paid off Chase Manhattan.

6 Q. Okay. And when did you find out about that
7 lien?

8 A. When we received, when we went to the
9 courthouse and searched the title.

10 Q. Okay. And did you get a copy of that
11 recorded deed of trust?

12 A. Yes.

13 Q. And did your copy specify that it was a
14 Fannie Mae, Freddie Mac uniform instrument?

15 A. I have no idea.

16 Q. Let me ask the reporter to hand out Exhibit
17 6. And if you could identify that.

18 (Thurston Exhibit Number 6
19 was marked for identification.)

20 A. All right. Exhibit 6 is a prior recorded
21 deed of trust.

22 Q. And is that a true and correct copy of the

1 first two pages of the prior recorded deed of trust in
2 this transaction?

3 A. I would -- he got it from the land records,
4 so whatever is in the land records is what this would
5 be I would imagine.

6 Q. Do you have a copy of this in your file?

7 A. I sure do.

8 Q. Can you take a look please. I want to verify
9 what you have.

10 A. Yes, I have it.

11 Q. Thank you. Let's move to the Exhibit 8, the
12 settlement statement.

13 A. Okay.

14 Q. And there were two small debts that were paid
15 off, and they are noted at 1504 and 1505?

16 A. Yes, sir.

17 Q. What evidence do you have that those checks
18 cleared?

19 A. I have the cleared check.

20 Q. Can you provide a copy of that to me?

21 A. I sure can.

22 Q. Okay.

1 A. Can you give me your fax number.

2 A. 301 -- do you have all of the cleared checks
3 for that? I don't have any of them.

4 A. Sure.

5 Q. Let's make it an exhibit of the cleared
6 checks and make that Exhibit 11.

7 A. Well, let's go off the record for a second.
8 (There was an off the record discussion.)

9 THE WITNESS: Do you want to restate your
10 question?

11 BY MR. HAEGER:

12 Q. Yes. Can you please provide a copy of the
13 canceled checks in this transaction?

14 A. Bob, if I look at your disbursement ledger
15 there is a column that has cleared, and how we clear
16 our checks is Wachovia downloads cleared checks in our
17 system which automatically clears them within our
18 escrow function.

19 So, if you want to request in writing any
20 fronts and backs of a check, if you do that, I believe
21 there is a fifty cents charge. I will give you the
22 information, it will probably take two weeks to get the

1 information.

2 Q. If we can, let's do this. A disbursement
3 statement, if we can hand out Exhibit 9.

4 (Thurston Exhibit Number 9
5 was marked for identification.)

6 A. Okay.

7 Q. And if you can please identify that for us?

8 A. That is the disbursement journal.

9 Q. So, you said that this states whether or not
10 it is cleared. I see, status. I didn't have that in
11 the exhibit that I have. So, let me just look at
12 this.

13 So some checks were voided?

14 A. Yes, it could have been just a clerical
15 error. Sometimes the printer jams.

16 Q. Right. I am just looking through this, and
17 so it indicates that Speigel cleared --

18 A. Yes, Speigel would have cleared on 1/31 of
19 '05.

20 Q. The post date there means the date that it
21 cleared, or the date that their post date is
22 established?

1 A. No, it should be the date that it cleared.

2 Q. Okay.

3 A. I don't reconcile these accounts, but
4 logically, you know, I would assume that.

5 Q. Now, I am noting that asset acceptance was
6 voided. Can you show me, looking at Exhibit 9, the
7 evidence that asset acceptance had cleared?

8 A. I don't see. I don't think that cleared. I
9 think we refunded that back to the Dorseys.

10 Q. And should that show up in the disbursement
11 statement?

12 A. Yes, it would.

13 Q. Well, I see that asset acceptance was two
14 hundred and forty eight dollars. I do note that there
15 is a check to the Dorseys that was issued in June 2005
16 for a hundred and forty eight dollars?

17 A. I would have to go back through and look at
18 the details. I am probably not going to be able to
19 help you with just the summary.

20 Q. We are going to have to hold the deposition
21 open to clear this issue. I will try to do it
22 informally, so we don't have to recall you.

1 A. Okay.

2 Q. But if you can get me that information, so I
3 can resolve that question.

4 Just bear with me a second. So, can you
5 explain, you started to explain in a little bit more
6 detail how do you know whether or not the checks that
7 you have dispersed in a settlement have cleared?

8 A. The bank will tell me.

9 Q. Okay. So, how do they know you have issued a
10 check if it hasn't cleared?

11 A. I don't understand that question, Bob.

12 Q. Okay. If you mail out a thousand dollars to
13 Mr. Smith, how does your bank know that?

14 A. Positive pay system.

15 Q. Can you tell me what that is?

16 A. We have to post our check ledger into the
17 Wachovia system and they only clear the checks we tell
18 them are valid checks, it prevents fraud, so they are
19 expecting in your scenario, they are expecting check
20 number one hundred to Mr. Smith for a thousand dollars
21 to be presented to them, and once it is presented, they
22 clear it.

1 Q. Oh, I see.

2 A. That way, if somebody steals your checks, it
3 should prevent the fraud if you work your positive pay
4 system correctly.

5 Q. So, when do they notify you that something
6 hasn't cleared? After what period of time? Do they
7 wait until the thirty days after you posted it?

8 A. You would do your bank reconciliation so you
9 would know if the checks cleared.

10 Q. Okay. And what is the process you go through
11 in a transaction such as this to determine whether or
12 not the checks have cleared? When do you do that?

13 A. We have to reconcile our accounts every
14 month.

15 Q. Okay. And if you reconcile your account and
16 you see that there are checks that have not cleared,
17 what do you do then?

18 A. Well, we would, you know, it is every month
19 is a little different. Mostly our bookkeepers would
20 do, if they haven't cleared in six months they start
21 making phone calls.

22 Q. Okay.

1 A. But that process that is not set in stone
2 because sometimes because of the volume it takes a
3 little longer than that.

4 Q. Okay.

5 MR. COLLINS: Bob, do you have much more?

6 MR. HAEGER: I am almost finished. I am
7 happy to say.

8 Do you need to take a break?

9 MR. COLLINS: No.

10 BY MR. HAEGER:

11 Q. How much of the title insurance premium did
12 Crown keep as a commission in this case?

13 A. I would have to look at my underwriting
14 agreement from that year, but I would think that we
15 were on either a seventy five or eighty percent split.

16 Q. And can I determine that based upon looking
17 at the disbursement statement?

18 A. I would have to calculate it for you.

19 Q. But it is seventy five to eighty percent?

20 A. Yes. I just don't remember what that year
21 was, but yes.

22 Q. On Exhibit 10. Please hand out Exhibit 10

1 please.

2 (Thurston Exhibit Number 10
3 was marked for identification.)

4 A. All right. Exhibit 10, what is Exhibit 10
5 Bob?

6 Q. The disbursement statement that printed in
7 August of 2004?

8 A. I have to go grab that off the fax machine.

9 Q. Exhibit 10 is the disbursement statement,
10 Crown's disbursement statement dated August 4, 2004, is
11 that correct Mr. Thurston?

12 A. Yes.

13 Q. And can you tell me under what circumstances
14 monies are put into the held column? I note that there
15 is two of them at the top, one to Crown Title for ten
16 eighty three point seventy six, and one to First
17 American for one twenty one forty four.

18 A. We don't disburse our fees that are earned
19 until certain times of the month to cut down the
20 bookkeeping volume for my bookkeepers.

21 Q. All right. Did Crown mark up any of the
22 costs that it incurred when it charged the Dorseys?

1 A. I don't think so.

2 Q. All right. Take a look at Exhibit 8. That
3 is the settlement statement, and if you can please
4 explain exactly what Crown did for the two charges,
5 Crown or its agents did at lines eleven, twelve, which
6 it states recording walk through Crown Title for forty
7 dollars, and let's start there.

8 Can you please explain exactly what was done
9 for the charge listed as HUD line eleven, twelve?

10 A. We drove to Montgomery County Circuit Court.
11 We presented the documents to the recording officer
12 there with the checks, and we went to the land records
13 and brought the title to a through date that was more
14 current than when our abstract was issued.

15 Q. So Crown's responsibility of bringing the
16 title current, not your abstractor?

17 A. No, because we don't trust the abstractor to
18 record, we have to record.

19 Q. And the next line. If you can please explain
20 exactly what that is, line eleven, thirteen for eighty
21 three dollars?

22 A. Well, you know, your judgment reports I

1 believe are fifteen dollars a piece, and you have to
2 search judgments for anybody within twenty years of
3 title, so in this case I believe there were five of
4 them or six of them, and then the copies are fifty
5 cents, you know, our abstract was like forty pages,
6 copies are fifty cents a page at Montgomery County, so
7 that is probably a little bit undercharged.

8 Q. So, you bill that separately?

9 A. Yes. Well, you give your abstractor what is
10 known as copy cards. They use your copy card, so they
11 have, you know, like scanning your credit card at the
12 gas pump, I mean this particular abstractor would have
13 a Crown Title copy card. He would scan it within the
14 copier in the Circuit Court of Montgomery County and
15 copy sixty or seventy pages at fifty cents a page.

16 Q. My last question. For lines 1201 on the
17 HUD1, that is the recording fee. Can you please walk
18 me through that. Exactly what that is for?

19 A. It is to record the mortgage and the releases
20 at the county.

21 Q. And are you aware that was an overcharge?

22 A. I am not aware that was an overcharge.

1 Q. Can we look at the disbursement statement to
2 understand whether or not it was -- do you see that by
3 looking at your disbursement statement at Exhibit 9?

4 A. Well, Exhibit 8 is -- I am looking at Exhibit
5 8.

6 Q. Exhibit 8 is HUD1 and Exhibit 9 is the
7 disbursement statement. Line 1201 is payment to the
8 clerk of the court, is that correct?

9 A. Yes, it is Montgomery County Clerk of the
10 Court.

11 Q. Okay. So can you identify those
12 disbursements, in the disbursement statement?

13 A. I don't understand your question. You want
14 me to match the check to the disbursement?

15 Q. Yes, the hundred and ten dollars that was
16 charged. I want you to show me that you actually had
17 to pay that, and I think we can do it by looking at the
18 disbursement statement, and the clerk of the court was
19 paid forty dollars, not eighty, because there was only
20 one mortgage, this was not a piggyback.

21 A. Okay. Was there an assignment?

22 Q. Apparently not.

1 A. Okay. And sometimes, you know, some counties
2 if the deed of trust is more than a certain amount of
3 pages, it is a little bit more.

4 Q. So, how much did you actually pay in
5 connection with the charges listed on line 1201 of the
6 HUD1, when you look at your disbursement ledger? Can
7 you answer that question?

8 A. Well, no, because we have a recording
9 account, so there have been, the release and the
10 assignment, or any additional charges would have been
11 paid out of a recording account.

12 We don't hold amounts that could get paid in
13 subsequent weeks in our escrow account. Does that make
14 sense to you?

15 Q. Yes. But, I would like you to look at your
16 file and identify, so that you can confirm that the
17 Dorseys were overcharged forty dollars?

18 A. Well, they weren't overcharged.

19 Q. Then I need to have the evidence that
20 demonstrates what you are saying because the evidence
21 is not there.

22 A. Well, you don't have -- we have a separate

1 escrow account called a recording account, so if you
2 look at the fourth item down, it says Crown Title join
3 seventy dollars.

4 Q. Okay.

5 A. That seventy dollars went into a recording
6 account, and that is held for subsequent money that
7 needs to be disbursed to record documents. It doesn't
8 get held within our escrow account, so we had forty
9 dollars from the mortgage line, and thirty dollars from
10 the release line. So, when the release came in, we
11 would have wrote a thirty dollar check out of the
12 recording account.

13 The forty dollar check was being held in case
14 an assignment was presented to us. Now, if it goes
15 more than a month or two months or three months and an
16 assignment is not presented, we would have refunded
17 that money back to the Dorseys, but you wouldn't see
18 that check out of the escrow account. You would see it
19 out of a recording account.

20 Q. Can you tell by looking at the file whether
21 or not such an assignment was presented and if not --

22 A. I don't think it was. I think we would have

1 refunded the forty bucks back to the Dorseys because
2 Wells Fargo presented an assignment before it was
3 recorded, in other words, I don't know what the
4 recording date was, maybe September 1st, or I don't
5 know when we took it up there, but if there was no
6 assignment we would have noted the file to disburse the
7 money back to the Dorseys, but you wouldn't see that in
8 this ledger account.

9 Q. Ledger. Can you verify whether or not that
10 is what happened here?

11 A. I could search my recording account for a
12 check to the Dorseys.

13 Q. Let's leave this deposition open for this
14 issue.

15 A. Okay.

16 Q. To close the loop on what happened to that
17 forty dollars.

18 A. Okay.

19 Q. And that is all I have. Thank you very much
20 Mr. Thurston.

21 MR. HAEGER: I will let the reporter tell
22 you about the reading and signing.

1 THE REPORTER: Mr. Thurston, you have a
2 right to read the transcript of your deposition, or you
3 can waive that right.

4 You would have an errata sheet and you could
5 note any corrections that you may have.

6 Do you want to read and sign, or do you want
7 to waive that right?

8 THE WITNESS: I will read it.

9 MR. COLLINS: No questions. Thank you.

10 MR. HAEGER: Thank you gentlemen.

11 (Whereupon, at 12:15 p.m., the
12 deposition of DAVID THURSTON
13 was concluded.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, BARBARA J. SHAULIS, the officer before
3 whom the foregoing deposition was taken, do hereby
4 certify that the witness whose testimony appears in the
5 foregoing deposition was duly sworn by me; that the
6 testimony of said witness was taken by me in stenotypy
7 and thereafter reduced to typewriting under my
8 direction; that said deposition is a true record of the
9 testimony given by said witness; that I am neither
10 counsel for, related to, nor employed by and of the
11 parties to the action in which this deposition was
12 taken; and, further, that I am not a relative or
13 employee of any counsel or attorney employed by the
14 parties hereto, nor financially or otherwise interested
15 in the outcome of this action.

16
17 BARBARA J. SHAULIS

18 Notary Public in and for the
19 State of Maryland
20

21 My commission expires:

22 May 12, 2011

1 A C K N O W L E D G E M E N T O F D E P O N E N T

2

3

4 I, DAVID THURSTON, do hereby acknowledge I

5 have read and examined the foregoing pages of

6 testimony, and the same is a true, correct and complete

7 transcription of the testimony given by me, and any

8 changes or corrections, if any, appear in the attached

9 errata sheet signed by me.

10

11

12

13

14

15 _____

16 Date

15 _____

16 DAVID THURSTON

1 Daniel Collins, Esq.
2 McNamee, Hosea, Jernigan
3 6411 Ivy Lane
4 Suite 200
5 Greenbelt, Maryland 20770

6 IN RE: DORSEY, et al v. WELLS FARGO

7 Dear Mr. Thurston:

8 Enclosed please find your copy of your
9 deposition, along with the original signature page.

10 Within 30 days of receipt, please forward
11 errata sheet and original signed signature page to
12 Capital Reporting Company, 1821 Jefferson Place, 3rd
13 Fl., Wash., D.C. 20036,
14 (202) 857-3376.

15 If you have any questions, please do not
16 hesitate to call. Thank you.

17 Yours,

18
19 BARBARA J. SHAULIS

20 Reporter/Notary
21
22

Capital Reporting Company

1 Capital Reporting Company
2 1821 Jefferson Place, N.W.
3 Third Floor
4 Washington, D.C. 20036
5 (202) 857-3376

6 E R R A T A S H E E T

7 CASE: DORSEY, et al v. WELLS FARGO

8 WITNESS: DAVID THURSTON

9 DATE: August 28, 2008

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SIGNATURE

DATE