

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEUTSCHE BANK NATIONAL TRUST)	
COMPANY AND HOMEQ SERVICING,)	
Plaintiffs,)	
)	
vs.)	CA No. 08-11141-NMG
)	
JONATHAN BARRY AND)	
JAMIE FLACK BARRY,)	
Defendants.)	

BEFORE: THE HONORABLE NATHANIEL M. GORTON

DAY THREE OF JURY TRIAL

John Joseph Moakley United States Courthouse
Courtroom No. 4
One Courthouse Way
Boston, MA 02210
Thursday, January 21, 2010
9:22 a.m.

Cheryl Dahlstrom, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3209
Boston, MA 02210
Mechanical Steno - Transcript by Computer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

DOONAN, GRAVES & LONGORIA, LLC
By: Reneau J. Longoria, Esq., and
Erin Powers Severini, Esq.
100 Cummings Center
Beverly, Massachusetts 01915
On behalf of the Plaintiffs.

LAW OFFICE OF GLENN F. RUSSELL, JR.
By: Glenn F. Russell, Jr., Esq.
38 Rock Street
Fall River, Massachusetts 02720
- and -

CUTLER AND ASSOCIATES
By: Timothy K. Cutler, Esq.
77 Franklin Street
Boston, Massachusetts 02110
On behalf of the Defendants.

1	47	Copy of note for first mortgage endorsed in blank	.101
2			
3	48	Copy of note for second mortgage endorsed in blank	101
4	45	Assistance Secretary Certificate for MERS	111
5			
6	46	Assistant Secretary Certificate for Barclays	111
7	49	Accounting of escrow advances.....	112
8	50	Reconciliation of corporate or discretionary advances	113
9			
10	51	Pay-off quote dated through 1/15/10, for second mortgage	.116
11	52	Pay-off quote dated through 1/15/10, for first mortgage	.116
12			
13	53	Verified Answer and Counterclaims.....	148

14
15
16
17
18
19
20
21
22
23
24
25

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

2 THE COURT: Good morning, jurors. We're ready to
3 resume. Mr. Reyes will please retake the witness stand, and
4 Mr. Cutler you may continue with cross-examination.

5 Mr. Reyes, you're reminded that you remain under oath.
6 Please be seated.

7 THE WITNESS: Yes, your Honor.

8 MR. CUTLER: Thank you, your Honor.

9 CONTINUED CROSS-EXAMINATION BY MR. CUTLER:

09:21 10 Q. Good morning, Mr. Reyes.

11 A. Good morning.

12 Q. I'd like just to briefly go back where we left off if
13 that's okay. So let me -- looking at your chart, it's your
14 testimony that the Barrys' mortgage and note went from WMC to
15 Sutton and Securitized Asset Backed Receivables and then into
16 the pool for the investment, is that correct?

17 A. Yes, that's correct.

18 Q. What exactly is this pool called?

19 A. This trust has a pool of mortgages. The trust name is
09:22 20 Securitized Asset Backed Receivables LLC Trust 2006-WM3.

21 Q. Securitized Asset Backed Receivables LLC -- did you say
22 2006?

23 A. Trust 2006-WM3.

24 Q. And the trust is some kind of entity, is that correct?

25 A. Yes, it is. It is a trust.

1 Q. Deutsche Bank is not the trust, is that correct?

2 A. Deutsche Bank is the trustee.

3 Q. But is not the trust?

4 A. Deutsche Bank is trustee on behalf of the trust.

5 Q. On behalf of the trust which is -- Deutsche Bank is
6 trustee on behalf of an entity, which happens to be the trust
7 in this case, correct?

8 A. Yes.

9 Q. And this is not the only trust that Deutsche Bank is a
09:23 10 trustee for, correct?

11 MS. SEVERINI: Objection, your Honor. Beyond the
12 scope of the testimony.

13 THE COURT: Overruled.

14 Q. And it's -- Deutsche Bank is the trustee on a number of
15 other securitized mortgage trusts, correct?

16 A. Yes.

17 Q. Approximately how many?

18 MS. SEVERINI: Objection, your Honor. This is beyond
19 the scope of his testimony.

09:24 20 THE COURT: He can have approximately how many.
21 Overruled.

22 A. Approximately 1,900 trusts.

23 Q. And on this chart, we see your -- can you turn to Exhibit
24 35? I apologize. I'm thinking you can see the screen, too.

25 In the exhibit books --

1 MR. CUTLER: Your Honor, may I approach the witness?

2 THE COURT: Yes.

3 MR. CUTLER: Did you take all the exhibits back?

4 MS. SEVERINI: No. They're right there.

5 Your Honor, I'd like to clarify. There's a binder in
6 front of Mr. Reyes. I'm not quite sure --

7 MR. CUTLER: That's some of my exhibits.

8 MS. SEVERINI: Okay.

9 THE COURT: Just put the document in front of him and
09:25 10 continue to examine.

11 Q. Now you're looking at your chart, correct?

12 A. Yes.

13 Q. Up in the right-hand corner it says, "Trustee Deutsche
14 Bank National Association." Is that -- is that who you are, as
15 trustee?

16 A. No. There's a typo. It's Deutsche Bank National Trust
17 Company.

18 Q. Trust Company, okay. I'll fix that typo.

19 And you're in your own little box, and you're your own
09:26 20 little entity there, correct?

21 A. Yes.

22 Q. Now, we heard about MERS. Where would I find MERS on
23 here?

24 A. MERS -- one of the exhibits yesterday was the mortgage,
25 where it was noted, at the closing of the two Barry loans, that

1 MERS is the nominee holder for WMC Mortgage Corp., as lender,
2 and its successors and assigns.

3 Q. Are they in the chain of title of the Barrys' mortgage and
4 note?

5 MS. SEVERINI: Objection, your Honor. That's
6 compound. What is mortgage and note?

7 THE COURT: Well, overruled, if he understands it.

8 A. With respect to the mortgage, MERS is the nominee holder
9 for the lender, WMC Mortgage Corp., and its successors and
10 assigns.

09:27

11 Q. But do they have -- let me try to -- I call it MERS. Does
12 MERS have -- did MERS at any point have an interest -- strike
13 that.

14 At any time did MERS have an ownership interest in the
15 Barrys' mortgage or trust?

16 A. Yes, as nominee holder for WMC Mortgage Corp. because the
17 mortgages for the first and second loans are secured by the
18 first mortgage note and the second mortgage note.

19 Q. Okay. So the MERS held an ownership interest in the notes
20 and the mortgage, correct?

09:28

21 MS. SEVERINI: Objection. He's misstating what Mr.
22 Reyes stated.

23 THE COURT: That objection is sustained.

24 Q. Is MERS -- let's go back. You're saying that MERS -- is
25 it fair to say that MERS has an interest in the Barrys' note

1 and mortgage? Yes or no.

2 MS. SEVERINI: Objection. This question has already
3 been asked.

4 THE COURT: Overruled.

5 A. As I said, and as it states on the mortgage exhibits for
6 the first and second mortgage loans, MERS is a nominee holder
7 for the lender, WMC Mortgage Corp., and its successors and
8 assigns.

9 Q. So my question, you can't answer yes or no?

09:29 10 A. MERS is the nominee holder for WMC Mortgage Corp. and its
11 successors and assigns.

12 Q. Would you please point on this chart where MERS is?

13 A. Again, MERS is only a nominee holder. It does not -- it
14 is not the beneficial holder of the two Barry loans. The
15 beneficial holder of the two Barry loans is WMC Mortgage Corp.,
16 as lender, and its successors and assigns.

17 Q. Is there any reason you didn't include MERS in your chart
18 here?

19 A. MERS is simply a nominee. This chart notes that WMC
09:30 20 Mortgage is the lender with respect to the two Barry loans.

21 Q. Did MERS ever hold possession of the actual note and
22 mortgage?

23 MS. SEVERINI: Your Honor, this is, again, the same
24 type of question. It's compound.

25 THE COURT: Overruled.

1 A. I'm sorry. Can you please repeat?

2 Q. Did MERS ever hold actual physical possession of the
3 mortgage and the note?

4 A. My understanding is that, from the point of closing with
5 Attorney Gediman, the original note and mortgage were sent to
6 WMC Mortgage Corp.

7 Q. So MERS never held physical possession -- strike that.
8 I'm sorry.

9 MERS never had physical possession of the note or the
09:31 10 mortgage; is that what you're saying?

11 A. Again, MERS is only a nominee entity on behalf of WMC
12 Mortgage Corp. and its successors and assigns.

13 Q. All right. We heard a lot about transfers, and I believe
14 you testified earlier to the term "transfer." What does -- and
15 transfer dates when you were talking about the assignments.
16 What is the significance of a transfer date?

17 A. As I stated yesterday, with respect -- if we're speaking
18 of the confirmatory assignments of mortgage which I executed, I
19 can place reliance, as trustee, on the servicer, HomeEq
09:32 20 Servicing, in preparation of that document.

21 Q. My question is: Please tell the jury what the
22 significance is of a transfer date. What does it mean? Why is
23 it on the assignment?

24 A. Again, with respect to the confirmatory assignments that I
25 executed, I placed reliance on the servicer with respect to the

1 transfer dates and the substance of the confirmatory assignment
2 of mortgage.

3 Q. Do you even know the significance of what the transfer
4 date is on the assignment?

5 A. The transfer date is the effective date that the mortgage
6 is assigned from the assignor to the assignee.

7 Q. Okay. So that transfer date is the date that, for
8 example, WMC would say is the date it transfers its interest
9 down -- strike that.

09:34 10 So transfer date between WMC and Sutton, the sponsor,
11 would be the date that WMC transfers all of its rights and
12 interest to the sponsor, correct?

13 MS. SEVERINI: Objection, your Honor. I'm not sure
14 that's a question or testimony.

15 THE COURT: The objection is sustained because the
16 question is confusing.

17 MR. CUTLER: Okay. I apologize.

18 Q. The transfer date is the date that the mortgage and the
19 note are transferred from one entity to another, correct?

09:35 20 A. Correct.

21 Q. And it reflects that all interest in both the note and the
22 mortgage are transferred to the next entity, correct?

23 MS. SEVERINI: Objection, your Honor. That's not what
24 the witness was saying.

25 THE COURT: Overruled. He can answer.

1 A. Okay. If you can please clarify the question.

2 Q. Sure.

3 A. Are we speaking of the chart now? Are we speaking of the
4 confirmatory assignments that I executed?

5 Q. Well, right now we're trying to establish what your chart
6 -- this chart reflects what happened, correct? You made this
7 chart to show the jury this is what -- strike that.

8 This chart was prepared to show the jury how the
9 Barrys' mortgage and note made it into the trust, correct?

09:35 10 A. Yes, so if I may clarify.

11 Q. Well, we'll do that in a second.

12 Now, this trust was based on the Pooling and Service
13 Agreement, correct? Is that a yes or a no?

14 A. This trust is based on --

15 Q. No, no, the chart. I'm sorry, the chart. This chart was
16 -- this chart was based on the terms and the conditions of the
17 Pooling and Service Agreement, correct?

18 A. Yes, and if I may clarify. And, in addition, the Mortgage
19 Loan Purchase Agreement and the Bill of Sale. What I want to
09:36 20 clarify is that, as I noted yesterday, the closing date of this
21 transaction -- the agreement is dated November 1, 2006. The
22 closing date is December 1, 2006, per the Pooling and Servicing
23 Agreement. The Bill of Sale and cross-receipt between Sutton
24 Funding LLC and the depositor, Securitized Asset Backed
25 Receivables LLC, is also dated December 1, 2006. In addition,

1 the closing date definition in the Mortgage Loan Purchase
2 Agreement is defined as from time to time when WMC Mortgage
3 Corp. sells loans to Sutton Funding LLC.

4 This transaction, the sale of the mortgage pool, which
5 includes the two Barry loans, as evidenced by the mortgage loan
6 exhibit to the Pooling and Servicing Agreement, occurs on
7 December 1, 2006. These parties effectuate the sale from WMC
8 Mortgage Corp. to Sutton Funding LLC, from Sutton Funding LLC
9 to Securitized Asset Backed Receivables LLC, to Deutsche Bank
09:38 10 National Trust Company, as trustee, on December 1, 2006.

11 Q. Where is December 1, 2006, on there, on your chart? It's
12 not on there, is it, sir?

13 A. This chart is an overview of the transaction. It does
14 reference the Pooling and Servicing Agreement dated as of
15 November 1, 2006. In that agreement, the closing date is
16 defined --

17 Q. Why didn't you include -- if that date was so important
18 that you felt you had to come back here today and -- I'm not
19 quite sure what you said, but what you said. Why didn't you
09:39 20 include it in this chart in the first place? Just briefly.
21 Why was the December 1, 2006 -- if it's an important date, why
22 isn't it there?

23 A. This chart is merely an overview of the transaction.

24 Q. And it's a chart prepared to show -- okay. All right.

25 Now, let's -- will you turn to Exhibit 18 in front of

1 you. You don't represent WMC Mortgage, correct?

2 A. I don't understand the question.

3 Q. Okay. Do you work with WMC Mortgage?

4 A. Deutsche Bank National Trust Company --

5 Q. Do you personally work for WMC Mortgage?

6 A. From time to time, yes, but I --

7 Q. They pay you? Are you on their payroll?

8 A. No.

9 Q. Are you on HomeEq's payroll?

09:41 10 MS. SEVERINI: Objection, your Honor. This wasn't
11 discussed in the scope of his direct.

12 THE COURT: Overruled.

13 Q. Does HomeEq pay you? Do you get monies directly from HomeEq
14 for your -- anything?

15 A. No.

16 Q. How about Sutton, does Sutton pay you personally?

17 A. No.

18 Q. How about Securitized Assets Backed Receivables LLC, do
19 they pay you personally?

09:42 20 A. Me personally?

21 Q. Yeah.

22 A. No.

23 Q. All right. This was -- Exhibit 18, I believe, you've
24 already testified to, is that correct?

25 A. Yes.

1 MS. SEVERINI: Objection, your Honor. He did not
2 testify to Exhibit 18.

3 THE COURT: Overruled. He can answer whether he has
4 or he hasn't.

5 Q. Now, this is the purported assignment from WMC -- no, from
6 Mortgage Electronic Registration Systems, as nominee for WMC
7 Mortgage Corp., signor, to Deutsche Bank National Trust
8 Company, as trustee; do you see that?

9 A. Yes.

09:43 10 Q. Who signed that?

11 A. Joy Ferish (ph).

12 Q. I believe it's Vanish.

13 A. I can't read.

14 Q. Do you know who Miss Vanish is?

15 A. No.

16 Q. Have you ever met Miss Vanish?

17 A. No.

18 Q. And here the transfer date is July 9, 2007, correct?

19 A. It states "July 9, 2007."

09:43 20 Q. Is this the Securitized Asset Backed Receivables LLC Trust
21 2006-WM3 -- is it an open trust? Can you -- is it continuing
22 to buy mortgages and add them to the trust?

23 A. No. However, this assignment of mortgage was executed in
24 connection with a foreclosure proceeding against the Barrys.

25 Q. I'm asking you this question. I want to go through this.

1 So they're not -- isn't it true that all the assets in the
2 securitized -- in Securitized Assets Backed Receivables LLC
3 Trust 2006-WM3 had to be in there -- and I'll use your December
4 1st -- by December 1, 2006, correct?

5 A. And the two Barry loans were. Please note that the
6 mortgage, at closing, specified MERS as the nominee for WMC
7 Mortgage Corp. and its successors and assigns. MERS is an
8 electronic record-keeping system. And the entities that we
9 have discussed, Sutton Funding LLC Securitized Asset Backed
09:45 10 Receivables LLC and Deutsche Bank National Trust Company, as
11 trustee, are all successors and assigns of that mortgage.

12 Q. You said something. You've been thinking about this a
13 little bit. You were talking about the Barrys' mortgage being
14 foreclosed. Now, we talked about that yesterday. Is there a
15 judgment against the Barrys?

16 MS. SEVERINI: Objection. This is not part of the
17 scope --

18 THE COURT: Let him finish the question.

19 MS. SEVERINI: My apologies.

09:46 20 THE COURT: Ask the question.

21 MR. CUTLER: Yes. I apologize.

22 Q. Is there a judgment against the Barrys regarding the
23 foreclosure of their home?

24 MS. SEVERINI: Objection. This was not --

25 THE COURT: Sustained.

1 Q. Are you aware of whether or not the Barrys' home has been
2 foreclosed?

3 A. I am aware that foreclosure proceedings against the Barrys
4 were initiated by HomEq, as servicer, pursuant to their
5 responsibilities under the Pooling and Servicing Agreement.
6 Pursuant to the Pooling and Servicing Agreement, when
7 foreclosure proceedings are initiated, then an assignment of
8 mortgage into Deutsche Bank National Trust Company, as
9 trustee's name, is required because the foreclosure proceeding
09:46 10 has to be initiated in the name of the owner, which is Deutsche
11 Bank National Trust Company as Trustee.

12 Q. Okay. Where has the foreclosure proceeding been
13 initiated? What court?

14 MS. SEVERINI: Objection, your Honor. This is not
15 part of his --

16 THE COURT: Sustained.

17 Q. How -- what do you know about -- do you know what court?

18 MS. SEVERINI: Objection, your Honor.

19 THE COURT: Sustained.

09:47 20 Q. How do you know foreclosure proceedings were initiated?

21 MS. SEVERINI: Objection, your Honor.

22 THE COURT: Sustained. Move on.

23 Q. Okay. So what -- so according to this assignment, MERS is
24 the one who transferred the mortgage to Deutsche Bank National
25 Trust Company, as trustee, which is your company, correct?

1 That's what the language -- let me just -- that's what the
2 language says, correct?

3 A. It says MERS, as nominee for WMC Mortgage Corp., assignor.

4 Q. It doesn't say to securitized backed receivables asset LLC
5 trust 2006 WM3, correct? It doesn't say that? It says it's to
6 you guys?

7 MS. SEVERINI: Objection. His questions are
8 cumulative and confusing.

9 THE COURT: Sustained.

09:48 10 Q. The language there does not say that that mortgage is
11 being transferred to Securitized Asset Backed Receivables LLC
12 Trust 2006-WM3? It only says that it's being transferred to
13 Deutsche Bank National Trust Company, as trustee, which is the
14 entity we identified you to be in this chart, correct?

15 A. That's correct.

16 Q. Okay. And the entity that's doing the transferring is
17 MERS, correct?

18 A. Again, as nominee for WMC Mortgage Corp., assignor.

19 Q. And that transfer was done by Joy Vanish on July 9, 2007,
09:49 20 correct?

21 MS. SEVERINI: Objection, your Honor. He's misstating
22 the facts in evidence.

23 THE COURT: He can answer if he understands the
24 question. Overruled.

25 Q. You need me to restate it? Would you like me to restate

1 the question?

2 A. Yes, please.

3 Q. And this assignment says the transfer date is July 9,
4 2007, correct?

5 A. Yes. Again, this assignment of mortgage, pursuant to the
6 Pooling and Servicing Agreement, is required. I want to note
7 that prior to this point the successors and assigns were on the
8 MERS system. This assignment of mortgage was required under
9 the Pooling and Servicing Agreement because of the foreclosure
09:50 10 action initiated by HomeEq, as servicer.

11 Q. On the MERS system. Have you personally looked on the
12 MERS system? Have you personally looked on it and seen this
13 mortgage on it?

14 A. I have not personally looked at the MERS system.

15 Q. So you're just making that assumption, correct?

16 A. No. I actually asked that question of counsel and --

17 MR. CUTLER: Motion to strike. I assume you don't
18 want to waive attorney --

19 THE COURT: You mean your own counsel?

09:50 20 MS. SEVERINI: Your Honor, yes. You can't discuss it.

21 THE COURT: Sustained.

22 Q. All right. Now, let's turn to Exhibit 19. This appears
23 to be, if I'm correct, an assignment from Mortgage Electronic
24 Registration System, as nominee for WMC, to Deutsche Bank
25 National Trust Company, as trustee. Again, the transfer date

1 is July 9th. Have I stated what is in the document correctly?

2 A. Yes.

3 Q. And this appears to be dated 6/9/08, correct?

4 A. Yes.

5 Q. And the one we looked at -- if you just flip back to 18,
6 that was dated June 4, 2008, is that correct?

7 A. Yes.

8 Q. Are they transferring the same interest twice?

9 A. From my understanding, this assignment of mortgage
09:52 10 dated --

11 Q. Let me -- I need to know the basis. Is your understanding
12 independent of your discussions with counsel?

13 MS. SEVERINI: Objection, your Honor. Is that
14 necessary?

15 THE COURT: Overruled.

16 MR. CUTLER: Unless we're going to waive
17 attorney-client privilege, when I have a comment based on my
18 understanding --

19 THE COURT: I overruled the objection.

09:53 20 MR. CUTLER: I'm sorry, your Honor. Yes.

21 Q. Go ahead. Independent of your discussions with counsel,
22 what is -- why do we have two assignments if you have an
23 independent understanding other than counsel?

24 A. My independent understanding is that HomeEq, as servicer,
25 initiated foreclosure proceedings, and under the Pooling and

1 Servicing Agreement, because foreclosure proceedings had been
2 initiated, an assignment of mortgage to Deutsche Bank National
3 Trust Company, as trustee, had to be done because a foreclosure
4 proceeding has to be initiated in the name of the owner, which
5 is Deutsche Bank National Trust Company, as trustee. And under
6 the Pooling and Servicing Agreement, it is HomEq's
7 responsibility, as servicer, to perform that function.

8 Q. Okay. Did you talk to HomEq on this issue? Did you talk
9 to HomEq on this issue?

09:54 10 A. Yes. I've had discussions with HomEq.

11 Q. Who did you talk to?

12 A. I've discussed this matter with Mike Perry at HomEq.

13 Q. When did you have this discussion with Mr. Perry?

14 A. Within the past two weeks, in preparation for this trial.

15 Q. And were you -- just you and Mr. Perry sitting alone, or
16 were you sitting with counsel when you had this conversation?

17 A. When we had the conversation, it was by phone because we
18 were supposed to come here, I believe, to the trial last week
19 but it was postponed. So we had spoken a couple of weeks ago.

09:55 20 Q. Was anyone else on that phone conversation?

21 A. No.

22 Q. And the reason you're talking to Mr. Perry is essentially
23 to prepare for this trial?

24 A. No. Actually, we were speaking on a different low-level
25 matter, and because in the course of business we contact each

1 other, we had discussed this matter because the trial was
2 postponed -- or our appearance at this trial was postponed.

3 Q. All right. So going back to this assignment, you didn't
4 discuss this assignment with Mr. Perry, did you? That would be
5 Exhibit 19. Specifically this assignment, did you discuss that
6 with him?

7 A. I did not discuss this assignment with him. However, it's
8 typically in mortgage-backed transactions, such as this
9 securitization, that the servicer independently acts on behalf
09:56 10 of the trustee in foreclosure proceedings.

11 Q. All right. So we have -- would it be fair to say that on
12 record there are two assignments filed by MERS on behalf of --
13 as nominee for WMC, stating that the transfer date was July 9,
14 2007, correct?

15 A. Yes. And, again, from my understanding, this is due to
16 the foreclosure proceedings.

17 Q. Yes or no. All right. And these are on the Registry
18 for --

19 THE COURT: Mr. Cutler, no wandering, please.

09:57 20 MR. CUTLER: I apologize.

21 Q. These are on the -- recorded with the Massachusetts
22 Registry of Land Records, correct?

23 A. I don't know that personally.

24 Q. Well, you confirmed -- you understand that there are
25 certified copies?

1 A. I understand these are recorded, but, I mean -- I mean,
2 I'm inferring from the testimony that I've heard, yes.

3 Q. Do you have an understanding that the significance of that
4 is for the world to see?

5 A. Yes.

6 Q. Now, I'm going to show you what we've marked as Exhibit
7 20. And you signed this, correct, sir?

8 A. Yes.

9 Q. Okay. And this is a Confirmatory Assignment of Mortgage?

09:58 10 A. Yes.

11 Q. What were you correcting here?

12 A. As I've stated, HomEq Servicing has the delegated
13 responsibility under the Pooling and Servicing Agreement to
14 service the mortgage loans up to and including foreclosure.
15 Under the agreement, I may execute documents that I receive
16 from the servicer and rely on their representations that this
17 is necessary for me to execute in order for HomEq to conduct
18 its servicing activities.

19 Q. Okay. Can you say in simple, straightforward terms, what
09:59 20 are you correcting in this assignment that you signed?

21 MS. SEVERINI: Objection, your Honor. This has been
22 asked and answered and --

23 THE COURT: Overruled.

24 A. This Confirmatory Assignment of Mortgage is assigning from
25 Deutsche Bank National Trust Company as Trustee to Deutsche

1 Bank National Trust Company as Trustee under the Pooling and
2 Servicing Agreement dated as of November 1, 2006, and so on, as
3 assignor, the Barry mortgage.

4 Q. Was it wrong before?

5 A. It's not wrong. This is a Confirmatory Assignment of
6 Mortgage.

7 Q. Okay. So is this document accurate?

8 A. In substance, it's accurate because Deutsche Bank National
9 Trust Company, as trustee, does own the Barry loan and
10:01 10 foreclosure proceedings were initiated. Thus, the assignment
11 of mortgage to Deutsche Bank National Trust Company as Trustee
12 under the Pooling and Servicing Agreement had to be recorded.
13 In substance, the document is correct.

14 Q. Okay. So we have a transfer date here of July 10, 2007.
15 Why didn't it just go straight -- it really went to you as
16 trustee -- look at this. It's going from Deutsche Bank
17 National Trust Company, as trustee. And Deutsche Bank, as we
18 just -- and it's correct that Deutsche Bank is a trustee -- is
19 a trustee of 1,900 securitized trusts, correct?

10:02 20 A. Correct. But with respect to the Barry loans, the two
21 Barry loans are only in this specific trust, Securitized Asset
22 Backed Receivables LLC Trust 2006-WM3.

23 Q. But when it says, "Deutsche Bank National Trust Company as
24 Trustee," it doesn't say this trust. It could be any of those
25 1,900 trusts, couldn't it?

1 A. No. This, again -- in substance, I believe this
2 Confirmatory Assignment of Mortgage to be correct, and the
3 Barry loans are only in this trust.

4 Q. As you read it, it says, "Deutsche Bank National Trust
5 Company as Trustee." How would I, as an individual looking on
6 public records, know what trust you're talking about there when
7 I look on that?

8 A. Well, that's why the confirmatory assignments of mortgage
9 was done.

10:03 10 Q. Oh, to clarify that? Is that what you're saying? Is that
11 now what you're saying why this was done?

12 A. Yes. But, in substance, I maintain that the Barry -- that
13 the assignment -- Confirmatory Assignment of Mortgage --

14 Q. So we're acknowledging then, it was at least at one point
15 unclear? You would agree with me on that?

16 A. I don't agree that it was unclear.

17 Q. Then if it wasn't unclear, why would you have to go back
18 and do a confirmatory assignment?

19 A. Again, the servicer of the trust, HomEq Servicing, has the
10:03 20 expertise in servicing matters. Deutsche Bank National Trust
21 Company, as trustee, relies on the servicer to service the
22 mortgage loans and, upon its request, executes documents that
23 the servicer represents are necessary and appropriate for the
24 servicer to conduct its servicing activities.

25 Q. So if there were any mistakes, not Deutsche Bank's problem

1 but it's HomeEq's problem, correct? Is that what you're saying?

2 A. No, that's not what I'm saying. Again, in substance, I
3 believe the assignments to be correct, and I was asked to
4 execute this Confirmatory Assignment of Mortgage, which HomeEq
5 is allowed to do under the Pooling and Servicing Agreement, and
6 I'm allowed to execute it under the Pooling and Servicing
7 Agreement.

8 Q. All right. And if HomeEq was mistaken, then this document
9 would be mistaken, correct?

10:05 10 A. Again, in substance, relative to these assignments, I know
11 these assignments to be done relative to a foreclosure
12 proceeding. And it is required under the Pooling and Servicing
13 Agreement that the servicer conduct foreclosure proceedings in
14 the name of Deutsche Bank National Trust Company as Trustee for
15 Securitized Asset Backed Receivables LLC Trust 2006-WM3.

16 Q. You keep talking about the "pursuant to foreclosure
17 proceeding." You only became aware of the foreclosure
18 proceeding two weeks ago when you spoke to HomeEq, correct?

19 A. Well --

10:05 20 Q. Yes or no, sir.

21 A. I knew about it before then. I mean, I had known about
22 this matter. Again, the trial was postponed. I just happened
23 to talk to Mike Perry at that point.

24 Q. And this was done back in -- recorded on February 9 of
25 2009, correct?

1 A. No. That's when it was -- that's when it was notarized.
2 I believe the bar at the top -- the barcode at the top says --
3 it says, "February 23, 2009."

4 Q. Okay. That's when it was recorded?

5 A. Right.

6 Q. You signed it -- thank you for the correction. You signed
7 it on February 9, 2009?

8 A. Correct.

9 Q. All right. Were you aware -- let me ask this: Was the
10:06 10 foreclosure proceeding -- had it been initiated then?

11 A. From my understanding, the foreclosure proceedings have
12 been ongoing for more than a year.

13 Q. When did they start?

14 A. From my understanding, at some point in 2007.

15 Q. When in 2007?

16 A. I don't know the exact month.

17 Q. All right. Let's look at some more. You have a transfer
18 date, and it's transferring it to Deutsche Bank Trust Company
19 as Trustee under Pooling and Service Agreement dated as of
10:07 20 November 1, 2006, Securitized Asset Backed Receivables LLC
21 Trust 2006-WMC3, Mortgage Pass-Through Certificate Series
22 2006-WMC3.

23 The way I read that, it's still not putting it in the
24 trust because it's still transferring it to you as the trustee.
25 It's not saying we're transferring it into the trust, correct?

1 Is that what the language says?

2 A. It's how it's supposed to read under the Pooling and
3 Servicing Agreement. Under Section 2 of the Pooling and
4 Servicing Agreement, when foreclosure proceedings are
5 initiated, it's supposed to be done in the name of Deutsche
6 Bank National Trust Company as Trustee for Securitized Asset
7 Backed Receivables LLC Trust 2006-WM3.

8 Q. And WMC3, I thought you said the trust was Securitized
9 Asset Backed Receivables LLC Trust 2006-WM3. What is -- is
10:09 10 WMC3 one of the other 1,900 trusts you manage?

11 A. No. As it was noted yesterday, my testimony, that was a
12 typographical error.

13 Q. But because of that, that's where the property, according
14 to this assignment, were transferred. They weren't transferred
15 to the trust here, but they were transferred to whatever
16 2006-WMC3 is, correct?

17 A. Yes. But, in substance, I view this still as correct
18 because Deutsche Bank National Trust Company as Trustee for
19 Securitized Asset Backed Receivables Trust --

10:09 20 Q. You perceive it as correct because you want it be that
21 way. You're saying it's this way.

22 MS. SEVERINI: Objection, your Honor. It's
23 argumentative.

24 THE COURT: Sustained.

25 Q. All right. Let's look at Exhibit 21. Mr. Reyes, it looks

1 like you've done another confirmatory assignment. Is that your
2 signature there, sir?

3 A. Yes.

4 Q. Looks like this was done how many months ago?

5 A. In May of 2009.

6 Q. What were you thinking -- how come you did this next
7 confirmatory assignment?

8 A. Again, under the Pooling and Servicing Agreement, HomeEq,
9 as servicer, may request the trustee to execute documents as it
10:11 10 believes necessary. HomeEq submitted this document along with
11 an officer certificate for me to execute, and I executed it
12 pursuant to the Pooling and Servicing Agreement.

13 Q. All right. Looks like you changed the transfer date here.
14 How can you change it to November 1, 2006?

15 A. Well, there is an asterisk at the -- on this page, below
16 my signature, and it provides an explanation.

17 Q. Well, you signed the document, didn't you?

18 A. Which document?

19 Q. The document that is in front of you, Exhibit 21,
10:12 20 Confirmatory Assignment of Mortgage. You signed that document,
21 didn't you?

22 A. Yes, based on the servicer's request for me to execute
23 this document under the Pooling and Servicing Agreement.

24 Q. You know the world is going to rely on this document, do
25 you not? You understand that the world -- people out there who

1 look on the Registry are going to rely on this document? You
2 know that, correct?

3 A. I understand that these types of documents are recorded in
4 the local municipality or county, and I executed this document
5 based on a request from HomeEq, which is valid under the Pooling
6 and Servicing Agreement.

7 Q. You heard the attorney earlier testify, the closing
8 attorney, how you look to the records -- the recorded records
9 to understand the chain of title, to issue title insurance? Do
10:13 10 you remember that testimony?

11 A. Yes. But he also mentioned "substance." I believe that,
12 in substance, Deutsche Bank National Trust Company, as trustee,
13 is the owner of the two Barry loans, and the substance of this
14 Confirmatory Assignment of Mortgage, I believe, is represented
15 by this Confirmatory Assignment of Mortgage.

16 Q. Is it a little bit like darts? You don't have to get real
17 close?

18 MS. SEVERINI: Objection, your Honor, argumentative.

19 MR. CUTLER: Withdrawn.

10:14 20 Q. All right. So let's answer the question. November 1,
21 2006, why do we change the transfer date to that?

22 A. As it states in the asterisk below --

23 Q. Well, why don't you tell me. All that does -- it says it
24 corrects it and changes the date, and the transfer date
25 referenced July -- rather -- does November 1, 2006, have any

1 meaning in the service -- I mean, the Pooling and Service
2 Agreement or the Prospectus?

3 A. Yes.

4 Q. It does, okay. What meaning does it have?

5 A. November 1, 2006, is when the agreement is dated. In
6 addition, there is a definition in the Pooling and Servicing
7 Agreement of cut-off date, which is defined as November 1,
8 2006. And I believe there's a definition of cut-off dates
9 stating principal balance, which refers to the mortgage loans.
10:15 10 It's essentially the date that the parties determine the loans
11 which would comprise the pool of mortgages that would be
12 conveyed to this trust.

13 Q. Right. It was the date that all the mortgages were to be
14 in the pool, correct?

15 MS. SEVERINI: Objection, your Honor, misstating.

16 THE COURT: Overruled.

17 A. Again, I maintain that, in substance, the Confirmatory
18 Assignments of Mortgage to Deutsche Bank, while there have been
19 corrections made, it doesn't take away from the substance that
10:16 20 Deutsche Bank National Trust Company, as trustee, is the owner
21 of the two Barry loans.

22 Q. But it was changed to November 1st to reflect the terms of
23 the Pooling and Service Agreement which says that all of the
24 assets have to be in the pool by November 1, 2006, correct?

25 A. No. That's not the intent of the Pooling and Servicing

1 Agreement. It's merely for the parties from WMC Mortgage Corp.
2 to Sutton Funding LLC, Securitized Asset Backed Receivables LLC
3 and Deutsche Bank National Trust Company as Trustee to agree
4 upon what the loan population will be.

5 Q. Why could we not just leave the date as July 10th? Could
6 we not leave it as July 10, 2007, which was approximately --
7 I'm a bad counter -- eight or nine months later? Why change --
8 strike that.

9 Why change the date from July 10th to May -- to
10:17 10 November 1st?

11 A. Again, from my understanding, foreclosure proceedings were
12 initiated against the Barry loans by HomeEq, as servicer.
13 HomeEq, as servicer, under the Pooling and Servicing Agreement,
14 may request the trustee to execute documents as it deems
15 necessary and appropriate. I executed these documents based on
16 the Pooling and Servicing Agreement.

17 Q. But you're going in reverse. First you -- let me -- first
18 you're testifying about the foreclosure, and the foreclosure
19 was in 2007, and that's why you had a transfer date of July
10:18 20 10th and why that was okay.

21 MS. SEVERINI: Objection. That's not -- it's
22 misstating.

23 Q. Wasn't that your testimony?

24 THE COURT: Overruled.

25 A. No, that's not what I'm stating. I am stating that,

1 again, in substance, Deutsche Bank National Trust Company as
2 Trustee owns the Barry loans, and HomEq, as servicer, under the
3 Pooling and Servicing Agreement, initiated foreclosure
4 proceedings. And pursuant to the Pooling and Servicing
5 Agreement, once foreclosure proceedings are initiated, they
6 have to be initiated in the name of the trustee, Deutsche Bank
7 National Trust Company as Trustee for Securitized Asset Backed
8 Receivables LLC Trust 2006-WM3.

9 Q. Which is the right date? The November 1st date, 2006, or
10:18 10 the July 10th date, 2006? Which one of those is correct?

11 A. This Confirmatory Assignment of Mortgage would be the last
12 in the chain of title in the local land records. This is the
13 document that was last recorded.

14 Q. Which one?

15 A. This --

16 Q. Which date is the correct date? Just tell me which date
17 you think is correct.

18 A. Again, in substance, I believe that this Confirmatory
19 Assignment of Mortgage is correct and from my understanding --

10:19 20 Q. They're both called Confirmatory Assignment of Mortgage.
21 Please, just tell me, do you think the transfer date should be
22 July 10, 2007, or do you think it should be November 1, 2006?

23 A. Again, I relied on the servicer to complete this document.
24 The servicer has that expertise.

25 Q. So you don't really do any checking on any of these

1 documents you sign, do you, other than talking to -- do what
2 the servicer tells you?

3 A. I at least -- I make sure that the entity name that I'm
4 signing for, Deutsche Bank National Trust Company as Trustee,
5 is correct. I'm able to place reliance on the servicer.
6 There's also a concept in the Pooling and Servicing Agreement
7 that the trustee is not required to inspect or verify documents
8 that it executes. It may rely on an officer certificate from
9 the servicer.

10:20 10 Q. You're saying you don't have to verify anything you sign?

11 A. I'm not saying that. What I'm saying is the way the
12 Pooling and Servicing Agreement is structured, I'm able to
13 place reliance on the servicer who services the mortgage loans
14 on behalf of the trustee.

15 Q. So you -- that basically exculpates Deutsche Bank? They
16 can sign anything they want? As long as they're told by HomeEq
17 the information, you guys don't have any liability under the
18 Pooling and Service Agreement; is that what it is?

19 MS. SEVERINI: Objection, your Honor. He's --

10:21 20 THE COURT: Sustained.

21 Q. Are you saying that the Pooling and Service Agreement does
22 not require Deutsche Bank to verify the information provided to
23 it by HomeEq?

24 A. I am saying that Deutsche Bank National Trust Company, as
25 trustee, may rely on the representations of the servicer with

1 respect to executing documents.

2 Q. Okay. Did you rely on the servicer here?

3 A. Yes.

4 Q. Did you do any independent verification of anything you
5 were signing here other than make sure that they spelled your
6 company's name right?

7 A. Again, under the Pooling and Servicing Agreement --

8 Q. It's a yes or no, sir.

9 A. -- I placed reliance on the servicer as allowed under the
10:22 10 Pooling and Servicing Agreement.

11 Q. So you just relied on what -- now, you also mentioned on
12 the Pooling and Service Agreement -- pooling and service -- I'm
13 sorry. The servicer, HomeEq, provided you some kind of
14 documentation regarding this? They provided you --

15 A. It's typical across all of our servicers that -- and it's
16 -- and there's a provision in the Pooling and Servicing
17 Agreement that we may ask for an officer certificate. It is
18 typical, in the course of business with securitizations, that
19 not only with Confirmatory Assignments of Mortgages but with
10:23 20 other documents that a servicer deemed necessary, that we may
21 place reliance on that servicer based on the Pooling and
22 Servicing Agreement.

23 Q. And I apologize if I have trouble understanding. You got
24 this document, these assignments, which says whether or not the
25 trust you're overseeing has or does not have one large

1 mortgage, correct, would be the Barrys' mortgage?

2 A. I'm sorry. Say it again, please.

3 Q. You're given this assignment, confirmatory assignment, to
4 show that the Barrys' mortgage has really made it into the
5 securitized trust, correct?

6 MS. SEVERINI: Objection, your Honor.

7 THE COURT: Sustained.

8 Q. Did you have a phone call with anybody at HomeEq telling
9 you, yes, all the information is correct in here? And it's a
10:24 10 yes or no. Did you have such a phone call, on or before you
11 signed that, telling you that the information in these
12 assignments was correct?

13 A. The phone call is not necessary. Under the Pooling and
14 Servicing Agreement, the servicer may request the trustee to
15 execute documents as it deems necessary.

16 Q. So as long as the service and pooling agreement says this
17 is what has to be done, you don't have to do anything else? Is
18 that what you're saying?

19 A. Other than I want to ensure that I'm signing for the
10:25 20 correct entity of Deutsche Bank, Deutsche Bank National Trust
21 Company.

22 Q. But you didn't care about the trust that Deutsche Bank was
23 the trustee on, correct?

24 MS. SEVERINI: Objection, argumentative.

25 THE COURT: Overruled.

1 Q. You didn't --

2 A. It's not a matter of not caring. It's a matter of, in the
3 course of business, the Pooling and Servicing Agreement is the
4 contract that defines the relationship between the trustee and
5 the servicer. A servicer is appointed because it has expertise
6 in servicing mortgage loans. The servicer may request from the
7 trustee to execute documents as it deems necessary and
8 appropriate for the servicer to conduct its servicing
9 activities, including foreclosure.

10:26 10 Q. Look at Exhibit 20. You didn't double-check that the
11 assignment was assigning the mortgage and the trust into the
12 correct trust, did you?

13 A. Again, under the Pooling and Servicing Agreement, I may
14 place reliance on the servicer when executing documents.

15 Q. So you're the trustee of these trusts. By the way, how
16 much -- what's the assets of Securitized Asset Backed
17 Receivables LLC Trust 2006-WM3?

18 MS. SEVERINI: Objection. I'm not sure how --

19 THE COURT: Sustained.

10:26 20 Q. Would you please look at the -- would you please look at
21 Exhibit 25. Would you look at the front page of the Prospectus
22 which has been entered into evidence here, Exhibit 25, at the
23 top. Does this trust have 97 -- 970,000 -- almost a billion
24 dollars -- almost a billion dollars worth of assets in it,
25 correct?

1 A. If I may clarify, that \$970,470,000 number reflects the
2 certificates or bonds being issued to investors.

3 Q. Could the value of the mortgage be greater than that? I
4 mean -- strike that.

5 You wouldn't issue certificates in excess of the value
6 of the mortgages, would you?

7 MS. SEVERINI: Objection, your Honor. I'm not sure --

8 THE COURT: Sustained.

9 Q. How many mortgages are in this pool that you are the
10 trustee on?
10:29

11 A. Approximately 4,700-plus loans.

12 Q. How much did the trust pay for the Barrys' mortgage?

13 MS. SEVERINI: Objection, your Honor.

14 THE COURT: Sustained.

15 Q. Did the trust pay anything for the Barrys' mortgage?

16 A. The consideration for the mortgage loans conveyed from the
17 depositor to the trustee is based on the sale of the
18 certificates or bonds to investors. Those proceeds is the
19 consideration paid to the depositor. The trustee does not
10:31 20 itself get consideration for the mortgage loans. It is
21 assigned based on the Pooling and Servicing Agreement, and as
22 noted in the Prospectus Supplement, it is assigned right, title
23 and interest to the mortgage pool for the benefit of the
24 certificate holders or bondholders. And the pool includes the
25 two Barry loans.

1 Q. Okay. So is the answer yes or no?

2 A. The answer is, as I stated, that I'm explaining what the
3 consideration is that is paid for the mortgage loans.

4 Q. All right. Well --

5 THE COURT: Mr. Cutler, no wandering, please.

6 MR. CUTLER: I'm sorry, your Honor.

7 Q. So is it fair to say that it's your opinion or your belief
8 that the correct transfer date of the Barry assets from WMC to
9 Deutsche Bank National Trust Company as Trustee of Pooling and
10:32 10 Service Agreement dated November 1, 2006, Securitized Asset
11 Backed Receivables LLC WM3-2006, Mortgage Pass-Through
12 Certificates Series WM3-2006, is November 1, 2006?

13 A. Based on the Confirmatory Assignment of Mortgage that we
14 discussed and that has been recorded, yes.

15 Q. Now, when the Barrys' mortgage was transferred to Deutsche
16 Bank, trustee, along with the note, what -- did you get a
17 receipt? Was there a receipt covering this transaction?

18 A. Again, this was a MERS loan. Both loans were MERS loans.
19 In the mortgages, at closing of the loan, it is noted that MERS
10:34 20 is the nominee holder for the lender, WMC Mortgage Corp., and
21 its successors and assigns.

22 Q. All right. So the answer is no?

23 MS. SEVERINI: Objection, your Honor.

24 THE COURT: The objection is sustained because he
25 hasn't finished his answer. Go ahead.

1 MR. CUTLER: No. I apologize.

2 A. No. What I'm saying is that at the point of -- at the
3 point of closing, December 1, 2006, Deutsche Bank National
4 Trust Company had all right, title and interest to the mortgage
5 pool of this trust, including the two Barry loans. The
6 Confirmatory Assignments of Mortgage were later executed in
7 connection with a foreclosure proceeding as required under the
8 Pooling and Servicing Agreement.

9 Q. All right. Putting that aside -- we'll come back to that
10:35 10 and see if we can sort of figure that one out.

11 MS. SEVERINI: Objection, your Honor.

12 THE COURT: Sustained. Let me see counsel at sidebar.

13 (SIDEBAR CONFERENCE AS FOLLOWS:

14 THE COURT: Counsel, you've now been at it for an hour
15 and fifteen minutes. You informed me that you expected your
16 cross to last another hour.

17 I might remind both counsel that this jury is
18 expecting this trial to be completed by tomorrow, and it is
19 going to hold it against the person or the side that it thinks
10:37 20 is holding it up. I haven't imposed time limits on this case.
21 I probably should have but I didn't. But I can just simply
22 forewarn counsel that if they are perceived as being the reason
23 why this thing is being dragged out, the jury is going to hold
24 it against that party that it believes is doing it.

25 I think we are -- we've been over these matters ad

1 nauseam, and I would expect that your cross-examination will be
2 completed soon.

3 MR. CUTLER: Thank you, your Honor.

4 . . . END OF SIDEBAR CONFERENCE.)

5 Q. Pursuant to the service and pooling agreement, WMC
6 transferred all of its interest and rights to Sutton Funding,
7 correct?

8 A. The Pooling and Servicing Agreement references the
9 Mortgage Loan Purchase Agreement. The transfer from WMC
10:37 10 Mortgage Corp. to Sutton Funding LLC occurs under the
11 underlying Mortgage Loan Purchase Agreement and on the closing
12 date, December 1, 2006.

13 Q. Sir, I'm just confirming so I can make -- get my next
14 point and try to wrap this up.

15 And I believe you testified -- I just want to make
16 sure I'm not misquoting you -- that when the loans and
17 mortgages traveled from WM3 to Sutton, each of those was an
18 absolute sale, correct? Correct?

19 A. Yes.

10:38 20 Q. All rights and privileges went there, correct?

21 A. Yes.

22 Q. Now, how can WMC transfer and assign its rights in the
23 mortgage and a note that it's already sold to Sutton?

24 MS. SEVERINI: Objection, your Honor. He's misstating
25 the evidence.

1 THE COURT: Overruled. If he understands the
2 question.

3 A. All right. If I may explain, the Barry loans are MERS
4 loans. The transfers of the mortgages are reflected
5 electronically on the MERS system, from my understanding, from
6 -- as the mortgages state, at closing, WMC Mortgage Corp. --
7 excuse me -- MERS is the nominee for the lender, WMC Mortgage
8 Corp.

9 Q. Sir --

10:39 10 A. Now -- and its successors and assigns. The successors and
11 assigns include Sutton Funding LLC, Securitized Asset Backed
12 Receivables LLC and Deutsche Bank National Trust Company as
13 Trustee. That is what that mortgage, at closing, represents.

14 Q. But, sir --

15 A. And that is -- and that is recorded -- and that's -- and
16 that's what was recorded in the local jurisdiction.

17 Q. Okay.

18 A. Now, the Confirmatory Assignments of Mortgage had to be
19 executed because of foreclosure proceedings. For example,
10:40 20 those Confirmatory Assignments of Mortgage would have never
21 been executed if the Barrys were not under foreclosure. The
22 loan would have just stayed a MERS loan. But because of the
23 foreclosure proceeding, then it had to be recorded in the local
24 jurisdiction that Deutsche Bank National Trust Company is the
25 owner of the Barry loans.

1 Q. You talk all about MERS, which was not included in this
2 chart, correct? MERS is not in this chart? Just yes or no.
3 MERS is not in this chart, correct?

4 A. I don't believe that MERS has to be in the chart because
5 they're not the real party in interest. The real parties in
6 interest are noted in the flowchart.

7 Q. But I'm asking you, how can -- on June 4th or at any time,
8 whether it's June 4th, it's yesterday or any time after WMC
9 transferred all of its interest to Sutton, could it now turn
10:41 10 around and transfer supposedly all those same interests to you
11 guys as -- you guys, the Deutsche Bank?

12 MS. SEVERINI: Objection, your Honor.

13 THE COURT: Overruled.

14 A. Again, those transfers are on the MERS system. If the
15 Barrys were not under foreclosure, the Confirmatory Assignments
16 of Mortgage would not have been recorded.

17 Q. Is it not absolutely impossible to transfer -- is it not
18 impossible for WMC to transfer rights and interest to any
19 entity that it has already transferred and given to Sutton?

10:42 20 MS. SEVERINI: Objection, your Honor. It's a
21 confusing question.

22 THE COURT: Sustained.

23 Q. Where is the assignment from WMC to Sutton Funding?

24 A. Again --

25 Q. There is -- let me rephrase it. There is no assignment

1 from WMC to Sutton, correct?

2 A. No. The sale of the mortgage loans is effective December
3 1, 2006. It happens all on the same day. The sale of the
4 mortgage loans, including the two Barry loans, from WMC
5 Mortgage Corp. to Sutton Funding LLC, to Securitized Asset
6 Backed Receivables LLC, to Deutsche Bank National Bank Trust
7 Company as Trustee, happens on December 1, 2006. And based on
8 my information and belief, that is what is on the MERS system.

9 Q. The information and belief?

10:43 10 A. Now -- now, when the foreclosure proceedings were
11 initiated, because, in the local jurisdiction, from my
12 understanding, to initiate the foreclosure --

13 MR. CUTLER: Objection.

14 A. -- the owner has to be on record. Thus, then, the actual
15 -- remember, MERS is an electronic record-keeping system. Now,
16 because of the foreclosure, then the assignment of mortgage
17 from MERS, as nominee for WMC Mortgage Corp., as assignor, is
18 then recorded. Then -- because now in the local county records
19 the last owner of record is now Deutsche Bank National Trust
10:44 20 Company as Trustee.

21 Then, while there were -- while there were
22 typographical or other oversights with respect to the
23 Confirmatory Assignments of Mortgage, in substance, I believe
24 them to be correct because that is what is necessary in a
25 foreclosure. The foreclosure has to be initiated by the

1 servicer, HomEq, on behalf of Deutsche Bank National Trust
2 Company, as trustee, and that is what the county -- and that is
3 what the local records indicate because those Confirmatory
4 Assignments of Mortgage were recorded and Deutsche Bank
5 National Trust Company as Trustee is the owner of the two Barry
6 loans.

7 Q. Let's look back at these notes -- I mean, these
8 assignments. WMC transferred on July 9, 2007, correct?

9 MS. SEVERINI: Objection. He's misreading the
10:45 10 assignment.

11 THE COURT: Sustained.

12 Q. Exhibit 18, you had the transfer -- all interests were
13 transferred by WMC Mortgage to Deutsche Bank National Trust
14 Company as Trustee. How could -- and then on the final -- I'm
15 sorry. And if you'd look at Exhibit -- 22? Look at Exhibit
16 22, please. And the transfer date on 22 is November 1, 2006,
17 correct?

18 MS. SEVERINI: Objection, your Honor. This has been
19 asked and answered numerous times.

10:48 20 MR. CUTLER: I want to ask three questions in order to
21 make my point.

22 THE COURT: Yes, you may have it.

23 A. I'm sorry. Can you repeat the question, please?

24 Q. All right. According to the exhibit in front of you --
25 yes or no -- did Deutsche Bank transfer, pursuant to that

1 assignment, its -- the mortgage and note on November 1, 2006?

2 A. I'm sorry. Did Deutsche Bank transfer?

3 Q. Yup. Deutsche Bank, as trustee, to the trust, on November
4 1, 2006.

5 MS. SEVERINI: Objection, your Honor. It's a compound
6 question, mortgage and loan.

7 THE COURT: Sustained. I don't understand the
8 question.

9 Q. Okay. Let me go there. How could Deutsche Bank transfer
10:49 10 its interest to the trust of -- the supposed interest of the
11 Barrys' loan on November 1, 2006, if, according to Exhibit 18,
12 those interests were not transferred to it by WMC until July 9,
13 2007?

14 A. I'm sorry. I don't understand the question. When is --
15 where is July 9th stated here?

16 Q. On Exhibit 18, it's the assignment signed by Joy Vanish.

17 A. Wait, wait. I'm on Exhibit 22. Sorry.

18 Q. You have to look at both. You have two assignments. You
19 have the assignment from -- purported assignment from WMC,
10:50 20 transferring all of its interest to Deutsche Bank. And then
21 you have the second assignment of November 1, 2007, which is
22 about nine months later -- I mean, nine months earlier, nine
23 months earlier, when Deutsche Bank is purporting to transfer
24 those same interests in the trust.

25 My question is, how could Deutsche Bank transfer its

1 supposed claim in the Barrys' mortgages and notes on November
2 1, 2006, if those interests were not transferred to them until
3 July 9, 2007?

4 MS. SEVERINI: Objection, your Honor. He's asking two
5 questions in one phrase.

6 THE COURT: Sustained.

7 Q. How is it that Deutsche Bank was able to transfer its
8 supposed claims in the Barrys' mortgages and loans -- Mr.
9 Barry's mortgage and loan into the trust on November 1, 2006,
10:51 10 when, according to the public records, WMC did not transfer any
11 interest to Deutsche Bank until July 9, 2007, approximately
12 nine months later?

13 MS. SEVERINI: Objection, your Honor. The witness has
14 already answered this question.

15 THE COURT: If he can answer, I'm going to allow him
16 to answer. Do you understand the question, Mr. Reyes?

17 THE WITNESS: No, your Honor. If counsel can please
18 repeat.

19 Q. Sure, okay. Do you not acknowledge that the final
10:52 20 assignment that is on the title record is from Deutsche Bank to
21 the trust with a transfer date of November 1, 2006?

22 A. Deutsche Bank National Trust Company, first, does not
23 transfer to the trust. It's basically clarifying that it is
24 trustee for that specific trust. It is not transferring it to
25 the trust. Deutsche Bank National Trust Company as Trustee

1 still holds the mortgages.

2 Q. Then why was an assignment signed by you to put on record
3 for the world to see saying that the Barrys' notes and
4 mortgages were being transferred from Deutsche Bank National
5 Trust Company as Trustee to Deutsche Bank National Trust
6 Company as Trustee of Pooling and Service Agreement dated as of
7 November 1, 2006, blah, blah, blah?

8 MS. SEVERINI: Objection, your Honor. The witness has
9 already answered this question numerous times.

10:53 10 THE COURT: Sustained.

11 MR. CUTLER: Then I'll just ask two more on this.

12 Q. Exhibit 18, see the transfer date of July 9, 2007?

13 A. Yes.

14 Q. And the transfer reflects transfer of interest in the date
15 that the Barrys' mortgage -- no, strike that.

16 Have you ever seen the promissory notes purported to
17 be signed by Mr. Barry?

18 A. Yes, the original promissory notes.

19 Q. When was the first time you saw those?

10:55 20 A. In preparation for this trial.

21 Q. Within the last two weeks?

22 A. Yes.

23 MR. CUTLER: I have no further questions of this
24 witness.

25 THE COURT: Any redirect?

1 REDIRECT EXAMINATION BY MS. SEVERINI:

2 Q. Good morning, Mr. Reyes. A couple of quick questions to
3 clarify. I want to turn your attention to Exhibit 24 which has
4 already been admitted. It's the Pooling and Servicing
5 Agreement.

6 A. Yes.

7 Q. Does this document contain a mortgage loan schedule?

8 A. Yes.

9 Q. Are the Barry loans on this mortgage loan schedule?

10:56 10 A. Yes.

11 Q. How do you know this?

12 A. Because it is an exhibit to the Pooling and Servicing
13 Agreement, and I have reviewed the mortgage loan schedule and
14 confirmed that the Barrys' loans were on the mortgage loan
15 schedule.

16 Q. What does this mean, that they're on the mortgage loan
17 schedule?

18 A. It means that the two Barry loans were included in the
19 pool of mortgages for this trust, Securitized Asset Backed
10:57 20 Receivables LLC Trust 2006-WM3.

21 Q. Turn your attention to Exhibit 26, Initial Certification
22 of Custodian that has been admitted.

23 A. Yes.

24 Q. Yesterday you testified that the initial certification
25 acknowledged receipt of the Barry promissory notes by Wells

1 Fargo, is that correct?

2 A. Yes.

3 MR. CUTLER: Objection.

4 A. Wells Fargo did not note any exceptions with respect to
5 the Barry notes.

6 Q. So if -- what does this mean?

7 A. It means that Deutsche Bank National Trust Company,
8 pursuant to the Pooling and Servicing Agreement, received the
9 mortgage notes as required and that the mortgage notes,
10:58 10 pursuant to Section 2, were conveyed to Deutsche Bank National
11 Trust Company as Trustee.

12 Q. So if the loans were properly conveyed and transferred to
13 Deutsche Bank National Trust Company as Trustee, is there a
14 need for a final certification acknowledging that?

15 A. No.

16 MS. SEVERINI: Your Honor, I have no further
17 questions.

18 THE COURT: Any recross?

19 RE-CROSS-EXAMINATION BY MR. CUTLER:

10:58 20 Q. The initial certificate is just an electronic entry,
21 correct?

22 A. I'm sorry. I don't know what you mean.

23 Q. The initial certificate is just an electronic entry, is it
24 not?

25 MS. SEVERINI: Objection. Can he clarify "initial

1 certificate"?

2 THE COURT: Yeah. I don't understand.

3 Q. The schedule you're talking about -- and we talked about
4 this last time -- is really the initial certificate that is
5 provided by Wells Fargo at the closing date, correct?

6 A. Correct.

7 Q. And that certificate is just an electronic entry, correct?

8 A. It is a letter -- the initial certification of the
9 custodian, as required under the Pooling and Servicing
10:59 10 Agreement, is executed as of December 1, 2006. It is a letter
11 that is executed by Wells Fargo Bank National Association, and
12 it includes an attachment of mortgage loans where some of the
13 documents may not necessarily be complete and Wells Fargo notes
14 that. Otherwise, if Wells Fargo does not note anything missing
15 with respect to that mortgage loan, then it certifies via this
16 letter that it has received all necessary documents pursuant to
17 the Pooling and Servicing Agreement.

18 Q. Why don't you turn to Exhibit E in the Pooling and Service
19 Agreement.

11:00 20 THE COURT: What exhibit are we on?

21 MR. CUTLER: 24.

22 THE COURT: 24-E?

23 MR. CUTLER: Yes, sir. It's the end -- it says
24 Exhibit 4 of that, 38th page of 78 pages.

25 THE COURT: Page number?

1 MR. CUTLER: No page numbers on this Pooling and
2 Service Agreement.

3 May I approach the bench and show you what I'm looking
4 at so that --

5 THE COURT: No. Just go ahead.

6 Q. And this is the -- the initial Certificate of Custodian
7 letter was received, correct?

8 A. Yes.

9 Q. Okay. And it says here the custodian has made -- has made
11:01 10 no independent examination of the documents, correct, contained
11 in the mortgage file beyond review specifically required in the
12 Pooling and Service Agreement and is making no representation
13 as --

14 MS. SEVERINI: Objection, your Honor. He's just
15 reading the document.

16 Q. Would you just read, please, then? Read that last
17 paragraph to the jury.

18 A. "The custodian makes no representations as to the
19 validity, legality, sufficiency, enforceability or genuineness
11:02 20 of any of the documents contained in each mortgage file of any
21 of the mortgage loans identified on the mortgage loan schedule
22 or the collectability, insurability, effectiveness or
23 suitability of any such mortgage loan."

24 Q. Not taking a lot of responsibility, are they?

25 MS. SEVERINI: Objection, your Honor.

1 THE COURT: Sustained.

2 Q. All right. Then about -- according to the Pooling and
3 Service Agreement, about 90 days after the closing, custodian
4 shall ascertain -- question is: Isn't it true, 90 days after
5 the closing date, custodian shall ascertain that all documents
6 identified in the document certification and exemption report
7 are in its possession, absolutely confirming you have all
8 documents? And then -- and the custodian is supposed to
9 receive Form F, which is the next form in your Pooling and
11:03 10 Service Agreement. First -- strike that.

11 Is it not true that after 90 days of the closing date
12 the custodian shall ascertain that all the documents are, in
13 fact, there?

14 A. Yes. And the custodian, Wells Fargo Bank, did note that,
15 with respect to the Barry loans, the original mortgage note and
16 the assignment of mortgage or -- I'm sorry, the original
17 mortgage note was received.

18 Q. Sir, you haven't produced Exhibit F in this case, have
19 you?

11:04 20 A. No, but --

21 MR. CUTLER: No further questions.

22 THE COURT: Any re-redirect?

23 MS. SEVERINI: No, your Honor.

24 THE COURT: Thank you, Mr. Reyes. You may step down.
25 And we're going to take the morning recess. We'll be in recess

1 for 15 minutes, jurors.

2 (The jury left the room at 11:03 a.m.)

3 THE COURT: All right. I have received this morning
4 the plaintiffs' memorandum of law in support of the admittance
5 into evidence of Exhibits 29 and 30 in their entirety and
6 unredacted. You have not had a chance to respond to that in
7 writing, Mr. Cutler. Do you wish to address the Court in that
8 regard?

9 MR. CUTLER: I would, your Honor, yes. Thank you.

11:04 10 THE COURT: I'll give you two minutes.

11 MR. CUTLER: Your Honor, our issue with that note is
12 the signing of Shirley Reyes or Luis. It's undated. And,
13 two --

14 THE COURT: I'm sorry. What are you referring to?

15 MR. CUTLER: At the bottom of the note, there's a "pay
16 to order" stamp.

17 THE COURT: Yes.

18 MR. CUTLER: That's the part. One, that the stamp and
19 the woman who supposedly signed that stamp, that name is
11:05 20 undated. And given the importance of time lines in this case,
21 in our opinion, it's important to place when that was done.

22 And, two, there's this handwritten notation that -- we
23 don't know who did it or where it came from. And those are the
24 two issues.

25 And we would like to have proper firsthand testimony

1 on who she is. Did she have authority to do that?

2 THE COURT: The question is why the document itself
3 should not be admitted to be subjected to whatever
4 cross-examination or argument in your case. Why should I not
5 admit the document?

6 MR. CUTLER: Because of prejudice to the jury, because
7 if they see that handwriting and that stamp, one can assume
8 that because it's on the document it's true without ever having
9 been instructed, you know, it's for you to determine the
11:06 10 veracity of that just because the document is in front of you.
11 And, two, because the way things seem to go, I'm going to have
12 someone up on the stand saying this is the way according to the
13 agreement. Therefore, this is right.

14 THE COURT: Who are you going to have on the stand?

15 MR. CUTLER: I'm not going to have anybody. But from
16 the style of the testimony that's coming in, I expect I'll see
17 the same rhythm of testimony.

18 THE COURT: If the document is admitted just as
19 offered, without somebody authenticating it, it will be subject
11:06 20 to argument as to whether or not it is, in fact, a legitimate
21 assignment. I assume that the plaintiffs will argue that it
22 is; you'll argue that it isn't.

23 MR. CUTLER: Correct, your Honor.

24 THE COURT: I'm unclear how you're going to be faced
25 with a witness who's going to be testifying about it.

1 MR. CUTLER: Because -- this is what I anticipate the
2 testimony. Mr. Witness, was this document prepared in the
3 ordinary course pursuant to the Pooling and Service Agreement?
4 Yes. Is this normally what you see in the Pooling and Service
5 Agreement? Yes.

6 Essentially, it's drawing the conclusion, therefore,
7 the Pooling and Service Agreement says these contracts were
8 done this way. Therefore, everything is legitimate on this
9 document without ever substantiating the veracity of the
10 signature. That was poorly articulated, but that's the best I
11 can do.

12 THE COURT: Miss Longoria or whoever it is to respond
13 for the plaintiffs?

14 MS. LONGORIA: Miss Severini wrote it, but I would
15 respond just very briefly, your Honor. First, I would ask your
16 Honor to just look at the original notes. They are definitely
17 the original notes.

18 THE COURT: Where might I look at them?

19 MS. LONGORIA: One moment, your Honor. If I may
11:08 20 approach.

21 In our research last night, we went through a lot of
22 cases where there aren't original notes. Judge Collings has
23 one of the leading cases in this jurisdiction. There's a lot
24 of talk about what you do when you don't have original notes.
25 Here we have the original notes. They speak for themselves.

1 Counsel can argue all he wants about them, but they're
2 negotiable instruments.

3 With regard to the testimony he was speaking of, no,
4 the documents speak for themselves. They're in evidence. Will
5 I discuss them with Mike Perry if they're admitted unredacted?
6 Absolutely. Mike Perry is the servicer. Not only were those
7 documents, as we have stipulated, produced, endorsed in blank
8 on June 24th, but Mike Perry will testify that it was at the
9 servicer's direction that that endorsement be complete.

11:09 10 It's not a conspiracy. It's not a mystery. They're
11 endorsed specifically to Deutsche Bank, the full and correct
12 name of the entity. That doesn't have to be authenticated.
13 It's the original document. If they want to argue they don't
14 like it, that it's in handwriting instead of typed, all of that
15 is argument, but it is the original document. These folks are
16 the holder of that original document, and I believe that we're
17 entitled to its submission.

18 THE COURT: Last word on this, Mr. Cutler.

19 MR. CUTLER: So the Court is not terribly surprised,
11:09 20 there is going to be issues of authentication of those
21 documents, and that will come out later in this trial.

22 THE COURT: What question of authentication?

23 MR. CUTLER: That's going to be coming out, whether
24 those are actually true notes.

25 THE COURT: I don't understand what you mean.

1 MR. CUTLER: Whether they're forged, whether that is
2 done on photo shop, that document.

3 THE COURT: Which document, the original document?

4 MR. CUTLER: The original notes. I'll tell you
5 something. It's actually the history -- and this has been,
6 down in Florida, extensively litigated, that they destroy every
7 document. They destroy these notes. And we're going to have
8 an issue on this one, maybe at our peril, but we may raise that
9 issue that -- we reserve the right -- that that is actually a
10 photo shop document.

11 THE COURT: All right. I'll take the matter under
12 advisement. We'll be in recess.

13 (Recess taken at 11:10 a.m.)

14 (The Court entered the room at 11:41 a.m.)

15 THE COURT: Good morning again, counsel. I have, in
16 the interim, reviewed the documents in question and have
17 decided that I am going to admit Exhibits 29 and 30 in their
18 unredacted version because I believe they are not subject to
19 the hearsay rule because a negotiable instrument carries
20 independent legal significance and, therefore, is a verbal act,
21 which is nonhearsay.

22 I also believe that, with respect to hearsay
23 exceptions, Federal Rule of Evidence 803, 15, applies, that is,
24 statements in documents affecting an interest in property.

25 The Court deems these documents authentic because it

1 finds evidence sufficient to support a finding that the note
2 and assignment are what the plaintiff claims them to be and,
3 further, because, pursuant to Federal Rule of Evidence 902, 9,
4 extrinsic evidence of their authenticity are not required
5 because promissory notes are commercial paper.

6 However, the defendant shall have the right to
7 cross-examine and, later, to argue with respect to any of the
8 plaintiffs' witnesses -- that is, cross-examine any of the
9 plaintiffs' witnesses and later argue about the legitimacy of
10 the assignment itself.

11 With that, the Documents No. 29 -- rather, Exhibits
12 No. 29 and 30 will be admitted in their unredacted form.

13 Any comments outside the hearing of the jury, Miss
14 Longoria?

15 MS. LONGORIA: No, your Honor. I would just ask if I
16 could bring them back here.

17 THE COURT: You may.

18 MR. CUTLER: Miss Longoria, do you mind bringing these
19 over there, too? Thank you.

20 THE COURT: All right. We'll call the jury.

21 (The jury entered the room at 11:45 a.m.)

22 THE COURT: Good morning again, jurors. Again, the
23 recess is longer than you expected. That was because I needed
24 to decide a question of law outside of your hearing. And I
25 have done that now, and, hopefully, it will shorten the

1 process. So we may proceed.

2 The plaintiff will call its next witness.

3 MS. LONGORIA: Thank you, your Honor. The plaintiff
4 will call Mike Perry to the stand.

5 JOSEPH M. PERRY, Sworn

6 THE CLERK: You may be seated. Please state your name
7 for the record, spelling your last.

8 THE WITNESS: Joseph Michael Perry, P-e-r-r-y.

9 DIRECT EXAMINATION BY MS. LONGORIA:

11:46 10 Q. Good morning, Mr. Perry. How are you employed, sir?

11 A. I am the vice president for nonperforming assets at HomEq
12 Servicing.

13 Q. How long have you been at HomEq Servicing?

14 A. I've been at HomEq Servicing since June, 2007.

15 Q. And before we leave that testimony, I'm going to direct
16 your attention to Exhibit 35, the chart that we've used. I
17 believe it's in front of you to your left. On that there is --
18 it's Exhibit 35 and has previously been admitted as such.

19 Who are you in this chart as the representative of
11:47 20 HomEq?

21 A. HomEq is the servicing entity in the -- as identified in
22 the Pooling and Servicing Agreement.

23 Q. Okay. And you are that representative of HomEq?

24 A. Yes, I am.

25 Q. Okay. Turning your attention back to your education for a

1 bit, sir, can you tell me how you were educated?

2 A. Yes, ma'am. I have a bachelor's of business
3 administration, with a concentration in finance, majoring in
4 real estate finance. I have a minor in economics from the
5 University of Memphis.

6 Q. And you're currently with HomEq. How long have you been
7 there?

8 A. Since June, 2007.

9 Q. Okay. Where were you before HomEq?

11:47 10 A. I was the vice president for default administration for
11 Equity One Mortgage in Malton (ph), New Jersey. It is a
12 division of Popular Bank.

13 Q. And before that?

14 A. I was the vice president for default administration with
15 Wendover Financial Services in Greensboro, North Carolina.

16 Q. And with regard to your duties and responsibilities as a
17 servicer on this chart, can you tell me generally what does a
18 servicer do?

19 A. A servicer administers the day-to-day functions of
11:48 20 managing and administrating a mortgage loan. We collect
21 payments. We remit payments to investors. We manage escrow
22 accounts in trust for borrowers. We monitor the payment of
23 taxes and insurance on properties. If necessary, we will
24 advance tax and insurance to protect the collateral assets, the
25 residential properties. We also perform pay-off demands when

1 loans refinance. We collect those pay-offs and we remit those
2 to investors, in general.

3 Q. When did HomEq begin servicing -- or did HomEq begin
4 servicing the Barrys' loan at some point?

5 A. Yes, they did.

6 Q. When did that happen?

7 A. The loans transferred to us, I believe, in September of
8 2006.

9 Q. Okay. So you've been present throughout the testimony in
10 this case, haven't you, sir?

11 A. Yes, I have.

12 Q. Okay. And I believe there was some discussion during the
13 last week as to -- the last witness, Mr. Ronaldo Reyes of
14 Deutsche Bank, as to when these loans transferred into the pool
15 with regard to the December 1st closing date, 2006, et cetera.
16 You were the servicer for these loans even before all that took
17 place, is that right?

18 A. Yes, we were.

19 Q. Okay. Now, how did you communicate this fact to the
20 Barrys?

21 A. In accordance with the Real Estate Settlement Practices
22 Act, we notified the Barrys in what is known in the industry as
23 a hello letter. I believe it was dated September 20-something,
24 2006. This is a notice that is sent from the receiving
25 servicer to the borrower notifying them of a transfer of

1 service.

2 Q. Okay. I'm going to direct your attention to what have --
3 are before you as Exhibits -- or have been identified as
4 Exhibits 36 and 37. They are placed before you on the left.
5 Can you identify for me, sir, please, what are these?

6 A. May I get my glasses?

7 Q. You may put your glasses on.

8 A. This is a copy of a welcome letter sent to Jonathan Barry,
9 dated September 29, 2006, notifying him of the transfer of
10 servicing from a prior servicer to HomeEq Servicing.

11 Q. Okay. And for identification purposes -- I'm sorry.

12 MR. CUTLER: I apologize for interrupting. We do not
13 have that set of exhibits.

14 MS. LONGORIA: Your Honor, I provided the Court, the
15 clerk and defense counsel with a full copy of all exhibits.

16 MR. CUTLER: We have a book --

17 THE COURT: Maybe you could help locate it, Miss
18 Longoria, if you can.

19 MS. LONGORIA: It's in your box.

11:51 20 THE WITNESS: May I get a drink of water?

21 THE COURT: Yes, of course, you may.

22 THE WITNESS: Thank you, sir.

23 MR. CUTLER: I apologize. She did.

24 MS. LONGORIA: No, that's okay. She knew it.

25 Q. I believe we were identifying what has been marked for

1 identification purposes as Exhibit 37. Could you identify what
2 is that document?

3 A. Yes, ma'am. This is the notice of service transfer under
4 the RESPA guidelines. This also goes with the letter dated the
5 same date, September 29th. This goes with the welcome letter.
6 It explains the rights and responsibilities of the transfer.
7 In this, it actually identifies the prior servicer as Litton
8 Loan Servicing. They are based in Houston, Texas, I believe.
9 It tells the borrower that as of September 30, 2006, that that
10 transfer is in effect and that the loans would be transferred
11 to us.

12 Q. Okay. Are these documents made and kept in the regular
13 course of your business?

14 A. Yes, ma'am.

15 MS. LONGORIA: I would move for the admission of
16 Exhibits 36 and 37.

17 THE COURT: They will be admitted, 36 and 37.

18 (Exhibit No. 36 received into evidence.)

19 (Exhibit No. 37 received into evidence.)

11:53 20 Q. Now, you testified that HomEq was a servicer of these
21 loans before they even went into the pool. I want to talk to
22 you a little bit about what HomEq does when they become the
23 servicer of something. Once you take over the servicing for
24 something, what's the first thing that you do?

25 A. As of the servicing date, the loans are boarded to the

1 mortgage accounting system, and those loans are generally
2 boarded electronically. Loans with special circumstances, such
3 as ARM loans, loans with step rates, loans with buy-down
4 features, are then audited manually after they are boarded. We
5 take the information from the prior servicer's record, board it
6 to our system, and then audit the back data of the loan.

7 Q. Okay. And in this case the loans were adjustable rate
8 loans, is that correct?

9 A. The first mortgage, I believe, is an adjustable rate
10 mortgage.

11 Q. Okay. The second one?

12 A. The second mortgage is a fixed rate loan.

13 Q. Okay. So you were present when Attorney Scott Gediman
14 testified earlier, yesterday, the closing attorney, is that
15 right?

16 A. Yes, I was.

17 Q. I believe Attorney Gediman testified that, basically, when
18 he finished the closing, he took all of the documents that the
19 Barrys had signed, and he sent them back to WMC. What I want
20 to know is what happens next.

21 So we have all of these documents that Attorney
22 Gediman witnessed as signed, except for the mortgage because he
23 testified that he recorded that in the Registry of Deeds. But
24 for everything else, what does WMC do to that -- do to this
25 pile of documents so that you, as a servicer, can do your job?

1 A. WMC would take from the origination file and develop what
2 we call the servicing file. There would be copies of the
3 documents and relevant information, the 1003, insurance
4 policies, the borrower's insurance policies, things that were
5 required from closing, and those would be placed in the
6 servicing file. That would be forwarded to the servicer for
7 the set-up and auditing of the loan. The original documents
8 would have been forwarded to an appropriate custodian.

9 Q. Okay. Turning your attention to Exhibit -- what have been
11:55 10 marked and admitted as Exhibits 29 and 30 -- the original first
11 and second Barry notes should be right in front of you in a
12 plastic case.

13 A. Yes, ma'am.

14 Q. Okay. And then turning your attention, also, to Exhibits
15 27 and 28, what have been previously admitted as the collateral
16 files from the Barry loans.

17 A. Yes, ma'am.

18 Q. Okay. As I understand your testimony, the big bunch of
19 papers goes off to the servicer electronically so that they can
11:56 20 manage the loan, and the little bunch of papers goes to the
21 custodian, is that right?

22 MR. CUTLER: Objection, your Honor.

23 THE COURT: Grounds?

24 MR. CUTLER: Leading.

25 THE COURT: All right. Sustained.

1 MS. LONGORIA: Okay.

2 Q. Where does the small special group of papers that include
3 the note, the mortgage and the title insurance policy -- where
4 does that go?

5 A. That would go to the custodian.

6 Q. Okay. And those documents that are before you, sir,
7 starting first with 27 and 28, the collateral files --

8 A. Yes, ma'am.

9 Q. -- are those the original collateral files? Are those the
11:57 10 original special collateral files with the original documents
11 that were initially sent to the custodian?

12 A. These appear to be original documents.

13 Q. Okay. And when, during the course of the litigation, I
14 requested these from you, where did you go to get them?

15 A. We went to Wells Fargo.

16 Q. So in your files, your servicing files, where you have the
17 big documents, you don't have the little file of special
18 documents?

19 A. We do not maintain the original documents. We are not a
11:57 20 custodian.

21 Q. Okay. So we requested for litigation the original notes
22 and the original collateral files. And your testimony is you
23 requested those from the trustee -- I'm sorry, from the
24 custodian and provided them.

25 I also direct your attention then to Exhibits 29 and

1 30. Are those the original notes that you requested from the
2 custodian?

3 A. Exhibit 29 appears to be the original note for the
4 adjustable rate first mortgage.

5 Q. That's the \$1,160,000 mortgage?

6 A. Yes, ma'am.

7 Q. And with regard to Exhibit 30?

8 A. Exhibit 30 appears to be the original note for the second
9 mortgage, the fixed rate loan.

11:59 10 Q. Okay.

11 MS. LONGORIA: Now, I would request the opportunity to
12 publish both of those original documents to the jury, your
13 Honor.

14 THE COURT: They haven't been admitted in their
15 unredacted form.

16 MS. LONGORIA: I would move for the admission of 29
17 and 30 in their unredacted form. Thank you.

18 THE COURT: They will be admitted in their unredacted
19 form, Exhibits 29 and 30, and they may be published via my
11:59 20 deputy clerk.

21 (Exhibit No. 29 received into evidence.)

22 (Exhibit No. 30 received into evidence.)

23 THE COURT: Where are they?

24 MS. LONGORIA: Right in front of the witness. 29 and
25 30 are the original notes.

1 THE COURT: You may proceed while the jury examines.

2 MS. LONGORIA: May I? Okay.

3 Q. Now, so these original notes go to the custodian. You, as
4 a servicer, book the loan. As I understand it, the first
5 payment on this loan -- from the testimony of Gediman and the
6 documents that were signed -- the first payment was due
7 September 1 of 2006, that would not have been put through your
8 offices, is that correct?

9 A. The September 1 payment was collected by Litton Loan
10 Servicing.

11 Q. Okay. But after that, who collected the payments on this
12 loan?

13 A. HomEq Servicing. We began servicing with the -- on
14 September 30th, with the 10/1 payment due.

15 Q. And did you collect that payment?

16 A. We did.

17 Q. And did you collect the next payment?

18 A. We did.

19 Q. Was the next payment timely?

12:01 20 A. No, it was not.

21 Q. Okay. I'm going to direct your attention to what have
22 been identified as Exhibits 38 and 39. Initially, what is
23 Exhibit 38?

24 A. Exhibit 38 is a payment history for the first mortgage,
25 the \$1.16 million loan.

1 Q. What is Exhibit 39?

2 A. Exhibit 39 is a reconciled payment history of the second
3 mortgage.

4 Q. Okay. Directing your -- are these records made regularly
5 and -- regularly made in the course of your business as
6 servicer?

7 A. Yes, ma'am, they are.

8 MS. LONGORIA: I move for the admission of 38 and 39.

9 THE COURT: They will be admitted.

10 (Exhibit No. 38 received into evidence.)

11 (Exhibit No. 39 received into evidence.)

12 Q. Directing your attention to 38, the first loan --

13 A. Yes, ma'am.

14 Q. After HomEq took over and the first two payments were
15 made, what happened?

16 A. The first payment made to HomEq for the October 1, 2006,
17 payment was made on October 29th. It was approximately 29 days
18 late.

19 Q. Okay.

12:03 20 A. The second payment for the November 1 installment was made
21 on December 1, 2006.

22 Q. Okay.

23 A. The -- I'm sorry.

24 Q. No. I just want to clarify briefly before we go on. At
25 the very top of that document, that spreadsheet, there are a

1 number of items that label each of the columns. Can you
2 briefly just identify for the jury what those things mean so
3 that they can read along with you as you testify as to when
4 payments were made?

5 A. Reading from the left, the "transaction date" is the date
6 that the event is posted to our servicing system. The
7 "description" is a description of the activity on the loan.
8 The "amount received" is incoming cash. The "effective date"
9 is the date that we posted the transaction back to if we have
10 to adjust dates.

12:04

11 Q. Okay. Let me stop you there. When would you adjust a
12 date?

13 A. If a payment was made on a weekend where -- or excuse
14 me -- on a weekend where a late charge was assessed but the
15 payment was timely, the transaction date would be posted, the
16 late charge. So in that case we would effective date it pre
17 the late charge, and the system would automatically waive the
18 late charge.

19 Also, in circumstances where payments are received

12:04

20 that they are less than the amounts due, for example, if an
21 account was four months past due and we received two payments,
22 the payment would be posted to suspense, to be reviewed by the
23 Collections Department, and assuming that it was acceptable and
24 they were working with the borrower through the default, they
25 would post an effective date back to the date of the receipt.

1 This way we don't assess late charges unnecessarily.

2 Q. Very well. And can you continue to describe the rest of
3 those columns, sir?

4 A. Next column across is the "due date applied to,"
5 "principal paid." When payments are received on a loan, they
6 are amortized into principal and interest, interest in arrears,
7 principal to the current amount, so that the next interest
8 assessment is adjusted by the reduction in the principal.

9 Q. Okay.

12:05 10 A. So what happens is, is we take a payment and amortize it,
11 and then a piece of it goes to principal and a piece of it goes
12 to the interest due.

13 Q. Okay.

14 A. And that's the "interest paid" column. We also track
15 escrow paid. Borrowers regularly escrow their taxes and
16 insurance, and that is usually collected -- although some
17 borrowers do make annual deposits, it is usually collected in a
18 monthly payment stream. And it is deposited to a separate
19 account that is maintained in trust for the borrower.

12:06 20 "Fees paid" would be late charges, those -- if they
21 had been assessed prior and were paid at that.

22 "Fee description" describes the type of fee. We also
23 assess fees for NSF charges, if a borrower returns a check, in
24 accordance with state laws. There are other fees, too, but
25 they're numerous to mention.

1 Q. That's fine.

2 A. "Unapplied funds" would be those amounts that remain in
3 suspense.

4 "Other paid" would be where we're paying money out
5 from an account if we were having to pay to escrow taxing
6 authorities, insurance companies for escrowed loans, things of
7 that nature.

8 Q. Okay.

9 A. And then the "principal balance" in the far column is a
12:07 10 running balance on the principal as we are applying payments
11 and reducing the balance.

12 Q. Very good. And directing your attention back to the
13 history of payments on this first loan for the Barrys, I
14 believe you left off with the November, 2006, payment. Was
15 that received?

16 A. The November, 2006, payment was received, but it was
17 received late in the process and wasn't posted until December
18 1, 2006.

19 Q. Okay. Was there another payment made?

12:08 20 A. Yes. The December payment was made on January -- or it
21 was received on January 24th and effective dated on January
22 24th.

23 Q. Okay. What's the significance of the December payment
24 being made in the end of January?

25 A. At that point in time, the borrower has defaulted on the

1 loan.

2 Q. Okay.

3 A. There's a difference between "delinquent" and "defaulted."

4 Q. Can you explain that difference?

5 A. Yes, ma'am. "Delinquent" means that you are late on a
6 payment. However, "default" has a very specific term. It
7 means in the note that you have gone beyond 30 days late, and
8 another payment has come due prior to you making your payment.

9 Q. Okay.

12:08 10 A. At that point in time, a default would be declared, and a
11 notice of default would be sent to the borrowers.

12 Q. Very well. And so after that January payment, did there
13 come a time when another payment -- or other payments were
14 made?

15 A. Yes, ma'am. On April 16, 2007, we received, it appears,
16 two payments. Those funds were posted to the suspense account.
17 They were reviewed by the Collections Department, and on April
18 17th, the next day, they were applied and effective dated back
19 to the 16th.

12:09 20 Q. Very well. And what's the next time that the Barrys make
21 a payment?

22 A. On June 18, 2007, we received two payments, it appears,
23 \$14,730, which was placed into the suspense account, reviewed
24 by the Collections Department on June 19th, and then posted to
25 two payments due.

1 Q. Do they make their July payment?

2 A. Well, the payments on the June 19th posting were applied
3 to the March and April payments due. We apply payments to the
4 most due payment date as they are received. So as of June 19,
5 2007, the Barrys were due for their May and June payments.

6 Q. So what do you do when they're behind like that at this
7 point?

8 A. There are a series of letters, phone calls and attempts to
9 contact the borrower to find a suitable work-out solution to
10 avoid further default and the necessity of pursuing a
11 foreclosure action.

12 Q. Okay. And were those efforts made in this case?

13 A. From reviewing the records, yes, ma'am.

14 Q. Okay. Were they successful?

15 A. Sporadic payments were received through this period.

16 Q. Okay.

17 A. We did receive communications from the Barrys that there
18 were financial difficulties, and we were working with the
19 Barrys to resolve those.

12:11 20 Q. Okay. In August of 2007, how far behind were the Barrys?

21 A. As of August 2, 2007, the Barrys were due for the May,
22 June, July and August payments, so they were four payments past
23 due.

24 Q. Okay. And so then what did you do?

25 A. On August 8, 2007, we referred the foreclosure to a local

1 counsel here in Massachusetts.

2 Q. What was that name?

3 A. It was Doonan, Graves & Longoria.

4 Q. When was the -- let me start -- so you refer the loan for
5 foreclosure. Can you talk a little bit about foreclosure in
6 Massachusetts? Is Massachusetts a judicial or a nonjudicial
7 state?

8 MR. CUTLER: Objection, your Honor. Asking the
9 witness --

12:13 10 THE COURT: Sustained.

11 Q. Can you describe the foreclosure process in Massachusetts?

12 MR. CUTLER: Objection, your Honor. Lack of
13 foundation.

14 THE COURT: On foundation grounds, it's sustained.

15 Q. In the course of your duties as servicer, is one of the
16 things that you do to manage the litigation if, in fact, it is
17 necessary or to manage the foreclosure process?

18 A. As part of the Nonperforming Assets Department, we manage
19 foreclosures, bankruptcies and litigation accounts in all
12:13 20 jurisdictions where we service loans.

21 Q. And do those processes vary from state to state?

22 A. Yes, they do.

23 Q. Do some states require a judicial process, a judicial
24 complaint and a judgment, prior to proceeding with the
25 foreclosure?

1 MR. CUTLER: Objection.

2 THE COURT: Overruled.

3 MR. CUTLER: Lack of foundation.

4 THE COURT: If he knows.

5 THE WITNESS: I'm sorry.

6 THE COURT: Go ahead.

7 THE WITNESS: Thank you, sir.

8 A. Yes, ma'am, they do.

9 Q. Can you describe that process? In the states where a
10 judicial process is necessary, can you describe briefly and in
11 general what that is?

12 A. May I use an example?

13 Q. Yes.

14 A. For example, Pennsylvania, Pennsylvania is a judicial
15 foreclosure state. In that process, we have to file a
16 complaint with the court where it is heard over a period of
17 time by a judge, and the judge issues a judgment on the note.
18 At that point in time, the judgment is referred to a sheriff,
19 who executes on the judgment in the form of a sheriff's sale.
20 That would be a very limited version of a judicial foreclosure.

21 Q. And can you compare and contrast that to a nonjudicial
22 foreclosure?

23 A. Yes, ma'am. May I use Massachusetts as an example?

24 Q. Yes.

25 A. In Massachusetts, it is a power of sale state. It's a

1 nonjudicial action. What happens is that notices are provided
2 to the debtor of their default. They are then posted and
3 published in local newspapers. We go to the Land Court to get
4 a ruling as to the applicability of the Soldiers' and Sailors'
5 laws here in Massachusetts; and then from there, upon post and
6 publication, an auction is held by a private entity, not by the
7 sheriff, as I understand it.

8 Q. And in August of 2007, that nonjudicial foreclosure
9 process was initiated on the Barry loans?

12:16 10 A. Yes, it was.

11 Q. And was a judgment that Mr. and Mrs. Barry were not in the
12 military and not available to avail themselves of the
13 Serviceman's Act, was that obtained in that action?

14 MR. CUTLER: Objection.

15 THE COURT: Grounds?

16 MR. CUTLER: Mischaracterizes the law. Asks for a
17 legal conclusion.

18 THE COURT: I'm going to allow him to testify about
19 what he knows about the process understanding that he's not a
12:16 20 lawyer.

21 Q. Did you obtain a judgment that certified that Mr. and Mrs.
22 Barry were not in the military?

23 A. The Land Court issued the ruling that they were not
24 subject to the Soldiers' and Sailors' relief.

25 Q. In that initial ruling that the Land Court made, whose

1 name was that Soldiers' and Sailors' complaint filed in? What
2 entity name?

3 A. I believe it was filed as Deutsche Bank National Trust
4 Company as Trustee.

5 Q. And was there a first foreclosure sale scheduled?

6 A. Yes, there was.

7 Q. Did there come a time when HomeEq entered into a
8 forbearance agreement with Jonathan Barry in November of 2007?

9 A. Yes, we did. On November 4th, arrangements were made with
12:17 10 the Barrys on what we call a listing forbearance. In that
11 circumstance, what we are trying to do with the borrower is
12 allow them time to sell the property. And we agreed to accept
13 normal monthly payments, no collection of the back arrearages,
14 for a period of time that's defined to allow the property to be
15 marketed. That way we can avoid a foreclosure and resolve the
16 problem.

17 Q. And you spoke about only collecting the ongoing monthly
18 mortgage payments in this -- during this special forbearance
19 time. Why is that significant to the Barrys? What assistance
12:18 20 does that give them?

21 A. The Barrys, as of November, would have been significantly
22 past due. They were still due for the May payment. That would
23 have been five payments at close to \$7,500. Plus, to make a
24 regular forbearance would be a monthly payment of the 7,500 and
25 a portion of that arrearage scheduled out.

1 Our communications with the Barrys had indicated that
2 there were financial difficulties. If they were unable to make
3 one payment, it is unlikely they would be able to make one
4 payment plus the arrearage on a go-forward basis.

5 Q. I see. So instead of requiring the full reinstating of
6 the loan, you gave them the opportunity to hold off the
7 foreclosure but keep making mortgage payments in the regular
8 monthly amount?

9 A. We did.

12:19 10 Q. Okay.

11 A. And that forbearance agreement was signed and returned to
12 us.

13 Q. Okay. Around what time of the year was that?

14 A. It was November.

15 Q. Okay.

16 A. I believe our foreclosure sale was scheduled for November
17 28th, actually.

18 Q. I'm going to direct your attention to Exhibits 40 and 41.
19 Can you identify for the record what is Exhibit 40?

12:19 20 MR. CUTLER: Your Honor, while the witness is
21 reviewing that, in 41, there is a correspondence from counsel.
22 I don't think that's appropriate to be --

23 THE COURT: We're doing 40 right now, as I understand
24 it; is that correct, Miss Longoria?

25 MS. LONGORIA: Yes.

1 A. Exhibit 40 is the listing forbearance agreement. It lists
2 the terms of the forbearance agreement, tells how payments are
3 to be remitted. It then describes in the agreement that
4 payments would be remitted beginning with November 16, 2007,
5 and extending to May 16, 2008; that seven payments would be
6 remitted to allow for the marketing of the property.

7 MS. LONGORIA: And I move to admit Exhibit 40.

8 THE COURT: Exhibit 40 will be admitted.

9 (Exhibit No. 40 received into evidence.)

12:21 10 Q. Now, turning your -- okay. Let me talk a little more
11 about Exhibit 40. How do you know that this document was the
12 document that was sent to the Barrys for their forbearance
13 agreement?

14 A. This is a standard HomeEq listing forbearance agreement,
15 and it was prepared by Miss Cruz in our Sacramento office. I
16 know Miss Cruz.

17 MS. LONGORIA: Your Honor, I would request permission
18 to redact Exhibit 41 of any names of counsel.

19 MR. CUTLER: Your Honor, if we could just take the --

12:22 20 THE COURT: We can do that at a break. You can have
21 it admitted subject to its redaction at a later time.

22 MS. LONGORIA: Very well. Thank you.

23 THE COURT: We haven't admitted 41 yet.

24 MS. LONGORIA: I would move for the admission of 41.

25 THE COURT: He hasn't described what it is.

1 MS. LONGORIA: Oh, I apologize.

2 Q. Can you describe what Exhibit 41 is, absent the top half
3 of the first page?

4 A. Exhibit 41 is a fax copy of the signature pages for the
5 listing forbearance agreement signed by Jonathan Barry and
6 Jamie Flack Barry on November 14, 2007. Additionally, there is
7 a copy of a financial statement that we have taken to evaluate
8 the Barrys' ability to support this forbearance agreement. And
9 there is an acknowledgment and an agreement that the Barrys
10 were requesting a short sale based on their financial hardship,
11 meaning that we would accept the market sale of the property
12 even if it was not sufficient to retire the debt.

13 Q. By "retire," you mean?

14 A. Fully liquidate.

15 Q. Pay in full?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. LONGORIA: I move for the admission of Exhibit 41.

19 THE COURT: Subject to redaction --

12:24 20 MS. LONGORIA: Subject to redaction.

21 THE COURT: -- of the matters pointed out by Mr.

22 Cutler, it will be admitted as Exhibit 41.

23 (Exhibit No. 41 received into evidence.)

24 Q. Now, Exhibit 41, as you testified, were the signature
25 pages. Is it sufficient to just send out the signature pages

1 of this whole agreement? Was HomeEq satisfied with that in the
2 formation of this forbearance contract?

3 A. We were. And, in fact, we ordered a hold placed on the
4 foreclosure action based on this agreement.

5 Q. Okay. And notwithstanding the fact that you placed the
6 hold on it, did some folks go to the Barrys' house and put up a
7 sign and start -- or at least were they on the premises for the
8 purpose of conducting an auction?

9 A. Yes, they did.

12:25 10 Q. And what happened?

11 A. Upon notification that that had occurred, we immediately
12 contacted the attorneys and had it stopped.

13 Q. After that happened, did you proceed with your agreement?
14 In other words, did these folks pay? I would direct your
15 attention back to Exhibit 38.

16 A. We received two payments on the forbearance agreement, one
17 on November 20th, four days later than had been agreed but we
18 accepted it.

19 Q. Okay.

12:25 20 A. And then the second one on December 19th. At that point
21 in time the payments stopped.

22 Q. Okay. And when the payments stopped, what happens to the
23 forbearance agreement?

24 A. The forbearance agreement is canceled.

25 Q. Now, what do you do next?

1 A. We restart the foreclosure action.

2 Q. What does that mean in Massachusetts?

3 A. In Massachusetts, we are required to go back to the
4 beginning each time we stop.

5 Q. Beginning of what? The notices?

6 A. The post and publication process, all the notices. So
7 when we restarted the foreclosure, we started over.

8 Q. Okay. So when you started over with the posting and
9 publication, can you describe for the jury what does posting

12:26 10 and publication -- what does "publication and posting" mean?

11 What does the sending of the notices to the folks -- what does
12 that mean?

13 A. It's a series of notices in accordance with the
14 Massachusetts statutes notifying the borrower of the default
15 and scheduling the sale in accordance with the note and
16 mortgage.

17 Q. Okay.

18 A. The publication is the publication of that sale date in --
19 I believe it's described as a newspaper of sufficient

12:27 20 circulation in the borrower's immediate area.

21 Q. Okay. Why is the publication done?

22 A. It's a requirement of the Massachusetts statutes.

23 Q. So you do it?

24 A. Yes.

25 Q. So after the publication and after the notices were sent,

1 was there another foreclosure scheduled?

2 A. Yes, there was.

3 Q. When was that one scheduled?

4 A. I believe it was scheduled for June 10, 2008.

5 Q. Okay. At some point was that sale canceled?

6 A. Yes, it was.

7 Q. And why was that?

8 A. On June 4, 2008, we were contacted by the Barrys, and
9 another listing forbearance agreement was entered into to allow
10 the Barrys to make payments.

11 Q. I'm going to direct your attention to what have been
12 identified as Exhibits 42 and 43. Can you describe those two
13 documents for the record?

14 A. Item No. 42 is another listing forbearance agreement dated
15 May 30, 2008.

16 Q. Okay. What is Exhibit 43?

17 A. It is the -- it is a fax copy of the signature pages of
18 that listing forbearance agreement.

19 MS. LONGORIA: I move for the admission of Exhibits 42
12:29 20 and 43.

21 THE COURT: They will be admitted, 42 and 43.

22 (Exhibit No. 42 received into evidence.)

23 (Exhibit No. 43 received into evidence.)

24 Q. And directing your attention to the very last page of
25 Exhibit 43, was the initial payment required by this

1 forbearance agreement -- was that made?

2 A. Yes. It was received on June 6, 2008.

3 Q. Was the borrower at this time represented?

4 A. Yes.

5 Q. At some point did you learn -- or what happened next?

6 A. Upon receipt of the payment on June 6, 2008, we placed the
7 scheduled foreclosure sale on hold.

8 Q. Okay. And then what did you learn?

9 A. We learned that the Barrys had filed suit.

12:30 10 Q. Against HomEq?

11 A. Against Deutsche Bank and HomEq.

12 Q. Okay. And what did you do with regard to that suit?

13 A. We filed counter-responses to fully address any issues
14 that would be related to the loan, and we continued the
15 forbearance agreement.

16 Q. Okay. Now, if you would have known -- when did they --
17 what date was that complaint that you were sued? What date was
18 that on?

19 A. I understand it was signed June 2nd.

12:31 20 Q. So if you would have known when these folks entered into
21 this forbearance agreement on 6/4 -- you received it back on
22 6/6 -- that they had already sued you on 6/2, would you have
23 entered the forbearance agreement?

24 A. No.

25 Q. That suit, what was the sum and substance of the claim of

1 the Barrys in that suit?

2 A. That they had suffered emotional --

3 MR. CUTLER: I'm going to object, your Honor.

4 THE COURT: Overruled.

5 A. I understand that they had suffered emotional harm due to
6 the inadvertent foreclosure auction held or attempted on
7 November 28, 2007.

8 Q. Okay. And that initial complaint, was that filed here in
9 federal court, or where was that filed?

10 A. It was filed in state court.

11 Q. And what did you do with regard to that initial complaint?

12 A. Filed our counterclaims and asked that it be removed here
13 to federal court.

14 Q. Okay. And that action, is that this same action that we
15 are litigating today?

16 A. Yes, it is.

17 Q. Okay. What happened to the emotional distress claim?

18 A. The Barrys dismissed it.

19 Q. When did they do that?

20 A. September, 2008, I believe.

21 Q. The record will reflect that it was September, 2009.

22 A. Excuse me.

23 Q. The correction.

24 So they sue and they sue Deutsche. That's in the
25 summer of 2008?

1 A. Yes.

2 Q. So this litigation goes on all the way through 2008 and
3 into 2009, into the fall of 2009, and then they dismiss their
4 claim on emotional distress?

5 A. They did.

6 Q. So that's why all that's left in this case are the
7 counterclaims?

8 A. That's correct.

9 Q. So you didn't go out and go to federal court and file
10 these three claims against these folks?
12:33

11 A. No, we did not.

12 Q. After you were sued, notwithstanding that, you had this
13 forbearance agreement. Did you keep up your end of the deal?

14 A. We did.

15 Q. Did they make payments under that forbearance agreement?

16 A. They made two payments under the forbearance agreement.

17 Q. And you accepted those payments?

18 A. Yes, we did.

19 Q. At some point did they stop making payments under the
20 forbearance agreement?
12:33

21 A. The Barrys stopped paying on July 3, 2006 (sic), with
22 their last payment, which was applied to the August 1, 2007,
23 payment due. No payments have been received since.

24 Q. Okay. Directing your attention --

25 THE COURT: The Court is confused. Was that 2006 or

1 later?

2 THE WITNESS: That was -- I'm sorry.

3 THE COURT: Go ahead.

4 THE WITNESS: The last payment received was on July 3,
5 2008.

6 THE COURT: 2008.

7 THE WITNESS: Yes, sir. That was the second payment
8 on the second listing forbearance.

9 Q. And what did that advance the loan -- or make them due for
10 on their first mortgage loan?

11 A. August 1, 2007.

12 Q. Okay. So as we sit here today, that first mortgage loan
13 that we just all -- we just published to the jury, that's
14 August, 2007, that that one is due for?

15 A. That is the payment that is due at this point.

16 Q. Okay. Now, directing your attention just briefly back to
17 Exhibit 39 -- we admitted that document, but we didn't talk
18 about that. You testified that that was the loan history on
19 the second loan. Can you just briefly tell the jury, what's
20 the last payment that they made on the second loan?

21 A. On August 15, 2007, the August -- the August 1, 2007, due
22 date was paid.

23 Q. In the very last column it says, "NSF reversal." What
24 does that mean?

25 A. On August 17, 2007, the payment that was received on

1 August 15th was returned by the bank.

2 Q. Okay. So you have --

3 A. This loan is currently due for the August 1, 2007,
4 installment.

5 Q. I see. Turning your attention to Exhibit 44 that has been
6 marked for identification purposes, what is this?

7 A. This is a report from Hope for Homeowners counseling
8 session between Jonathan Barry and the Springboard -- I guess
9 it's a credit counseling agency here in Massachusetts, where
10 12:36 Mr. Barry sat down with the folks from the credit counseling
11 agency and went through consumer credit counseling.

12 Q. Okay. Was this document provided to your office?

13 A. Yes, it was. It was sent to us by Larry Ewing at the
14 credit counseling agency.

15 Q. Has it been kept within your business records since it was
16 received?

17 A. Yes, it was.

18 MS. LONGORIA: I move for the admission of Exhibit 44.

19 MR. CUTLER: Object.

20 12:37 THE COURT: Grounds?

21 MR. CUTLER: Lack of foundation, hearsay, simply was
22 prepared by a third party, not under their guidance, not under
23 their oversight. It's hearsay.

24 MS. LONGORIA: Your Honor, it's not being offered for
25 the truth of the matter asserted, just that they were

1 continuing to work with the Barrys.

2 THE COURT: All right. It will be admitted
3 conditionally -- it's not offered for the truth of the matter
4 but for the fact that it was received. It will be admitted as
5 Exhibit 44.

6 (Exhibit No. 44 received into evidence.)

7 Q. So you get sued on June 2nd. You enter into a forbearance
8 agreement on June 4th. You receive this counseling summary on
9 June 10th. And you get your last payment in July of 2008, is
10:38 10 that accurate?

11 A. We received the counseling summary on June 18th.

12 Q. Okay. Thank you.

13 A. Otherwise, yes.

14 Q. Okay. Now, when they quit paying in that loan -- when
15 they quit paying on that forbearance agreement, what is it that
16 happens next?

17 A. We reinstated the foreclosure action.

18 Q. So they -- when was the next foreclosure action scheduled?

19 A. I believe it was scheduled for September, 2009.

12:38 20 Q. Now, that's a pretty long time. What, in the meantime,
21 were you working on doing? What were you doing during that
22 time?

23 A. Attempting to settle this matter.

24 Q. Okay.

25 MR. CUTLER: Objection, your Honor.

1 THE COURT: Overruled.

2 Q. So you schedule a sale in September of 2009. And do you
3 do the publication and the notices again?

4 A. Yes, we do.

5 Q. Okay. What happens to that first publication?

6 A. They continue of record. Massachusetts doesn't allow us
7 to withdraw.

8 Q. I misstated. I didn't mean the --

9 A. You don't mean the one back in 2007?

12:39 10 Q. Right. Let me ask that question, too. Back in 2007, you
11 got a judgment under the Soldiers' and Sailors' Act?

12 A. Yes, I did.

13 Q. Now, that judgment back in 2007, it was in the name, as
14 you testified, Deutsche Bank National Trust Company as Trustee,
15 correct?

16 A. Yes.

17 Q. Okay. Now, that said that they weren't in the military.
18 But you went back to the Land Court and got a new Soldiers' and
19 Sailors' judgment?

12:39 20 A. I did.

21 Q. Okay.

22 A. I believe in March of 2009.

23 Q. Okay. So you started over not just from the publication
24 and the notices, but you started all the way over with the new
25 Soldiers' and Sailors'?

1 A. We went all the way back to the beginning.

2 Q. The new Soldiers' and Sailors' in the Land Court is in the
3 name just as trustee, or does that reference the trust, the new
4 one?

5 A. That is the complete and full name of the trust.
6 Massachusetts foreclosure proceedings have been evolving
7 rapidly.

8 MR. CUTLER: Objection.

9 THE COURT: You've answered the question.

12:40 10 THE WITNESS: Apologize.

11 Q. Okay. You start over. You file a new complaint in the
12 Land Court. Do you get another Soldiers' and Sailors'
13 judgment?

14 A. Yes, we do.

15 Q. Okay. Once again, the folks are still not in the
16 military?

17 A. They are not.

18 Q. After you get that Soldiers' and Sailors' judgment, is
19 there a new foreclosure scheduled?

12:40 20 A. Yes, there is.

21 Q. New publications?

22 A. Yes.

23 Q. And new notices?

24 A. Yes.

25 Q. Now, that first publication -- or the first foreclosure

1 sale, you testified, was scheduled in September. Out of the
2 required statutory publications, were all of those publications
3 made?

4 A. No, they were not.

5 Q. Okay. And do you know why?

6 A. Not really. They were provided to the appropriate
7 publishing entity, the newspaper, and it was not published on
8 time. That's an unusual circumstance.

9 Q. Okay. But you did it again?

12:41 10 A. We did.

11 Q. Okay. So when is the next foreclosure scheduled,
12 foreclosure sale?

13 A. I believe it was November, 2009, perhaps October. I'm not
14 sure.

15 Q. Anyways, in the fall of 2009?

16 A. It was.

17 Q. Okay. Immediately prior to that next foreclosure, what
18 happens?

19 A. The Barrys filed another action in state court.

12:41 20 Q. Against who?

21 A. Against Deutsche Bank National Trust Company as Trustee,
22 HomEq Servicing, and Doonan, Graves & Longoria.

23 Q. Now, that next action, is that about these same loans?

24 A. Yes, it is.

25 Q. And they're attempting to stop the foreclosure sale that

1 was scheduled in October?

2 MR. CUTLER: Objection, leading.

3 THE COURT: Sustained.

4 Q. What was the point -- what is the sum and substance of the
5 second action that was filed in state court?

6 MR. CUTLER: Objection.

7 THE COURT: Overruled. He can state it if he knows.

8 A. There were three items alleged: one, that the loan was
9 not appropriate, that it was not a good -- a correct loan for
10 the borrower; two, that it was not closed properly, that there
11 were violations in the closing; and three, that Deutsche Bank
12 National Trust Company as Trustee does not have standing.

13 Q. Okay. And that state action, that's still pending?

14 A. It is. A temporary restraining order was requested.

15 Q. And what did you do with your foreclosure sale?

16 A. We forbore the foreclosure sale.

17 Q. What date is that postponed to?

18 A. February the 10th or 12th of this year.

19 Q. Okay. Is there any -- are there any motions pending in
12:43 20 that state court case?

21 A. I understand there's a motion to dismiss that we have
22 submitted.

23 Q. Okay. Now, turning your attention back to this case,
24 during last spring of 2009, before you refiled the Soldiers'
25 and Sailors' complaint, did you record various assignments of

1 mortgage on this property?

2 A. We absolutely did.

3 Q. Okay. I'm going to direct your attention to Exhibits 18
4 through 21 as those concern this first mortgage. You've been
5 present in the court during the testimony with regard to these
6 assignments, so I -- is that correct?

7 A. Yes, I have.

8 Q. Okay. So with regard to Exhibit 18, that appears to
9 assign the mortgage from MERS, as nominee for WMC, into
10 Deutsche Bank National Trust Company as Trustee, is that
11 accurate?

12 A. Yes, it is.

13 Q. And it was signed by Joy Vanish. Do you know who Joy is?

14 A. It was signed by Joy Vanish, and Joy Vanish works for me
15 in Raleigh.

16 Q. When Joy signed this, was she in Raleigh before the notary
17 public, Lorna Hunt?

18 A. Yes, she was.

19 Q. Is there a typo in this? It says "State of California" at
20 the top of this corporate acknowledgment.

21 A. Yes, there is.

22 Q. Directing your attention to No. 19, that also assigns a
23 mortgage -- this mortgage, Jonathan and Jamie Barry, with all
24 the reference information, from MERS, as nominee for WMC, into
25 Deutsche Bank National Trust Company. This document is signed

1 by Joyce Nelson. Do you know who Joyce Nelson is?

2 A. No, I don't.

3 Q. Okay. Where was this document signed?

4 A. Sacramento, California.

5 Q. Okay. Exhibit 20, this document assigns the first
6 mortgage from Deutsche Bank National Trust Company as Trustee
7 to Deutsche Bank, with the full reference to the trust, is that
8 correct?

9 A. Yes, it does.

12:46 10 Q. But it has two mistakes in it, doesn't it?

11 A. Yes, it does.

12 Q. We've talked at length about the fact that there's a date
13 of transfer on there that is inaccurate and a WMC3. Is that an
14 accurate statement of the mistakes in this assignment?

15 A. Yes, it is.

16 Q. Was it your job, as servicer, to correct those mistakes?

17 A. Yes, it is.

18 Q. Okay. I'm going to direct your attention to Exhibit 21,
19 which purports to also be a confirmatory assignment from

12:46 20 Deutsche Bank National Trust Company as Trustee into the

21 Deutsche Bank, with reference to the full pool. Were the
22 issues that you just testified to in Exhibit 20 -- were those
23 rectified?

24 A. Yes, they were.

25 Q. Okay. Now, I'm going to direct your attention to Exhibit

1 22. That would be the assignment of the second mortgage loan?

2 A. Yes.

3 Q. Okay. This was signed by Joyce Nelson out in Sacramento,
4 California. Do you know Joyce?

5 A. I don't know Joyce Nelson personally.

6 Q. Okay. But as servicer, it was your job to record an
7 assignment from MERS into Deutsche Bank National Trust Company,
8 with the full reference to the pool, is that correct?

9 A. That's correct.

12:47 10 Q. There's no transfer date on here. Is a transfer date
11 required on an assignment?

12 A. Not that I know of.

13 Q. Okay. As a matter of course, this assignment was signed
14 on June 29th. After the Ibanez ruling, do you put transfer
15 dates on assignments anymore?

16 A. No, I do not.

17 Q. Now, the folks that we talked about, who signed those
18 documents, even if you don't remember their names or haven't --
19 don't know them personally, are there documents that are kept
12:48 20 in the public record that let all the world know who's
21 qualified to sign these various legal documents?

22 A. Yes, there are.

23 Q. Okay. I'm going to direct your attention to Exhibit 45
24 and Exhibit 46. What are these documents, sir?

25 A. This is an Assistant Secretary Certificate by Mortgage

1 Electronic Registration Systems, identifying -- let's see -- a
2 corporate resolution that certain employees of HomeEq, a member
3 of Mortgage Electronic Registration Services, are appointed as
4 assistant secretaries and vice presidents of MERS.

5 Q. So we have Joy Vanish and we have Joyce Nelson. Do those
6 folks appear on this document?

7 A. Yes, they do.

8 Q. Let me stop. That document -- both of these documents,
9 are those the certified copies from the Registry of Deeds? I
10:49 10 would direct your attention to the back of the page. On the
11 back?

12 A. Nothing on the back page.

13 Q. 45 and 46?

14 A. 45. Let's see 46. No certification.

15 Q. Okay. That's fine. We can come back to that.

16 Without the admission of the document reported in the
17 Registry of Deeds, do you know whether or not these folks are
18 authorized to sign on behalf of MERS?

19 A. It is my understanding that they are.

10:50 20 Q. Okay. Now, directing your attention -- let me ask you one
21 more question. There's two assignments from MERS into
22 Deutsche, as trustee. Do you know why that was?

23 A. Two assignments from MERS? There are two mortgages.

24 Q. Of the first mortgage. There's actually two assignments
25 of the first mortgage. They're dated very closely to one

1 another, and I just -- do you know why there's two instead of
2 just one?

3 A. No, I don't.

4 Q. Okay. Does it hurt to have two?

5 A. Not that I know of.

6 Q. Okay. Now, next I'm going to direct your attention back
7 to the notes and the collateral files.

8 MS. LONGORIA: We've sent the notes around to the
9 jury. Have they come back?

12:51 10 Q. Previously, you testified that the notes are part of the
11 collateral file and that those documents are transferred to the
12 custodian for safekeeping, is that accurate?

13 A. Yes.

14 Q. So in a case, from time to time, do you have occasion to
15 request a copy of the original notes?

16 A. In certain foreclosure states, original notes are
17 required; in other states, no. In Massachusetts, I understand
18 that original notes are not required.

19 Q. Okay. But did -- nevertheless, did there come a point in
12:52 20 time in this case where the borrowers asked to see the original
21 notes in connection with the litigation?

22 A. Yes, they did.

23 Q. And did you provide those notes?

24 A. Yes, we did.

25 Q. How do you go about getting the special documents from the

1 custodian?

2 A. A request goes from our documents group in Sacramento to
3 the custodian requesting the documents. The documents are
4 provided to us. We have to sign for them. And then at that
5 point in time they are in our control until we pass them to
6 counsel.

7 Q. And when these documents came to you and you sent them
8 back out to us, the two original notes, how at that point were
9 they endorsed?

12:53 10 A. They were endorsed in blank.

11 Q. Okay. I'm going to direct your attention to Exhibits 47
12 and 48, previously admitted -- agreed as the admissibility of
13 same between counsel.

14 MS. LONGORIA: So I would move for the admission of 47
15 and 48. They are copies of the notes as endorsed in blank.

16 THE COURT: They will be admitted, 47 and 48.

17 (Exhibit No. 47 received into evidence.)

18 (Exhibit No. 48 received into evidence.)

19 Q. So directing your attention to the last page of -- or the
12:53 20 second to last page, I should say, of 48 --

21 A. Of 48?

22 Q. Yes. To specify which note is 48 -- I'm sorry, 47. I
23 misspoke. Can you identify which note No. 47 is?

24 A. 47 is the adjustable rate note in the amount of \$1.16
25 million. That would be the first mortgage.

1 Q. Okay. Now, is this document -- is this the original note?

2 A. No, this is not.

3 Q. Is what was just handed back to you, is that the original
4 note?

5 A. Yes.

6 Q. At the point that you provided this document to my office
7 for reviewing of counsel on June 24th, as stipulated between
8 the parties, was this document endorsed in blank as indicated
9 in Exhibits 47 and 48?

12:55 10 A. Yes.

11 Q. Now, subsequent to that time, did you instruct that that
12 document -- that the endorsement be completed?

13 A. Yes.

14 Q. So as you look at those original notes that we had just
15 discussed, if you look at that endorsement, is it, in fact,
16 completed?

17 MR. CUTLER: Leading.

18 THE COURT: Overruled.

19 Q. Who is it completed to?

12:55 20 A. Let me answer the first one.

21 Q. I'm sorry.

22 A. Yes, it is complete.

23 Q. Okay. And to whom is it completed? Pay to the order of?

24 A. Deutsche Bank National Trust Company as Trustee under
25 Pooling and Servicing Agreement dated as of November 1, 2006,

1 Securitized Asset Backed Receivables LLC Trust 2006-WM3,
2 Mortgage Pass-Through Certificate Series 2006-WM3.

3 Q. Okay. When these original special documents are sent out
4 to counsel for litigation, why is it that you instruct counsel
5 to complete the endorsements into whoever you're foreclosing?

6 MR. CUTLER: Objection, leading.

7 THE COURT: Overruled.

8 A. These documents are negotiable instruments. It would not
9 be a sound business practice to allow them to be unendorsed and
10 out of our control.

11 Q. Okay. So if it's endorsed in blank, is it like \$1.16
12 million in cash? Somebody can just go and take this and cash
13 it?

14 A. Yes.

15 Q. Okay. Now, is there -- the original documents that are
16 before you that you provided to our offices in this litigation,
17 is there any doubt in your mind that those documents were
18 generated by a computer someplace, that there's another
19 original note running around out in the world someplace?

12:57 20 A. I do not believe there is another original note. These
21 are original notes.

22 Q. Okay. Now, I'm going to direct your attention to Exhibits
23 27 and 28, the collateral file. Following this litigation,
24 when the original notes go home, back to the custodian, where
25 will they live?

1 A. In this collateral file.

2 Q. Okay. So the special documents, after we finish here,
3 will live back -- will go back to you. They will be put back
4 in the collateral file. Then where do they go?

5 A. Back to Wells Fargo.

6 Q. And then Wells keeps them?

7 A. They do.

8 Q. What if these folks pay these loans off? What happens to
9 these notes?

12:58 10 A. Should the Barrys pay the loans in full, the notes would
11 be marked "canceled" and marked "paid in full," and discharges
12 of the mortgages would be sent to the local recording office.

13 Q. Next, I'm going to direct your attention to Exhibit 49.
14 First, can you identify what is this?

15 A. I'm sorry. I do not see a 49. Perhaps I'm not seeing the
16 right spot. I apologize.

17 THE COURT: This will be a good place, then, to take
18 the break. We will break for lunch, folks, and I'll ask you to
19 come back at 2:00. Same drill. If you see anybody involved in
12:59 20 this case, you're not to have any conversations with them. We
21 will see you back here at 2. We'll have an afternoon session
22 till about 3:30. It will depend on how the testimony goes.
23 (The jury left the room at 1:00 p.m.)

24 THE COURT: You may step down, Mr. Perry.

25 Please be seated, counsel. Approximately how much

1 longer on direct examination, Miss Longoria?

2 MS. LONGORIA: Fifteen minutes. I'm almost done.

3 THE COURT: And the cross, approximately?

4 MR. CUTLER: I want to be -- I'd like to say one hour
5 because I think this witness is much more responsive, and I
6 will probably be able to --

7 THE COURT: We may be able to complete this witness
8 today?

9 MR. CUTLER: Yes, sir.

01:00 10 THE COURT: And then, again, refresh the Court's
11 memory as to how long the Barrys will be on direct.

12 MS. LONGORIA: Your Honor, that is entirely dependent
13 on what more I receive. I've received no additional documents.
14 This morning they came in with the original K-1s and some of
15 his bank records. I don't have the tuition documents. I don't
16 have the underlying documents for the 2007 and 2008 taxes. I
17 don't have complete tax returns -- or I don't have complete
18 bank statements.

19 I made a list just so it didn't seem like I was making
01:00 20 a big deal out of nothing. The kinds of numbers that are going
21 into the accounts that I do have, 38,000 and change, 22, 28,
22 16, 21, 15, 15, 18, one set --

23 THE COURT: What are the numbers referring to, Miss
24 Longoria? They're meaningless.

25 MS. LONGORIA: Monthly amounts of money going into his

1 checking account. That's just it. I don't --

2 THE COURT: In thousands? You're saying 22. Does
3 that mean 22,000?

4 MS. LONGORIA: 22,000, yes, your Honor. One set of
5 bank statements -- it's a spreadsheet so it's not a bank
6 statement. It's something he created. So I don't know what's
7 in and out of this. 135,000. These folks have made part of
8 their defense --

9 THE COURT: I don't want the full load here.

01:01 10 MS. LONGORIA: Sorry.

11 THE COURT: Will you not call him and ask him about
12 that if you don't get further information? Is that what you're
13 saying?

14 MS. LONGORIA: No, no. I will call him. I'm just
15 saying if --

16 THE COURT: Give me your present approximation as to
17 how long your direct examination will be.

18 MS. LONGORIA: An hour.

19 THE COURT: Okay. And the cross of both of your
01:01 20 clients?

21 MR. CUTLER: My cross and redirect, an hour. I think
22 Jamie will be substantially shorter for both of us.

23 THE COURT: All right. I am -- I have not -- you may
24 be seated, counsel. It looks as though this case is not going
25 to be ready for the jury tomorrow, which is going to be

1 disappointing to them as well as to the Court. But if that is
2 the case, I do not relish having closing arguments and charge
3 late on Fridays. I think that's unfair to a jury to do that.

4 What I am likely to do, unless we make more progress
5 in this afternoon's session than we can anticipate, what I'm
6 likely to do is to suggest -- request, order, whatever the
7 appropriate term is -- this jury to be recessed through Monday
8 because I need to empanel another jury in another case on
9 Monday. So we can't go forward at least for half a day on
01:02 10 Monday. I think it would be inappropriate to call them in on
11 Monday afternoon.

12 What we'll do is we'll recess this case tomorrow,
13 until Tuesday morning, at which point we will have closings and
14 the charge to the jury on Tuesday. That's going to extend this
15 trial yet another day beyond what they anticipated, but that's
16 the only way I can see in resolving the case.

17 Do you have any comments in that regard, Miss
18 Longoria?

19 MS. LONGORIA: I was trying to discern a creative
01:03 20 solution for not having this financial -- one solution that I
21 thought of is if your Honor would instruct a negative inference
22 from the failure to provide the information; and if it would
23 bar counsel from arguing that they didn't pay these loans
24 because of hardship, that might remedy my not having any of the
25 information I need to cross-examine these folks.

1 I think it's important because it's their financials,
2 and I don't have a clear picture of it. But if those -- if
3 their strategy has changed and all they're going to say is it
4 isn't the original note, and it's not about whether they can
5 afford it and they're not going to make a plea to the jury that
6 they can't afford it and et cetera, then -- and that inference
7 could be made and that charge could be made, that might remedy
8 it. And then I could be much more brief in my examination.

9 THE COURT: I'm -- Mr. Cutler?

01:04 10 MR. CUTLER: Without -- just a side point. I'll tell
11 you where I want to go with this. We're not arguing that he is
12 not paying it because he doesn't have the money, et cetera.
13 We're arguing that he came to the belief that they're not
14 entitled to it.

15 But we did have financial difficulties which did lead
16 to the forbearance agreement and that -- I did tell them in the
17 opening statement that he hit a hard time. That's why he
18 entered into the forbearance agreement.

19 I do not plan, and I will agree at closing as long as
01:04 20 -- I don't want to put myself in a box. I don't see anything
21 weird. I wasn't planning on saying, you know, pity the Barrys.
22 They don't have any money. You shouldn't do anything with
23 them. That direction, I was not planning on going. But I do
24 have to explain they had hit a rocky road, fell behind, duh,
25 duh, duh, duh.

1 And then, as to providing the documents, we have
2 provided everything. I'm not sure you want to hear all of it
3 again.

4 THE COURT: I don't. What I really want to know is
5 what the timing is going to be. I haven't heard anything that
6 suggests to me that this case can be completed tomorrow.

7 MS. LONGORIA: Your Honor, what if we would set time
8 limits on the direct and cross, both for the remaining
9 witnesses?

01:05 10 THE COURT: If you all can agree to that, you may do
11 so, but I doubt if you're going to be able to come to that
12 agreement.

13 We'll be in recess until 2:00.

14 (Luncheon recess taken at 1:06 p.m.)

15 (The jury entered the room at 2:08 p.m.)

16 THE COURT: Good afternoon, jurors. We are ready to
17 resume.

18 Mr. Perry, please retake the witness stand. You are
19 reminded, Mr. Perry, that you remain under oath. Please be
02:08 20 seated. And you may continue with direct examination, Miss
21 Longoria.

22 MS. LONGORIA: Thank you, your Honor.

23 Q. Mr. Perry, with regard to these loans, with regard
24 especially to -- initially to the first loan, what is the per
25 diem interest rate? In other words, what does this loan cost

1 per day?

2 A. Approximately \$227 a day.

3 Q. Okay. And the second loan?

4 A. Approximately \$43 a day. It's either 33 or \$43 a day.

5 I'm not sure.

6 Q. So just under \$300 a day for every day that these loans
7 are not paid, is that accurate?

8 A. Yes.

9 Q. For every day that you stay in litigation and you're not
02:09 10 able to realize on the collateral -- through foreclosure, et
11 cetera, that's how much it cost you?

12 A. That's how much it cost the trust.

13 Q. I'm sorry. I misspoke.

14 Directing your attention back to Exhibits 45 and 46 --

15 A. Yes.

16 Q. -- are these the original Assistant Secretary
17 Certificates?

18 A. Yes, they are.

19 Q. And the document marked 45 is the original certificate for
02:09 20 what entity?

21 A. For MERS.

22 Q. And 46?

23 A. For Barclays Capital Real Estate.

24 MS. LONGORIA: I move for the admission of Exhibits 45
25 and 46.

1 THE COURT: They will be admitted, 45 and 46.

2 (Exhibit No. 45 received into evidence.)

3 (Exhibit No. 46 received into evidence.)

4 Q. And now directing your attention back to Exhibit 49, can
5 you identify what has been marked as Exhibit 49?

6 A. Exhibit 49 is an accounting of the escrow advances made on
7 the first mortgage.

8 Q. And can you describe for the jury what an escrow advance
9 is?

02:10 10 A. In those circumstances where a borrower is not paying --
11 if a borrower has decided to pay his own taxes and insurance,
12 in those circumstances where he does not pay them, under the
13 note and mortgage, the servicer, as the representative of the
14 lender, has the right to force the payment of taxes and
15 insurance and to form an escrow account.

16 Q. Okay.

17 A. These are advances where we have paid taxes and insurance
18 on the property.

19 Q. Okay. And do you collect interest on that escrow account?

02:11 20 A. We do not.

21 Q. Okay. So, for example, you advanced monies for taxes.
22 Why do you do that?

23 A. I believe Mr. Gediman pointed out that tax liens supersede
24 all other liens. So what we have to do is we have to pay those
25 taxes so that our liens remain primary.

1 Q. And Exhibit 49, is this a business record of HomEq made
2 and kept in the regular course of your business?

3 A. It is.

4 MS. LONGORIA: I move for the admission of Exhibit 49.

5 THE COURT: It will be admitted.

6 (Exhibit No. 49 received into evidence.)

7 Q. Directing your attention to the advances in the specific
8 exhibit, sir, can you describe the second line item?

9 A. On 2/18/08, we disbursed \$24,516.32 to redeem the property
02:12 10 from the tax sale.

11 Q. What does that mean?

12 A. The Swampscott township was going to sell the property at
13 tax sale.

14 Q. Okay. And there are a number of other taxes, for
15 instance. Are those advances made by HomEq?

16 A. Yes, they are.

17 Q. At this point, are you now aware that these folks are not
18 paying their taxes?

19 A. The borrowers are not paying the taxes on the property.
02:13 20 We are.

21 Q. You are. And in February of 2008 when you paid the
22 24,000, does that represent one quarter or two quarters, or was
23 there a backlog of taxes that you had to pay?

24 A. It appears that the taxes on the property run
25 approximately \$4,000 a quarter. 24,000 would appear to me to

1 represent six to eight quarters.

2 Q. And what's the total amount that HomEq has advanced on
3 this loan on behalf of the borrowers?

4 A. For taxes and insurance to cover the property, \$99,999.99,
5 to date.

6 Q. Did you double-check that figure?

7 A. We did. Kind of an odd number but that's where it is
8 right now.

9 Q. Okay. Directing your attention to Exhibit 50, is this
02:14 10 also one of your business records made and kept in the --
11 initially, what is Exhibit 50?

12 A. Exhibit 50 is a reconciliation of the corporate or
13 discretionary advances made on this account.

14 Q. Is this record regularly kept in the ordinary course of
15 your business?

16 A. Yes, it is.

17 MS. LONGORIA: I move for the admission of Exhibit 50.

18 THE COURT: It will be admitted.

19 (Exhibit No. 50 received into evidence.)

02:14 20 Q. I want to direct your attention next to Exhibits 14 and
21 15, the mortgages. I apologize. I believe they're in the
22 first stack in the far right-hand corner.

23 A. This goes 12, 13, 16, 17.

24 Q. You know, sir, without reference to the original
25 documents, let's see if I can ask you a few questions, and

1 perhaps I won't need those original documents.

2 Are you familiar with the original mortgages signed in
3 this case?

4 A. Here we are. I found 14 and 15.

5 Q. Thank you. Would you take a moment to review what have
6 been admitted as Documents 14 and 15. Are those the certified
7 copies of the mortgages in this case?

8 A. Yes.

9 Q. Okay. And at the point that you came on board -- sir, and
02:16 10 those mortgages are in the name of whom?

11 A. Jonathan Barry and Jamie Flack Barry.

12 Q. And they were given to?

13 A. MERS as -- let's see here. It looks like they were made
14 to MERS, as a nominee for WMC Mortgage Corporation.

15 Q. And at the point that you began servicing these loans, in
16 September of 2006, Mr. Gediman had already recorded those
17 documents, is that accurate?

18 A. Yes.

19 Q. Now, if the Barrys would have stayed current on their
02:17 20 mortgages and their notes, and if the mortgages would have
21 stayed in the name of MERS, in the Massachusetts land records,
22 no foreclosure were ever initiated, would these loans, both of
23 the Barry loans, the million six and the other one, would they
24 be in the pool that's managed by the trust or not?

25 A. Yes.

1 Q. Whether or not you, as the servicer, undertake to record
2 assignments of mortgage into Deutsche, what, if anything, does
3 that have to do with whether or not these loans are transferred
4 into the pool?

5 A. The transfer to the pool occurred with the closing of the
6 securitization.

7 Q. Okay.

8 A. The -- when we record the mortgage -- the assignment of
9 the MERS documents to the pool, I don't see a material issue.

02:18 10 Q. So at the point you came on as servicer, in September,
11 these loans were in the name of MERS?

12 A. They were.

13 Q. Okay. And after that, the loans were securitized and
14 transferred into the pool as of December 1, 2006?

15 A. They were.

16 Q. So if you never undertook to record any assignments in
17 this matter, those loans would still be in the pool to this
18 day?

19 A. They would still be in the pool, and they would still be
02:18 20 in the name of MERS.

21 Q. Okay. And as you testify here today, where are the Barry
22 loans? Are they in the pool or not in the pool?

23 A. They are in the pool.

24 Q. Were they properly transferred into the pool as of
25 December 1st?

1 A. As far as we know.

2 Q. My next exhibit I'd like to direct your attention to,
3 Exhibit 51, can you identify, for the record, what is this?

4 A. This is a pay-off quote dated through January 15, 2010, on
5 the second mortgage.

6 Q. Is this a true and accurate business record made and
7 prepared in the course of your business as servicer?

8 A. Yes, it is.

9 MS. LONGORIA: I move for the admission of 51.

02:19 10 (Exhibit No. 51 received into evidence.)

11 THE COURT: It will be admitted.

12 Q. With regard to the second loan, as of January 15th, you
13 testified that there's a per diem and the clock continues to
14 click. At least as to the 15th, what was the pay-off of just
15 the second mortgage loan?

16 A. On January 15, 2010, the pay-off on the second mortgage
17 was \$143,206.69, and the per diem was \$31.66 a day.

18 Q. Now, directing your attention to Exhibit 52, was this,
19 likewise, prepared by HomeEq, and is it a true and accurate
02:20 20 business record?

21 A. It is.

22 MS. LONGORIA: I move for the admission of 52.

23 THE COURT: It will be admitted.

24 (Exhibit No. 52 received into evidence.)

25 Q. Directing your attention -- which loan is this?

1 A. This is the first mortgage.

2 Q. And this pay-off quote is good through what date?

3 A. January 15, 2010.

4 Q. There's a number on there for unpaid principal balance.
5 What is that?

6 A. That's the present principal balance on the first mortgage
7 loan.

8 Q. And there is a number for outstanding interest. What is
9 that?

02:21 10 A. That's the interest accrued from August 1, 2007, through
11 1/29/10.

12 Q. Then there are some late charges?

13 A. Yes.

14 Q. Do we stop adding late charges at some point? There's
15 \$885 of late charges.

16 A. I don't know that we continue to accrue late charges to
17 date.

18 Q. Okay. My next number I would direct you to is the number
19 that you testified to, that 99,000 number. That's the escrow
02:21 20 advances?

21 A. That's the escrow advances.

22 Q. The 21,000 that you just testified to is the corporate
23 balance?

24 A. That's the corporate account balance.

25 Q. In addition to these expenses, are you also incurring

1 costs and attorney fees?

2 A. Yes, I am.

3 Q. Good through the end of the year, do you have an
4 approximate amount that you've incurred as far as costs and
5 attorney fees just for our litigation?

6 A. \$36,000.

7 Q. That number is also ongoing?

8 A. It is.

9 Q. Do you have the authority to collect for those costs and
02:22 10 fees under the mortgage and note as well?

11 A. Yes, we do.

12 Q. So in addition to those costs and fees, what is the
13 projected pay-off good through 1/11/10?

14 A. Well, allowing for accruing corporate advances and
15 interest through 1/29/10, \$1,492,074.80.

16 MS. LONGORIA: I have nothing further.

17 THE COURT: Cross-examination, Mr. Cutler?

18 MR. CUTLER: Thank you, your Honor.

19 CROSS-EXAMINATION BY MR. CUTLER:

02:23 20 Q. Is it not your testimony that the notes and the mortgage
21 are already in the pool?

22 A. Yes, sir.

23 Q. Why does it need to do all these assignments?

24 A. MERS cannot take title to property. As the Pooling and
25 Servicing Agreement requires, we have to put the note or the

1 mortgage -- because I don't believe the note is assigned; I
2 believe it is endorsed. We have to assign the mortgage to the
3 pool because the pool has to take possession of the property if
4 there's a foreclosure.

5 Q. So MERS doesn't have title to the property, yet the
6 mortgages are in the pool, but they're not at the same time,
7 correct?

8 A. No, sir.

9 Q. Is it not your testimony -- go one more time. Is the note
02:24 10 in the pool?

11 A. It is.

12 Q. Can -- has the note and the mortgage been separated?

13 A. No, sir.

14 Q. Have they followed each other the whole time?

15 A. Yes, sir.

16 Q. Both as to legal rights and as to physicality?

17 A. The original --

18 Q. Have they both followed each other as to physicality?

19 MS. LONGORIA: Objection.

02:25 20 THE COURT: Let him answer.

21 MR. CUTLER: Sorry, your Honor.

22 A. The original mortgage is on file at the recording office.
23 The original note is with the custodian.

24 Q. And when was the original mortgage on file in the name of
25 the pool? When did that happen?

1 A. When MERS, as nominee -- there was no assignment required
2 to the pool until there was the potential for taking property.

3 Q. But you just said -- so the mortgage has never been put in
4 the name -- until -- the mortgage, then, has never been put in
5 the name of the trust until you filed the first assignment; is
6 that what you're saying?

7 A. MERS, as nominee for WMC, its successors and assigns, was
8 deemed acceptable in the Pooling and Servicing Agreement.

9 Q. Okay. Deemed acceptable in that.

02:26 10 Are you saying that these foreclosures -- I'm sorry,
11 these assignments were done for the initiation of the
12 foreclosure action?

13 A. The assignments were done in anticipation of the
14 completion of the foreclosure action.

15 Q. There is no requirement in the -- let me strike that.
16 I'll go back to that.

17 That's not true, is it now, your statement?

18 MS. LONGORIA: Objection.

19 THE COURT: Overruled.

02:27 20 A. I'm sorry?

21 Q. Your statement that these assignments were done with
22 regards to the anticipation of foreclosure is not a true
23 statement, sir, is it not?

24 A. It is a true statement, sir.

25 Q. Your own testimony -- tell the jury when the foreclosure

1 action was filed. In your own testimony, did you not say your
2 -- the foreclosure notice was filed in August of 2007?

3 A. Yes, sir.

4 Q. And the first assignment that we see here was filed June
5 4, 2008, was it not?

6 A. Yes, sir.

7 Q. Almost -- almost ten months later?

8 A. Yes, sir.

9 Q. So it wasn't in anticipation of foreclosure because
02:28 10 foreclosure had already been filed, right?

11 A. No, sir.

12 Q. You filed --

13 A. We began a foreclosure action. We also forbore it twice.

14 Q. What happened on June 2, 2008, two days before the first
15 of this series of assignments started getting filed?

16 A. The Barrys filed suit, sir.

17 Q. Yes, they did. And that is the reason you filed the
18 assignments, is it not?

19 A. No, sir.

02:28 20 Q. And isn't it -- the reason you filed these assignments had
21 nothing to do with anything of a foreclosure argument but
22 because you knew you had defective title and had to go back and
23 clean it up, isn't that true?

24 A. No, sir.

25 Q. Turn to -- you're familiar with the Pooling and Servicing

1 Agreement, correct?

2 A. Parts of it, sir, the servicing part.

3 Q. And we heard testimony from Mr. Reyes that the reason that
4 these assignments were filed was because the property was
5 foreclosed; is that an accurate representation of what he said?

6 MS. LONGORIA: Objection. That misquotes the
7 evidence.

8 THE COURT: Overruled.

9 A. I don't believe so, sir.

02:29 10 Q. Okay. So he didn't say "foreclosed"? He didn't use past
11 tense?

12 A. I'm not absolutely certain what he said. I will tell you
13 that we have not foreclosed.

14 Q. And HomeEq is the one that provided Mr. Reyes with all the
15 information that went into the assignments, correct?

16 A. Yes, sir.

17 Q. And it was HomeEq's advice that these assignments had to be
18 done because of a foreclosure?

19 A. Yes, sir.

02:30 20 Q. Where in the Pooling and Service Agreement does it address
21 that issue?

22 A. I don't know, sir. It is my understanding --

23 Q. Sir.

24 A. I apologize.

25 Q. The service and pooling agreement governs what HomeEq can

1 do and cannot do, correct?

2 A. Yes, it does.

3 Q. And you were advising -- or no. You were providing
4 information for Deutsche Bank, as trustee, to file assignments
5 on the Barrys' loan based on what was instructed to you by the
6 Pooling and Service Agreement, correct?

7 A. And our understanding of Massachusetts process.

8 Q. And you just came and testified over and over again that
9 the Pooling and Service Agreement directed you to go ahead and
02:31 10 prepare these assignments because of a pending foreclosure?

11 A. Yes, sir.

12 Q. Would you not think that you would know the section that
13 authorizes you to do that before you took the stand?

14 A. Sir, I can find it in the document if I need to.

15 Q. It's right in front of you. Just flip right to it.

16 A. Section 3.17, "Title, Conservation and Disposition of REO
17 Property."

18 Q. Uh-huh. Where specifically does it say that, one, to do
19 assignments and, two, those assignments have to be from WMC
02:33 20 directly -- well, wherever they go?

21 MS. LONGORIA: Objection.

22 THE WITNESS: I apologize.

23 MS. LONGORIA: It was just two questions.

24 THE COURT: Sustained.

25 Q. 3. -- where are you looking at, 3.01?

1 A. 3.17, sir.

2 Q. Okay. All right. Where does it say in 3.17 that in case
3 of a foreclosure -- or anticipated foreclosure, that
4 assignments have to be done?

5 A. "In the event that title to such REO property is acquired,
6 the deed or certificate of sale shall be issued to Deutsche
7 Bank National Trust Company or, if applicable, the name of the
8 successor trustee, as trustee for Securitized Asset Backed
9 Receivables LLC 2006-WM3, Mortgage Pass-Through Certificate
02:34 10 Series 2006-WM3, or to its nominee, for the benefit of the
11 certificate holders."

12 Q. And REO report is property that is already in -- taken by
13 the originator, isn't it?

14 A. Yes, sir.

15 Q. So you're really talking about a situation where WMC
16 doesn't have the note to pass on or the mortgage to pass on.
17 They have already foreclosed on the property. And instead of
18 selling the note or the mortgage into the pool, all they've got
19 is a piece of property they had foreclosed on. Isn't that the
02:35 20 situation you're talking about?

21 A. No, sir.

22 MS. LONGORIA: Objection.

23 Q. It is property taken by WMC in foreclosure, is it not?

24 A. No, sir.

25 Q. Is it property foreclosed upon? Who would be foreclosing

1 upon the property then?

2 A. HomEq Servicing, as servicer for the trust, and Deutsche
3 Bank, as the trustee.

4 Q. So is the trust -- it is the trust transferring the
5 property to itself then?

6 A. No, sir. The transfer of the property is occurring at the
7 foreclosure sale. At that point in time, a deed is issued in
8 that name.

9 Q. Who owns the title to the Barrys' -- who owns the mortgage
02:35 10 to the Barrys' property right now?

11 A. The trust.

12 Q. The trust. In your opinion, who, in June of 2007, owned
13 the title to the Barrys' property?

14 A. The trust.

15 Q. In January of 2007, who owned the mortgage to the Barrys'
16 property, in your opinion?

17 A. The trust.

18 Q. Why would WMC be transferring title to -- title to the
19 property if it's not in their name?

02:36 20 A. Because it was in the name of MERS, as nominee for WMC,
21 sir.

22 Q. But WMC no longer owns the interest, does it?

23 A. The title to the mortgage was in the name of MERS, as
24 nominee for WMC, its successors and assigns. The entities in
25 the transaction were all successors and assigns.

1 Q. Okay. So MERS is not identified in your chart. You would
2 agree that the property, in your opinion, got transferred all
3 the way through the system, yet you still had to do the
4 assignment and title. And MERS owns no interest in the
5 property, correct?

6 A. MERS is a nominee for WMC.

7 Q. So nominee -- what's your definition of a nominee?

8 A. I don't know, sir. I'm not a lawyer.

9 Q. What is -- you've been using it here as a -- giving it
02:37 10 some kind of power. What kind of power does MERS get as a
11 nominee?

12 A. A nominee is a -- acts as like an agent for WMC, its
13 successors and assigns, to process notices on the -- that would
14 be noticed to a mortgage holder.

15 Q. Now, MERS has a contract with WMC, correct?

16 A. Yes, sir.

17 Q. In that contract, are they designated as an agent?

18 A. I don't know, sir. I don't know that contract.

19 Q. Well, have you looked to see whether MERS has the
02:38 20 authority to do anything that you're saying they're doing?

21 A. No, sir.

22 Q. So you haven't confirmed whether they have the authority
23 to do that. You have a power of attorney, as the company of
24 HomEq, to act on behalf of the trust, do you not?

25 A. I do.

1 Q. You produce that power of attorney?

2 A. I don't know, sir.

3 Q. Well, how do we know today, as you're sitting there, you
4 actually have the authority to file suit on behalf of the
5 trust?

6 A. The pooling --

7 Q. What authority do you have to even file suit naming the
8 Barrys?

9 A. The --

02:39 10 MS. LONGORIA: Objection.

11 Q. I'll start again. Have you authorized the filing of a
12 lawsuit against the Barrys?

13 MS. LONGORIA: Objection.

14 Q. Strike that. Have you authorized the filing of a
15 counterclaim against the Barrys?

16 A. Yes.

17 Q. Have you authorized the filing of two foreclosure actions
18 in Land Court against the Barrys?

19 A. Yes.

02:39 20 Q. And have you done those -- and have you brought the --
21 have you brought the counterclaims in the name of HomeEq?

22 A. I believe we have, sir.

23 Q. And on behalf of Deutsche Bank, correct?

24 A. Yes, sir.

25 Q. And Deutsche Bank is named also in that lawsuit filed,

1 correct?

2 A. Yes, sir.

3 Q. What legal authority did you have to do that?

4 A. The Pooling and Servicing Agreement.

5 Q. Gives you power of attorney?

6 A. It -- it requires the trustee to provide us with a power
7 of attorney if necessary.

8 Q. Where is that power of attorney?

9 A. I don't know, sir.

02:40 10 Q. What is the breadth of that power of attorney? What
11 powers do you have under that power of attorney?

12 A. To initiate legal actions, to initiate collections
13 actions, to defend the trust in various matters.

14 Q. Also -- all actions?

15 A. Not that I know of, sir. I believe it's limited to the
16 collections activities and those litigations that arise from
17 that.

18 Q. Actually, isn't it limited to actions regarding
19 foreclosures?

02:40 20 A. I don't know, sir, specifically.

21 Q. Well, you've been working and authorizing this to go on.

22 Now, in this action here, you're not seeking to
23 foreclose on the Barrys' property, correct?

24 A. In this action?

25 Q. Yeah.

1 A. No, sir.

2 Q. And we talked about the Land Court and the Sailors' and
3 Soldiers' thing and getting a judgment.

4 A. I don't believe that they issue a judgment in Land Court.

5 Q. They do not. Thank you for clarifying that. We heard
6 that a lot and they do not.

7 You filed one action to foreclose on the Barrys back
8 in August of 2007?

9 A. Yes, sir.

02:41 10 Q. And the reasons you name Mrs. Barry is because her name is
11 on the mortgage, correct?

12 A. Her name is on the mortgage.

13 Q. Her name is not on the note, correct?

14 A. Her name is not on the note.

15 Q. And because the mortgage secures the property, anyone with
16 an interest in the property you want to have in there?

17 A. We notice everyone involved who has an interest in the
18 property.

19 Q. And the lawsuit -- okay. And then -- and you brought that
02:42 20 original lawsuit in the name of Deutsche Bank National Trust
21 Company as Trustee, correct?

22 MS. LONGORIA: Objection.

23 THE COURT: Sustained.

24 Q. That original Land Court action was brought in the name of
25 Deutsche Bank National Trust Company as Trustee, correct?

1 A. Yes, sir.

2 Q. And Deutsche Bank is a trustee of, to your knowledge,
3 1,900 trusts?

4 A. I don't know how many trusts that Deutsche Bank is a
5 trustee of.

6 Q. From looking at that, could you tell what trust was
7 bringing the foreclosure action?

8 MS. LONGORIA: Objection.

9 THE COURT: He can have it if he understands it.

02:42 10 MS. LONGORIA: He misquotes what the Land Court
11 action -- he calls it a foreclosure action.

12 THE COURT: All right. Sustained to that extent.

13 Q. You can answer it.

14 THE COURT: No. The objection is sustained.

15 MR. CUTLER: Oh, the whole thing. I thought you said
16 --

17 Q. The first Land Court action was brought -- we acknowledge
18 was brought. From looking at who the party that brought the
19 Land Court action, could you tell from looking at who brought
02:43 20 in the name -- you brought, on behalf of HomeEq -- did you file
21 -- authorize the filing of a second foreclosure on the Barrys?

22 MS. LONGORIA: Objection.

23 THE COURT: Sustained.

24 Q. Are you aware of the existence of a second foreclosure
25 action on behalf of Deutsche Bank against the Barrys?

1 MS. LONGORIA: Objection.

2 THE COURT: Sustained.

3 Q. Did you not testify earlier today about two land -- two
4 foreclosure actions?

5 A. Yes.

6 Q. All right. And are those not separate foreclosure
7 actions?

8 A. As I understand Massachusetts law, yes, sir.

9 Q. It's your understanding they have separate case numbers?

02:44 10 MS. LONGORIA: Objection.

11 THE COURT: If he understands, he can answer it.

12 MS. LONGORIA: My objection is that he's asking the
13 same question, referring to the Land Court action as a
14 foreclosure action by using the case number.

15 THE COURT: Let's differentiate the two.

16 Q. The foreclosure action filed in Land Court, do they have
17 two separate --

18 THE COURT: Foreclosure actions are not filed in Land
19 Court.

02:45 20 Q. The complaint filed in Land Court, did you file two -- a
21 second complaint in Land Court on behalf of Deutsche Bank?

22 A. Yes, sir.

23 Q. What was the purpose of that complaint?

24 A. To comply with the evolving Massachusetts process.

25 Q. What happened in the first one?

1 A. It's still out there.

2 Q. Are you -- sometime in February, are you seeking to hold
3 an auction to sell the Barrys' home?

4 A. There's a foreclosure sale scheduled, yes, sir.

5 Q. And you seek to recover the monies that you are seeking to
6 recover in this case, are you not?

7 MS. LONGORIA: Objection.

8 THE COURT: Sustained.

9 Q. What do you -- why are you seeking to foreclose on the
02:46 10 Barrys' house in February?

11 A. It's a continuation of the foreclosure action.

12 Q. And, presently, there is a civil action in Essex Superior
13 Court regarding that matter, is there not?

14 A. Yes, sir.

15 Q. Now, you also have countersued the Barrys here in this
16 case, have you not?

17 A. Yes, sir.

18 Q. And let's go back a little bit on the history of that. Is
19 it your testimony that the Barrys filed -- you moved -- you had
02:47 20 your attorneys move to have the Barrys' case moved to federal
21 court, did you not?

22 A. Yes, sir.

23 Q. And then you authorized your attorneys to file
24 counterclaims against the Barrys?

25 A. Yes, sir.

1 Q. What are those counterclaims that you -- you're suing the
2 Barrys on?

3 A. Default under the note; that there was default on a
4 purchase -- I mean, on a money exchange transaction; and that
5 the -- there was a lack of good faith in dealing with us.

6 Q. So Count -- breach of loan agreement contract, is that one
7 of the claims you authorized your attorneys to bring against
8 the Barrys?

9 A. That would be the first count, the default under the note.

02:48 10 Q. And you brought it -- Deutsche and HomEq both have brought
11 it together, correct?

12 A. Yes, sir.

13 Q. What damages has HomEq incurred?

14 A. HomEq has to borrow the funds that we advance for these
15 expenses and costs and knows that those borrowing costs are
16 damages to us.

17 Q. Do you have a contract with the Barrys that entitle you to
18 recover that?

19 A. I have a contract with the pool, with the trustee under
02:48 20 the Pooling and Servicing Agreement. I have no contract with
21 the Barrys.

22 Q. Did you ever lend -- did HomEq ever lend the Barrys money?

23 A. No, sir.

24 Q. And, in fact, why -- in what loan agreement contract are
25 you suing on here?

1 A. The Barrys' notes.

2 Q. Those are the notes with WMC Mortgage?

3 A. And the trust.

4 Q. How was -- why is Mrs. Barry getting sued?

5 MS. LONGORIA: Objection.

6 THE COURT: Sustained.

7 Q. What damages does HomEq want to recover from Mrs. Barry
8 under its claim for breach of loan agreement contract?

9 MS. LONGORIA: Objection.

02:49 10 THE COURT: Sustained.

11 Q. Are you seeking damages against Mrs. Barry for -- under
12 the theory of breach of loan agreement contract?

13 MS. LONGORIA: Objection.

14 THE COURT: He can answer that if he knows.

15 A. I don't know.

16 Q. Unjust enrichment, are you seeking damages against Mrs.
17 Barry, Mr. Barry, or both of them under that theory?

18 A. Mr. Barry.

19 Q. Count 3, breach of the covenant of good faith and fair
02:50 20 dealing, are you seeking to recover damages from Mr. Barry or
21 Mrs. Barry under that claim?

22 A. Mr. Barry.

23 Q. So under all three claims, you're also seeking to recover
24 damages from Mr. Barry?

25 A. As I understand it.

1 Q. Yet, you have authorized the lawsuit to go forward against
2 Mrs. Barry, have you not?

3 MS. LONGORIA: Objection.

4 THE COURT: Sustained.

5 MR. CUTLER: May I approach the witness to show him
6 the verification on the back of the -- thank you.

7 THE COURT: You may approach the witness.

8 Q. Angela T. Berry (ph) work in your office?

9 A. Angel Berry (ph).

02:51 10 Q. Angel Berry?

11 A. Yes, sir.

12 Q. She's authorized to sign such verifications?

13 A. Yes, sir.

14 Q. Could you read that verification to the jury?

15 A. "I, Angel T. Berry, being duly sworn, state that I am a
16 representative of Barclays Capital Real Estate, Inc., HomeEq
17 Servicing, servicing agent for Deutsche Bank National Trust
18 Company as Trustee, the above-named defendants and plaintiffs
19 in counterclaim in this action. I have read the verified
02:52 20 action and am familiar with the content thereof and do thereby
21 state that the same is true to my knowledge except those
22 matters therein which are stated to be alleged on information
23 and belief, and as to those matters, I believe them to be
24 true."

25 Q. You're familiar with verifications, correct?

1 A. Yes, sir.

2 Q. And do you have an understanding that verifications are
3 put on official documents like this to have the client confirm
4 that the facts are true?

5 A. Yes, sir.

6 Q. Now, we went through -- Exhibits 36 through 50, you
7 testified on, correct?

8 A. I believe so, sir.

9 Q. Easy question. In any of those documents that you
02:53 10 testified on all morning, is Deutsche Bank, as trustee,
11 mentioned in one of them? I'm saying, these are the ones in
12 your book, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48,
13 49, 50.

14 MS. LONGORIA: Objection. The documents speak for
15 themselves.

16 THE COURT: Overruled.

17 A. Without having to go back and look at every document, sir,
18 they speak to themselves what they are.

19 Q. Can you identify one of those documents that mentions
02:54 20 Deutsche Bank?

21 A. 36 through 50?

22 Q. Uh-huh.

23 A. No, sir.

24 Q. Did I hear correctly when you said at the beginning of
25 your testimony that Joyce Nelson works for you?

1 A. No, sir.

2 Q. She doesn't work for you?

3 A. No, sir. She works for HomeEq Servicing.

4 Q. But she works for HomeEq Servicing?

5 A. In Sacramento, California.

6 Q. All right. Sir, would you turn to Exhibit 18, please.

7 A. Yes, sir.

8 Q. HomeEq provided all the information for this assignment to
9 Deutsche Bank?

02:57 10 A. HomeEq prepared and executed this assignment, sir.

11 Q. HomeEq prepared and executed it?

12 A. Yes, sir.

13 Q. I thought it was from Mortgage Electronic Registration,
14 Inc., as nominee for WMC Mortgage?

15 A. They are the nominee. This was prepared and sent to us.
16 We're the one who executed it.

17 Q. WMC and HomeEq, are they the same company?

18 A. No, sir.

19 Q. Does HomeEq own an interest in the property?

02:57 20 A. MERS, as nominee, does -- is the nominee for WMC. We
21 executed on behalf of MERS.

22 Q. You're not -- HomeEq and MERS are not the same company, are
23 they?

24 A. No, sir.

25 Q. And I assume -- so what you're saying is we've got WMC;

1 its nominee is MERS; and then MERS has a nominee, which is
2 HomEq?

3 A. No, sir.

4 Q. What legal authority do you have -- you don't say here
5 that you're signing on behalf of MERS?

6 A. I'm signing -- I'm signing as MERS, sir. MERS has granted
7 me authority. I have those documents here.

8 Q. Authority to sign documents for them?

9 A. Yes, sir.

02:58 10 Q. Did WMC grant you authority to sign documents for them?

11 MS. LONGORIA: Objection.

12 THE COURT: Overruled.

13 Q. Did WMC grant you authority to sign assignments of
14 mortgages?

15 A. In the Pooling and Servicing Agreement.

16 Q. They gave you a -- there's a legal -- there's a power of
17 attorney from WMC to you to sign mortgages?

18 MS. LONGORIA: Objection, your Honor.

19 THE COURT: If he can answer it. Overruled.

02:58 20 MS. LONGORIA: May I state the basis of my objection?

21 THE COURT: Not right now.

22 A. Please restate your question.

23 Q. Sure. Did WMC grant you a power of attorney to sign
24 mortgages on its behalf?

25 A. Not that I know of.

1 Q. All right. Where did you come up with the July 9, 2007,
2 transfer date?

3 A. That was the expected date of the foreclosure sale.

4 Q. So you expected, on June 4th, after the Barrys had filed a
5 lawsuit against you, that within -- boy -- 35 days there would
6 be a foreclosure?

7 A. We didn't know that the Barrys had filed their lawsuit,
8 sir.

9 MS. LONGORIA: Objection.

03:00 10 THE COURT: Overruled.

11 Q. But you just testified they filed it on the 2nd, correct?

12 MS. LONGORIA: Objection. There's two different
13 years.

14 THE COURT: Sustained.

15 MR. CUTLER: I'm sorry. You're right. Thank you for
16 the clarification.

17 Q. The Barrys had filed the lawsuit --

18 A. A year prior.

19 Q. -- a year prior. So you thought during the pendency of
03:00 20 that lawsuit that you were going to foreclose on the property
21 in 35 days?

22 A. The foreclosure action was running concurrent. We
23 continued to forbear it.

24 Q. All right. So you expected that --

25 A. At some point we would foreclose.

1 Q. But -- wait a minute. All right. You filed -- this
2 document is dated June 4, 2008, and it was prepared on or
3 before June 4, 2008, correct?

4 A. Yes, sir.

5 Q. And the transfer date says "July 9, 2007," correct?

6 A. Yes, sir.

7 Q. So you're not looking forward?

8 A. We're looking back. I don't know where that date came
9 from, sir. I'm sorry.

03:01 10 Q. You're the ones who authorized it, correct? You don't
11 know where that number came from?

12 A. No, sir.

13 Q. But it's talking about the transfer of the property,
14 correct -- transfer of the mortgage?

15 A. The expected transfer of the property at foreclosure sale.

16 Q. All right. Isn't this assignment of mortgage the only
17 assignment of mortgage that is effective in all of the
18 assignment of mortgage -- with respect to all the mortgages
19 that we have looked at today?

03:02 20 MS. LONGORIA: Objection.

21 Q. To your knowledge?

22 THE COURT: Sustained. I don't understand the
23 question.

24 Q. We've looked at about five assignments of mortgages today,
25 correct?

1 A. Four assignments to the first mortgage, one assignment to
2 the second.

3 Q. With regards to the four mortgages on the first -- four
4 assignments regarding the first mortgage, this is the only
5 assignment that survives based on everything that was recorded,
6 correct?

7 MS. LONGORIA: Objection.

8 Q. If you can answer it.

9 THE COURT: If he knows.

03:03 10 MS. LONGORIA: I'm not even sure which assignment he's
11 talking about.

12 MR. CUTLER: I'm sorry. Assignment, Exhibit 18.
13 Thank you, counsel.

14 A. I don't know, sir.

15 Q. All right. This assignment says Deutsche National -- I
16 mean, WMC Mortgage is assigning to Deutsche Bank National Trust
17 Company as Trustee, correct?

18 MS. LONGORIA: Objection. It misstates the document
19 that's in evidence.

03:03 20 THE COURT: Sustained.

21 Q. Exhibit 18 states, "Mortgage Electronic Registration
22 System, as nominee for WMC Mortgage Corp., hereby sells,
23 assigns, transfers to Deutsche Bank National Trust Company as
24 Trustee assigning the mortgage," is that correct?

25 A. That's what it says, yes, sir.

1 Q. And the mortgage and the note would follow that mortgage,
2 correct? If they're signing over the mortgage, the note would
3 follow, correct?

4 MS. LONGORIA: Objection. That's a legal conclusion.

5 THE COURT: Sustained.

6 Q. Now, that Exhibit 18 has been -- there was a -- there was
7 a subsequent filing of assignment of mortgage, was there not?

8 A. Yes, sir.

9 Q. And that is Exhibit 19, correct?

03:04 10 A. Yes, sir.

11 Q. And do you know why this assignment of mortgage was done?

12 A. No, sir.

13 Q. But does it replace Exhibit 18?

14 MS. LONGORIA: Objection.

15 Q. To your knowledge?

16 THE COURT: Sustained.

17 Q. Do you know which assignment controls the mortgage,
18 whether assignment in Exhibit 18 or assignment in Exhibit 19
19 controls where -- the transfer of the mortgage?

03:05 20 MS. LONGORIA: Objection.

21 THE COURT: Sustained.

22 Q. Do you have any understanding as to whether or not the
23 assignment of mortgage in Exhibit 19 superseded the assignment
24 of mortgage in Exhibit 18?

25 MS. LONGORIA: Objection.

1 THE COURT: Sustained.

2 Q. Please turn to Exhibit 20. You testified on this
3 mortgage, have you not, this Confirmatory Assignment of
4 Mortgage?

5 A. Yes, sir.

6 Q. What's the purpose of a Confirmatory Assignment of
7 Mortgage to your understanding?

8 A. To correct issues in prior assignments.

9 Q. Okay. Which assignment is this confirmatory assignment
03:06 10 correcting?

11 MS. LONGORIA: Objection.

12 THE COURT: Sustained.

13 Q. Is it not true, based on what it says right here at the
14 top, "Conforms and corrects assignments of mortgages reported
15 at Book 27832, at Page 352"?

16 MS. LONGORIA: Objection. The document speaks for
17 itself.

18 THE COURT: Sustained.

19 Q. All right. Based on looking at Exhibit 20, is it not
03:06 20 correcting and conforming Exhibit 18?

21 MS. LONGORIA: Objection.

22 THE COURT: Grounds?

23 MS. LONGORIA: The document speaks for itself.

24 THE COURT: I'll let him have that question.

25 Overruled.

1 A. That's what it says.

2 Q. Okay. Please turn to Exhibit 21. Is 21 also correcting
3 Exhibit 18? If you look at the footnote, you can see that.
4 I'm sorry, correcting Exhibit 18.

5 A. Yes. It also appears to be correcting the prior
6 confirmatory assignment, too.

7 Q. Which also corrects Exhibit 18?

8 A. Yes, sir.

9 Q. So we have two corrections of assignments correcting
03:08 10 Exhibit 18.

11 Would you please turn to Exhibit 22?

12 A. The second mortgage assignment?

13 Q. No, 23.

14 A. 23?

15 Q. Is it not correct to say that Exhibit 23 is also
16 correcting Exhibit 18?

17 MS. LONGORIA: Objection.

18 THE COURT: If he can answer. Overruled.

19 A. I don't know, sir.

03:09 20 Q. Okay. If you look at the middle of the assignment, it
21 identifies -- it's recorded, Book 27832, Page 352. Isn't that
22 Exhibit 18?

23 A. Yes, sir. But it also appears to be correcting other --
24 the confirmatory assignments as well.

25 Q. Right. Within Exhibit 18?

1 A. No, sir.

2 Q. Exhibit 20. It's correcting Exhibit 20, correct?

3 MS. LONGORIA: Objection.

4 THE COURT: Sustained.

5 Q. You just stated it's correcting -- it appears to be
6 correcting other confirmatory assignments. Which confirmatory
7 assignments do you believe it's correcting?

8 MS. LONGORIA: I object.

9 THE COURT: Sustained.

03:10 10 Q. Let's look -- would you please turn to Exhibit 19?

11 A. Yes, sir.

12 Q. And 19 is -- if you look at the bottom, it's correcting --
13 it's Page 318. Exhibit 19 has not been corrected by any of
14 these confirmatory assignments we talked about?

15 A. Not that I can see, sir.

16 Q. So based on that, all of the confirmatory assignments
17 address the assignment of mortgage that predated Exhibit 19,
18 correct?

19 MS. LONGORIA: Objection.

03:12 20 THE COURT: Sustained.

21 Q. Based on going through what you have just gone through, is
22 it not true that the only assignment that is effective, based
23 on these changes, is Exhibit 19?

24 MS. LONGORIA: Objection.

25 THE COURT: Sustained.

1 Q. Do you have any understanding that any other assignment of
2 the -- of Mr. and Mrs. Barry's mortgage that you have looked at
3 today is effective other than the assignment in Exhibit 19?

4 MS. LONGORIA: Objection.

5 THE COURT: Sustained.

6 Q. Which of these assignments -- do you believe any of these
7 assignments transfer any interest of the Barrys' property to
8 any entity?

9 MS. LONGORIA: Objection.

03:13 10 THE COURT: Sustained.

11 Q. HomeEq authorized the preparation of these assignments,
12 correct?

13 A. Yes, sir.

14 Q. Before filing the second foreclosure action on the Barrys,
15 did you make any effort to see if these assignments were
16 effective?

17 MS. LONGORIA: Objection.

18 THE COURT: He can answer whether he saw -- took any
19 measures. Overruled.

03:14 20 MS. LONGORIA: My objection is to the first part of
21 the question.

22 THE COURT: Overruled.

23 A. I'm not exactly sure I understand your question.

24 Q. Did you make any effort before filing the second
25 foreclosure action on the Barrys' home -- sorry -- filing the

1 second action in Land Court on the Barrys' home, did you make
2 any effort to determine whether or not any or all of these
3 assignments were effective?

4 MS. LONGORIA: Objection.

5 THE COURT: Overruled.

6 A. Me personally or --

7 Q. Yup.

8 A. No, sir.

9 Q. Are you aware of anybody at HomEq doing that?

03:15 10 A. We rely on local counsel for that, sir.

11 Q. So if local counsel made a mistake, then these wouldn't be
12 effective, would they not?

13 MS. LONGORIA: Objection.

14 THE COURT: Sustained.

15 Q. Did you not state earlier in your testimony that you did
16 not go out to federal court to file claims against the Barrys?

17 A. We filed counterclaims.

18 Q. In federal court?

19 A. As I understand it, yes, sir.

03:16 20 Q. Not in state court, but after it was removed to federal
21 court, you filed the counterclaims?

22 A. That's the way I understand it, yes, sir.

23 MR. CUTLER: I have no further questions at this time,
24 your Honor.

25 THE COURT: Redirect?

1 MS. LONGORIA: Yes, your Honor. Your Honor, if I may
2 approach the witness?

3 THE COURT: Yes.

4 REDIRECT EXAMINATION BY MS. LONGORIA:

5 Q. Sir, counsel asked you some questions about the Verified
6 Answer and Counterclaims filed in this case. I'd like to
7 direct --

8 MS. LONGORIA: Actually, I would like to first have
9 this marked as Exhibit 51.

03:18 10 THE COURT: Is that the next number in sequence?

11 MS. LONGORIA: I believe so, your Honor.

12 THE COURT: 53, we think.

13 MS. LONGORIA: 53, your Honor.

14 THE COURT: Exhibit 53. Any objection?

15 MR. CUTLER: No, your Honor.

16 THE COURT: It will be marked and received as Exhibit
17 53.

18 (Exhibit No. 53 received into evidence.)

19 Q. Sir, calling your attention to Page 6 of this document,
03:18 20 can you please read Paragraph 5, that being the first paragraph
21 of the counterclaim?

22 A. Under "Facts"?

23 Q. Yes.

24 A. "On July 24, 2006, Jonathan Barry entered into two loan
25 agreements with WMC Mortgage Company for \$1.16 million and

1 \$113,000. Both loans were secured by mortgages on the property
2 at 19 Reed Terrace (ph), Swampscott, Massachusetts, executed by
3 Jonathan Barry and Jamie Flack Barry."

4 Q. And does this very clearly indicate that Mr. Barry signed
5 the notes and both Mr. and Mrs. Barry signed the mortgage?

6 A. Yes.

7 Q. And I direct your attention to Paragraph 8. That is the
8 first paragraph under Count 1 of the counterclaim. Does that
9 incorporate Paragraph 5 that you just read for the jury?

03:20 10 MR. CUTLER: Objection.

11 THE COURT: Grounds?

12 MR. CUTLER: Document speaks for itself.

13 THE COURT: Miss Longoria, what's the purpose of this?

14 MS. LONGORIA: Counsel inquired in this area, and my
15 inquiry is very simple. Paragraph 5 indicates that only Mr.
16 Barry signed the note. Paragraphs 8, 10 and 12 are the
17 paragraphs under each of those counts, and they very clearly
18 incorporate Paragraph 5.

19 Q. So at any time was HomeEq and Deutsche Bank attempting to
03:20 20 file -- or to make an allegation that Mrs. Barry signed this
21 note?

22 A. No.

23 Q. Directing your attention to what has been admitted as
24 Exhibit 45, counsel asked you a series of questions about how
25 it is that the individuals who are signing on behalf of MERS

1 have that authority. Can you tell me, what is Exhibit 5 and
2 how it gives those folks the authority to sign for MERS?

3 A. It's a corporate resolution by MERS establishing
4 individuals at HomeEq Servicing as being authorized signers on
5 behalf of MERS with Assistant Secretary Certificate by Tanya
6 Bletchenjer (ph) of MERS.

7 Q. And you were asked a series of questions about the
8 Soldiers' and Sailors' actions in Land Court. At the
9 conclusion of the Soldiers' and Sailors' action, is there a
03:22 10 judgment that indicates that the folks are not in the military?

11 MR. CUTLER: Objection.

12 THE COURT: Overruled, if he knows.

13 A. It's my understanding it is not a judgment. Oh, it's a
14 sort of a judgment. It's a ruling by the Land Court.

15 Q. And what does that ruling say?

16 A. That they're not in the military and entitled to relief
17 under the Soldiers' -- the Massachusetts Soldiers' and
18 Sailors'.

19 Q. Is it a comment on the underlying merits of the action in
03:22 20 any way?

21 A. No.

22 MS. LONGORIA: Nothing further.

23 THE COURT: Any recross?

24 REXCROSS-EXAMINATION BY MR. CUTLER:

25 Q. Exhibit 53.

1 A. Yes, sir.

2 Q. Please turn to the answer of HomEq and Deutsche Bank at
3 Paragraph 11 -- I'm sorry, No. 12, No. 12.

4 A. Yes, sir.

5 Q. It states here the assignment of mortgage has a transfer
6 date of July 9 and is recorded at Book 27932, at 352. That was
7 July 9, 2007.

8 MS. LONGORIA: Objection.

9 THE COURT: He hasn't asked a question yet.

03:24 10 Q. Where did that date come from?

11 MS. LONGORIA: Objection.

12 A. I don't know, sir.

13 THE COURT: Grounds?

14 MS. LONGORIA: He asked about Exhibit 53, which is the
15 complaint, and I don't understand where he's going with the
16 dates.

17 THE COURT: Are you quoting from the --

18 MR. CUTLER: Yes, No. 12.

19 MS. LONGORIA: Oh, okay.

03:24 20 THE COURT: The objection is overruled.

21 Q. Would you please read the last paragraph of the
22 counterclaim by Deutsche Bank and HomEq?

23 A. The paragraph beginning "Wherefore"?

24 Q. "Wherefore," please.

25 A. "Wherefore, Deutsche and HomEq request that this court

1 enter a finding of breach of contract, unjust enrichment and
2 breach of contract of the forbearance agreement against the
3 defendants in counterclaim and award Deutsche and HomEq
4 damages, attorneys' fees, costs and all other relief as this
5 court deems just and proper."

6 Q. So HomEq is seeking damages on its own behalf here, is it
7 not?

8 MS. LONGORIA: Objection.

9 A. Yes, sir.

03:25 10 THE COURT: Overruled.

11 Q. And seeking damages against Jamie Flack Barry, correct?

12 A. It's a counterclaim. I believe she sued us first.

13 Q. And it's -- if someone sues you first -- if someone sues
14 HomEq first, HomEq can sue them for anything that it thinks is
15 appropriate?

16 MS. LONGORIA: Objection.

17 THE COURT: Sustained.

18 MR. CUTLER: No more questions, your Honor.

19 THE COURT: Thank you, Mr. Perry. You may step down.

03:25 20 I'll see counsel at sidebar.

21 (SIDEBAR CONFERENCE AS FOLLOWS:

22 THE COURT: Now, I take it you have two more
23 witnesses, Miss Longoria?

24 MS. LONGORIA: Yes, your Honor.

25 THE COURT: And those are the Barrys?

1 MS. LONGORIA: That's correct.

2 THE COURT: No other witnesses after that?

3 MS. LONGORIA: That's correct.

4 THE COURT: And the basic estimated time of direct is
5 about an hour or so with both of them?

6 MS. LONGORIA: A little less with Mrs. Barry and a
7 little more with Mr. Barry.

8 THE COURT: A couple hours?

9 MS. LONGORIA: Yes.

03:27 10 THE COURT: Okay. I am going to announce to the jury
11 now that we're not going to finish tomorrow because I'm not
12 going to put this case to the jury late on a Friday afternoon.
13 Therefore, we're going to have to recess. I think it best not
14 to try to do anything on Monday because I've already committed
15 to empanelling another jury in another case. So it's my
16 judgment that we ought to knock it off until Tuesday and that I
17 will tell the jury that we're going to complete the testimony
18 tomorrow and that we will then have closings and charge on
19 Tuesday.

03:27 20 Is there any reason why I should not do that?

21 MS. LONGORIA: No, your Honor.

22 MR. CUTLER: No, your Honor.

23 MS. LONGORIA: Following your discharge of the jury
24 and out of the hearing of the jury, I would like to make an
25 argument for the record with regard to the documents necessary

1 prior to examining the Barrys.

2 THE COURT: Tonight?

3 MS. LONGORIA: After the jury is discharged.

4 THE COURT: I can't do it tonight. I've got other
5 business. We'll have to do it in the morning.

6 MS. LONGORIA: All right. I can do it by writing.

7 THE COURT: Please do.

8 . . . END OF SIDEBAR CONFERENCE.)

9 THE COURT: All right, jurors. We are going to recess
03:27 10 for the day. That's the good news. The bad news is we are not
11 going to be able to complete the case tomorrow. We are going
12 to be able to complete the testimony, but it would be
13 inappropriate, in my judgment, since we're going to have
14 probably three or four hours of testimony before we're
15 completed, to then try to have closings and charge to you late
16 on a Friday afternoon. It would be unfair to you and, I think,
17 unfair to everybody to ask you to work late and maybe into the
18 evening on a Friday. So rather than that, what I'm going to do
19 is suspend after tomorrow.

03:28 20 Again, as I think you might have already heard, I have
21 another case starting on Monday. You know the process of
22 empanelling a jury. It takes a long time. So I'm not going to
23 ask you to come in Monday, in midday, or cool your heels while
24 I empanel another jury.

25 What I'm going to do is suspend this case, after

1 tomorrow, until Tuesday, Tuesday, next week, the date of which
2 slips my mind, but maybe my deputy will remind me of what that
3 date is. The 26th of January will be Tuesday. What will
4 happen on Tuesday is we will have closing arguments first
5 thing. Then I will charge you on the law in the case, and then
6 the case will be submitted to you sometime mid- to late morning
7 Tuesday. Then the case will be in your hands. But it's not
8 going to happen tomorrow as I had hoped we would be able to do.
9 It's just one of those things. We're not going to be able to
03:29 10 complete it. So we will go forward with that.

11 So I will see you back here tomorrow morning, and
12 tomorrow will be the last day of testimony. But make plans to
13 be returning on Tuesday, January 26th, at which time the case
14 will be completed. Have a nice evening. I'll see you tomorrow
15 morning at 9 a.m.

16 (The jury left the room at 3:30 p.m.)

17 THE COURT: All right. Be seated, counsel. I do not
18 have time to hear an argument on a motion, but, Miss Longoria,
19 tell me what the subject matter is.

03:30 20 MS. LONGORIA: Your Honor, it was simply my motion
21 that you have in abeyance as we wait for the Barrys to produce
22 their financial records. I'm about to examine them. Counsel
23 has said they're only going to argue what they reported during
24 2007. That's the year I don't have.

25 THE COURT: You're going to have to deal with what you

1 have, and I will deal with the consequences. If I am
2 convinced, either by you or someone else, that the Barrys have
3 been not forthcoming in the financial information that they're
4 required to produce, then there will be consequences for the
5 defendants' case.

6 MS. LONGORIA: Thank you, your Honor.

7 THE COURT: But if you want to put something in
8 writing to this effect and get it to my office by the end of
9 the day, I'll consider it before we have the Barrys testifying
10 tomorrow morning.

03:31

11 MS. LONGORIA: Thank you, your Honor.

12 THE COURT: Otherwise, we are in recess until tomorrow
13 morning at 9 a.m.

14 (Whereupon, at 3:31 p.m. the trial recessed.)
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/Cheryl Dahlstrom

01/24/2010

Cheryl Dahlstrom, RMR, CRR
Official Court Reporter

Dated