

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: 50 2010 CA 013920XXXX MB
THE BANK OF NEW YORK MELLON f/k/a THE
BANK OF NEW YORK AS TRUSTEE FOR THE
CERTIFICATEHOLDERS CWALT, INC.
ALTERNATIVE LOAN TRUST 2005-56
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-56,

Plaintiff,

-VS-

[REDACTED] [REDACTED]
UNKNOWN SPOUSE OF
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AS NOMINEE
FOR COUNTRYWIDE HOME LOANS, INC.
MIN NO. 1000157-0008053098-9;
VILLAGEWALK OF WELLINGTON HOMEOWNERS
ASSOCIATION, INC.; UNKNOWN TENANT
NO.1; UNKNOWN TENANT NO. 2; and ALL
UNKNOWN PARTIES CLAIMING INTERESTS BY,
THROUGH, UNDER OR AGAINST A NAMED
DEFENDANT TO THIS ACTION, OR HAVING OR
CLAIMING TO HAVE ANY RIGHT, TITLE OR
INTEREST IN THE PROPERTY HEREIN
DESCRIBED,

Defendants.

/

DEPOSITION OF ROY DIAZ

Wednesday, March 23, 2011
1:05 p.m. - 3:29 p.m.
101 N.E. 3rd Avenue, #1500
Fort Lauderdale, Florida 33301

Reported By:
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Notary Public, State of Florida
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1 APPEARANCES:

2

3 On behalf of the Plaintiff:

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4 SMITH, HIATT & DIAZ, P.A.

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7

8 On behalf of the Defendant:

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1	I N D E X	
2	WITNESS:	PAGE:
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12	Defendant's No. 1	2/28/11 E-mail from Ryan Cox
13		to Steven Brotman
14	Defendant's No. 2	Assignment of Mortgage Dated
		5/20/10 - Assignee, Deutsche
		Bank National Trust Company
15	Defendant's	Assignment of Mortgage Dated
16	Composite No. 3	5/20/10 - Assignee, The Bank
		of New York Mellon
17	Defendant's No. 4	Agreement for Signing
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19	Defendant's No. 6	MIN Summary, MIN Audit, MIN
		Transfer Audit, Milestones
20		
21		
22		
23		
24		
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6 ROY DIAZ,
7 having been first duly sworn or affirmed, was examined
8 and testified as follows:

10 MR. ZACKS: Dustin Zacks here for the
11 defendants, [REDACTED] [REDACTED] and
12 Dominic Fazzari.

14 MS. MATSON: Diane Matson, representing
15 plaintiff.

17 BY MR. ZACKS:

21 A. I am a shareholder of the law firm Smith,
22 Hiatt & Diaz, P.A.

25 Q. Okay. So you're familiar with -- you agree

1 I don't need to run through the basic requirements of a
2 deposition, correct?

3 A. I understand the protocol.

4 Q. Okay. If you need a break, just tell me.
5 If you need me to clarify, I'm sure you'll tell me.

6 A. Okay. I need a break. No.

7 Q. How long have you been in your position at
8 Smith & Hiatt?

9 A. I've been a shareholder, I believe,
10 12 years.

11 Q. You're also an officer of Mortgage
12 Electronic Registration Systems, correct?

13 A. I am a vice president.

14 Q. Okay. Do you have any other titles?

15 Let me actually ask you first: Mortgage
16 Electronic Registration Systems, for ease of usage and
17 brevity, I'm going to refer to them as MERS. Is that
18 going to be okay?

19 A. That's fine.

20 Q. And you'll understand what I'm referring to
21 when I say MERS?

22 A. Yes. There's two entities, though.

23 Q. When I'm referring to MERSCORP, I'll
24 specify that.

25 A. Perfect.

1 Q. But when I'm referring to Mortgage
2 Electronic Registration Systems, Inc. and I refer to them
3 as MERS, you'll understand, correct?

4 A. Yes.

5 Q. Okay. Do you have any other titles for
6 MERS?

7 A. No.

8 Q. Are you the officer of any other
9 corporation?

10 A. I'm an officer of Smith, Hiatt & Diaz, P.A.

11 Q. Any other corporations?

12 A. No.

13 Q. Do you have signing authority for any other
14 corporations?

15 A. Not that I know of.

16 Q. We were told by Ryan Cox -- Ryan Cox is an
17 associate at your firm, right?

18 A. He is an associate at Smith, Hiatt & Diaz.

19 Q. Okay. -- that the reason you remember
20 signing the assignment of mortgage in this case was
21 because you've only signed a couple of assignments; is
22 that correct?

23 A. I believe I only signed a few. I don't
24 know if I want to frame it as "couple."

25 Q. Okay. How many assignments would you say

1 you have signed?

2 A. Less than six.

3 Q. And so you would agree you told Ryan Cox
4 approximately, give or take, how many assignments you've
5 signed?

6 A. I don't recall having a conversation with
7 Ryan about that. I just don't recall.

8 Q. Okay.

9 A. I'm not saying his statement was wrong.

10 Q. Sure.

11 As you sit here today, if I understand your
12 testimony correctly, you haven't signed more than six
13 assignments of mortgages, correct?

14 A. Well, I'm going to ask you to frame the
15 question a little bit differently. We're here -- let me
16 take a step back, okay.

17 First of all, there is a March 7, 2011
18 protective order that was entered. It was an agreed
19 order. And that protective order limits the testimony
20 and your inquiry to the assignment of mortgage that was
21 attached to the Complaint, The Bank of New York Mellon
22 FKA the Bank of New York as Trustee for the
23 Certificateholders CWALT, Inc. Alternative Loan Trust
24 2005-56 Mortgage Pass-Through Certificates, Series
25 2005-56 versus [REDACTED] et al.

1 So with the understanding that your line of
2 questions is limited to the assignment associated with
3 this case, which was an assignment I believe -- I don't
4 have it in front of me, but I believe it was an
5 assignment out of MERS into the plaintiff, is that your
6 question, have I signed more than six assignments out of
7 MERS into this plaintiff? Because the answer to that
8 would be no, I don't know that I have.

9 Q. Have you signed more -- if I understand
10 your testimony correctly today, you haven't signed more
11 than six assignments of mortgage in total from MERS to
12 anyone?

13 A. Out of MERS into another entity, correct.
14 I don't believe I signed more than six.

15 Q. Okay. What about assignments of mortgages
16 other than from MERS to someone else?

17 MS. MATSON: Object. It's outside the
18 scope of the order.

19 BY MR. ZACKS:

20 Q. Are you refusing to answer based on the
21 advice of counsel?

22 A. No. I'm refusing to answer because you've
23 been ordered not to go there.

24 MS. MATSON: Let's mark this as 1.

25 (Defendant's No. 1, 2/28/11 E-mail from Ryan

1 Cox to Steven Brotman, was marked for identification.)

2 BY MR. ZACKS:

3 Q. Ask if you've ever seen this document
4 before.

5 A. I don't recall if I've seen this document
6 before.

7 Q. Okay. And on the bottom half of the e-mail
8 from Ryan Cox sent February 28, 2011, 9:58 a.m. to Steven
9 Brotman, I wonder if you would read the paragraph
10 starting with "We have an agreement."

11 A. Sure. That's the -- this is the agreement
12 that led to the agreed order. Do you want to have this
13 order brought in as an exhibit?

14 Q. Can you read the paragraph that starts with
15 "We have an agreement"?

16 A. I did.

17 Q. Can you read it into the record for me?

18 A. Oh. "I am submitting the order, and have
19 talked with Roy. He says he only signed two of these
20 AOM's, so he does recall the circumstances of signing
21 this document, and agrees that the scope of the depo
22 includes the process for executing assignments."

23 Q. Does that refresh your recollection at all
24 as to a conversation with Ryan Cox about how many
25 assignments of mortgages you've signed?

1 A. I don't recall having that conversation,
2 but it's probable that that was a conversation I had with
3 him. I just don't specifically recall it.

4 Q. Okay. Do you remember executing an
5 assignment of mortgage from MERS as nominee for America's
6 Wholesale Lender to Deutsche Bank National Trust Company
7 as Trustee for the Harborview Loan Trust 2006-5?

8 A. Sitting here at this moment, I can't say
9 that I do remember that.

10 BY MR. ZACKS:

11 Q. And we'll mark this Exhibit 2.

12 (Defendant's No. 2, Assignment of Mortgage
13 Dated 5/20/10 - Assignee, Deutsche Bank National Trust
14 Company as Trustee for the Harborview Mortgage Loan Trust
15 2006-5, was marked for identification.)

16 BY MR. ZACKS:

17 Q. And I'll ask if you recognize your
18 signature at the bottom of Exhibit 2.

19 A. This relates to a different case, correct?

20 Q. Is that your signature at the bottom?

21 A. I'm going to object to answering any
22 questions about this assignment based on the protective
23 order. And I'm not going to answer any questions about
24 Exhibit 2 based on the protective order.

25 The protective order refers to the

1 assignment of mortgage attached to the Plaintiff's
2 Complaint, and that the questions will be limited solely
3 to the foregoing assignment of mortgage. Those -- and
4 that's an order you agreed to.

5 Q. Let me -- okay. So let's enter Exhibit 3,
6 and we'll make it Defendant's Composite Exhibit 3. We'll
7 mark that as 3.

8 (Defendant's Composite No. 3, Assignment of
9 Mortgage Dated 5/20/10 - Assignee, The Bank of New York
10 Mellon FKA The Bank of New York as Trustee for the
11 Certificateholders CWALT, Inc. Alternative Loan Trust
12 2005-82 Mortgage Pass-Through Certificates, Series
13 2005-82, with other attached documents, was marked for
14 identification.)

15 BY MR. ZACKS:

16 Q. I'll ask you to take as much time as you
17 need to flip through that composite exhibit.

18 A. Okay. I've reviewed Composite Exhibit 3.

19 Q. Okay. And can you tell me in general what
20 those documents are?

21 MS. MATSON: I object to the extent that
22 the questioning is outside of the scope of this,
23 and to the extent that anything here is anything
24 other than the one assignment that was attached to
25 the Complaint.

1 BY MR. ZACKS:

2 Q. Are you refusing to answer based on the
3 advice of counsel?

4 A. Well, I'm not just refusing to answer that
5 question, I'm prepared to terminate the deposition unless
6 you're going to agree to comply with the order. And if
7 you're not going to comply with the order, you have to
8 tell me that because then I'm going to terminate the
9 deposition and we're going to go back to the Judge, and
10 we're going to discuss whether or not you have to comply
11 with the order.

12 Q. Well, for the moment, I'll leave the
13 questions on Composite Exhibit 3 until the end.

14 I would just ask, again, the e-mail from
15 Ryan Cox which has been entered -- which has been marked
16 as Defendant's Exhibit 1, does that appear to you to say
17 that the scope of the deposition includes the process for
18 executing assignments?

19 A. Whether that e-mail says it or not, I've
20 got that e-mail clarified in my mind, and the
21 clarification arises out of an order that was entered by
22 the Court that was agreed to by you, which limited the
23 scope of this deposition to the assignment attached to
24 the Complaint.

25 Q. So is that a yes or a no?

1 A. That's my answer. You figure it out.

2 Q. Okay. So you're refusing to answer my
3 question?

4 A. I answered your question.

5 Q. Well, the question was, is it a yes or a
6 no?

7 A. It was not a yes or no, and there is no
8 such thing as a yes or no question, Dustin, particularly
9 when you're deposing me.

10 MR. ZACKS: Let's mark Exhibit 4.

11 (Defendant's No. 4, Agreement for Signing
12 Authority, was marked for identification.)

13 BY MR. ZACKS:

14 Q. Ask if you recognize this document.

15 A. Yes, I do recognize this. This is a
16 photocopy of what appears to have come off the public
17 records, stamped "not an official copy," but it is a
18 photocopy of a document that I do recognize.

19 Q. And can you tell me what it is?

20 A. It is the agreement for signing authority
21 that was recorded in official records book 46631 at
22 page 935 of the public records of Broward County,
23 Florida, and it was recorded on October 29, 2009.

24 Q. So you have seen this document before.

25 A. Yes.

1 Q. And you agree in this document the
2 agreement for signing authority which begins on page 2,
3 MERS is described -- pardon me, BAC Home Loans Servicing,
4 LP is described as the member?

5 A. That's what the document says.

6 Q. Okay. And Smith, Hiatt & Diaz is described
7 as the vendor, correct?

8 A. That's what the document says.

9 Q. If you take a look at paragraph 3 on page 2
10 of Exhibit 4, paragraph 3 states that "MERS may be the
11 mortgagee of record on members' mortgages."

12 Again, "member" as described in this
13 document is BAC Home Loans Servicing, LP, correct?

14 A. No.

15 Q. Okay. Who is the member?

16 A. BAC is identified as "member," but that
17 name, that word is, I believe, used interchangeably in
18 the MERS process. BAC is not the only member of MERS.
19 There are many members.

20 Q. So in paragraph 3, you believe that
21 "member" means someone other than BAC Home Loans
22 Servicing, LP?

23 A. Let me read the document a minute.

24 Q. Sure.

25 A. Okay. What was the question again?

1 MR. ZACKS: Do you mind reading it back for
2 me.

3 (A portion of the record was read by the
4 reporter.)

5 THE WITNESS: No, I don't.

6 BY MR. ZACKS:

7 Q. So to clarify, the member referred to in
8 paragraph 3 is BAC Home Loans Servicing, LP; is that
9 correct?

10 A. That's how I would interpret it.

11 Q. Was the loan in this lawsuit owned by BAC?

12 A. I do not believe it was.

13 Q. And did you speak to anyone to determine
14 that?

15 A. No.

16 Q. Did you look in the documents to determine
17 that?

18 A. I would have.

19 Q. And what documents would those have been?

20 A. I would have looked at corporate business
21 records that were delivered to our firm which would have
22 described who the owner of the loan documents were.

23 Q. Besides corporate business records
24 delivered to your firm, anything else?

25 A. That's all I would have looked at.

1 Q. Do you specifically recall looking at them
2 in this case?

3 A. I don't specifically recall looking at them
4 but that would have been -- that is my practice. I would
5 also have reviewed the title examination, which is also
6 my practice.

7 Q. Besides the title examination and the
8 corporate business records delivered to your office,
9 anything else you would have looked at to determine
10 whether BAC Home Loans Servicing, LP owned the loan in
11 this case?

12 A. I don't really understand your question,
13 the way it's framed. Do you know who the plaintiff is in
14 this case?

15 Q. You agreed with me that BAC Home Loans
16 Servicing, LP never owned the loan in this case; is that
17 correct?

18 A. I don't know that --

19 MS. MATSON: Asked and answered. He
20 already said he didn't.

21 THE WITNESS: I didn't -- Yeah, I don't
22 know if they ever owned it.

23 BY MR. ZACKS:

24 Q. Okay. Paragraph 7 of Exhibit 4 describes
25 termination. Does that appear to be correct?

1 A. That appears to be correct.

2 Q. Has the contract between BAC and Smith,
3 Hiatt & Diaz ever been cancelled or terminated?

4 A. No.

5 Q. Has this agreement ever been cancelled?

6 A. Exhibit No. 4?

7 Q. (Nods head.)

8 A. No.

9 Q. Page 3 appears to have signatures on it,
10 correct?

11 A. It does.

12 Q. Can you tell me who signed on behalf of
13 MERSCORP, Incorporated at the top left?

14 A. I do not know whose signature that is.

15 Q. Can you tell me who signed for BAC Home
16 Loans Servicing, LP at the bottom left?

17 A. I do not specifically know whose signature
18 that is.

19 Q. And going to the top right for MERS, can
20 you tell me who signed that?

21 A. It appears to be the same signature of
22 paragraph -- of page 4 which is described as William
23 Hultman.

24 Q. And do you know William Hultman?

25 A. I do not know him personally.

1 Q. Have you seen his signature before other
2 than on this exhibit?

3 A. No.

4 Q. Can you tell me who signed at the bottom
5 right for Smith, Hiatt & Diaz, P.A.?

6 A. Virginia Hiatt.

7 Q. Do you know what date the person for BAC
8 Home Loans Servicing, LP signed this page?

9 A. No.

10 Q. Turn to page 4 of this exhibit. The title
11 of this page is Mortgage Electronic Registration Systems,
12 Incorporated, Corporate Resolution.

13 Can you read the first paragraph under that
14 title I just read, please.

15 A. Okay.

16 Q. Are you an assistant secretary of MERS?

17 A. Pursuant to this document, I've been
18 appointed as assistant secretary and vice president --

19 Q. So is that a yes or no?

20 A. -- of MERS.

21 Q. Sorry. I didn't mean to you cut you off.

22 So is that a yes or a no?

23 A. Based on this document, the answer would be
24 yes.

25 Q. Would you agree that this corporate

1 resolution appears to give employees of Smith, Hiatt &
2 Diaz the power to assign the lien of any mortgage loan
3 registered on the MERS System that is shown to be
4 registered to be BAC Home Loans Servicing, LP or its
5 designee?

6 A. I believe that's what this agreement
7 intends to do, and it's intended to apply to a limited
8 number of designated employees of Smith, Hiatt & Diaz,
9 P.A.

10 Q. And you stated earlier you don't know if
11 BAC Home Loans Servicing, LP ever owned this loan in this
12 case?

13 MS. MATSON: Objection: Asked and answered
14 twice.

15 BY MR. ZACKS:

16 Q. You can answer.

17 A. Whatever I said before is the same answer.
18 How's that.

19 Q. Okay. So do you know if BAC Home Loans
20 Servicing, LP was the registered entity on the MERS
21 System for this loan?

22 A. I don't understand your question.

23 Q. Sure. We're looking at paragraph 3 on
24 page 4 of Exhibit 4.

25 A. I understand the exhibit but I don't

1 understand your question. Servicing entity? What form
2 of entity are you asking me?

3 Q. Sure. So your contention is you can assign
4 the liens of any mortgages if it's registered on MERS and
5 it's shown to be registered to BAC Home Loans Servicing,
6 LP, right?

7 A. If BAC Home Loans Servicing, LP is the
8 registered servicer of a loan and they have the servicing
9 responsibility, I have the authority to assign that
10 mortgage into the plaintiff.

11 Q. Okay. And where in this document does it
12 say registered as servicer?

13 A. You asked me what my understanding of the
14 document was. You can read the document.

15 Q. Okay. Do you see anywhere in this document
16 where it says registered to be servicer on the MERS
17 System?

18 A. That's what I understood the document to
19 mean.

20 Q. As you look at the document now?

21 A. No, as I looked at it in the past.

22 Q. And as you look at it now --

23 A. I still understand it to mean that.

24 Q. Okay. Do you see anywhere on the document
25 where it says --

1 A. The word servicer?

2 Q. Right.

3 A. I don't know. Do you?

4 Q. I'll ask you to take as much time as you
5 need.

6 A. I looked at the document and that sentence
7 does not include the word servicer. I'll agree with you.

8 Q. And would you agree that the entirety of
9 page 4 of this exhibit does not contain anything related
10 to BAC Home Loans Servicing, LP registered as servicer?

11 A. And this is the corporate resolution we're
12 talking about, right, when you say "this document"?

13 Q. This document.

14 A. By "this document," do you mean page 4 of
15 this exhibit?

16 Q. Sure. Let's begin with that.

17 A. Okay. Yeah, I would agree it does not say
18 to be registered to BAC Home Loans Servicing, LP as
19 servicer.

20 Q. Was this loan registered to BAC Home Loans
21 Servicing, LP on the MERS System?

22 A. I believe it was, as servicer.

23 Q. And how do you know that?

24 A. One of the things we do is we check. We
25 look at both the corporate business record that we

1 receive from the client and we look at the MERS System.

2 Q. And when you say "we check," do you include
3 yourself?

4 A. It's a function of the office.

5 Q. So is that a yes or no?

6 A. I have physically gone onto the system and
7 looked, yes.

8 Q. Do you do that every time you sign a
9 document pursuant to this corporate resolution, or most
10 of the time?

11 MS. MATSON: Again, object on the basis of
12 the order. It's outside the scope of the order.
13 You can ask about this particular assignment.

14 THE WITNESS: And I did check this
15 particular assignment.

16 BY MR. ZACKS:

17 Q. Okay. Are you a vice president of MERS in
18 any sense of the word other than being authorized to sign
19 as a vice president?

20 A. My corporate capacity with MERS is limited
21 to the agreement that you've marked as Exhibit 4, and in
22 no other capacity.

23 Q. So you're not paid by MERS?

24 A. No.

25 Q. And you're not -- you don't attend any

1 board meetings of MERS?

2 A. No.

3 Q. Okay. You don't have any job duties as
4 vice president of MERS?

5 A. No.

6 Q. You don't report to the president of MERS?

7 A. No.

8 Q. You're not involved in any governance of
9 MERS?

10 A. No.

11 Q. You don't report to the secretary of MERS
12 either; is that correct?

13 A. Correct.

14 Q. Do you have any MERS employees who report
15 to you?

16 A. Do I have any MERS employees? What do you
17 mean by that?

18 Q. Sure. Do you have any supervisory
19 capacity --

20 A. Do I retain --

21 Q. -- as MERS?

22 A. Within MERS, do I retain a supervisory
23 capacity? No.

24 Q. Have you ever been to the MERS
25 headquarters?

1 A. I might have been once, not related to
2 this, but I might have been once. But it wouldn't have
3 been related to this loan.

4 Q. Sure. Do you remember in what capacity you
5 went up to the MERS headquarters?

6 MS. MATSON: Object, again, relevance.

7 THE WITNESS: It would have been completely
8 outside of Exhibit 4 or this loan.

9 BY MR. ZACKS:

10 Q. If you know, why were you appointed vice
11 president and assistant secretary as opposed to just an
12 agent or attorney in fact for MERS?

13 A. That was a decision that they made, that
14 MERS made. I don't know what the basis of that decision
15 was.

16 Q. Okay. Why did you sign the assignment in
17 this case as opposed to, say, your client or the servicer
18 of this loan?

19 A. Because I was permitted to.

20 Q. Any other reason?

21 A. Any other reason would be privileged under
22 the attorney-client privilege, so I'm not going to tell
23 you.

24 Q. Okay. Is MERS a party to this lawsuit?

25 A. Yes, they are a party to the lawsuit.

1 They're a defendant in the lawsuit, but they're a
2 defendant in their capacity as Nominee -- and I'll read
3 this into the record -- for Countrywide Home Loans, Inc.,
4 MIN, M-I-N Number 1000157-0008053098-9.

5 Q. And would you agree that Smith, Hiatt &
6 Diaz represents the plaintiffs in this case?

7 A. I do agree.

8 Q. And would you agree that in this case
9 you've signed a document on behalf of MERS, correct?

10 A. I signed a document within the purview of
11 the agreement for signing authority that you have marked
12 as Exhibit 4 on behalf of MERS.

13 Q. So is that a yes or no?

14 A. That's my answer.

15 Q. Did you sign the document as vice president
16 of MERS in this case?

17 A. I did.

18 Q. The Exhibit 4, can you tell me who
19 requested that? In other words, was it your firm who
20 asked for permission to sign documents on behalf of MERS,
21 or was it MERS themselves?

22 MS. MATSON: Object. Attorney-client
23 privilege.

24 THE WITNESS: Well, I won't go into the
25 privilege part of it. The answer is I don't know

1 specifically, sitting here today, exactly what
2 triggered the evolution of -- the process that led
3 to -- eventually led to this document.

4 BY MR. ZACKS:

5 Q. Do you know who would have more information
6 about that?

7 A. No.

8 Q. What relation does BAC -- if I say BAC,
9 you'll understand what I'm referring to, BAC Home Loans
10 Servicing, LP, correct?

11 A. Okay.

12 Q. So is that a yes?

13 A. Yes.

14 Q. You'll understand what I mean when I say
15 BAC instead of the full name, correct?

16 A. You're telling me that when you say BAC,
17 you mean BAC Home Loans Servicing, LP, and I understand
18 that.

19 Q. Great.

20 What relation does BAC have with America's
21 Wholesale Lender?

22 A. I don't know.

23 Q. Do you know who would have more information
24 about that?

25 A. Probably BAC.

1 Q. Anyone at BAC in particular?

2 A. Not that I know of. I mean, I don't know
3 the name.

4 Q. If you could take me through the procedure,
5 your usual procedure of executing an assignment of the
6 mortgage.

7 MS. MATSON: Objection. It's outside of
8 the scope. You can ask him about what transpired
9 regarding this assignment.

10 THE WITNESS: I will review the Complaint.
11 I will review the corporate business records.

12 BY MR. ZACKS:

13 Q. And you're speaking generally now?

14 A. No. I'm speaking about this case.

15 Q. This case, okay.

16 A. I would have reviewed the Complaint. I
17 would have reviewed the business records. I would have
18 reviewed the title exam. I would have either reviewed a
19 printout or looked at the MERS System to see that they
20 were registered as the servicer. I would have executed
21 the assignment. And in this case in particular -- is
22 this ours? No.

23 MS. MATSON: This one.

24 THE WITNESS: -- in this case in
25 particular, the notary would have either come to

1 my office and watched me sign it, or I would have
2 went to her desk and signed it in her presence.
3 She knows me for many years. She's worked for our
4 office for many years. She's on maternity leave
5 right now. And she would have witnessed my
6 signature.

7 BY MR. ZACKS:

8 Q. Besides those steps, anything else you did
9 in preparation for signing this assignment of the
10 mortgage?

11 A. Not that I recall, sitting here today.

12 Q. Exhibit 5.

13 (Defendant's No. 5, Assignment of Mortgage
14 dated 5/19/10 - Assignee, The Bank of New York Mellon FKA
15 the Bank of New York as Trustee for the
16 Certificateholders CWALT, Inc., Alternative Loan Trust
17 2005-56 Mortgage pass-Through Certificates, Series
18 2005-56, was marked for identification.)

19 BY MR. ZACKS:

20 Q. Ask you if you recognize that document.

21 A. Is this the assignment that was attached to
22 the Complaint? Let me see.

23 Q. That's what it is.

24 A. If that's what it is, then that's it.

25 Q. If you recognize it, is that what it

1 appears to be?

2 A. Sure does.

3 Q. Does that appear to be your signature?

4 A. It does.

5 Q. Can you tell me, underneath -- there's some
6 numbers at the bottom left beginning with 1183, and there
7 appears to be a line underneath that. Any idea who made
8 that line?

9 A. That squiggly line?

10 Q. Correct.

11 A. No, I don't.

12 Q. Have you seen other assignments of
13 mortgages signed by members of your firm?

14 MS. MATSON: Again, object to the scope.

15 BY MR. ZACKS:

16 Q. And you're refusing to answer based on the
17 advice of counsel, correct?

18 A. Based on the order, not on advice of
19 counsel. It's based on the order.

20 Q. You said you reviewed business records
21 prior to signing this assignment, correct?

22 A. Correct.

23 Q. What business records?

24 MS. MATSON: Object. Attorney-client
25 privilege and work product.

1 THE WITNESS: Without telling you in
2 detail, they would be records that were turned
3 over to us by our client for preparation of the
4 lawsuit.

5 BY MR. ZACKS:

6 Q. And when you say "your client," you mean
7 who?

8 A. BAC is the servicer of this loan and would
9 be the entity that provided us with the documentation.
10 And when I say BAC, I'm using the same definition.

11 Q. You said you would look at a printout or
12 the MERS System? You told me exactly what you would look
13 at.

14 A. No. If a --

15 MS. MATSON: Objection. To me, that
16 question is vague, the way you've asked, because
17 you asked that same question, I think, before, so
18 if you could just clarify, are you talking about
19 what he reviewed before executing this assignment?

20 MR. ZACKS: Yeah.

21 MS. MATSON: Okay. I just wanted to --

22 BY MR. ZACKS:

23 Q. Did you understand the question?

24 A. I believe you're asking me the difference
25 between a printout or the MERS System? Is that your --

1 no, I guess I didn't.

2 Q. Okay. You said you looked at printouts
3 either from the MERS System or you looked at the MERS
4 System itself.

5 A. I either went on my computer, logged onto
6 the MERS System and looked at it, or somebody else did
7 that, printed the page and handed me a printout of the
8 page of the MERS System.

9 Q. And you don't specifically remember doing
10 that in this case?

11 A. I don't remember which.

12 Q. What did the MERS System say?

13 A. I don't specifically remember. I testified
14 as to what the process was when I executed this
15 particular assignment. That was the process when I
16 executed this particular assignment. I don't, sitting
17 here today, remember specifically what I saw or read. I
18 can tell you that if I executed this, it's because
19 everything was in order, from my view. And when I say
20 "this," I mean Exhibit 5.

21 Q. So you don't specifically remember looking
22 at the MERS System prior to executing this assignment of
23 mortgage; is that correct?

24 A. I don't specifically recall the events that
25 led to this signing of Exhibit No. 5.

1 Q. Okay. So you don't specifically remember
2 looking at the MERS System prior to executing this
3 assignment of mortgage?

4 A. Correct.

5 Q. You said you would check over the MERS
6 System to make sure everything was in order. What do you
7 mean by that?

8 A. I don't think I said that.

9 Q. Okay.

10 A. Ask me a question.

11 Q. Sure.

12 MR. ZACKS: I wonder if we could read back
13 the past couple questions and answers. Any
14 objection?

15 MS. MATSON: Okay. Because I agree, that's
16 not what he said, so, yeah, that's fine.

17 MR. ZACKS: Okay. I don't want to waste
18 more time, but I thought that's what he said.

19 (A portion of the record was read by the
20 reporter.)

21 BY MR. ZACKS:

22 Q. What would you look at the MERS System to
23 determine prior to signing an assignment of mortgage like
24 this one?

25 A. What would I what?

1 Q. What would you look at the MERS System to
2 determine prior to signing an assignment of mortgage such
3 as this one?

4 A. I would look at the MERS System to see the
5 registered servicer and the registered investor/owner of
6 the note and mortgage.

7 Q. Anything else?

8 A. That's what I would be looking for so, no,
9 I would not be looking for anything else.

10 Q. Besides looking at the Complaint, the
11 business records sent to you by your client, the printout
12 of the MERS System or the MERS System itself, anything
13 else you reviewed prior to signing an assignment of
14 mortgage?

15 A. I think I said the title work.

16 Q. The title report. Anything else?

17 A. I don't believe there was anything else
18 that I looked at for this case.

19 Q. How did you determine whether or not an
20 assignment needed to be executed in this case?

21 A. By reviewing the title report.

22 Q. And what did the title report say?

23 A. That an assignment was needed.

24 Q. In those words?

25 A. It would have -- I don't remember

1 specifically how it was printed on the report but, in
2 essence, the report would have included words to the
3 effect of an assignment being needed.

4 Q. Who did the title report?

5 A. I don't remember.

6 Q. When was the title report done?

7 A. Prior to me executing the assignment.

8 Q. Other than words to the effect of saying an
9 assignment is needed, is there anything else you review
10 the title report for?

11 A. As it relates to what we're here on today
12 and this particular assignment, no.

13 Q. The words to the effect that an assignment
14 was needed in the title report you looked at prior to
15 executing this assignment, you don't know who wrote those
16 words in the title report; is that correct?

17 A. It would have been the person who prepared
18 the title report.

19 Q. And you don't know who that is, correct?

20 A. Sitting here today, I don't.

21 Q. Do you know what company it was?

22 A. I'm not sure what company it was, no.

23 Q. Do you know who would have more information
24 on that?

25 A. Well, my office would have more information

1 on it.

2 Q. Okay. And who at your office?

3 A. You can make inquiry to me.

4 Q. Anyone else?

5 A. You can make inquiry to Virginia Hiatt.

6 Q. Anyone else?

7 A. There's a number of people at my office
8 that you could -- that could answer that question. We
9 have a file. It's in the file. Anyone who has access to
10 the file would be able to see it.

11 Q. And yourself and Virginia Hiatt have access
12 to the file?

13 A. Of course. And my title work is work
14 product and it's privileged, and I would object to you
15 inquiring beyond general questions, and I won't produce
16 it.

17 Q. Who drafts -- who drafted this assignment
18 of mortgage?

19 A. My office.

20 Q. And who at your office?

21 A. I don't know who specifically at my office
22 drafted it.

23 Q. Do you know when it was drafted?

24 A. Prior to me executing it.

25 Q. Is there any more specific time frame? Was

1 it a week before you signed it? Was it a month before
2 you signed it?

3 A. I don't know.

4 Q. How was it determined that Bank of New York
5 and the words that follow it, how was it determined that
6 Bank of New York Mellon was going to be who you were
7 assigning the mortgage to?

8 A. That would have been based on a review of
9 the corporate business records that were delivered to us
10 by our client in anticipation of filing this lawsuit.

11 Q. Do you know who did it?

12 A. Who did what?

13 Q. Who determined that Bank of New York Mellon
14 needed to be the assignee?

15 A. I don't know which specific person in my
16 office made that determination.

17 Q. But that determination would have been
18 based on records sent from your client; is that correct?

19 A. In addition to the title examination.

20 Q. When you look at the MERS System, do you
21 enter a password?

22 A. No.

23 Q. Are you just entering the Mortgage ID
24 Number?

25 A. Yes.

1 Q. Can you tell me typically -- well, tell me
2 for this assignment, if you remember, that process would
3 have consisted of entering the MERS ID Number on the
4 MERSServicerID.org website; would that be correct?

5 A. I think that's what it is, MERSServicer.org
6 I think that's what it is.

7 Q. Okay. And is there anything else in the
8 MERS System that you referred to earlier that you would
9 have looked at --

10 A. No.

11 Q. -- or is it just the MERSServicerID.org
12 website?

13 A. It's the public website that anybody with a
14 member ID number, M-I-N number would use.

15 Q. And you don't remember specifically in this
16 case looking at that website; is that correct?

17 A. I don't remember specifically in this case.

18 Q. And do you remember when you would have
19 looked at that?

20 A. Prior to signing the assignment.

21 Q. Was it a week before? A month before?

22 A. I don't remember.

23 Q. Do you keep a record of that search on the
24 MERS System?

25 A. No.

1 Q. What do you do with it? If it's a
2 printout, you just throw it out, I'm assuming?

3 A. Yeah.

4 Q. Do you make -- you don't make any notes in
5 your file about, like, such as a checkmark, I checked the
6 MERS System for this before I signed this?

7 A. No.

8 Q. But it definitely would have been before
9 executing the assignment of mortgage, correct?

10 A. Yes.

11 Q. And you reviewed the MERS Servicer ID
12 website to determine who was listed as the servicer and
13 the investor, correct?

14 A. That is what I routinely do, and so I --
15 without a specific recollection of this particular file,
16 that is what I would have done in this file --

17 Q. And would you --

18 A. -- routinely.

19 Q. Sure. And you wouldn't have signed this
20 assignment of mortgage without looking at the MERS
21 System; is that correct?

22 A. It's possible that I would have signed the
23 assignment of mortgage without looking at the MERS
24 System. That's a possibility. I don't remember in
25 particular if that's what happened here, but it's

1 possible.

2 Q. When would you sign an assignment without
3 looking at the MERS System?

4 A. If the other documentation I reviewed was
5 sufficient to convince me that it was accurate.

6 Q. Who decides to put your name on the
7 assignment of mortgage?

8 A. I don't know who decided to prepare this
9 particular assignment mortgage for my signature. I don't
10 remember.

11 Q. Would they have had to clear it with you?

12 A. No.

13 Q. Do you know why you signed this assignment
14 of mortgage as opposed to anyone else with signing
15 authority at your firm?

16 A. I don't know -- I don't recall the
17 particular reason why this was prepared for my signature.

18 Q. Is May 19, 2010 the date you appeared
19 before a notary to sign this assignment of mortgage?

20 A. I don't recall this specific date, but
21 based on the date reflected on the assignment, which is
22 Exhibit 5, it appears that it was May 19, 2010 when I
23 executed it in the presence of a notary.

24 Q. Who put in the date May 19, 2010?

25 A. I don't know.

1 Q. Do you know what happened on May 19th in
2 connection with the subject loan?

3 A. I don't understand your question.

4 Q. You would agree with me that below the
5 title, "Assignment of Mortgage," it says that this
6 mortgage was transferred for value received? Would you
7 agree with that?

8 A. I agree that it says that on the document,
9 yes.

10 Q. Do you know what value exchanged hands on
11 May 19, 2010?

12 A. No.

13 Q. Do you know who would have more information
14 on that?

15 A. Perhaps the plaintiff. Perhaps BAC as
16 their servicer.

17 Q. Anyone else?

18 A. I would be speculating.

19 Q. What value did MERS receive for
20 transferring the mortgage to Bank of New York Mellon?

21 A. I don't know.

22 Q. Did you do any verification to see if the
23 value was received?

24 A. I didn't have to, so that's a no.

25 Q. What records do you review to ascertain

1 what value was received?

2 A. I reviewed corporate business records that
3 are sent to us by our client.

4 Q. And those would say what value was
5 received?

6 A. Those corporate business records are
7 attorney-client privileged records and they're also work
8 product, so I'm not going to testify as to what the
9 contents of those records provide.

10 Q. In what form did the value received come?
11 Was it check? Was it cash?

12 A. I don't know.

13 Q. Did Bank of New York Mellon pay any
14 consideration for the mortgage?

15 A. To the best of my knowledge, the answer to
16 that is yes.

17 Q. And what was that consideration?

18 A. That would require me to divulge
19 attorney-client privileged information that I'm not going
20 to testify to.

21 Q. Did a physical transfer of the mortgage
22 take place on May 19, 2010?

23 A. Are you asking me to draw a legal
24 conclusion?

25 Q. Did a physical transfer of the mortgage

1 take place on May 19, 2010?

2 A. I don't know what you mean by that, so I
3 can't answer the question.

4 Q. What does physical transfer mean to you?

5 A. A physical hand-over of documentation is
6 what I believe physical transfer would mean.

7 Q. Okay. So using your definition, was there
8 a physical transfer of the mortgage on May 19, 2010?

9 A. The actual physical documents, the
10 particular note and the mortgage in their physical form
11 were not turned over to the Trustee, The Bank of New York
12 Mellon. They were in possession of my law firm who is
13 attorney for that entity in this case. So the documents
14 were in possession of the plaintiff when they were
15 delivered to my law firm.

16 Now, I cannot tell you if on May 19, 2010
17 those documents were physically in the possession of my
18 law firm.

19 Q. So was there a physical transfer of the
20 mortgage from MERS to Bank of New York Mellon on May 19,
21 2010?

22 A. Based on my definition, I don't know.

23 Q. Do you know who would have more knowledge
24 of that?

25 A. BAC.

1 Q. Anyone else?

2 A. My office could certainly investigate and
3 find out the answer to that question.

4 Q. So that would include Virginia Hiatt and
5 yourself?

6 A. It would.

7 Q. Can you describe your level of confidence
8 with the accuracy of information on this assignment?

9 A. I'm confident that it's accurate.

10 Q. Has that level of confidence changed given
11 the example of errors reported in the securitization
12 process?

13 MS. MATSON: Objection.

14 THE WITNESS: I don't know what errors
15 you're referring to.

16 BY MR. ZACKS:

17 Q. Has the level -- are you aware of any
18 problems in the securitization process?

19 MS. MATSON: Objection: Outside the scope
20 of the order.

21 THE WITNESS: Agreed. I believe that that
22 is outside the scope of the order. It's also
23 vague.

24 BY MR. ZACKS:

25 Q. Bank of New York Mellon, as listed on this

1 assignment, is the Trustee of a Trust, correct?

2 A. It appears to be.

3 Q. So it was your understanding you were
4 assigning the mortgage to a Trust, correct?

5 A. It was my understanding that MERS was
6 assigning the mortgage to the named entity that appears
7 in the face of this assignment.

8 Q. So is that a yes or a no?

9 A. That's my answer. Don't try to tie me down
10 to a yes or no.

11 Q. Okay. So when you executed this assignment
12 of mortgage, was it your understanding you were assigning
13 a mortgage from Mortgage Electronic Registration Systems,
14 Incorporated, Acting Solely as a Nominee for America's
15 Wholesale Lender to the Bank of New York Mellon FKA the
16 Bank of New York as Trustee for the Certificateholders
17 CWALT, Incorporated Alternative Loan Trust 2005-56,
18 Mortgage Pass-through Certificates Series 2005-56?

19 A. Correct.

20 Q. Are you aware of any requirements outside
21 of this assignment to place the mortgage into that Trust?

22 MS. MATSON: Again, object to the scope of
23 the question.

24 THE WITNESS: Without waiving the
25 restriction of the order, I will answer the

1 question and say no.

2 BY MR. ZACKS:

3 Q. Is there additional information you would
4 tell me but for the order in response to that question I
5 just asked? Or would your answer still be no?

6 A. Well, that certainly takes us outside of
7 the order so I'm not going to answer your question.

8 Q. The Trust appears to be dated 2005; is that
9 correct?

10 A. Based on the face of the document, it seems
11 to be correct.

12 Q. Do you know what that date relates to?

13 A. Not specifically.

14 Q. Do you ever review any pooling and
15 servicing agreements prior to signing assignments?

16 MS. MATSON: Object again. If you're
17 asking relative to this one, that's acceptable.

18 THE WITNESS: Are you asking specifically
19 as to the pooling and servicing agreement related
20 to this particular plaintiff?

21 BY MR. ZACKS:

22 Q. Let me be clear. You're refusing to answer
23 my previous question based on the advice of counsel,
24 correct?

25 A. No, based on the order --

1 Q. Okay.

2 A. -- the agreed order.

3 Q. Okay. As to this particular assignment,
4 did you review any pooling and servicing agreement?

5 A. I did not.

6 Q. Okay. The paragraph just above your
7 signature block on this assignment of mortgage, can you
8 read that paragraph, please? I'd ask you to read it into
9 the record.

10 A. That starts with, "Together with all"?

11 Q. Correct.

12 A. "...together, with all the indebtedness
13 currently due and to become due under the terms of any
14 promissory note or evidence of indebtedness secured
15 thereby. This assignment is made this 19th day of May,
16 2010, without recourse to assignor and without
17 representation or warranty by assignor, express or
18 implied."

19 Q. Thank you.

20 "Together with all indebtedness currently
21 due," what does that mean to you?

22 A. The amount of indebtedness due under the
23 promissory note and mortgage related to this loan was
24 being assigned over to the plaintiff who would be
25 entitled to all of the rights under the note and

1 mortgage.

2 Q. And "Evidence of indebtedness secured
3 thereby," what does that mean to you?

4 A. The loan documents.

5 Q. What would those be?

6 A. A promissory note, a mortgage. I don't
7 know if there were any other loan documents related to
8 this particular loan, sitting here today.

9 Q. Is it your understanding that the note is
10 also being assigned by this assignment?

11 A. The entire indebtedness, the mortgage that
12 secures the note and the note are the loan documents that
13 are being assigned to the named assignee.

14 If you're asking me for my legal
15 interpretation of what this means, it might be different,
16 but it wouldn't be appropriate for me to tell you.

17 Q. So is it your understanding that the note
18 is also being assigned by this assignment?

19 A. As you've phrased it, I would say that is
20 not my understanding.

21 Q. Did a physical transfer of the note occur
22 on May 19, 2010?

23 A. I don't know the date that the physical
24 transfer of the note occurred.

25 Q. Did the physical transfer of the note occur

1 from MERS to Bank of New York Mellon an May 19, 2010?

2 A. Isn't that what you just asked me?

3 Q. No.

4 A. All right.

5 MR. ZACKS: Can you read it back?

6 MS. MATSON: Can you read it again?

7 (A portion of the record was read by the
8 reporter.)

9

10 MS. MATSON: I would like to object.

11 You're assuming facts that are not in evidence or
12 involved in the case at all. And if you want me
13 to be specific, I can. You're assuming that MERS
14 had the note to transfer. And I don't think you
15 can make that assumption, and he can't answer the
16 question.

17 BY MR. ZACKS:

18 Q. You can answer.

19 A. The answer is I don't know.

20 Q. Do you know who would have more knowledge
21 of that?

22 A. Probably BAC.

23 Q. Anyone else?

24 MS. MATSON: I object, again. You're
25 calling for continuous speculation on his part,

1 and I don't think you should go further.

2 THE WITNESS: Yeah. I don't know. I
3 agree. I don't know.

4 BY MR. ZACKS:

5 Q. Did any rights to the note transfer on
6 May 19, 2010?

7 A. You're asking for a legal conclusion, so
8 I'm not going to answer that.

9 Q. Well, you're also deposed here today in
10 your individual capacity; is that correct?

11 A. Yeah.

12 Q. Okay. Can you tell me, did any rights to
13 the note transfer on May 19, 2010?

14 A. In my legal capacity as an attorney? In my
15 individual capacity as an attorney?

16 Q. In any capacity.

17 A. Are you asking me for my legal opinion?

18 Q. I'm not asking for a legal opinion. In
19 connection with this assignment, did any rights to the
20 note transfer on May 19, 2010?

21 A. My belief is that the answer to the
22 question is yes.

23 Q. And from whom to whom?

24 A. The entities reflected in the assignment of
25 mortgage.

1 Q. So in connection with this assignment of
2 mortgage, your testimony here today is that MERS
3 transferred a right to the note to Bank of New York
4 Mellon on May 19, 2010; is that correct?

5 MS. MATSON: Objection.

6 THE WITNESS: Not necessarily by virtue of
7 this assignment of mortgage.

8 BY MR. ZACKS:

9 Q. But it did occur on May 19, 2010?

10 A. I don't know that it occurred on that date.
11 It may have occurred prior to that date.

12 Q. Okay. And you said your belief was that
13 there was a transfer of the rights to the note on May 19,
14 2010; is that correct?

15 A. By virtue of this assignment of mortgage,
16 this assignment of mortgage has a legal effect. As of
17 the date it was executed, there is a legal effect of what
18 that execution results in.

19 Q. So --

20 A. But I'm not pinning anything specifically
21 down to May 19, 2010 because I don't know if that was the
22 specific date when the ownership interest in the note was
23 transferred into the assignee reflected on this document.

24 Q. Did you check on any physical transfer of
25 the note or mortgage before signing this document?

1 A. That would have been included in the
2 business records that I reviewed that would have been
3 turned over to us by our client prior to commencing the
4 lawsuit.

5 Q. Anything else?

6 A. As I sit here today, I would say I don't
7 recall having reviewed anything else.

8 Q. Do you specifically recall a date of
9 physical transfer of the note or mortgage as to this
10 loan?

11 A. No. What I can tell you, it would have
12 either been on May 19, 2010 or it would have predated
13 May 19, 2010.

14 Q. And how do you know that?

15 A. Because if I signed this, it would have
16 been because I was convinced that the named assignee
17 owned the interest.

18 Q. But you don't know what date they acquired
19 the interest?

20 A. Sitting here today, I don't.

21 Q. And you don't know the date that MERS
22 transferred the rights to the note to the assignee?

23 MS. MATSON. Object again. You're assuming
24 facts that aren't in evidence.

25

1 BY MR. ZACKS:

2 Q. You may answer.

3 A. I don't recall.

4 Q. Would you agree that the note was not
5 transferred on May 19, 2010?

6 A. I wouldn't agree or disagree. I
7 wouldn't -- I told you I don't recall, sitting here
8 today, the date that the transfer of interest in the
9 promissory note occurred.

10 Q. And you're confident in the level of
11 accuracy of this assignment, correct?

12 A. Yes.

13 Q. MERS never has an interest in promissory
14 notes; is that correct?

15 MS. MATSON: Objection. It's outside the
16 scope of the order.

17 BY MR. ZACKS:

18 Q. You may answer.

19 MS. MATSON: If you know.

20 THE WITNESS: I don't know, as phrased.

21 BY MR. ZACKS:

22 Q. Okay. Tell me about any interest you know
23 that MERS has in promissory notes.

24 MS. MATSON: Object. It's outside the
25 scope of the order.

1 THE WITNESS: Right. We're here on this
2 case.

3 BY MR. ZACKS:

4 Q. Okay. And you would agree that you signed
5 this assignment of mortgage on behalf of MERS, correct?

6 A. I executed it, yes.

7 Q. And you would agree you executed it as vice
8 president of MERS, correct?

9 A. Yes.

10 Q. And you would agree that you executed it as
11 vice president of MERS, together with indebtedness that
12 you said was evidenced by loan documents, correct?

13 A. Correct.

14 Q. And you said those loan documents would
15 include the note, correct?

16 A. Correct.

17 Q. So what interest does MERS have in
18 promissory notes?

19 MS. MATSON: Again, objection.

20 THE WITNESS: You're asking -- you're
21 asking for a legal conclusion. This is an issue
22 of law. And MERS' interest in this loan and any
23 loan documents associated with this loan are clear
24 on the records and are clear on the face of those
25 documents.

1 BY MR. ZACKS:

2 Q. And what documents would those be?

3 A. The mortgage, the note, this assignment.

4 MERS is a nominee for an entity held and was the titled
5 mortgagee as nominee for America's Wholesale Lender, and
6 in that capacity, transferred their mortgagee interest to
7 the named assignee on the assignment, Exhibit No. 5.

8 Q. They transferred their mortgagee interest.
9 Did they transfer anything else?

10 A. You're asking me to draw a legal
11 conclusion. I'm not willing to do that.

12 Q. In connection with this assignment, did
13 they transfer anything else but the mortgagee interest?

14 A. They transferred what is stated on the face
15 of this assignment. The legal effect of that is not for
16 me to testify to. That's for a Court to determine.

17 Q. And when you signed this document, did you
18 understand that MERS was assigning anything additional
19 than its mortgagee interest?

20 A. I understood it was assigning everything
21 that's stated in this assignment of mortgage, and that
22 interest is specified and assigned.

23 Q. So that would include the note.

24 A. I don't know if that includes the note.
25 That's a legal conclusion.

1 Q. So you signed a document without knowing
2 the legal effect of it?

3 A. Oh, I believe I do know the legal effect of
4 it, but that's not a factual issue for this deposition
5 today.

6 Q. So you signed it and you don't know whether
7 or not MERS assigned or did not assign the note; is that
8 correct?

9 A. I know that MERS assigned the mortgage by
10 virtue of this assignment, and that MERS agreed to the
11 terms contained in this assignment in that process.

12 Q. You said you know that MERS agreed to the
13 terms of the assignment. Who did you talk to at MERS to
14 determine that?

15 A. I didn't speak to anybody at MERS.

16 Q. Did you speak to anyone at all to determine
17 whether MERS assented to the terms of the assignment?

18 A. Not in this particular case, no.

19 Q. So how did you know that MERS assented to
20 the terms of the assignment?

21 A. I know that from circumstances outside of
22 the scope of this particular case.

23 Q. So you didn't speak to anyone regarding to
24 MERS' assent in terms of this assignment of mortgage; is
25 that correct?

1 A. I did not speak to anyone as it relates to
2 Exhibit 5.

3 Q. Okay. So you don't know that MERS agreed
4 to the terms of this assignment of mortgage; is that
5 correct?

6 A. No, I know that they did.

7 Q. How do you know that?

8 A. I know that from information that I derived
9 in a scenario outside of the scope of this particular
10 assignment.

11 Q. Okay. So there's information outside of
12 this assignment that relates to this assignment; is that
13 correct?

14 A. It doesn't relate to this assignment.

15 Q. So without that knowledge, you would have
16 no knowledge of MERS' assent to the terms of this
17 assignment; is that correct?

18 A. Let me put it another way. In my capacity
19 as vice president under the Agreement for Signing
20 Authority, which is Exhibit 4 to your deposition, in that
21 capacity, I agreed on behalf of MERS to the terms of this
22 assignment.

23 Q. So through that corporate authority as
24 Exhibit 4 to this deposition, MERS assented to the terms
25 of this assignment of mortgage?

1 A. Through me.

2 Q. So it was you that assented to the terms of
3 this assignment of mortgage.

4 A. The one in this case, yes.

5 Q. And no one else.

6 A. Correct.

7 Q. And you signed as vice president of MERS
8 acting solely as a nominee for America's Wholesale
9 Lender; is that correct?

10 A. Yes, it is.

11 Q. How did you know that MERS was nominee for
12 America's Wholesale Lender?

13 A. By reviewing documentation.

14 Q. What documentation?

15 A. I don't specifically recall what I reviewed
16 in this case to see that, to determine that, but I would
17 have reviewed either the mortgage or I would have
18 reviewed other documentation that would have established
19 that to me.

20 Q. So in this case you don't remember a single
21 document that you looked at that would establish the
22 nominee status of MERS for America's Wholesale Lenders;
23 is that correct?

24 A. I don't.

25 Q. Did someone at America's Wholesale Lender

1 tell you that MERS was acting as the nominee?

2 A. No.

3 Q. Did someone at MERS tell you they were
4 acting as nominee for America's Wholesale Lender?

5 A. No.

6 Q. Was America's Wholesale Lender in existence
7 on May 19, 2010?

8 A. I don't know.

9 Q. Did you check that before signing this
10 assignment of mortgage?

11 A. No.

12 Q. Why not?

13 A. Didn't need to.

14 Q. Why not?

15 A. Because the mortgage was in MERS as
16 nominee.

17 Q. And how could MERS be nominee for a company
18 that was defunct?

19 A. I won't speculate and answer that question.
20 If you would have done the little ritualistic dance in
21 the beginning, you would have told me not to speculate,
22 right?

23 Q. Sure.

24 Is it your belief that MERS can be a
25 nominee for a defunct company?

1 A. I don't know.

2 Q. Did you know when you signed this
3 assignment of mortgage?

4 A. I've never had the issue come up and it
5 didn't -- I made no inquiry on that issue.

6 Q. Do you know if anyone checked if America's
7 Wholesale Lender was extinct on May 19, 2010?

8 A. I don't know.

9 Q. Did you ever talk with anyone at America's
10 Wholesale Lender?

11 A. Not as it relates to this loan.

12 Q. What specifically did you look at to
13 determine that MERS was the nominee for America's
14 Wholesale Lender?

15 A. I told you I don't remember.

16 MS. MATSON: Asked and answered.

17 BY MR. ZACKS:

18 Q. You also said that MERS holds title; is
19 that correct?

20 A. MERS holds what?

21 Q. MERS held title in this case?

22 MS. MATSON: Objection: Vague.

23 THE WITNESS: I don't recall saying that.

24 BY MR. ZACKS:

25 Q. Did MERS hold legal title to the mortgage

1 before you executed this assignment of mortgage?

2 A. MERS was the mortgagee of record before
3 this was executed, Exhibit 5.

4 Q. And how did you determine that?

5 A. I told you, I don't remember what I looked
6 at.

7 Q. You would agree that this assignment is not
8 an affidavit, correct?

9 A. It was not my intention when I executed it
10 that it would be an affidavit.

11 Q. As you look at it now, do you understand it
12 to be an affidavit?

13 A. I don't know what you mean. The legal term
14 of art, "affidavit," I don't know what you mean by it.

15 Q. Sure. Did you swear to the contents of
16 this assignment when you signed it?

17 A. No.

18 Q. Did you take an oath before signing this
19 assignment of mortgage?

20 A. No.

21 Q. So you didn't swear that anything happened
22 on May 19th; is that correct?

23 A. I did not take an oath.

24 Q. So you did not swear that anything happened
25 on May 19, 2010, correct?

1 A. I did not take an oath.

2 Q. So is that a yes or a no?

3 A. That's my answer.

4 Q. Okay. So you're refusing to answer my
5 question?

6 A. I answered it.

7 Q. Okay. So when you signed this assignment
8 of mortgage, all you were acknowledging is that you were
9 signing as an officer of MERS?

10 A. No.

11 Q. Okay. What else did your signature
12 signify?

13 A. The assignment of the mortgage as reflected
14 in the terms of this document.

15 Q. So a transfer of the assignment did occur
16 on May 19, 2010?

17 A. If you're asking me what the legal effect
18 of the execution of this assignment of mortgage is,
19 you're asking for a legal conclusion and I'm not going to
20 answer that.

21 It was my intention when I executed this
22 document that the assignment of mortgage out of the
23 assignor into the assignee, as prescribed by the terms of
24 this document, Exhibit 5, was going to occur and did in
25 fact occur as of May 19, 2010.

1 Q. And you have no personal knowledge of
2 anything that happened on May 19, 2010, apart from your
3 signing this assignment, correct?

4 A. That's very open and very vague so I can't
5 answer your question.

6 Q. You signed this assignment of mortgage May
7 19, 2010, correct?

8 A. I did.

9 Q. In connection with this assignment of
10 mortgage, can you tell me anything else that happened on
11 May 19, 2010 regards the subject loan?

12 A. Sitting here today, I cannot.

13 Q. Do you know what date this case was filed?

14 A. I don't.

15 Q. Is it true that plaintiff needed to be the
16 mortgagee on the date the case was filed in order to
17 bring this action?

18 MS. MATSON: Objection: Asking for a legal
19 conclusion.

20 THE WITNESS: I don't know, based on the
21 way you've asked the question.

22 BY MR. ZACKS:

23 Q. Who would have more knowledge of that?

24 A. I can name two dozen lawyers in town that
25 might be able to give you a legal opinion.

1 Q. Who's Tanya Simpson?

2 A. She's an attorney at our office.

3 Q. Does she work under you?

4 A. Well, she's an associate attorney at our
5 office.

6 Q. Do you supervise her directly?

7 A. At times.

8 Q. Do you know why she was named in this
9 assignment of mortgage?

10 A. I believe she was listed in compliance with
11 a Florida statute that requires the preparer and a return
12 address to be reflected on the assignment.

13 Q. Any other reason?

14 A. No.

15 Q. Do you know of any other activities Tanya
16 Simpson had in connection with drafting or filing this
17 assignment of mortgage?

18 A. No.

19 Q. Or verifying it?

20 A. No.

21 Q. The search that you run through before you
22 sign the assignment of mortgage, are there records of
23 that?

24 MS. MATSON: Objection: vague. What do you
25 mean by --

1 MR. ZACKS: Sure.

2 BY MR. ZACKS:

3 Q. You said you look at various documents,
4 corporate records, looking at the MERS system, looking at
5 title report.

6 Do you have any records that you actually
7 did that search?

8 A. That I conducted?

9 Q. (Nods head.)

10 A. I'm going to answer the question even
11 though I shouldn't because it's overbroad and vague.

12 The title examination is not prepared by
13 me. The corporate business records are not prepared by
14 me. I review corporate business records that are
15 delivered to my office from our client. I review a title
16 examination that's prepared by someone else. And I
17 review, to the extent I have to, public records on the
18 MERS website, the public MERS website.

19 Q. And do you have any records of a system
20 that you use when you check those off or when you review
21 those? Do you have any notes that you take
22 contemporaneously with reviewing those records you just
23 mentioned?

24 A. I don't have physical notes. We do
25 maintain a legal file.

1 Q. Okay. And that would contain records of
2 your going through the documents and looking at them
3 prior to executing an assignment of mortgage.

4 A. It would contain the records and the
5 documents I would have reviewed other than the website
6 review or a printout of the website review of the MERS
7 public system.

8 Q. But you don't know in this case?

9 A. No. Let me say I don't know about that
10 last piece. I do know that a title search was conducted,
11 and I do know that we would have received public business
12 records -- I mean, I'm sorry, corporate business records.

13 MS. MATSON: I don't know if this is a good
14 time or not, but I would suggest taking a break.
15 There's no water in here or anything.

16 MR. ZACKS: Yeah, if you want to, that's
17 fine.

18 (A recess was taken from 2:40 p.m. to
19 2:52 p.m.)

20 BY MR. ZACKS:

21 Q. Okay. We're back on. You understand
22 you're still under oath, right?

23 A. Yes.

24 MR. ZACKS: I'll mark this 6.

25 (Defendant's No. 6, MIN Summary, MIN Audit,

1 MIN Transfer Audit, Milestones, was marked for
2 identification.)

3 BY MR. ZACKS:

4 Q. I'll ask if you've seen this document
5 before.

6 A. No.

7 MS. MATSON: We're doing this as a
8 composite, even though each of these is different?

9 MR. ZACKS: Yeah. Sure, Composite
10 Exhibit 6 if you like.

11 THE WITNESS: Oh, let me just look real
12 quick.

13 MS. MATSON: Then we have to be specific.

14 MR. ZACKS: No, it was all provided to me
15 as one.

16 MS. MATSON: I know, but it's different
17 reports.

18 THE WITNESS: I think we need to mark them
19 as 6A, B, C.

20 MS. MATSON: That would be better.

21 THE WITNESS: Are you okay with that? We
22 can put it on the corner of the page. Make it a
23 composite exhibit, and then put in the corner of
24 the page, A,B,C.

25 MR. ZACKS: If that would make it easier

1 for you.

2 THE WITNESS: Well, it's going to make it
3 better for your record, but you don't have to do
4 it with stickers. I'll do it for you.

5 Let the record reflect I am putting the
6 initials A, B, C, and D on the right bottom corner
7 of Composite Exhibit 6.

8 And your question to me is whether or not
9 I've seen it before, so let me just look at all of
10 the pages.

11 No, I haven't seen any of these pages.

12 BY MR. ZACKS:

13 Q. Do you know what these are?

14 A. They're titled MIN Summary and MIN Audit
15 and MIN Transfer Audits and Milestones.

16 Q. Have you seen documents like these before?

17 A. I have seen documents like these in the
18 past related to other cases, but I didn't see these
19 documents related to this case.

20 Q. You didn't see these documents prior to
21 signing the assignment of mortgage, correct?

22 A. No. And I think I need to clarify that.
23 The website I would have looked at shows the servicer
24 name but I don't believe it shows the investor. I
25 believe it only shows the servicer name. And to the

1 extent I wasn't clear about that before, I want to
2 clarify that.

3 Q. Okay. And so do you remember specifically,
4 when you looked at the MERS website before signing this
5 assignment of mortgage, who the servicer was?

6 A. Like I said before, I don't remember
7 specifically. I know procedurally what I do and I know
8 procedurally what I would have done, but I don't remember
9 specifically.

10 But now that I'm looking at Exhibit 6, I
11 can tell you that my recollection is refreshed that the
12 website I go to and have gone to would not have shown the
13 assignee's name. It would have shown the servicer.

14 Q. Do you know what a MIN audit, M-I-N audit,
15 a MIN Transfer Audit, and Milestones are?

16 A. Technically, no.

17 Q. So you don't know what information these
18 documents reflect? Besides 6A, besides the MIN Summary,
19 you don't know what the MIN Audit, the MIN Transfer
20 Audit, or the Milestones reflect?

21 A. As they relate to this particular exhibit,
22 no.

23 Q. So you wouldn't know if the dates on the
24 MIN Audit, MIN Transfer Audit and the Milestones
25 represent dates of physical transfer of the note or

1 mortgage?

2 A. I don't know.

3 Q. Do you see the date May 19, 2010 on any of
4 these documents as Composite Exhibit 6?

5 A. There's portions that are redacted, so with
6 exception to that, I do not see that date. Looks like
7 the transfer to be happening in 2005, looking at
8 Exhibit 6C, but go ahead.

9 Q. 6C is the MIN Transfer Audit; is that
10 correct? Is that what you were referring to?

11 A. Yeah.

12 Q. And you testified earlier you don't know
13 what the MIN Transfer Audit means?

14 A. As it relates to this exhibit, no. I'm
15 just reading off the document.

16 Q. Okay. Now, you're a vice president of
17 MERS, correct?

18 A. Yes.

19 Q. And can you tell me in general, the MERS
20 System, does that track ownership interest?

21 A. My capacity with MERS, as I've testified
22 before, is limited to Exhibit 4.

23 Q. So you don't know what MERS does?

24 A. I do know what MERS does.

25 Q. Okay. And what does MERS track?

1 A. What?

2 Q. What does MERS track?

3 MS. MATSON: Again, I have to object
4 because it's not within the scope of this order.

5 BY MR. ZACKS:

6 Q. And you said you may have -- well, let me
7 ask you this: You can't recall whether you did or didn't
8 look at the MERS website prior to executing this
9 assignment, correct?

10 A. Right.

11 Q. And yet you've said, even though it's
12 outside the scope, as you contend, generally, you would
13 have done that prior to executing assignments, right?

14 A. Generally.

15 Q. Or someone would have printed out the
16 picture from the website, correct?

17 A. Generally.

18 Q. Why would you check the MERS website if you
19 don't know what MERS does?

20 A. I said I do.

21 Q. Okay. Why would you check the MERS website
22 prior to signing this assignment of mortgage?

23 A. As part of the process of assigning the
24 mortgages.

25 Q. And as part of that process, why do you

1 rely on the MERS website?

2 A. I don't solely rely on the website. It's
3 part of the process.

4 Q. But you do rely on it in part, correct?

5 A. In part.

6 Q. Okay. And why do you rely on it at all?

7 A. Because it's information that's available
8 to me to review as part of the assigning process.

9 Q. And the information contained that you
10 review, do you have any knowledge of how it's produced,
11 in other words, how it gets into the system such that it
12 spits out something that you would look at prior to
13 signing this assignment of mortgage?

14 A. That's an overbroad and a vague question.
15 I'm going to ask you to rephrase it.

16 Q. Okay. You said you rely in part on the
17 MERS website prior to signing an assignment of mortgage,
18 correct?

19 A. Correct.

20 Q. Okay. And why do you rely on the website?

21 A. Because that's one of the things we review.

22 Q. So you review it because it's one of the
23 things you review?

24 A. Yeah.

25 Q. Any other reason?

1 A. Because we made the decision to review it
2 as part of executing the assignment of mortgage.

3 Q. And why did you make that decision?

4 A. Because it provides us with information
5 that assists us in confirming that the information
6 contained in the assignment is accurate.

7 Q. So you looked at -- well, strike that.

8 You don't recall whether you looked at it,
9 but the system you looked at only contains the servicer,
10 correct?

11 A. Yes.

12 Q. So where on this assignment of mortgage
13 does it refer to BAC Home Loans, LP?

14 A. It doesn't.

15 Q. Okay. Where does it refer to BAC Home
16 Loans Servicing, LP?

17 A. Right, it doesn't.

18 Q. Okay. So how did the information contained
19 in the MERS website assist you in making sure that the
20 assignment of mortgage is correct?

21 A. I'm operating under Exhibit 4, so that's
22 why I do it.

23 Q. So Exhibit 4 tells you you have to check
24 the MERS System prior to signing the assignment of
25 mortgage?

1 A. No.

2 Q. Okay. So why would you review information
3 on the MERS website to verify that the information in the
4 assignment of mortgage was correct?

5 A. I didn't say that.

6 Q. You didn't?

7 A. I didn't say that's the reason why I review
8 it.

9 Q. Okay. Then why do you review it?

10 A. Because I'm operating under the Agreement
11 for Signing Authority, which is Exhibit 4.

12 Q. So you reviewed the MERS website prior to
13 signing this assignment of mortgage, or you think you may
14 have but you don't recall, because you're operating under
15 the corporate power of authority from MERS?

16 A. Well, I'm operating under the Agreement for
17 Signing Authority.

18 Q. Okay.

19 A. Right.

20 Q. And because a decision was made to review
21 those records?

22 A. That we made, my office made.

23 Q. And because those are documents that you
24 review.

25 A. Right.

1 Q. Anything else?

2 A. Anything else related to what?

3 Q. Any other reason that you review the MERS
4 website prior to signing the assignment of mortgage?

5 A. In this particular case, I can't think of
6 any.

7 Q. So do you have any knowledge whatsoever
8 about the accuracy of the MERS website?

9 A. As it relates to this case? It doesn't
10 really matter because I don't specifically remember
11 whether or not I reviewed it or relied on it so...

12 Q. But you said you would have prior to
13 signing an assignment.

14 A. Right. But the answer is I don't know.

15 Q. And --

16 A. If I -- let me -- I don't know if I did in
17 this case.

18 Q. And so you don't know if those records were
19 accurate; is that correct?

20 A. I don't know if what records were accurate?

21 Q. The MERS website is accurate.

22 A. I don't even know if I reviewed it in this
23 case, so I can't answer the question.

24 Q. Why wouldn't you review the MERS website
25 prior to signing an assignment of mortgage?

1 A. See, this is how --

2 MS. MATSON: Objection. Asked and
3 answered. You've already gone over this and that
4 specific question.

5 THE WITNESS: This is why I've shouldn't
6 have answered the question when I agreed to answer
7 it. I do not specifically recall, sitting here
8 today, whether or not I reviewed that website when
9 I executed this document. And that's Exhibit 5.

10 BY MR. ZACKS:

11 Q. Right. And you said that you usually do,
12 right?

13 A. Correct.

14 Q. And you stated that you wouldn't have
15 signed this assignment of mortgage if you hadn't have
16 checked that website.

17 A. I don't think I said that.

18 Q. So you would have signed this assignment of
19 mortgage regardless of whether you checked the MERS
20 website?

21 A. I could have. I could have.

22 Q. You could have.

23 A. Correct.

24 Q. You don't always check the MERS website
25 prior to signing assignments of mortgage.

1 A. Correct.

2 Q. The information that you review on the MERS
3 website, do you know who inputs that?

4 MS. MATSON: Objection: Outside of the
5 scope of the order.

6 THE WITNESS: It's outside the scope of the
7 order.

8 BY MR. ZACKS:

9 Q. So you're refusing to answer? So you're
10 refusing to answer?

11 A. Pursuant to the terms of the order that you
12 agreed to, it's an inappropriate question. I'm not going
13 to answer it.

14 Q. Thank you.

15 Composite Exhibit 6A, underneath where it
16 says MIN Summary, the first line at the top left says
17 "summary," and going across to the right it says
18 "active," and then in parentheses, "registered."

19 Can you tell me what that means, please?

20 A. I don't know.

21 Q. Does that mean that the MERS -- does that
22 mean that this loan is still registered on the MERS
23 System?

24 MS. MATSON: Objection. He just answered
25 the question. He doesn't know.

1 BY MR. ZACKS:

2 Q. You can answer.

3 A. I don't know.

4 Q. Do you know who would have more knowledge
5 of that?

6 A. Well, the -- let me just look and make
7 sure. The protective order limits the deposition to the
8 assignment of mortgage that's attached. I've testified
9 that I did not review Exhibit 6A in furtherance -- or
10 Composite Exhibit 6 in furtherance of executing the
11 assignment of mortgage, so I'm not going to answer
12 questions about this particular composite exhibit because
13 it has no relation with my execution of the assignment
14 that is subject to this case.

15 Q. Does the MERSServicerID.org website reflect
16 whether the MERS status is active?

17 A. The portion of the website that I have
18 reviewed in the past wouldn't have indicated that. The
19 portion that I'm referring to -- the portion that I'm
20 referring to would not have indicated that.

21 Q. Okay. And you're confident that the
22 information reviewed on the MERS website would have been
23 accurate?

24 A. I am not -- I've told you repeatedly that I
25 do not recall whether or not I reviewed the MERS website

1 when I executed this assignment of mortgage.

2 Q. Now, you've said you review the MERS
3 website and you've seen documents like this, like
4 Composite Exhibit 6. Any reason why you wouldn't review
5 the documents contained in Exhibit 6 before executing the
6 assignment of mortgage?

7 A. It's not necessary.

8 Q. Why not?

9 A. Because it's not. Because I decided it's
10 not.

11 Q. You as vice president of MERS?

12 A. In every possible capacity as it relates to
13 this case.

14 Q. Did you sign this assignment of mortgage
15 after being retained as counsel for the plaintiff?

16 A. After my law firm was retained?

17 Q. (Nods head.)

18 A. Is that the question?

19 Q. Sure.

20 A. Yes.

21 Q. Okay. So you executed an assignment to be
22 used as evidence in your case, correct?

23 A. Sure.

24 Q. Is that a yes?

25 A. It's a sure.

1 Q. Is that a yes or a no?

2 A. You said sure earlier. Was that a yes or a
3 no?

4 Q. Okay. So...

5 A. It's a yes.

6 Q. It's a yes.

7 And were you aware when you signed the
8 assignment of mortgage that MERS was a defendant in this
9 case?

10 A. Probably.

11 Q. But you're not sure?

12 A. I don't specifically remember.

13 Q. But you reviewed the Complaint prior to
14 signing the assignment of mortgage, correct?

15 A. Yeah.

16 Q. Did you review the Complaint in this case
17 before signing this assignment of mortgage?

18 A. I probably would have, yeah.

19 Q. But you don't specifically remember.

20 A. I don't specifically remember, but I
21 normally do, so I'm going to assume I did.

22 Q. But as you sit here today, you can't say
23 for certain whether you reviewed the Complaint prior to
24 signing this assignment of mortgage; is that correct?

25 A. Right.

1 Q. Why did you sign this as vice president and
2 not as assistant secretary of MERS? By "this" I mean the
3 assignment of mortgage in this case.

4 A. Exhibit 5. Because that was the capacity
5 that I decided to sign it in.

6 Q. So you decided that your name and signature
7 block would be followed by vice president in this
8 assignment of mortgage in this case?

9 A. I believe I was part of the decision making
10 process that would have resulted in that.

11 Q. I know you said the reason that vice
12 president is in this is because that's the decision that
13 was made, but why that versus assistant secretary?

14 A. That would go into attorney-client
15 privileged communication between my law firm and me as an
16 attorney and our client, so why we made that decision is
17 not one that I'm going to answer because it's privileged.

18 THE WITNESS: And on behalf of the client,
19 which you're here on behalf of the client, if you
20 can assert the privilege, Diana.

21 MS. MATSON: I do.

22 BY MR. ZACKS:

23 Q. When your law firm has transferred,
24 physically, the note and mortgage, do you have receipts
25 of that?

1 A. We don't have a specific receipt.

2 Q. Do you have a checkmark electronically or
3 physically?

4 A. When the original documents are received,
5 they are noted in our file which is maintained
6 electronically. Each client, each case has a file. This
7 case has a file. It's maintained electronically and a
8 notation is made that we have come into possession of the
9 original.

10 Q. So the notation is made electronically,
11 right?

12 A. Yeah.

13 Q. And it's made by a clerk? An attorney?

14 A. Someone in our office, not an attorney.

15 Q. Okay. So, and that would be made on the
16 date the documents came in, correct? Or...

17 A. I mean, not necessarily the same day that
18 they came in, no.

19 Q. The Exhibit 1, the e-mail, which I will
20 certainly hand to you, "Have talked with Roy," and this
21 is Ryan Cox's e-mail, "Have talked with Roy," dot, dot,
22 dot. "He agrees that the scope of the depo includes the
23 process for executing assignments."

24 Don't you agree that I read that correctly,
25 understandably while excerpting a line there?

1 A. That's what this says.

2 Q. Okay. Did you tell Ryan Cox that?

3 A. I would have told him words to that effect,
4 yes.

5 Q. Okay. And what I'm going to do now is ask
6 some questions about the general processes regarding your
7 execution of assignments. If you want to not answer,
8 that's fine, we'll certify them.

9 A. Well --

10 Q. Just so you know what I'm doing, I'm not
11 trying to antagonize you, certainly.

12 A. I understand.

13 MS. MATSON: I think we've already put in
14 the record that the order limits --

15 MR. ZACKS: Sure. And you continue to
16 assert that. I would like to ask my questions so
17 that I can certainly ask to compel them.

18 BY MR. ZACKS:

19 Q. Take me through the procedure of -- take me
20 through your usual procedure of executing an assignment
21 of mortgage.

22 MS. MATSON: Objection. I'm just going to
23 repeat the same objection each time.

24 BY MR. ZACKS:

25 Q. And, again, you're refusing to answer,

1 correct?

2 A. I believe I already answered that question
3 in the context that we're here under. And I think that
4 you have a sufficient answer to that question.

5 Q. Okay. But you're refusing to answer it
6 now, correct?

7 A. No. I'm telling you I already did answer
8 the --

9 Q. Okay.

10 A. Let me finish. I already did answer that
11 question so it's been asked and answered. And, no,
12 you're not going to be able to have it re-read back in
13 the record because it's too deep and too far gone.

14 Q. Okay. So that's your answer to the
15 question "Take me through the procedure, the usual
16 procedure of executing assignments of mortgages," right?

17 A. I have answered that question.

18 Q. Okay. In general, how do you determine
19 whether or not an assignment of mortgage needs to be
20 executed?

21 MS. MATSON: Objection: Asked and answered
22 previously.

23 MR. ZACKS: No other objection?

24 THE WITNESS: Within the contents of the
25 protective order, you've already got the answer to

1 that question.

2 BY MR. ZACKS:

3 Q. Okay. So other than this case, in general,
4 when you're executing assignments of mortgages, how do
5 you determine whether or not an assignment of mortgage is
6 needed?

7 A. I believe that that question goes beyond
8 the protective order so I'm not going to answer it.

9 Q. Other than the assignment of mortgage in
10 this case, in general, how do you determine who should be
11 the mortgagee?

12 MS. MATSON: Objection: Outside the scope
13 again.

14 THE WITNESS: Correct, that's outside the
15 scope so I'm not going to answer it.

16 BY MR. ZACKS:

17 Q. Now, aside from the assignment of mortgage
18 in this case, in general, where do you gather the
19 information that gets input onto assignments of mortgage?

20 MS. MATSON: Objection: Outside the scope.

21 THE WITNESS: And I will say again that the
22 information you were requesting has been asked and
23 answered.

24 BY MR. ZACKS:

25 Q. How is that information transmitted?

1 A. This is just harassing, so let's just do
2 this: Let's just cut it short because I'm going to
3 terminate the deposition now myself, okay. I am not
4 going to go through a line of questioning, after having
5 gone through the exercise of filing a motion for
6 protective order, having agreed with you as to what the
7 parameters of this deposition were going to be, having an
8 order signed by the Judge describing and stating what
9 those parameters are, and now you are blatantly going
10 outside the parameters.

11 And I'm not going to sit here two hours
12 into this deposition going through objection, after
13 objection, after objection just to make a record for you
14 to utilize.

15 We have a protective order. You are
16 compelled to comply with that protective order. Unless
17 you have a question that is outside of the scope of that
18 protective order that you want to ask me -- and you know
19 whether or not it is outside the scope of that protective
20 order -- tell me that you don't have any other questions,
21 that there are other issues that you want to inquire
22 about and we'll go to court on those. But I'm not going
23 to sit here and go through this exercise with you.

24 Q. Okay. So you're refusing to answer?

25 A. If the question is in violation of this

1 Court order, absolutely, I am refusing to answer it.

2 Q. In general, again, not referring to the
3 assignment in this particular case, how are assignments
4 generated?

5 A. Same answer.

6 MS. MATSON: Objection. And I think he
7 wants to terminate. And you already said that
8 you're saving the questions that are outside the
9 scope for the end of the deposition, so if that's
10 where we are --

11 MR. ZACKS: Well --

12 MS. MATSON: -- you said you were going to
13 save any questions outside of this particular
14 assignment for the end. If we're there and he's
15 terminated, and all is going to be is
16 objectionable, then I think we need to terminate.

17 MR. ZACKS: It's up to you.

18 THE WITNESS: Actually, it's up to you. If
19 you have a question -- I don't want to prevent you
20 from asking any questions that fall within the
21 parameters of this protective order. So if you
22 have any questions that you know are not -- are
23 going to be objected to, because you know the
24 questions, I don't, then ask those questions.

25

1 BY MR. ZACKS:

2 Q. All I'm going by is the agreement from your
3 office which stated that the scope of today's deposition
4 would include the process for executing assignments.

5 A. And I'm relying on an agreed order that was
6 submitted to the Court after you reviewed it and agreed
7 to the terms of the order, and the Court entered the
8 order pursuant to your agreement. That's what I believe
9 trumps the e-mail that you received from Ryan.

10 Q. Sure.

11 A. Okay.

12 Q. I understand your position.

13 A. Thank you. So are we done?

14 Q. I have several questions remaining. Again,
15 we'd get through them rather quickly if you just want to
16 state that you're refusing to answer them. It's up to
17 you.

18 A. I am on record. This is exactly why I
19 filed a motion for protective order, Dustin, so that we
20 wouldn't have to go through this, okay. This is why we
21 gave you the motion. This is why we talked about it.
22 This is why we entered into an agreed order, all right.

23 So now you want to go outside the scope of
24 this and -- and I don't know what your questions are.
25 And I want to be very clear so that when Judge Hoy reads

1 this transcript, he understands I am not in any way,
2 shape, or form preventing you from asking me questions
3 about the assignment of mortgage attached to the
4 Plaintiff's Complaint as stated in the order dated
5 March 7, 2011, and the scope of the deposition being
6 limited solely to the foregoing assignment of mortgage.
7 You can ask me every question you have within those
8 parameters.

9 If you know that the questions that you
10 have written on your paper go outside the scope, as an
11 officer of the Court, step up and say it does, they do,
12 let's go back to the Judge, and let me ask the Judge if I
13 can ask you these questions.

14 But as we sit here today, I have a ruling
15 from the Judge that you agreed to that doesn't allow you
16 to harass me or to ask me questions outside the scope of
17 this order.

18 And I don't want there to be any question
19 that I'm not going to answer legitimate questions that
20 fall within the purview of this order. Anything outside
21 of the order, I'm not required to answer. So you know
22 your questions, I don't. If you know, as an officer of
23 the court, that those questions are not limited to the
24 assignment of mortgage in this case, then I think it's
25 inappropriate for you to keep me here and continue to ask

1 me those questions.

2 Q. Okay. In general, outside the assignment
3 of mortgage in this case, how is the assignee determined?

4 MS. MATSON: Same objection.

5 THE WITNESS: Same objection.

6 MS. MATSON: Outside the scope. It's
7 harassing at this point.

8 BY MR. ZACKS:

9 Q. Has anyone checked the MERS record to see
10 who should actually be the assignee of the mortgage?

11 MS. MATSON: Objection: Outside the scope.
12 It's harassing.

13 BY MR. ZACKS:

14 Q. Shouldn't the mortgage be held by the owner
15 of the note?

16 MS. MATSON: Objection: Harassing.
17 Outside the scope.

18 BY MR. ZACKS:

19 Q. How does your name get on the assignments
20 of mortgage, in general?

21 MS. MATSON: Objection. Can we just keep
22 the same objection going?

23 THE WITNESS: No, you actually have to say
24 it.

25 Dustin, how many -- can you just tell me

1 how many you have written down?

2 MS. MATSON: How many questions are there?

3 MR. ZACKS: Not a lot left.

4 THE WITNESS: Can you just count it?

5 Because I just want to decide if I want to
6 terminate, or if it's only a few more, I'll
7 certainly sit through it.

8 MR. ZACKS: Less than ten.

9 THE WITNESS: Okay. Go ahead.

10 BY MR. ZACKS:

11 Q. In general, can you discuss the
12 notarization process in place in May of 2010?

13 MS. MATSON: Objection: Outside the scope,
14 and harassing.

15 BY MR. ZACKS:

16 Q. Did you sign all the assignments of
17 mortgage in Composite Exhibit 3?

18 MS. MATSON: Objection: Outside the scope
19 of the order.

20 BY MR. ZACKS:

21 Q. And, again, you're refusing to answer all
22 these questions, correct?

23 A. I'm not refusing to answer them. The
24 protective order prohibits you from asking them.

25 Q. Okay. So you're not going to answer.

1 A. So I'm not going to answer them based on
2 that.

3 Q. Okay. And did you execute all the
4 assignments of mortgage, as Composite Exhibit 3, using
5 your usual process?

6 MS. MATSON: Objection: Outside the scope;
7 harassing.

8 BY MR. ZACKS:

9 Q. Why did you execute all the assignments in
10 Composite Exhibit 3 and in Exhibit 2 as opposed to
11 someone else at Smith, Hiatt?

12 MS. MATSON: Objection: Outside the scope.
13 BY MR. ZACKS:

14 Q. As opposed to someone at the servicer or
15 the lender?

16 MS. MATSON: Objection: Outside the scope.
17 Already asked in context of this assignment.

18 THE WITNESS: And by outside the scope,
19 it's outside the scope of the protective order.

20 MR. ZACKS: That's good.

21 THE WITNESS: And I will read.

22 THE COURT REPORTER: Do you need this
23 transcribed?

24 MR. ZACKS: Yeah. Will you attach these,
25 please?

1 THE COURT REPORTER: Would you like a copy?

2 THE WITNESS: Yeah.

3 THE COURT REPORTER: Do you want me to send
4 it to your attention?

5 THE WITNESS: You can send it to mine.

6 (Deposition concluded at 3:29 p.m.)

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1 CERTIFICATE OF OATH

2
3 THE STATE OF FLORIDA,)
4 COUNTY OF BROWARD.)
5
6

7 I, Joyce L. Bluteau, Registered Professional
8 Reporter, Notary Public in and for the State of Florida,
9 certify that ROY DIAZ personally appeared before me on
10 the 23rd of March, 2011, and was duly sworn.

11
12 WITNESS my hand and official seal this 24th day
13 of March, 2011.
14
15
16
17
18
19
20

Joyce L. Bluteau, RPR, FPR
Notary Public - State of Florida
My Commission DD 736713
Expires: March 26, 2012

1 CERTIFICATE OF REPORTER

2 THE STATE OF FLORIDA,)

3 COUNTY OF BROWARD.)

4
5 I, Joyce L. Bluteau, Registered Professional
6 Reporter, do hereby certify that I was authorized to and
7 did stenographically report the deposition of ROY DIAZ;
8 that a review of the transcript was requested; and that
9 the foregoing transcript, numbered from 1 to 96,
inclusive, are a true and correct transcription of my
stenographic notes.

10 I further certify that said deposition was
11 taken at the time and place hereinabove set forth and
12 that the taking of said deposition was commenced and
13 completed as hereinabove set out.

14 I further certify that I am not an attorney or
15 counsel of any of the parties, nor am I a relative or
16 employee of any attorney or counsel of party connected
17 with the action, nor am I financially interested in the
action.

18 The foregoing certification of this transcript
19 does not apply to any reproduction of the same by any
20 means unless under the direct control and/or direction of
21 the certifying reporter.

22
23 DATED this 24th day of March, 2011.

24 _____
25 Joyce L. Bluteau,
Registered Professional Reporter
Florida Professional Reporter

1 DATE: March 24th, 2011
2 TO: ROY DIAZ, ESQ.
3 SMITH, HIATT & DIAZ, P.A.
4 2691 East Oakland Park Boulevard, #303
5 Fort Lauderdale, Florida 33306
6 IN RE: THE BANK OF NEW YORK MELLON, Etc. V [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] UNKNOWN
8 SPOUSE OF [REDACTED]
9 CASE NO.: 50 2010 CA 013920XXXX MB

10 Please take notice that on Wednesday, March 23,
11 2011, you gave your deposition in the above-referred
12 matter. At that time, you did not waive signature. It
13 is now necessary that you sign your deposition.

14 Please call our office at the below-listed number to
15 schedule an appointment between the hours of 9:00 a.m.
16 and 4:30 p.m., Monday through Friday.

17 If you do not read and sign the deposition within a
18 reasonable time, the original, which has already been
19 forwarded to the ordering attorney, may be filed with the
20 Clerk of the Court. If you wish to waive your signature,
21 sign your name in the blank at the bottom of this letter
22 and return it to us.

23 Very truly yours,

24 _____
25 Joyce L. Bluteau, RPR, FPR
 Consor & Associates Reporting and Transcription
 1655 Palm Beach Lakes Boulevard, Suite 500
 West Palm Beach, Florida 33401

26 I do hereby waive my signature:

27 _____
28 ROY DIAZ

29 cc via transcript: DUSTIN A. ZACKS, ESQ.

30 file copy

1 E R R A T A S H E E T

2 IN RE: THE BANK OF NEW YORK MELLON, ETC. V [REDACTED]
[REDACTED] [REDACTED] [REDACTED] UNKNOWN
3 SPOUSE OF [REDACTED]

DEPOSITION OF: ROY DIAZ TAKEN: 03/23/2011

4 REPORTER: JOYCE L. BLUTEAU, RPR, FPR

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

5 PAGE # LINE # CHANGE REASON

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21 Please forward the original signed errata sheet to this
office so that copies may be distributed to all parties.

22

23 Under penalty of perjury, I declare that I have read my
deposition and that it is true and correct subject to any
changes in form or substance entered here.

24

DATE: _____ SIGNATURE OF DEPONENT: _____

25