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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein
Circuit Court Judge

Case No. 2012-CP-10-02758
Appellate Case No. 2020-000162

Pinnacle Bank, as successor in
interest to Bank of North
Carolina, previous successor
in interest to Harbor National
Bank, Plaintiff

v.

Anthony Whitfield and Cindy
Whitfield, Defendants

Anthony Whitfield,
Counterclaimant

v.

David Swanson, Counterclaim
Defendant

of whom

Anthony Whitfield is the Appellant and David Swanson is the Respondent.

RECORD ON APPEAL – VOLUME II

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SC Court of Appeals

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1 Safe Systems. Is that an E-mail that -- a lot of the
2 E-mails that we received look like this. They're not
3 on the Safe Systems platform. Do you all go through
4 Safe Systems if you're sending loan packages or if
5 you're dealing with an outside third party outside of
6 the bank?

7 A. Typically.

8 Q. I'm just asking because, would that explain
9 why I have a copy of an E-mail on Safe Systems? That
10 went through Safe Systems?

11 A. It would be -- as far as the bank as a
12 whole, I wouldn't be the person to answer that. But
13 yes, I can say we have E-mails that go through Safe
14 Systems.

15 Q. I mean, do you send E-mails on Safe Systems
16 to each other, or do you only send E-mail
17 correspondence on Safe Systems if you're E-mailing
18 someone outside of the bank?

19 A. Safe Systems will pick up on E-mails and
20 encrypt some. So, as far as internally or internal
21 E-mail system, I can't speak to that. But if we're
22 sending loan documents out, they typically go on Safe
23 Systems and --

24 Q. To a -- such as a third party closing
25 attorney?

1 A. Yes.

2 Q. And this was an E-mail dated Monday, June
3 25, 2012 from Teresa Farley. Do you know who Teresa
4 Farley?

5 A. Yes.

6 Q. Who is she?

7 A. One of Mark Weeks' paralegals or closing
8 coordinators.

9 Q. From her to you and Felicia Pringle.
10 Subject line: Whitfield / REFI - 9 properties in 3
11 counties." And she says, "I'm waiting on all title
12 searches to come in. Should have by tomorrow. In the
13 meantime, please E-mail me the following:" Number 1,
14 "Loan commitment letter indicating loan amount and
15 terms." Then it goes on and on for items she's
16 requesting. And it looks like there's a reply from
17 Felicia Pringle. She must have replied all to you and
18 Teresa indicating Scott will E-mail Number 1 and 2.
19 That would be the loan commitment letter and the buyer
20 phone number.

21 Did I recite all that accurately as it
22 reflects on that E-mail?

23 A. Do you want to recite it again just to make
24 sure I'm answering you correctly?

25 Q. All right. Sure.

1 A. After I've reviewed it.

2 Q. Okay. I'll do that in the future. I'll
3 give it to you first. It appears to be an E-mail from
4 Teresa Farley to you and Felicia Pringle dated Monday,
5 June 25, 2012 with a subject line that says, "Whitfield
6 / REFI 9 properties in 3 counties," and she indicates
7 that she's waiting on title searches to come in by
8 tomorrow, and she's saying please send me a loan
9 commitment letter indicating the loan amount and terms
10 and other stuff down below that. And then Felicia
11 Pringle responded and said "Scott will E-mail #1 & #2,
12 meaning the loan commitment letter and buyer telephone
13 number and other items, and you're CC'd on that E-mail?

14 A. Yes.

15 Q. And this was Monday, June 25?

16 A. Yes.

17 Q. At this point in time -- and, again, you
18 may not recall. But on that Monday, had you begun
19 preparation of a loan commitment letter?

20 A. A commitment letter, no.

21 Q. Had you begun preparation of any letter at
22 this point in time?

23 A. There is a letter, but as far as when it
24 was started, I can't speak to that. I can tell you
25 when it was dated when we get to that piece of it, but

1 I can't SAY when that was started.

2 Q. Okay.

3 MR. HALVERSEN: We'll mark that as
4 Exhibit 5.

5 (Whereupon, Exhibit 5 was
6 marked for identification.)

7 BY MR. HALVERSEN:

8 Q. And let me show you another E-mail. Just
9 review that before I start asking questions.

10 Again, this is on Monday, another E-mail
11 from -- actually, the same E-mail at the bottom we just
12 looked at on Exhibit 5. And then at the top, an E-mail
13 from you to Steven Rogers later in the day at 4:08
14 p.m., and you say, "Steven, we are scheduled to close
15 Whitfield on Thursday. Can you confirm the appraisal
16 on Black Rush in time? Thanks, Scott." Is that
17 accurate?

18 A. Yes.

19 MR. HALVERSEN: Mark that as 6.

20 (Whereupon, Exhibit 6 was
21 marked for identification.)

22 BY MR. HALVERSEN:

23 Q. I'll hand you those starting at the end
24 where the beginning ones are.

25 Have you had a chance to go through that?

1 A. I did.

2 Q. This -- it looks like it's the following
3 day on Tuesday, June 26, and she's E-mailing you and
4 Felicia saying, Hey, I still need this information.
5 She states in here that "Please note that Cindy
6 Whitfield is on this property deed and will need to
7 sign the Charleston County mortgage."

8 Is this the first time you were aware
9 that Cindy Whitfield was on title to Black Rush?

10 A. Yes, or approximately that time.

11 Q. Okay. As we sit here today, you can't
12 recall speaking with anyone or reviewing any document
13 at the bank which showed before then that Cindy
14 Whitfield was on title on Black Rush?

15 A. No. No, I can't recall.

16 Q. It looks like Felicia responds -- and then
17 Felicia responds to Teresa and you with some
18 information, and then Teresa responds to Felicia and
19 you and says, "I never got any commitment letter. I
20 can do it however you guys want it done. Yes, July of
21 2004 after the mortgage was done he deeded Cindy
22 Whitfield a one half interest." And then Felicia
23 responds to Teresa and Scott Warren, you, and says, "I
24 will get with Scott when he returns from lunch. Scott
25 is working on the commitment letter. Okay, Scott did

1 mention his ex-wife was on Black Rush." Is that
2 accurate?

3 A. Yes.

4 MR. HALVERSEN: We'll mark that
5 as 7, Exhibit 7.

6 (Whereupon, Exhibit 7 was
7 marked for identification.)

8 BY MR. HALVERSEN:

9 Q. And Exhibit 7, Felicia's E-mail is talking
10 about the commitment letter that was dated June 26,
11 2012 at 1:03 p.m., correct?

12 A. Correct.

13 Q. And then I'd like for you to identify this
14 E-mail, which is a little bit later that same day.

15 A. Identify it as in --

16 Q. As in, that's an E-mail from you to Mr.
17 Werking and Mr. Griffen?

18 A. Correct.

19 Q. And it says, Subject line: "Whitfield Term
20 Sheet," and it's dated June 26, 2012 at 4:17 p.m.,
21 correct?

22 A. Correct.

23 Q. And you say "Your thoughts?" to Ryan?

24 A. Correct.

25 MR. HALVERSEN: We'll mark that as

1 Exhibit 8.

2 (Whereupon, Exhibit 8 was
3 marked for identification.)

4 BY MR. HALVERSEN:

5 Q. Is that attachment -- would that have been
6 this document?

7 A. As far as that particular -- this being an
8 attachment to that, no, but, it could have, being that
9 this is faxed and that's E-mailed.

10 Q. I understand that, you know, there's a fax
11 header on here, and it looks like there's an exhibit
12 sticker from a previous deposition and there's some
13 markings on here. But, generally speaking, was this
14 the letter you had sent to Ryan Werking on Tuesday the
15 26th at 4:17 p.m.?

16 A. I can't say if there were any changes
17 between when I E-mailed it and what we're looking at
18 here that is not the attachment to that. Just if we're
19 going to --

20 Q. I understand what you're saying.

21 A. Okay.

22 Q. So, did you do a draft of this letter?

23 A. That would be the draft.

24 Q. Okay. You did the draft and you E-mailed
25 it to Mr. Werking?

1 A. Correct.

2 Q. And that's what you attached here as "your
3 thoughts"?

4 A. Correct.

5 Q. Okay. Did Mr. Werking make any revisions
6 to that letter?

7 A. I can't recall.

8 Q. Did you create this document on your
9 computer?

10 A. The content of it, yes.

11 Q. All right.

12 MR. HALVERSEN: We'll mark that so
13 we know what we're talking about, Exhibit 9. We'll
14 mark this as Exhibit 9. Actually, Doug, if you want to
15 place that right over -- yeah.

16 (Whereupon, Exhibit 9 was
17 marked for identification.)

18 BY MR. HALVERSEN:

19 Q. Okay. So, you drafted this letter dated
20 June 26, 2012, correct, on your computer?

21 A. Yes.

22 Q. When you sent it to Mr. Werking, did Mr.
23 Werking send you a reply E-mail saying, oh, it looks
24 fine or did he call you about it, or do you recall?

25 A. I don't recall.

1 Q. I'll represent to you that I haven't seen
2 any E-mail where Mr. Werking replied to you at all. Do
3 you recall talking with Mr. Werking after you wrote
4 this E-mail to him about "your thoughts," or did you
5 never feel like you got a response from Mr. Werking?

6 A. No, I would have gotten a response.

7 Q. Okay. But as we sit here today you can't
8 recall what that conversation was?

9 A. No.

10 Q. Okay. Do you remember after sending the
11 draft to Mr. Werking if you made any changes to the
12 content of Exhibit 9?

13 A. Do I recall? No.

14 Q. Okay. Is it possible then, based on what
15 you're telling me, that you might not have made any
16 changes to Exhibit 9?

17 A. Is it possible? Yes.

18 Q. Okay. How do you describe Exhibit 9? Is
19 this a commitment letter?

20 A. No.

21 Q. What is it?

22 A. A term sheet.

23 Q. What is a term sheet?

24 A. A term sheet is precommitment. It
25 facilitates a discussion.

1 Q. And if it facilitates a discussion, what in
2 here are -- is there anything in Exhibit 9 that you're
3 asking for Mr. Whitfield to do to complete that
4 discussion?

5 A. To complete it?

6 Q. Yes.

7 A. I'm not sure that I understand as far as --
8 are there conditions, is that what you're asking?

9 Q. Well, when you said it's a term sheet, you
10 said it facilitates a discussion. So I'm just trying
11 to figure out what item or what action would be called
12 for by Mr. Whitfield in order to continue with a
13 discussion?

14 A. To continue with a discussion it's general
15 terms, and then outlines different pieces, general
16 conditions. This -- we discuss it as a whole to make
17 sure that we're in agreement.

18 Q. What is -- how does a commitment letter
19 differ from a term sheet?

20 A. A term sheet says here, "This is not a
21 commitment to lend, but is our proposal for general
22 terms and conditions of the subject loan if the
23 transaction would close on June 28, 2012."

24 Q. Okay. What is in a commitment letter?

25 A. The commitment. It does say this is a

1 commitment to lend or something along those general
2 lines.

3 Q. Okay. Aside from that language, what is in
4 a commitment letter?

5 A. Very similar.

6 Q. Very similar? Okay. So, in a commitment
7 letter would you have an offer of credit to a borrower?

8 A. In a commitment letter?

9 Q. Yes.

10 A. Yes.

11 Q. Would you state the amount of the loan?

12 A. Yes.

13 Q. Would you state the term of the loan?

14 A. Yes.

15 Q. Would you state the interest rate on the
16 loan?

17 A. Yes.

18 Q. Is the -- are the loans that are proposed
19 to be renewed identified in Exhibit 9?

20 A. Yes.

21 Q. Are the terms outlaid in Exhibit 9?

22 A. Yes.

23 Q. Is the interest rate reflected on these
24 proposed renewals?

25 A. Yes.

1 Q. What is that interest rate?

2 A. 4.75 for the term of the loan.

3 Q. Okay. Are there any terms of the renewals
4 that aren't reflected in Exhibit 9?

5 A. Are there any terms of the renewal as --
6 could you be more specific?

7 Q. Is there anything -- is there any term of
8 the loan -- we talked about what's in a commitment
9 letter, which would be the amount of the loan, the
10 maturity date of the loan, the interest rate of the
11 loan. Is there anything in there that is not in --
12 that is in a commitment letter?

13 A. Yes.

14 Q. What?

15 A. Well, it would be -- a commitment letter
16 just has more detail. This is try to keep it simple,
17 easy to read.

18 Q. Okay. What detail is not in there that
19 would be in a commitment letter?

20 A. What detail -- as far as generally, I mean,
21 this is -- first of all, it says, "not a commitment to
22 lend." A commitment letter detail would be that this
23 is a commitment to lend. But as far as additional
24 detail, verbiage. That's all I can speak to as far as,
25 you know, converting this. This commitment letter may

1 have additional verbiage cover, you know, more minute
2 details. But, generally, this is a lot of the same
3 language.

4 Q. Okay. What would be the more minute
5 details that aren't in there?

6 A. There would -- generally, when you go to a
7 commitment letter, some of these conditions will be
8 satisfied being, for example, ensuring that the bank
9 maintains priority interest, requires minimum title
10 updates, title opinions. It's really -- I call it a
11 specific situation where, you know, it's going to go to
12 commitment versus using a term sheet. And this one,
13 for example, there were still a few conditions that,
14 you know, may be removed. There may be additional
15 verbiage added in that's on a standard commitment
16 letter. As far as, you know, specifically word for
17 word what those changes would be, I can't speak to that
18 today.

19 Q. Okay. Does the word "term sheet," are
20 those words anywhere on Exhibit 9?

21 A. "Term sheet," those two words together, no.

22 Q. Okay. Is there anything in Exhibit 9 that
23 states that Mr. Whitfield would have to pledge other
24 properties in order to do the renewals?

25 A. Is there anything that states that

specifically that Mr. Whitfield -- I don't see that written.

Q. Okay. Is there anything in Exhibit 9 that states that Cindy Whitfield would have to sign a mortgage?

A. That states or would require?

Q. Anything that states that Cindy Whitfield would have to sign a mortgage.

A. There's nothing specifically saying that Cindy Whitfield as a -- her name is not mentioned in here, no.

Q. It doesn't say that in there, does it?

A. No, it does not say Cindy Whitfield would be signing the mortgage.

Q. Okay. Is there anything else in that document -- is there anything that states that the title endorsement to the Black Rush property had to be obtained?

A. That states it has to be obtained or that the bank would maintain a priority interest?

Q. Is there anything in there that states --

A. That states endorsement --

Q. -- that a title endorsement to the Black Rush property would have to be obtained?

A. No, it does not specifically say a title

1 endorsement is required.

2 Q. Is there anything in that document that
3 states that each property closing is contingent on all
4 the other properties closing as well?

5 A. No.

6 Q. Is there anything in that document which
7 said that cash had to be brought to closing in order to
8 close those renewals?

9 A. Yes.

10 Q. Where?

11 A. "Accrued interest must be paid prior to
12 renewal."

13 Q. Okay. Is there anything in that document
14 that says that the principal balances had to be paid
15 down?

16 A. Saying it would have to be paid down, no.

17 Q. Is that your signature on Exhibit 9?

18 A. Yes.

19 Q. All right. Do you recall how or when you
20 delivered that document to Mr. Whitfield?

21 A. Mr. Whitfield came to my office. We met in
22 the conference room and reviewed it.

23 Q. Would that have been on the 26th or on the
24 day before closing, or do you recall?

25 A. I do not recall, but it was before closing.

1 Q. Okay. We have some E-mails we'll go
2 through, and the answer to that question might become
3 apparent after we look at these E-mails. So, just
4 remember if when we're talking about these subsequent
5 E-mails, maybe you'll -- that will bring up something.
6 And that goes through with the whole deposition. If
7 there's something we talk about afterwards where a
8 light bulb goes off, and you say, oh, I remember that,
9 just tell me and we'll go back if you want to change
10 what you said before. Okay?

11 A. Okay.

12 Q. This is Exhibit 9 -- I'm sorry. We'll mark
13 this as Exhibit 10, and it appears to be an E-mail from
14 Teresa Farley at Mark Weeks' office to you.

15 (Whereupon, Exhibit 10 was
16 marked for identification.)

17 BY MR. HALVERSEN:

18 Q. Do you recall receiving this E-mail? We
19 don't know -- there's not a date or a time stamp on the
20 top of it, but it looks like something might have been
21 scanned by Teresa on June 26, 5:48 p.m. So we don't
22 have a time stamp on the top, but do you remember her
23 sending you the proposed HUD?

24 A. There was a proposed HUD at some point.

25 Q. Let me show you that and have you take a

1 look at it, and while you're taking a look at it, I
2 guess we'll take a break.

3 (Whereupon, a short recess
4 was taken.)

5 BY MR. HALVERSEN:

6 Q. Okay. You've had a chance to look over
7 that. Is that -- this I'll submit to you was given to
8 us by Mark Weeks' office, and I'll just represent to
9 you, if you look at those settlement statements on the
10 second page, it appears that there's a blank line for
11 interest for Black Rush on one of the second pages of
12 the HUD. Is that accurate?

13 A. Yes.

14 Q. Do you recall her sending you that with the
15 marked-up version as we sit here today?

16 A. No.

17 Q. You do recall, though, having somebody in
18 Mark Weeks' office send you the proposed HUD?

19 A. A final proposed HUD or -- this would be a
20 proposed HUD.

21 Q. A proposed HUD. And one of the last
22 E-mails, which I'm not sure if you looked at that or
23 not, was an E-mail to you with a proposed HUD.

24 Have you had a chance look at that?

25 A. Uh-huh. Was there a question, or?

1 Q. She indicates on this E-mail to you and
2 Felicia Pringle that she was missing the interest
3 amount for Black Rush, and on one of these settlement
4 statements there is a blank for interest, correct?

5 A. Correct.

6 Q. And then on one of these second sheets, the
7 interest amount looks like it is plugged in for Black
8 Rush, is that accurate?

9 A. There is interest plugged in, yes.

10 Q. Okay. As we sit here today, do you
11 remember getting this E-mail, Exhibit 10?

12 A. Specifically, I can't say I recall the date
13 and time.

14 Q. Let me ask you this: Do you dispute
15 receiving this E-mail?

16 A. No.

17 Q. Okay. She indicates in Exhibit 10, quote,
18 "Since the loan is not going up in terms of the same
19 and we are not recording any modification, then I just
20 need your loan docs so I can see what else I need to
21 do. The current existing title insurance policies will
22 stay in effect as they were since the balances on each
23 loan has gone down rather than up with the interest
24 being paid at closing. Will this work for you all? If
25 so, please send me the docs dated for June 28. I'll

1 set a time for Mr. Whitfield to sign and bring funds
2 and will roll it with Teresa."

3 Do you ever remember responding to that
4 E-mail?

5 A. I do not remember responding.

6 Q. Okay. Do you remember getting a proposed
7 HUD from Teresa Farley?

8 A. As far as this goes?

9 Q. Right.

10 A. I recall getting one, yes.

11 MR. HALVERSEN: We'll mark the HUD
12 -- the Settlement Statement as Exhibit 11.

13 (Whereupon, Exhibit 11 was
14 marked for identification.)

15 MR. HALVERSEN: The next E-mail
16 we'll mark as Exhibit 12.

17 (Whereupon, Exhibit 12 was
18 marked for identification.)

19 BY MR. HALVERSEN:

20 Q. On Exhibit 11, are you aware as we sit here
21 today receiving another version of this HUD?

22 A. Do I remember receiving another version?

23 Q. Uh-huh.

24 A. It's possible.

25 Q. Okay. Could you, if your attorney asked

1 you to look in your E-mails to see all the E-mails at
2 this time that you have from Mark Weeks' office if
3 there's another HUD? If he asked you to do that, can
4 you give that to him?

5 A. Sure.

6 MR. BERNSTEIN: Please do that.

7 Q. Here is an E-mail from Teresa Farley to you
8 and Felicia Pringle. Subject line: "Whitfield Title
9 Opinion" dated Wednesday June 27. And Teresa Farley
10 says, "Here is the Title Opinion for Whitfield. I need
11 the payoff on Black Rush so I can adjust the HUD to
12 show that interest is being collected. And the closing
13 docs. Thanks, Teresa." And attached to it is a letter
14 from Mark Weeks to you and Felicia Pringle. Just
15 review that exhibit for me.

16 (Witness reviewing document)

17 Q. Do you remember receiving that E-mail and
18 letter from Mark Weeks?

19 A. Yes. Or from Mark Weeks' office.

20 Q. Right. Correct. And the letter states,
21 "Pursuant to your instructions regarding the
22 above-referenced loan, I have conducted a title
23 examination of the properties as listed on the attached
24 Exhibit A. The record owner of all Parcels except
25 Parcel #5 is Anthony Whitfield. The record owner of

1 Parcel #5 is Anthony Whitfield and Cindy Whitfield. I
2 find there is a good marketable title to the
3 above-described properties. Each parcel is subject to
4 a first mortgage in favor of Harbor National Bank as
5 recorded in the appropriate RMC Office for each
6 county." Did I read that accurately?

7 A. You did. And so this is a letter; the
8 exhibits are not attached.

9 Q. You're right. I do not know where his --
10 in his letter he has references an Exhibit A, but that
11 is not in this exhibit.

12 A. And I remember more so reading the
13 exhibits. This is -- this -- my memory of that letter,
14 the exhibit.

15 Q. And it contained the properties on that
16 exhibit?

17 A. Yes.

18 Q. Okay. So you received this letter from
19 Mark Weeks' office on the day before closing it looks
20 like according to Exhibit 12 at 11:14 in the morning.

21 A. Uh-huh. But my recollection, and it's been
22 over a year, or about over a year now, was there was
23 the attachments. Whether that was a separate E-mail or
24 part of that E-mail, without seeing them, I can't say
25 for sure.

1 Q. Understood.

2 MR. HALVERSEN: And the next set
3 of E-mails we'll mark as Exhibit 13.

4 (Whereupon, Exhibit 13 was
5 marked for identification.)

6 BY MR. HALVERSEN:

7 Q. And these are a series of E-mails between
8 Teresa Farley at Mark Weeks' office to Barry Sloop at
9 Stewart Title. And then it looks like you're on some
10 of the later E-mails. I'd like you to read through
11 that.

12 (Witness reviewing document)

13 Have you had a chance to read through
14 these E-mails?

15 A. I did.

16 Q. Okay. The day before the closing,
17 Wednesday, June 27, 10:52, Teresa Farley at Mark Weeks'
18 office is E-mailing Barry Sloop. Subject line: Lender
19 Title Policy Question. She says, "Hey, I have a
20 question for one of our bank lenders. Harbor National
21 Bank gave a loan to Mr. Whitfield on 1055 Black Rush.
22 After the mortgage was done, signed and recorded, Mr.
23 Whitfield gave a one-half interest to his wife, Cindy
24 Whitfield. So now the deed is in both of their names
25 and the mortgage is only in his name and Cindy resides

1 at the residence. We are now doing a modification of
2 the note. There is no modification of the mortgage
3 being recorded since the loan amount previously insured
4 is actually less now and the maturity dates are not
5 changing. Where does this leave Harbor National Bank
6 in the event they had to foreclose on the property.
7 Would they foreclose just like normal and just have
8 Cindy served as an additional defendant? How does this
9 affect their title policy?"

10 And on the next page Barry Sloop responds
11 and says, "Hey T, Cindy took title subject to the
12 mortgage. She would be named in the foreclosure action
13 as defendant, but they should prevail. Thanks."

14 Did I read all that accurately?

15 A. I believe so. Yes.

16 Q. And then Teresa Farley at Mark Weeks'
17 office, it looks like she forwards that E-mail to you
18 and Felicia Pringle and says, "See below. Does this
19 work for you? Teresa." Is that accurate?

20 A. Yes.

21 Q. And then the next E-mail from you to Teresa
22 Farley and Felicia Pringle, again, dated the same day,
23 Wednesday, June 27, 12:10 p.m., you say, "Teresa, thank
24 you for your work on this. I called bank counsel to
25 get some advice on how to handle it. (a) We need a

1 title endorsement on Black Rush only. We can rely on
2 your title opinion and existing policies for the
3 others. The E-mail to Stewart states that the maturity
4 dates are not changing but they are. The maturity date
5 on Black Rush was this past May. (b) We also need an
6 affidavit from Tony that these properties are owned and
7 pledged for business purposes. Thanks again. Felicia
8 is getting you the updated payoff for Black Rush, and
9 we should be good to close if you can satisfy the two
10 requirements above. Best regards, Scott."

11 Did I read that accurately?

12 A. Correct.

13 Q. Now, about this time -- was this the first
14 time that an issue of a title endorsement was being
15 brought up in discussion with the ability to renew
16 these loans, or was it before then?

17 A. Well, we're talking a matter of days
18 between all these E-mails. As far as is this is the
19 first time, I wouldn't be able to say for sure, but
20 this is approximately the time we became aware of Cindy
21 Whitfield being added to the deed.

22 Q. Was it your idea that there needed to be a
23 title endorsement, or was it someone else's idea?

24 A. I consulted bank counsel, and as far as who
25 had the original idea, my recollection is we saw that

1 Cindy Whitfield was on the deed and how do we maintain
2 title insurance that would be adequate.

3 Q. Okay. Who is bank counsel?

4 A. David Swanson.

5 Q. Who is he?

6 A. He's with Haynsworth Sinkler Boyd.

7 Q. And does Harbor National use him for real
8 estate matters, or do you know -- how did you know to
9 contact David Swanson?

10 A. As far as for opinions -- as far as all the
11 capacities that Harbor National uses him for I can't
12 speak to, but for questions such as this, David Swanson
13 is who I would call.

14 Q. Okay. So at that point in time, David
15 Swanson told you we need to get a title endorsement on
16 Black Rush and everything you've put in that E-mail, is
17 that accurate?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes, yes.

21 Q. Okay. Do you remember your phone
22 conversation with Mr. Swanson?

23 A. I do not, specific.

24 Q. Well did you send him a copy of the deed,
25 or did you just explain generally the scenario?

1 A. I can't recall.

2 Q. Okay. But he would have been the person
3 that gave you this information that is in this E-mail?

4 A. As far as bank counsel, I'd say in -- or
5 suggesting that we have the endorsement, yes.

6 Q. Okay. Did you discuss with any other
7 attorney this issue, or only David Swanson?

8 A. Well, I believe this is -- we're discussing
9 this with Mark Weeks' office and eventually spoke with
10 Mark directly.

11 Q. Would that have been -- these discussions
12 were at the closing or before the closing did you have
13 conversations with Mark Weeks about this issue?

14 A. As far as getting on the phone with Mark
15 Weeks, I can't say specifically before, but through
16 Teresa Farley, who would be communicating with Mark
17 Weeks. Obviously, there was communication. I can say
18 that at the closing table this was something that we
19 were still trying to get resolved.

20 Q. Okay. We'll get to that. Do you recall as
21 we sit here today telling Mr. Swanson about Barry
22 Sloop's response to Teresa Farley's question in
23 Exhibit 13?

24 A. Do I remember -- I don't believe that Barry
25 Sloop's name ever came up in any conversations with

1 Swanson.

2 Q. Or did you remember anything communicating
3 to Mr. Swanson that Cindy Whitfield took title subject
4 to the mortgage?

5 A. I did tell Swanson that Cindy Whitfield had
6 been added to the title.

7 Q. Uh-huh. After the mortgage was done with
8 Harbor National?

9 A. After -- and specifically told him after
10 the mortgage -- the original loan was closed and the
11 mortgage was filed.

12 Q. Okay. And then he gave you the advice that
13 he put into this E-mail which is, (a) need a title
14 endorsement on Black Rush, and that you could rely on
15 the title opinion and existing policies for the others,
16 and that you needed an affidavit from Tony that the
17 properties are owned and pledged for business purpose?

18 A. Yes.

19 Q. Did Mr. Swanson give you that advice, too,
20 about needing the affidavit for business, that they're
21 only pledged for business purpose?

22 A. I don't know if that was advice of Swanson,
23 or -- I can't recall that piece of it specifically.

24 Q. Okay. But it sounds like from your
25 previous testimony you do recall that the advice

1 regarding getting a title endorsement on Black Rush
2 only was from Mr. Swanson?

3 A. Was confirmed by Swanson.

4 Q. Okay. Now, you say "confirmed"?

5 A. Confirmed. Obviously, I posed the question
6 as far as what we can do given that Cindy Whitfield was
7 added to title and what are the ways to maintain it.

8 Q. Okay.

9 A. Solutions being getting an endorsement or
10 having Cindy Whitfield sign -- sign the --
11 acknowledging that her being part of the deed, signing
12 the mortgage.

13 Q. Did you discuss with Mr. Swanson an
14 option -- the option of having her sign a mortgage?
15 Whose idea was it that she needed to sign a mortgage?

16 A. I believe that's mentioned here. It's
17 mentioned prior -- this is from Teresa Farley saying
18 that, "If you were to record any modification of the
19 mortgage, Cindy would have to sign it since she is now
20 on the deed."

21 Q. Okay. And it looks like that E-mail was
22 CCed to Mr. Barry Sloop -- do you know who Barry Sloop
23 is, by the way?

24 A. I believe I read he is with the title
25 company, Stewart.com, which is Stewart Title.

1 Q. Right. It says, vice president, counsel?

2 A. Uh-huh. I don't know Barry Sloop, but
3 that's --

4 Q. Got you. So, Teresa sends an E-mail to you
5 on June 27, the day before the closing, CCing Mr. Sloop
6 and she says, "Okay, I think we can handle all this.
7 The deal with the maturity date is as follows: A
8 mortgage of record is valid for 20 years from the date
9 of the maturity if not satisfied. If you were to
10 record any modification of the mortgage, Cindy would
11 have to sign it since she is now on the deed, but
12 according to the mortgage rule above, your mortgage
13 will still be valid anyways even after the maturity
14 date on the original recorded mortgage has passed. The
15 deal would be whether or not your bank counsel is okay
16 to not record any new modification of mortgage since
17 the maturity date has changed. Barry, please respond
18 to my E-mail as to confirm or correct. Thanks, T.F."

19 And then Barry Sloop responds to just
20 Teresa it appears, and it says, "Teresa, I agree that
21 the wife should sign any modification. But, regardless
22 of whether she signs, still subject to the original
23 mortgage."

24 Did I read that accurately?

25 A. Yes.

1 Q. Okay. And then it looks like at the top of
2 the page on Exhibit 13, Teresa forwards that E-mail to
3 you and Felicia Pringle, the day before the closing,
4 and she says, "See below."

5 Do you recall looking at Mr. Sloop's
6 response to Teresa Farley's question?

7 A. Have I seen it before? Yes. Do I recall
8 it specifically --

9 Q. Okay. So fair to say Mr. Sloop is saying,
10 I agree; if there's going to be a modification of the
11 mortgage, she would need to sign, but she's still
12 subject to the original mortgage, correct?

13 A. Correct.

14 Q. At that point in time do you recall having
15 any discussions with Teresa about whether or not you
16 can just proceed to close with the original mortgage as
17 Mr. Sloop indicates, or if you needed to go with what
18 Mr. Swanson was saying, that we needed to get a title
19 endorsement on Black Rush?

20 A. Specific conversations, no, but I do
21 remember general discussions.

22 Q. Okay. At this point in time or when you
23 actually got to the closing table?

24 A. I wouldn't be able to recall specifically.
25 But this, again, is all within a matter of a few days.

1 MR. BERNSTEIN: Brent, I've been
2 waiting for -- I don't want to interrupt your flow. I
3 just realized that we had talked prior to the
4 deposition about reserving all objections except as to
5 form for purposes of this deposition?

6 MR. HALVERSEN: Right.

7 MR. BERNSTEIN: I'm not sure that it
8 was put on the record, and I want to make sure all
9 counsel are in agreement that all objections, except as
10 to form, are reserved, correct?

11 MR. HALVERSEN: Yes.

12 MR. BERNSTEIN: Okay. I just want
13 it on the record.

14 MR. HALVERSEN: Okay.

15 BY MR. HALVERSEN:

16 Q. I believe going forward in time, I've got
17 another E-mail -- the last E-mail where Teresa Farley
18 forwarded you Mr. Sloop's E-mail, and it's reflected in
19 Exhibit 13. That was Wednesday, June 27 at 12:45 p.m.
20 And here's an E-mail, we'll mark that next E-mail as
21 Exhibit 14, where Teresa Farley is E-mailing you and
22 Felicia Pringle. And her subject line, she says, "I
23 need a copy of the current policy on 1055 Black Rush in
24 order to do any endorsement, and if not written through
25 Stewart there may be a charge."

1 So, at that point in time it looks as if
2 Teresa Farley is proceeding with your recommendation on
3 Exhibit 13 to get a title endorsement on Black Rush, is
4 that accurate?

5 A. Yes.

6 MR. HALVERSEN: We'll mark that
7 E-mail as Exhibit 14.

8 (Whereupon, Exhibit 14 was
9 marked for identification.)

10 BY MR. HALVERSEN:

11 Q. We'll mark the next one as Exhibit 15,
12 which is still E-mails going around on Wednesday, June
13 27, the day before the closing.

14 (Whereupon, Exhibit 15 was
15 marked for identification.)

16 BY MR. HALVERSEN:

17 Q. This appears to be -- it looks like it was
18 an older E-mail from the week before on the bottom from
19 Felicia to Mark Weeks and CCing you with the address of
20 Black Rush. And then an E-mail at the top from Teresa
21 Farley at Mark Weeks' office to someone at Claypoole --
22 Stanley Claypoole's office and Stanley Claypoole, CCing
23 you and Felicia the day before the closing with a bunch
24 of attachments regarding the Black Rush property. Is
25 that accurate?

1 A. Yes.

2 Q. And she's saying to Claypoole's office
3 "Please advise if you can provide an endorsement to
4 this existing policy to extend the maturity date to
5 July 10, 2017." And if there's a charge for the
6 endorsement to be paid to First American.

7 MR. HALVERSEN: We'll do this next
8 Exhibit, Exhibit 16.

9 (Whereupon, Exhibit 16 was
10 marked for identification.)

11 BY MR. HALVERSEN:

12 Q. And this appears to be an E-mail from
13 Teresa Farley at Mark Weeks' office to you and Felicia
14 Pringle. It's hard to tell what the date is here, but
15 I think from the date on the bottom, it's Wednesday,
16 June 27, time stamp, 2:42 p.m. We can assume it's
17 after that time she is sending you -- subject line:
18 "HUD for Whitfield."

19 "Here you go. Please approve or revise.
20 Thanks, TF." Did I read that accurately?

21 A. Yes.

22 Q. Do you recall ever responding to that?

23 A. I recall -- respond -- as far as
24 specifically responding, no, I don't have a
25 recollection. It could be possible.

Q. All right. I'll just represent to you that we -- I could not find an E-mail from you responding to it. Again, if your attorney instructs you to go back and look at your E-mails, either in your sent or folder or wherever there's a record of it to see if there's a response to this E-mail, Exhibit 16, could you do that?

A. Yes.

THE WITNESS: And Bobbie, can you make notes of --

MR. BERNSTEIN: I'll have to put a note in the margin.

THE WITNESS: Okay.

BY MR. HALVERSEN:

Q. As we sit here today, I understand your testimony, you don't recall responding to it; but do you recall responding to Teresa Farley and saying, no, I do not approve that HUD?

A. I don't recall either way.

Q. Okay. This is another set of E-mails dated the end of the afternoon the day before closing. It starts off with Felicia Pringle to Teresa Farley, and then it looks like you're CCed on some of these E-mails. We'll mark this one as Exhibit 17.

MR. BERNSTEIN: Are you handing him E-mails of all the ones that he was CCed on, or are you

handing him some that he was not CCed or involved in?

MR. HALVERSEN: The first E-mail looks like he was not CCed, but it's a chain of subsequent E-mails with the same subject line which he was later CCed on.

MR. BERNSTEIN: Okay.

MR. HALVERSEN: If you could mark that as Exhibit 17.

(Whereupon, Exhibit 17 was marked for identification.)

BY MR. HALVERSEN:

Q. Take a minute to review those.

(Witness reviewing documents)

Was I reciting that earlier -- this appears to be an E-mail originally from Felicia Pringle to Teresa Farley requesting documents -- or I'm sorry. She says, Are you okay with the documents I E-mailed you? I can drop off the documents in the morning before I leave home, da, da, da, da, da. And she says, "I'm okay with the E-mailed ones. Do I need to go ahead and call Mr. Whitfield to set a time for him to sign the docs with us. Wanted to make sure because you said he was meeting with Scott also." And Felicia responds, CCs you 4:13 in the afternoon on June 27, the day before closing and says, "They met. I think the

1 only issue pending is Black Rush Circle."

2 Do you remember if you met with Mr.
3 Whitfield the day before closing or was it the same day
4 that you drafted Exhibit 9, which is the June 26, 2012
5 letter?

6 A. I believe it was the day before.

7 Q. You think you met the day before? Let's
8 talk about that meeting. How did that come about? Did
9 you call Mr. Whitfield and say come down to the bank
10 and we can go over these documents, or tell me --

11 A. Something to that general effect.

12 Q. Were you at the time in the Meeting Street
13 location?

14 A. Yes.

15 Q. Is that where you work now?

16 A. No.

17 Q. Where are you now?

18 A. James Island branch, 329 Folly Road.

19 Q. But at the time you were working in the
20 Meeting Street location?

21 A. Yes.

22 Q. And Mr. Whitfield came to meet you. Was
23 that the first time you met him in person?

24 A. No.

25 Q. Okay. When was the first time you met him

1 in person?

2 A. Specific to this transaction?

3 Q. Anytime.

4 A. I met him years ago, and I can't give you
5 an exact date.

6 Q. When you were at SouthTrust?

7 A. No, no. Probably First National.

8 Q. Okay. Well, was -- had you worked with him
9 doing loans, or?

10 A. No.

11 Q. How did you meet him?

12 A. It was through mutual friends at the time.

13 Q. Do you remember who those mutual friends
14 were?

15 A. I do.

16 Q. Who are they?

17 A. David Harrelson, his friend, Wally. I
18 don't Wally's last name. And Wally worked for -- with
19 Whitfield.

20 Q. Did you meet him professionally or --

21 A. No.

22 Q. -- socially?

23 A. Socially.

24 Q. Where, do you know?

25 A. I don't recall.

1 Q. But you remember you had met him before?

2 A. Uh-huh.

3 Q. And then so that would have been the first
4 time you met him?

5 A. Around that time.

6 Q. Okay. And then the next time you met him
7 would have been when he came to the Meeting Street
8 location?

9 A. Yes.

10 Q. So, tell me about the meeting, everything
11 you can recall from the meeting.

12 A. The meeting, we reviewed the term sheet.
13 Went through each item. I believe it's marked by Mr.
14 Whitfield just trying to establish an understanding of
15 the transaction -- transactions.

16 Q. You're referring to Exhibit 9?

17 A. Yes.

18 Q. Okay. We talked about that. Do you
19 remember anything he said as we sit here today?

20 A. That -- yes.

21 Q. Okay. What do you remember?

22 A. He had worked with Angie Bell and shared
23 some of his feelings, and as far as specifically, I
24 don't know that I can go into a whole lot of --
25 remember a whole lot of that detail. The goal was to

1 stay on task and make sure that we -- and I explained
2 to him, understand what we're looking at there; that
3 he's comfortable with it; that his closing attorney is
4 familiar with it, and what we needed to do to get to
5 closing. Make sure he had a -- it was what he had
6 discussed with other members of the bank when the deal
7 was put together, and try to prevent any surprises at
8 the closing table, and that was the general discussion.

9 Q. Okay. What were the feelings he shared
10 with you about Ms. Bell?

11 A. Specifically, again, it's hard to get into
12 that.

13 Q. Tell me generally what you remember.

14 A. Generally, that he had -- he thought it --
15 there was a 30 -- he stated he thought it was a 30-year
16 mortgage or 30-year note. And, again, that
17 conversation was kept at a minimum because we were
18 focusing on trying to close this and make sure he had a
19 good understanding of what was taking place.

20 Q. Before that meeting had you talked with
21 Angie Bell about his relationship -- past relationship
22 with Mr. Whitfield?

23 A. Very, very brief conversations. Again, my
24 short time -- or short time being involved was one,
25 maintain -- hopefully have Whitfield maintain a good

1 opinion of me. My goal was just to establish a
2 relationship with Whitfield, not worry about prior
3 events. And hopefully, you know, that would open up
4 the communication if we were starting fresh. That was
5 the goal.

6 Q. I got you. But what did she tell you in
7 your conversations with her about Mr. Whitfield before
8 you met with him?

9 A. That -- I believe it was just an E-mail or
10 two. Not a whole lot of conversation, but that they
11 were working on this and it did not get to close -- get
12 to closing.

13 Q. Same question as before because I don't
14 think I've seen that E-mail. If you could go back and
15 check your E-mails and get back to Mr. Bernstein about
16 that E-mail exchange?

17 A. Uh-huh.

18 Q. If he asked you to do that, can you do
19 that?

20 A. Sure.

21 Q. All right. Did you have an understanding
22 before the meeting about what the terms of the deal
23 were going to be; were those terms imparted to you from
24 somebody at the bank?

25 A. Yes.

1 Q. Who?

2 A. As far as -- who they were delivered by, I
3 believe that was Willard Stout based on a meeting
4 Whitfield had had with Charlie Rivers.

5 Q. Okay. So, is it accurate to say that Mr.
6 Stout imparted to you what the results of that meeting
7 were that Mr. Rivers had with Mr. Whitfield?

8 A. Yes, general terms that are outlined in the
9 term sheet we reviewed earlier.

10 Q. Okay. That was in Exhibit -- you're
11 referring to Exhibit 9, correct?

12 A. Uh-huh, 9. Correct.

13 Q. Okay. Did Mr. Stout indicate to you that
14 he was going to -- that the bank was going to require
15 additional collateral in order to renew these loans?

16 A. Did he indicate that? No.

17 Q. Okay.

18 A. At the time, no.

19 Q. He only -- the terms which he imparted to
20 you are only what's reflected in Exhibit 9, is that
21 accurate, the terms of the renewals?

22 A. The general points that were related to me
23 are in there.

24 Q. Okay. Did he mention to you that in his
25 discussions that Cindy Whitfield would need to sign a

1 mortgage?

2 A. That was not known at the time.

3 Q. Okay. My question --

4 A. No, no.

5 Q. The answer is no. Did he tell you that a
6 title endorsement might have to be obtained on the
7 Black Rush property?

8 A. And this is as I was -- the original
9 conversation --

10 Q. Correct.

11 A. -- as the relationship was being moved to
12 me, no.

13 Q. Okay. Did he tell you that we have to
14 close all of them or none of them?

15 A. No.

16 Q. So, going back to what we previously talked
17 about, which was when you met with Mr. Whitfield at the
18 Meeting Street location, you went over Exhibit 9 and
19 talked about the renewals. Do you remember any
20 comments from Mr. Whitfield about Exhibit 9, or did he,
21 you know, leave that meeting saying, okay, that's fine,
22 I can live with this, we'll see you tomorrow, or do you
23 remember how the meeting went?

24 A. At that point we were aware of Cindy
25 Whitfield being added to Black Rush and discussing it

1 with Mr. Whitfield. It was going to be difficult to
2 have -- get Cindy Whitfield to sign as part of this
3 modification, and told him that we were still pursuing
4 the endorsement, and we wouldn't -- did not yet know at
5 that point whether we were going to be able to get it,
6 that we had communicated with Weeks' office and
7 Claypoole's office and we were making every effort.

8 Q. Okay. I just want to make sure I
9 understand what you told him. And it sounds like you
10 were telling him there was a possibility you would need
11 the title endorsement --

12 A. Yes.

13 Q. -- for Black Rush?

14 A. Yes.

15 Q. Is that accurate?

16 A. Yes.

17 Q. In those conversations, did you tell him
18 that it might be needed for Mr. Whitfield's ex-wife to
19 sign the mortgage?

20 A. And that's Cindy Whitfield, correct.

21 Q. Right. Or did you only discuss the fact
22 that there might -- there's a possibility that you
23 might need a title endorsement?

24 A. We discussed the fact that her being added
25 to the title would call for her to sign as part of the

1 modification, and in lieu of that, we were pursuing the
2 endorsement to the original policy.

3 Q. Okay. And that was information I assume
4 you got from Mr. Swanson?

5 A. That was information from Mr. Swanson and
6 all parties involved, as you can see through the
7 communication, you know, with Teresa, her
8 communications with others, yes. But, yes, Swanson
9 suggested that we get the -- either suggested or
10 confirmed that we get that endorsement. He was in
11 agreement.

12 Q. Okay. And I just want to make sure we're
13 clear, because just the way you answered that made me
14 raise the question of, was there anybody else that
15 originated the idea of the title endorsement except for
16 Mr. Swanson?

17 The E-mails we have where you said I
18 called bank counsel and I need (a) title endorsement on
19 Black Rush only; we can rely on the title opinion and
20 policies for the others, and a business purpose
21 statement. That was, or was it not, Mr. Swanson
22 telling you that information, or was there anybody else
23 that said, yes, we agree we need to have that, or was
24 it only that information, that demand, was coming from
25 him?

1 A. Well, I don't think you can say that demand
2 was coming from Swanson as far as trying to answer the
3 question as you're presenting it, being aware that
4 Cindy Whitfield was added to the deed after the
5 original closing and seeking a way to remedy that as
6 far as the title policy goes. But Swanson -- Swanson
7 did confirm that that would be a way to do it if the
8 title company was agreeable, and we were seeking input
9 from people within the bank and Teresa Farley at Mark
10 Weeks' office.

11 So there's a lot of communication going
12 on here as far as, I guess back to the original
13 question.

14 Q. I guess what I'm trying to find out is
15 simply, was it Mr. Swanson's idea to obtain a title
16 endorsement, or was it somebody else's idea that you
17 confirmed with Mr. Swanson? Do you understand the
18 difference?

19 A. I do. I do. I called Swanson knowing
20 that -- and going back to when this question was posed
21 previously and the current conversation to make sure
22 it's clear. You know, when I saw that Cindy Whitfield
23 had been added to the deed, and I took that information
24 to Swanson asking what --

25 Q. What should be done?

1 A. -- what can we do to remedy this, and I
2 probably mentioned the idea of an endorsement, which he
3 confirmed was a -- you know, a solution.

4 Q. Did he say that it would be possible to
5 close the loan without having the endorsement, or did
6 he say absolutely you have to get this or you cannot do
7 it?

8 A. I'm trying to recall. And knowing how I
9 went to Swanson, I went for advice, and -- on how to
10 handle the situation, rely on his advice and, you know,
11 he's not going to be demanding that I do it one way or
12 another. He's going to make sure I'm informed as I'm
13 considering it.

14 Q. Sounds like as we sit here today you can't
15 remember him stating in that way, but he might have
16 said --

17 A. He said that would be the --

18 Q. Advisable thing --

19 A. -- advisable thing to do. I think as I
20 search for words, that is the way --

21 Q. That's accurate?

22 A. That's accurate.

23 Q. Okay. I think I know the answer to this
24 question, but Mr. Swanson didn't tell you that you
25 could not close Black Rush without having that

1 endorsement?

2 A. No.

3 Q. All right. So I think we left off on
4 chronologically your meeting with Mr. Whitfield, which
5 you believe was the day before closing, went over
6 Exhibit 9, and discussed the possibility of obtaining a
7 title endorsement, and not discussing Cindy signing the
8 mortgage. Is that something that came up later?

9 A. Not having to get the endorsement and not
10 have Cindy -- well, when it was mentioned originally to
11 Whitfield, he expressed that would be very difficult,
12 and seeking another solution, that's where we began
13 considering the endorsement.

14 Q. Okay. I just want to make sure I'm clear
15 and understand what you're saying, and I'm just only
16 talking about that meeting with Mr. Whitfield the day
17 before closing.

18 A. Okay.

19 Q. And I thought from your previous testimony
20 you were saying the only thing that was discussed was
21 that you may need to obtain a title endorsement, is
22 that correct, or did you --

23 A. No, no. That's not the only thing that was
24 discussed. We went through all the terms. Had
25 discussions about the, you know, title work coming in,

1 you know, that challenge --

2 Q. The terms --

3 A. Yeah, we had --

4 Q. I understand that. Everything you talked
5 about that's in Exhibit 9 you talked to him about that.
6 I understand that. But what I just want to know is,
7 did you only say there's a possibility we might need a
8 title endorsement for Black Rush, or did you say
9 there's a possibility we might need a title endorsement
10 for Black Rush, and if we can't get that, we may need
11 Cindy to sign a mortgage? Do you understand what I'm
12 asking?

13 A. I believe we started at -- and, you know,
14 we started with, Can Cindy sign the mortgage? And
15 knowing that was difficult, that's where we pursued the
16 title endorsement.

17 Q. Okay. And just so we're clear, you believe
18 you had that conversation with Mr. Whitfield --

19 A. Prior to the closing.

20 Q. -- at the meeting at your branch?

21 A. That was discussed prior to the closing and
22 at the branch.

23 Q. Okay. And he expressed some reservation
24 about having to get the ex-wife sign a mortgage, and
25 said, well, if there's another way to go, then let's do

1 that, something to that effect?

2 A. Absolutely.

3 Q. Okay. In that meeting did you say that
4 there would be any other requirements if Cindy would
5 not sign the mortgage?

6 A. Did I say there would be --

7 Q. Other requirements.

8 A. Other requirements if she did not?

9 Q. Right.

10 A. If she did not sign the mortgage?

11 Q. Right. In that meeting, did you say, for
12 example, if the ex-wife doesn't sign the mortgage, we
13 may need to substitute collateral, or you may have to
14 pay down these loans? Was there anything discussed to
15 that nature?

16 A. Those were mentioned as, you know, possible
17 solutions, but also stated the goal was to, you know,
18 get this closed as we had been working to.

19 Q. At that meeting that was discussed?

20 A. As a possible option, yes.

21 Q. Okay. Was that -- were you aware that Mr.
22 Rivers agreed at his meeting with Mr. Whitfield that
23 those were options that were not -- were taken off the
24 table?

25 A. I cannot speak to Mr. Rivers' conversation.

1 Q. Understood.

2 MR. BERNSTEIN: I want to raise an
3 objection to the form of that question. He didn't get
4 the opportunity before he answered.

5 MR. HALVERSEN: Okay.

6 Q. I understand you weren't there, but I
7 believe we previously discussed the fact that Mr. Stout
8 gave you the results of that meeting, correct?

9 A. Correct.

10 Q. And I think you previously testified that
11 the bank wasn't going to require substitutions of
12 collateral or cash pay-downs of the balances, correct;
13 and that was not -- those terms were not reflected in
14 Exhibit 9, correct?

15 A. Can you ask that question again?

16 Q. I believe you previously testified about,
17 for lack of a better phrase, what your marching orders
18 were from Mr. Stout about the fact that you're renewing
19 the loans as reflected on the terms on Exhibit 9,
20 correct?

21 A. Uh-huh. Uh-huh.

22 Q. Is that yes?

23 A. Yes, yes.

24 Q. And there was nothing that Mr. Stout told
25 you about requiring additional collateral or

1 substitution of collateral or buying down the loan
2 balances?

3 A. No, no.

4 Q. All right. Have we discussed, as you sit
5 here today, everything you can remember from that
6 meeting with Mr. Whitfield, which you believe was the
7 day before closing?

8 A. Yes.

9 Q. Okay.

10 MR. HALVERSEN: Let's go -- I
11 think we probably need to take a break for the
12 videographer.

13 (Whereupon, a short recess
14 was taken.)

15 BY MR. HALVERSEN:

16 Q. Let me show you these, which appear to be
17 Payoff Statements. It looks like there's a date -- it
18 says current date, June 27th, so I imagine those were
19 generated the day before closing.

20 MR. HALVERSEN: We'll make that next
21 exhibit, Exhibit 18.

22 (Whereupon, Exhibit 18 was
23 marked for identification.)

24 BY MR. HALVERSEN:

25 Q. Do you know if those were sent from Felicia

1 Pringle or Alysia Ward to Mark Weeks' office?

2 A. Do I know if Felicia or Alysia sent them to
3 Mark Weeks?

4 Q. Yeah.

5 A. I know Mark -- there were Payoff Statements
6 sent to Mark Weeks. As far as if these are them, could
7 be.

8 Q. And those are, correct me if I'm wrong, to
9 reflect what the balance is as of that point in time on
10 June 27 so that the closing attorneys can put -- use
11 that with the -- put it on the HUD?

12 A. Note the interest accrued, yes.

13 Q. Right. Per diems?

14 A. Uh-huh.

15 Q. Let me show you the next E-mail, which is
16 near the end of the working day on the 27th.

17 Have you had a chance to look at that?

18 A. Uh-huh.

19 MR. HALVERSEN: We'll mark that as
20 Exhibit 19.

21 (Whereupon, Exhibit 19 was
22 marked for identification.)

23 BY MR. HALVERSEN:

24 Q. Which appears to be an E-mail from Teresa
25 Farley at Mark Weeks' office with a subject line,

"Whitfield, Business Purpose Affidavit." And he sends it to you and Felicia Pringle, and then the only thing you respond is you say, "Assuming we get the proper endorsement, what time do you want to close?"

Did I read that accurately?

A. Yes.

Q. Business purpose affidavit, I don't have the attachment to it, but I'm going to show you these documents which appear to be loan documents or closing package documents, I don't know how you all refer to it, from a software company, FIS, to Teresa Farley, and this particular packet is for the Black Rush property.

Is the Business Purpose Affidavit which is referenced in that E-mail on Exhibit 19, is that located anywhere in this stack of documents, which we'll mark as Exhibit 20?

(Whereupon, Exhibit 20 was marked for identification.)

A. It's a Business Purpose Statement but not the Business Purpose Affidavit.

Q. Okay. So what's a -- on -- that subject line is not in Exhibit 20, it's somewhere else?

A. Yes.

Q. Do you know where -- if I asked you to -- if Mr. Bernstein asked you to go check out that E-mail

1 and print that out, could you do that for him?

2 A. Yes.

3 Q. Because I don't know what it is or if it
4 was an affidavit that was drafted by Mr. Weeks' office,
5 or if it's like a computer-generated thing like what's
6 in Exhibit 20 here. Do you know?

7 A. I do recall seeing it, and as far as who
8 generated it, I believe it came from -- I shouldn't say
9 I believe. There is a copy. There is a Business
10 Purpose Affidavit out there.

11 Q. Okay.

12 A. I don't know that it was ever signed.

13 Q. All right. And that was one of the items
14 that Mr. Swanson had suggested with you on the previous
15 E-mail about, (a) need a title endorsement, and (b) own
16 and pledge for business purpose, correct?

17 A. Again, my recollection of the conversations
18 with Swanson is more around the endorsement -- title
19 endorsement. But, you know, business affidavit was on
20 that E-mail you referenced, and as far as specific
21 conversations with Swanson on the business purpose
22 affidavit, I'm a little more fuzzy.

23 Q. Okay. A little farther up in this E-mail
24 chain after you say, "Assuming we get the proper
25 endorsement what time do you want to close?" Teresa

1 Farley E-mails you back at 4:07 in the afternoon and
2 says, "Let's do at tomorrow 3:00 p.m. in North
3 Charleston. Are you calling Mr. Whitfield or am I?"
4 And she writes, "And Tracie, if we don't hear back from
5 Claypoole on that endorsement by morning, let me
6 know/remind me and I will call the title company
7 directly about it." Is that accurate?

8 A. It is.

9 Q. So, at this point in time, is it fair to
10 say you knew they were scrambling trying to get this
11 title endorsement from somebody?

12 A. Yes. We were scrambling the whole time.

13 Q. Okay.

14 A. In the five or six day period we were
15 discussing.

16 Q. Right. But particularly, you know, the day
17 before closing day, you know, before you went home that
18 night, you knew that they were still working on --

19 A. Yes.

20 Q. -- Mark Weeks' office was working on
21 getting a title endorsement?

22 A. Yes.

23 MR. HALVERSEN: This is Exhibit 20.

24 Q. Do you recall that -- it mentions that it
25 was at 3:00 in the afternoon. Does that kind of go

1 with your memory, or do you have an independent
2 recollection about that, or?

3 A. We were working on it all the way up until
4 closing.

5 Q. Right. I'm just talking about when the
6 closing was scheduled or when it was. Was it actually
7 at 3:00 that you showed up to Mark Weeks' office?

8 A. That's my recollection, yes.

9 Q. Going forward to the day of closing, I'll
10 show you a chain of E-mails that began in the morning
11 on June 28. Just have a chance to go through those.

12 (Witness reviewing document)

13 Before we discuss that, I know you just
14 previously testified that the gist of your conversation
15 with Mr. Swanson was about getting the title
16 endorsement on Black Rush. Also, in that E-mail when
17 you E-mailed back to Teresa Farley, (a) title
18 endorsement and (b) business purpose -- the properties
19 are owned and pledged for business purposes; I wasn't
20 quite sure if that was an item that came up in your
21 discussion with Mr. Swanson, or did that come from
22 somewhere else?

23 A. Again, I specifically remember the title
24 endorsement and the business purpose affidavit. As far
25 as whose idea or instructions revolving around that, I

1 can't speak to with certainty as far as sources, and --

2 Q. The reason why I'm asking is because if you
3 go back to Exhibit 13, and they're talking about -- you
4 know, Teresa Farley is here discussing their title
5 company, Stewart Title, about the issue, and Stewart
6 Title gives their opinion. And then you respond and
7 say, "Thank you for your work on this. I called bank
8 counsel to get some advice on how to handle it." And
9 then you say, (a) need to get a title endorsement on
10 Black Rush, da, da, da. And then you say, (b) "We also
11 need an affidavit from Tony that these properties are
12 owned & pledged for business purpose."

13 Do you recall -- I'm assuming that that was
14 part and parcel of your discussion with Mr. Swanson
15 since the way you have the E-mail laid out, but it may
16 not be, and that's all I was trying to figure out.

17 A. That -- I can -- you know, we're going off
18 recollections, you know, prior conversations, and as
19 far as what I can say with certainty, I remember a lot
20 about the discussions as far as title endorsements, and
21 I remember less about the business purpose affidavit.
22 And if that was -- it makes sense that it was discussed
23 with Swanson. I can't give you any specifics on that
24 conversation. My recollection is not good enough.

25 Q. Okay. Let me ask you this then and I hear

1 what you're saying: Is there somebody else that would
2 have put that in as a demand about the business -- the
3 affidavit signed for -- that the properties are owned
4 and pledged for business purpose other than Mr.
5 Swanson?

6 A. Is there somebody that would have put it in
7 as a demand? You know, as you can see, group effort,
8 third parties within the bank come up with the best
9 closing package specific to this situation and, yes,
10 it's possible somebody else came up with that as a way
11 to do it.

12 Q. Because if it's not somebody else and this
13 is an instruction coming from you to them, that we need
14 (a) and (b), and all I want to know is, did the idea
15 for (b) come from just you or did it come from somebody
16 else, or maybe it came from Mr. Swanson, but you really
17 don't remember?

18 A. Again, at this time, I don't remember
19 enough to speak to that. I can go back through the
20 E-mails and try to -- or prior conversations, whatever
21 I can do to clarify it, but I cannot speak to that
22 right now as far as where the idea came from.

23 Q. Okay.

24 A. And that's what's being asked I believe.

25 Q. Correct. And I think you're not sure if

1 that was your idea --

2 A. Correct.

3 Q. -- given what you're telling me?

4 A. Correct.

5 Q. Got you. All right. Do you know if you
6 had any E-mail correspondence with Mr. Swanson?

7 A. I don't believe it was E-mail.

8 Q. Okay. Could you double-check that for me
9 if Mr. Bernstein asked you to check that for you --

10 A. Yes.

11 MR. BERNSTEIN: Just so that we're
12 clear, we're talking about E-mail conversations with
13 Mr. Swanson concerning the subject of Mr. Whitfield's
14 loan. We would certainly object regarding E-mails with
15 Mr. Swanson on any other subject, of course.

16 MR. HALVERSEN: Okay.

17 BY MR. HALVERSEN:

18 Q. Did you review these loan documents
19 identified as Exhibit 20 on this day or later?

20 A. I did review the loan documents that went
21 to closing, and if those are the ones that went to
22 closing, then I would have reviewed them.

23 Q. Before closing, or --

24 A. Having -- having be the -- since I was not
25 the one that sent those, you know, I can say I reviewed

1 loan documents prior to closing, but since I didn't
2 send those, I, you know, can't say that that's them.
3 But, yes. If they're the same loan documents that were
4 at the closing table, yes, I reviewed them.

5 Q. Before the closing or at the closing or
6 both?

7 A. I would have reviewed them before closing.
8 I review documents before closing.

9 Q. Okay. All right. Let's go back to this
10 E-mail chain which you've previously reviewed, which
11 starts off the morning of closing. And it looks like
12 the first E-mail is from Felicia to Teresa Farley,
13 CCing you, 9:44 in the morning. And she says, "Teresa,
14 we are on a time crunch with three of the Whitfield
15 loans for month end. Could you please send the
16 following loans and check back with Scott after
17 closing? 1)Gahagan Road, 2) Mepkin Drive, 3)Black
18 Rush. I can wait on the others."

19 Do you know why there was a time crunch,
20 she's talking about a time crunch?

21 A. Those three loans had already matured, I
22 believe, or they were the matured loans. And given
23 that we were working hard to get these renewed, prevent
24 them from reporting as carries for the bank.

25 Q. Is that because it was the end of the

1 second quarter, because this is dated June 28, 2012?

2 A. I can't say it's specifically because it's
3 the end of the second quarter. We try to maintain --
4 you know, try to have everything done by the end of
5 each month, and I believe some of these were over a
6 month beyond their maturity, or they were past their
7 maturity. So, you know, month-end of any year where a
8 goal is to have everything possible cleaned up.

9 Q. Okay. Do you know if there was any time
10 rush to get these done by the end of June, or were
11 these loans on a watch list at the time?

12 A. I can't speak to them being on a watch
13 list, but if they had -- if they had already matured,
14 yes, there's a reason to be a little more expeditious
15 or, you know, try to move it as quickly as possible as
16 long as we can maintain quality.

17 Q. Okay. But as we sit here, you don't know
18 if these loans were on a watch list at the end of June?

19 A. I do not.

20 Q. And it looks like Teresa the day of closing
21 is E-mailing Felicia Pringle, CCing you, and then
22 she -- you E-mail back to them and say, "Any word on
23 getting the title policy endorsement for Black Rush?"
24 And Teresa E-mails you back, 10:30 (sic): "I'm waiting
25 to hear from Ann Lofton at Claypoole's office." And

1 then she says, "I have a number for the title company
2 and will call them directly." Ann Lofton at
3 Claypoole's office says, "I just spoke to our
4 representative and she will be calling you, Teresa."
5 And it looks like you were CCed on all those E-mails,
6 is that accurate?

7 A. Yes.

8 MR. HALVERSEN: We'll mark that
9 as 21.

10 (Whereupon, Exhibit 21 was
11 marked for identification.)

12 BY MR. HALVERSEN:

13 Q. So as of 2:00 that day, the day of closing,
14 this endorsement still wasn't obtained. So, I assume
15 from these E-mails that before -- or when you left to
16 go to the closing in Mark Weeks' office, the
17 endorsement still wasn't --

18 A. Still was not in place.

19 Q. -- in hand?

20 A. No.

21 Q. So, going to closing, have I gone through
22 these E-mails, refreshed your recollection as to what
23 was going on at that point in time, and is there
24 anything else you knew going to that closing which we
25 haven't already discussed?

1 A. I can't recall anything.

2 Q. Did you talk to anyone at the bank like
3 Willard Stout or Mr. Werking or anyone else about -- or
4 Mr. Rivers about what was going to happen at this
5 closing aside from the nature of the things we've
6 already discussed?

7 A. That anything else that was going to
8 happen?

9 Q. Right.

10 A. I think the goal was to try to get it
11 closed. I guess if there's something beyond that,
12 you'd know specifically what you're looking --

13 Q. I guess all I'm asking is, did you have any
14 conversations either that day or the day before with
15 anyone else at the bank going into the closing? Did
16 you have any instructions or directives or any marching
17 orders from anyone at the bank, aside from everything
18 we've discussed? I just want to know if you remember
19 talking to anybody within --

20 A. Yes, I did talk to people within the bank
21 management. As far as specific conversations, you
22 know, I can't speak to them, but just generally where
23 we are at with it, and are we going to go to -- is it
24 going to close.

25 Q. Okay. Who would you have talked to in

1 those conversations, management?

2 A. Willard Stout, who I report to directly,
3 and, you know...

4 Q. Anyone else?

5 A. I don't recall any specific conversations.

6 Q. And I know you said you remember generally
7 the gist of those conversations. Just would have been
8 kind of what's going on, where you are, we're waiting
9 to get try to get this title endorsement --

10 A. Uh-huh.

11 Q. -- some things of that nature?

12 A. Yes.

13 Q. Anything else do you recall as we sit here
14 today, Mr. Stout telling you anything else before you
15 left to go to the closing?

16 A. No.

17 Q. Let's discuss -- you get to the closing.
18 Do you remember -- do you remember being there?

19 A. Yes.

20 Q. Okay. Do you remember about how long it
21 was before the closing was over?

22 A. The closing never happened.

23 Q. Well, I understand that the loans never
24 closed, but you went there for a closing, correct?

25 A. Correct.

1 Q. All right. Do you remember about how long
2 you were there before you left the building?

3 A. No, but generally -- I can't tell you how
4 long I was there, no.

5 Q. A couple hours, or?

6 A. No, no it wasn't that.

7 Q. It wasn't that long?

8 A. No.

9 Q. Okay. Do you remember -- I mean, were you
10 all sitting in a conference -- were you sitting in a
11 conference room with Mr. Whitfield?

12 A. Yes.

13 Q. And, I mean, what happened? Going from the
14 beginning, you know, how did it come to be that the
15 loans didn't close?

16 A. As you can -- as we've discussed all the
17 way through, the attempt to get that title endorsement
18 was up until the last minute. Mark Weeks, whereas they
19 were optimistic for that they were going to get that
20 endorsement, it did not come through. He informed us
21 of that. Sitting at the table with Mr. Whitfield and
22 Mr. Weeks, the solution only -- the next step was to
23 have Cindy Whitfield sign the documents as well.
24 Apparently, nobody had informed Ms. Whitfield of that.
25 They attempted to call her attorney on the phone at the

1 closing table. If I remember correctly, he was out
2 with back surgery or --

3 Q. The lawyer?

4 A. The attorney, yeah. The lawyer. So, we
5 weren't going to get an answer that day.

6 Q. Okay. You said that Mark Weeks was
7 confident at some point that they could get the title
8 endorsement?

9 A. Uh-huh.

10 Q. Do you recall, was he -- and these might
11 not be questions you know the answer to, but was he
12 telling you what was going on behind the scenes in
13 terms of that they were reaching out to Mr. Claypoole's
14 office, and at some point Mr. Claypoole said I can't do
15 the endorsement, or do you remember him saying, okay,
16 we can't do that, we'll going to my title company and
17 talk to them. Do you remember any discussions about
18 those kind of things?

19 A. Going through the E-mails we just went
20 through, when they reached out to Claypoole's office,
21 that was to get copies of the original title policy.
22 We sent over the original closing documents, tried to
23 expedite it, and we were working to see if we could
24 work off the original title policy.

25 Q. Okay. And did Mark Weeks ever say -- tell

1 you -- at some point in the afternoon he said we
2 couldn't get the title endorsement?

3 A. At the closing table --

4 Q. Right.

5 A. -- when we arrived at closing, yes. He
6 said we cannot --

7 Q. Was that pretty soon after you guys were
8 sitting there, or?

9 A. Yes.

10 Q. Did he tell you that he couldn't get the
11 title endorsement from Claypoole's office, or did he
12 say I couldn't get the endorsement from my title
13 company, or do you recall?

14 A. I don't recall.

15 Q. Okay. But generally, he said something
16 like we couldn't get the title endorsement?

17 A. Right.

18 Q. Did he ever say we cannot close Black Rush
19 because we don't have a title endorsement?

20 A. In those words no, but if we're requiring
21 being -- my presence, if you're requiring a title
22 policy of, you know, we can't close. So if --

23 Q. I got you. I just -- I want to understand,
24 you know, how it came to be that the closing didn't
25 occur, and I think based on the E-mails and what you

1 just said, the bank was making a condition, in order to
2 close Black Rush, that a title endorsement be obtained,
3 is that accurate?

4 A. Title endorsement or Ms. Cindy Whitfield --

5 Q. Sign the mortgage?

6 A. -- sign the mortgage.

7 Q. And I assume that it was your position that
8 if those things couldn't be obtained, either the title
9 endorsement on Black Rush or Cindy Whitfield signing a
10 mortgage, the bank would not be willing to close any of
11 the other loans as well?

12 A. That day?

13 Q. Correct.

14 A. Yes.

15 Q. Okay. Do you remember Mark Weeks saying,
16 you know, we can close the other eight, or --

17 A. Uh-huh.

18 Q. He mentioned that?

19 A. Yes.

20 Q. And what did you say?

21 A. I said we needed to get the endorsement or
22 Ms. Whitfield's signature figured out, that we would
23 stay at closing that day if we had to communicate with
24 her. I was more interested in the entire relationship.

25 Q. Okay. So, I take it from what you're

1 saying is you wanted either the endorsement or her to
2 sign the mortgage, and if you didn't have either one of
3 those you didn't want to close any of them that day?

4 A. Yeah, we weren't going to close any of
5 them.

6 Q. Okay. And you communicated that to Mr.
7 Weeks?

8 A. Yes.

9 Q. Okay. And at that point did he say, okay,
10 well, then that's all I can do and we'll just hang
11 tight, or?

12 A. He had already made the call to Cindy
13 Whitfield's attorney. He was aware that the attorney
14 had had some sort of surgery or medical condition, and
15 we were not going to hear back from him that day. So,
16 we -- so we decided just to hold off.

17 Q. Okay. Did you go -- did you leave Mark
18 Weeks' office at that point?

19 A. No. I'm sure you're aware that I had a
20 conversation with Mr. Whitfield in the parking lot, and
21 from there I left Mark Weeks' office.

22 Q. Okay. Tell me about that conversation.

23 A. After the closing did not go through,
24 Whitfield and I went down to where we were parked in
25 the same lot, obviously. We discussed why it did not

1 go through. There were other conversations about
2 Whitfield's personal feelings about banks and how they
3 handled the mortgage crisis or how they were supposed
4 to address it, and I told Whitfield that we -- we're
5 still working, you know, for the -- to get these
6 endorsements, you know. We still wanted to close, you
7 know. You know, that was basically the gist of it.

8 Q. Was he upset?

9 A. I would say at least he was -- I'm trying
10 to think of the right word to describe it. Talking
11 about banks in general, how they received money, you
12 know, he was very --

13 Q. Was he saying positive things about banks?

14 A. -- agitated. "Agitated" is probably a good
15 way to describe it.

16 Q. He probably was not happy?

17 A. No.

18 Q. Disgruntled?

19 A. Yes.

20 Q. Okay. Do you remember in that conversation
21 telling Mr. Whitfield that you could close Mepkin and
22 Gahagan, but you couldn't close the others?

23 A. Do I recall saying that? No.

24 Q. Okay. Do you recall saying that you could
25 close some of the loans except for Black Rush, but in

1 that scenario if you couldn't get a title endorsement
2 or the ex-wife to sign the mortgage, that the bank
3 would have to end up foreclosing on the other
4 properties?

5 A. No.

6 Q. Okay. Did you ever talk about the bank
7 prospectively needing to foreclose if some or all of --
8 if only some of the loans were closed that day and not
9 all of them?

10 A. Whitfield asked me what would the bank do
11 in those situation -- that situation. And, first of
12 all, I told him we weren't at that point, and we
13 couldn't -- I couldn't speak to it. You know,
14 different scenarios may have been discussed, but it was
15 Whitfield that asked, you know, if we don't do this,
16 you know, what the options -- what options are
17 available to the banks as far as foreclosure. And I
18 remember specifically telling him that, you know,
19 that's not where we were at at that point and that, you
20 know, his attorney would be better suited to answer
21 those questions.

22 Q. But was that -- were those discussions made
23 in the context of closing some of the loans and not all
24 of them? I mean, how did those foreclosure discussions
25 even come up?

1 A. Whitfield. Whitfield brought them up.

2 Q. But it wasn't in the context of if we close
3 some but not all of them?

4 A. I'm not sure that I understand the context
5 if we close some but not all of them. Again, Whitfield
6 brought up the conversation regarding foreclosures, and
7 I specifically said that we are not talking about, you
8 know, foreclosure right now, we're trying to get things
9 renewed.

10 Q. Did you ever offer to close any of the
11 loans, short of all of them to Mr. Whitfield?

12 A. Based on the fact that we had just left the
13 closing table and I had said that we were not going to
14 close the other loans, and if we were now down in the
15 parking lot, I do not recall saying anything about
16 that, and nor do I think my opinion would have changed
17 that quickly. Now I did reach out to Whitfield a
18 number of times afterwards --

19 Q. We'll talk about that.

20 A. Okay.

21 Q. It sounds like from what you're telling me
22 is, basically, your position was you're going to close
23 all of them or none of them, and since you couldn't get
24 all of them closed, then, basically, they packed it up
25 and said, okay, we can't do it right now.

1 A. No, yeah. "Right now" is the right way to
2 say it. We were not going to make a decision, you
3 know, that day as far as how we were going to proceed
4 with all of them. You know, we were going to do it
5 right.

6 Q. But you were making the decision that they
7 all were not going to close that day?

8 A. Yes.

9 Q. Did you ever, when you were in the parking
10 lot, discuss the subject of substituting collateral for
11 Black Rush?

12 A. Yes.

13 Q. Okay. How did that come about? Was that
14 something that Mr. Whitfield offered, or is that
15 something that you offered?

16 A. I offered.

17 Q. And would it be accurate to say that --

18 A. Offered as a potential solution.

19 Q. If the endorsement or the wife signing the
20 mortgage wouldn't come into play?

21 A. Right.

22 Q. Did you say that that would have been the
23 only solution if the title endorsement or the ex-wife
24 signing the mortgage couldn't be obtained?

25 A. If we couldn't get the title endorsement or

1 the -- I said that was the only solution I could think
2 of at the time.

3 Q. Do you remember any other discussions when
4 you were in the parking lot with Mr. Whitfield other
5 than those that we've already discussed?

6 A. Any other actions, subject matter?

7 Q. Correct.

8 A. I mean, well, the subject matter was more
9 venting about banks taking government money and what
10 they should be doing with it, and this was a
11 conversation from Whitfield, but I remember that being
12 a hard subject to get off of.

13 Q. Okay. Do you remember discussing set-off
14 clauses in the mortgage -- in the loan documents?

15 A. I remember mention of them.

16 Q. Do you remember how that came up?

17 A. Whitfield asked.

18 Q. What does that mean?

19 A. As far as specifically, he was posing
20 questions regarding right of set-off, and informing me
21 that he had read through the documents previously.

22 Q. Okay. Let's go forward with some E-mails
23 after closing. This is an E-mail from you to Willard
24 Stout and Ryan Griffin. Dated the next day, Friday.

25 (Witness reviewing document)

1 Have you looked at that?

2 A. Uh-huh.

3 MR. HALVERSEN: We'll mark that
4 as 22.

5 THE WITNESS: Before we go further,
6 shouldn't we strike some of this other unrelated
7 parties out of the --

8 MR. HALVERSEN: Yeah, you can redact
9 that before he makes it an exhibit.

10 MR. BERNSTEIN: We'll do that before
11 we leave. That's fine.

12 MR. HALVERSEN: Okay.

13 BY MR. HALVERSEN:

14 Q. There's some other -- it looks like other
15 borrower information. But the bottom part of this
16 says -- well, they're asking for a status update and
17 somebody -- it looks like Ryan was saying -- addressing
18 you saying, "Scott, closed yesterday," meaning
19 Whitfield, and then --

20 A. Asking if the closing --

21 Q. -- asking, and then Willard sends an E-mail
22 that says please only respond to Ryan --

23 A. And that was sent to all loan officers --

24 Q. Got you.

25 A. -- so that's why he is saying --

Q. Saying don't reply to other people --

(Off-the-record discussion)

A. When it says "Please reply only to Ryan and your immediate supervisor," Willard is saying for the loan officers not to reply to all.

Q. Right. And so you only replied to Willard and Ryan, and as part of the Whitfield matter, you say, "Did not close yesterday because we could not get title endorsement. Trying to close today if ex-wife will sign the mortgage as required. I lack confidence that we will get this resolved today, but we are still making a push to get the notes renewed."

Do you remember -- was -- since I assume that when you're at the closing, Weeks is saying, couldn't get the endorsements, and only possible option as far as you're concerned at that point was option B, which is to get the ex-wife to sign the mortgage.

A. Uh-huh.

Q. And were you aware that day, the day after closing that people were making phone calls trying to track down the ex-wife?

A. It was my understanding, yes.

Q. Do you know who was doing that?

A. I know Mark had called the wife's attorney -- ex-wife's attorney, and beyond that, I

1 can't -- Whitfield is obviously aware of where we stand
2 at that point. So -- and I believe I had phone
3 messages into Whitfield as well. But that's the extent
4 of the efforts that I can, you know, recall.

5 Q. At that point it wasn't incumbent on you as
6 other people were going to try to see if that was going
7 to be something that could happen, is that accurate?

8 A. Correct. I could not -- I'm not the one to
9 reach out to Mr. Whitfield's ex-wife.

10 Q. Others?

11 A. She's not a party to the note -- or not
12 note, to the loan at that point. She is on the title,
13 but I don't have a reason to speak with her.

14 MR. HALVERSEN: We'll mark that as
15 22.

16 (Whereupon, Exhibit 22 was
17 marked for identification.)

18 BY MR. HALVERSEN:

19 Q. The next E-mails I have are some -- is a
20 series of E-mails where you E-mailed Mark Shannon and
21 Kathy Hall that same day. It looks like -- Mark
22 Shannon I think -- isn't he the chief compliance
23 officer at the bank?

24 A. I don't know what Mark's title is, but he
25 is the compliance officer.

1 Q. Kathy Hall, what's her position?

2 A. Operations.

3 Q. Okay. Let me have you look at that.

4 (Witness reviewing document)

5 You've had a chance to look at that?

6 A. I have.

7 Q. You write an E-mail that Friday after the
8 closing date and say, "Kathy, we have a commercial loan
9 renewal" -- "we have a commercial loan renewal with a
10 twist - requiring guidance from our compliance experts.
11 9 loans, secured by residential properties, to Anthony
12 Whitfield. They were originated five years ago and 3
13 have matured. I ordered updated title searches and
14 found that the loan secured by 1055 Black Rush
15 (matured) had a partial interest in the property deeded
16 to the borrower's ex-wife. We are requiring a title
17 endorsement for 1055 Black Rush, and Stewart Title
18 understandably is requiring the ex-wife to sign on the
19 mortgage." Just stop there.

20 Did I accurately recite the E-mail that you
21 sent to Kathy and Mark on that day up until that point?

22 A. Yes.

23 Q. And you say that, "We are requiring a title
24 endorsement for 1055 Black Rush and Stewart Title
25 understandably is requiring the ex-wife to sign on the

1 mortgage."

2 Do you remember anything about that,
3 because I don't think up until this point this morning
4 we talked about Stewart Title demanding she sign the
5 mortgage. Do you remember where you got that from, or
6 is that a mistake?

7 A. The title companies were -- title company
8 was requiring the mortgage to be signed, so, as far as
9 it being a mistake --

10 Q. Well, let me just go back with you here,
11 because I believe that the testimony was that you
12 called bank counsel; bank counsel said you need to have
13 a title endorsement on Black Rush?

14 A. Uh-huh.

15 Q. That was David Swanson.

16 A. Uh-huh.

17 Q. He didn't mention anything about the
18 ex-wife signing the mortgage in that conversation,
19 correct?

20 A. He said we needed an endorsement, and the
21 requirement for the ex-wife to sign was the title
22 company to get that endorsement. So we're talking two
23 different, you know, conversations with Swanson
24 initially, and what do we need to do. David Swanson is
25 not the title company, he's not issuing the policy,

1 so --

2 Q. I know. But I had thought before all of
3 this the option was you guys were trying to get the
4 title -- or Mark Weeks' office was trying to get a
5 title endorsement either through Mr. Claypoole or
6 through, whoever, Stewart Title. At whatever point in
7 the closing Mark Weeks came back and said, guys, sorry,
8 couldn't get the title endorsement, right?

9 A. Correct, without the ex-wife's signature.

10 Q. Okay. Just to be clear, what he was saying
11 is in order to get the title endorsement, we need the
12 ex-wife to sign the mortgage. Do you see what I'm
13 saying?

14 A. Yes, yes.

15 Q. Okay. I just want to make sure we're
16 talking about the same thing.

17 So, when he was at closing, he said in
18 order to get the title endorsement, the ex-wife, Cindy
19 Whitfield, would have to sign the mortgage, is that
20 right?

21 A. Yes.

22 Q. Okay. All right. Because before, the way
23 I understood it was, we need to get a title
24 endorsement, that couldn't happen, and then the only
25 other option was to get the ex-wife to sign the

1 mortgage. That's not right --

2 A. And then you get the endorsement.

3 Q. Okay. All right. I got you.

4 A. Or she's going to -- they'll -- at that
5 point, you know, we're covered under the title policy.

6 Q. Okay. So, what --

7 A. It would -- it would eliminate the
8 exception.

9 Q. Okay. The door you have to travel then
10 through is to get the title endorsement, and the title
11 policy companies, whoever they were, were requiring the
12 ex-wife to sign the mortgage?

13 A. Right.

14 Q. Okay. It wasn't that the title endorsement
15 couldn't be obtained and then you guys said, okay, our
16 only option is to get a mortgage drawn up and have
17 Cindy Whitfield, the ex-wife, sign it?

18 A. Right.

19 Q. All right. Then you state, "The ex-wife
20 occupies the property as her residence, is currently on
21 title (bank did not agree to adding her)."

22 How did you get that information that the
23 bank didn't agree to add her, because I understand you
24 weren't the loan officer from the beginning, it was
25 Angie Bell, correct?

1 A. Right.

2 Q. So, did you get that information from Angie
3 Bell, or did you get that information from doing a
4 review of the loan file or the credit file?

5 A. When we got the title opinion or title
6 search back and became aware of it, nobody was aware
7 that the wife had been added to the deed, and that
8 could be talking to a number of people, Angie. There
9 was nothing in the credit file that I recall seeing.
10 There didn't seem to be any notice provided to the
11 bank.

12 Q. Okay. The bank knew she was -- the house
13 was being purchased for her, though, correct?

14 A. Yes, purchased for her to live in.

15 Q. Right. But what you're saying is, they
16 knew that, but they did not know that the wife was
17 added on the title until this title search came about?

18 A. Correct.

19 Q. And that's information you got either --

20 A. Third hand, I mean, because I obviously was
21 not there for the original closing or when they were
22 at -- she was added to the title. So, really, I only
23 can speak to my general understanding and --

24 Q. That's what you were told, is that accurate
25 to say?

1 A. That was my understanding, yes.

2 Q. Okay. Do you remember who would have given
3 you that information?

4 A. Again, it came up on title policy -- or the
5 title search, and --

6 Q. Right. I meant, who gave you the
7 information that the bank was unaware she was on title
8 until that point in time, because I think you said you
9 had talked to various people in the bank?

10 A. Right. I had mentioned Angie Bell and, you
11 know, couldn't see anything in the credit file. So,
12 without being there, you know...

13 Q. Understood. And you ask, "What are the
14 disclosure requirements and is there a right of
15 rescission period. We are waiting to hear if the
16 ex-wife is going to agree to be on the mortgage, but
17 must move quickly to execute if she does. If there are
18 disclosures with time requirements to them, I want to
19 go ahead and get them out. The other 8 properties came
20 back with clean title searches. I appreciate your
21 help, and I must request your guidance as soon as
22 possible." Right?

23 A. Correct.

24 Q. And then at some point it looks like Patti
25 Blenden responds, and I don't know why we don't have

1 that E-mail that it looks like because -- okay, I know
2 why.

3 So, you're saying this to Mark and Kathy,
4 and then I guess they must have gotten it to her, and
5 then here's her response, and you've read through that.
6 She says, "Definitely get the bank's attorney involved
7 from a perspective of proper security rights. If the
8 divorce decree made him solely responsible for the
9 wife's residence, she may not have to sign anything."
10 And then she goes on and on and on.

11 And it looks like Mark Shannon forwards
12 this E-mail to you and says, "Please see the below
13 comments from Patti Blenden. Based upon this scenario,
14 Patti states that this should be treated as a consumer
15 loan; however, the right of rescission would not apply
16 since no new money is being advanced. As you can see,
17 Patti also suggests consulting with legal counsel to
18 make certain that the bank's interests are protected
19 since this is such an unusual situation. Since Patti
20 states that this should be treated as a consumer loan,
21 I'm also attaching the checklist for 1-4 Family Real
22 Estate for consumer purpose loans. I hope this
23 information helps. Please let me know if I can do
24 anything else or if you have any additional questions."

25 Did I read that accurately?

1 A. You did.

2 Q. Again, if you could go back and check to
3 see if you have that checklist, because that was
4 something that I could not locate about the 1-4 Family
5 Real Estate checklist on your E-mails if Mr. Bernstein
6 asks you for that?

7 A. Okay.

8 Q. Mark is saying in this E-mail, and this is
9 July 2, Monday, so it would have been the Monday after
10 the closing on the 28th.

11 A. Right.

12 Q. He says, "Since Patti states that this
13 should be treated as a consumer loan" -- I'm sorry. He
14 says, "As you can see, Patti also suggests consulting
15 with legal counsel to make certain that the bank's
16 interests are protected since this is such an unusual
17 situation."

18 Do you recall ever consulting with --
19 calling back Mr. Swanson or calling any other lawyer
20 after you got this E-mail?

21 A. No.

22 Q. Okay. Do you remember getting this E-mail
23 with Patti Blenden's comments?

24 A. Yes.

25 Q. And that she said in there that "If the

divorce decree made him solely responsible for the wife's residence, she may not have to sign anything?"

A. Yes.

Q. At that point in time, did you try to get a copy of the divorce decree?

A. I don't recall.

MR. HALVERSEN: Mark this one as 22.

MR. BERNSTEIN: It's 23. 22 is the --

MR. HALVERSEN: Oh, I'm sorry.

MR. BERNSTEIN: I was waiting until you quit so I ask you on the record, I've confirmation to redact, White-out the names of bank customers other than Mr. Whitfield contained on Exhibit 22, correct?

MR. HALVERSEN: Yes.

MR. BERNSTEIN: I did not want to alter that without something on the record.

MR. HALVERSEN: Let's take a break.

(Whereupon, a short recess was taken.)

(Whereupon, Exhibit 23 was marked for identification.)

MR. HALVERSEN: Just for the record, Mr. Bernstein has made some redactions on Exhibit 22 to redact any non-Whitfield account information, is that

1 right?

2 MR. BERNSTEIN: That's correct.

3 MR. HALVERSEN: All right.

4 MR. BERNSTEIN: Just for
5 clarification, the only thing that was redacted were
6 the names of the other customers. If it had references
7 to account information regarding those customers, that
8 did not get redacted. Not everything on there about
9 account information relates to Mr. Whitfield, but the
10 only thing that was redacted were the names of the
11 customers.

12 BY MR. HALVERSEN: That's fine.

13 BY MR. HALVERSEN:

14 Q. The next E-mail, July 2, looks to be an
15 E-mail from Teresa Farley to you and Felicia Pringle.
16 Subject line, "Anthony Whitfield." And she says, "Hey,
17 any word on what we are doing with Mr. Whitfield?" And
18 you responded, "He has not responded to my phone
19 messages?" Question mark. Take a look at that.
20 That's the beginning of the E-mail.

21 (Witness reviewing document)

22 Have you had a chance to look at that?

23 A. I did.

24 MR. HALVERSEN: All right. We'll
25 mark that as 24.

1 Q. Were you calling -- this is the Monday
2 after the closing, which was on Thursday the 28th. I
3 was asking you the question, did you call Mr. Whitfield
4 and leave him phone messages?

5 A. I did.

6 Q. Do you remember, was it that weekend, or?

7 A. I would not have left a message for him
8 Saturday or Sunday, but there were multiple unreturned
9 calls following that closing.

10 Q. And I guess I just am curious because given
11 what we discussed before, you were saying basically the
12 only option left in your mind was for the ex-wife to
13 sign a mortgage, and that was kind of other people's,
14 you know, dealings to do, but why were you trying to
15 get a hold of Mr. Whitfield then?

16 A. Well, we were still trying to close. We
17 could not get the endorsement. We had not heard back
18 from the ex-wife. Whitfield was not returning my calls
19 letting me know if he had heard back from the ex-wife.
20 So we were continuing to try to move forward. That
21 conversation in the parking lot was the only solution I
22 could think of, you know, at the time. We were still
23 trying to communicate with Mr. Whitfield as far as
24 moving forward, but we were not hearing back.

25 Q. Did you ever try to contact Cindy

1 Whitfield?

2 A. No.

3 Q. Did anyone at Harbor National Bank try to
4 contact Cindy Whitfield about signing a mortgage?

5 A. Not to my knowledge.

6 Q. Okay. All right. I'm getting to the end
7 of the E-mails. Here's an E-mail dated July 17, which
8 looks like you E-mailed to yourself. Just take a look
9 at that.

10 (Whereupon, Exhibit 24 was
11 marked for identification.)

12 BY MR. HALVERSEN:

13 Q. Is this an E-mail that you're sending to
14 yourself just to document the file? That's what I
15 assume.

16 A. Yes. Not document the file, but --

17 Q. Put -- record what you wanted to put in
18 here?

19 A. Correct.

20 Q. Okay. And you indicate you left another
21 message for Mr. Whitfield stating ten days had passed.
22 It was actually more than that, though, wouldn't it
23 have been, because the closing was on the 28th? This
24 was dated the 17th.

25 A. Yes, it would be more.

1 Q. And you say, "My last conversation with Mr.
2 Whitfield's attorney were attempting to communicate
3 with his ex-wife's attorneys." Are you referring to
4 Mark Weeks in that, or was there another attorney you
5 were talking to?

6 A. The question again?

7 Q. It says in this E-mail your last
8 conversation was with Mr. Whitfield's attorney. Was
9 that Mr. Weeks or was that somebody else?

10 A. Obviously, this was meant for me. It's got
11 a grammatical issue there, and they were attempting to
12 contact Whitfield's ex-wife's attorney to see if she'd
13 be willing to sign the mortgage. Was that your
14 question?

15 Q. Yeah. So you weren't in touch with --

16 A. With his ex-wife? No.

17 Q. Right. But you weren't talking -- the way
18 that I read this sentence --

19 A. Correct. It's grammatically incorrect,
20 typo or whatever it may be.

21 Q. What were you trying to say?

22 A. That Whitfield's attorney was attempting to
23 communicate with his ex-wife's -- Whitfield's ex-wife's
24 attorney.

25 Q. Okay. Because you hadn't been talking to

1 Whitfield's attorney?

2 A. What's that?

3 Q. You had not been talking to Whitfield's
4 attorney?

5 A. Whitfield's attorney is Mark Weeks, and
6 that would be the reference as to who that is, the
7 closing attorney.

8 Q. Okay. All right.

9 A. Teresa Farley, which obviously I did have
10 communication with her after the fact.

11 Q. But you weren't talking to Mark Weeks or
12 any other attorney of Mr. Whitfield's after the
13 closing?

14 A. His office. I would assume that Teresa,
15 the closing coordinator, paralegal, represents his
16 office, so that would be what that's referring to.

17 Q. Okay. I got you. But nobody else?

18 A. No.

19 Q. Okay. And you state, "to see if she's
20 willing to sign the mortgage for the Black Rush
21 property as required. He also stated that this matter
22 may have to work its way through Family Court before it
23 can be resolved?"

24 A. Uh-huh.

25 Q. Where did that come from?

1 A. I believe that -- you know, obviously
2 communication from Weeks. You know, I believe it was
3 at the closing table, but, you know, without anything
4 specific to tell you exactly when it came up, I can't.

5 Q. Well, you think that might have been
6 something that Mark Weeks told you?

7 A. Yes.

8 Q. Something about they might have to just --

9 A. Work --

10 Q. -- work something out?

11 A. Yes.

12 Q. "I informed Tony that the loan has matured
13 and the note was in Tony's name, and we need to know if
14 he is willing to substitute collateral if he is not
15 able to resolve the issue with his ex-wife in a timely
16 manner."

17 When was it that you had that
18 conversation with Tony?

19 A. At the day of closing. You know,
20 obviously, there had been no communication since then.
21 This is dated the 17th. The attempted closing was, you
22 know, in June. You know, that was discussed.

23 Q. In the parking lot?

24 A. In the parking lot, and as we had talked
25 about, when we reviewed the term sheet.

1 Q. The day before closing?

2 A. And, again, that was talking plan A and B,
3 plan A, B, and we get the ex-wife's signature or
4 endorsement, and, you know, this is plan B.

5 Q. Okay. And I think we've already talked
6 about some of this in the next paragraph where you say
7 that you checked the file and that the bank
8 acknowledged that Black Rush was being purchased for
9 the ex-wife to live in, but were not informed that he
10 had later added her to title?

11 A. Correct. I believe we -- yes. I believe
12 we discussed that earlier.

13 MR. HALVERSEN: Mark that as 25.

14 (Whereupon, Exhibit 25 was
15 marked for identification.)

16 BY MR. HALVERSEN:

17 Q. Did you go to closing with instructions
18 from Willard Stout or anyone at Harbor National Bank to
19 not close unless Mr. Whitfield agreed to substitute
20 collateral for Black Rush?

21 A. Unless he had -- no, no, I didn't.

22 Q. Next E-mail, 26, if you'll read that.

23 A. Okay.

24 Q. And is that an E-mail from Mr. Werking to
25 you --

1 A. Yes.

2 Q. -- Subject line, "Term Sheet Whitfield."

3 And this is dated August 22, 2012 and he says, "Scott,
4 can you send me the term sheet you provided Tony for
5 the renewal structure we agreed to?"

6 A. Yes.

7 Q. Did you ever respond to that, or?

8 A. I'm sure I did.

9 Q. We'll go -- and that would have been
10 Exhibit 9?

11 A. Yes.

12 Q. Okay.

13 MR. HALVERSEN: We'll mark this as
14 Exhibit 26.

15 (Whereupon, Exhibit 26 was
16 marked for identification.)

17 BY MR. HALVERSEN:

18 Q. Last E-mail. And this appears to be an
19 E-mail from -- in November 2012 from you to Ryan and
20 CCed to Ryan Griffin about Anthony Whitfield Exception.
21 Is that because -- it pops up that he's an exception
22 because that these loans are on non-accrual, or?

23 A. He was not providing documentation that we
24 typically collect for loan file. But, yes, there was a
25 number of exceptions. I'd have to go back and look to

1 see specifically what they are.

2 Q. All right. And those are loan policy
3 exceptions, is that accurate?

4 A. Uh-huh.

5 Q. And so -- and then --

6 A. Or documentation exceptions.

7 Q. Okay. And then Ryan E-mails you and says,
8 "Scott, how are you coming with the renewals of these
9 loans?" And you responded to him, "Can't renew. I
10 know you are joking, but remember these E-mails are
11 being picked up in the litigation?"

12 A. Uh-huh.

13 Q. So, was that a joke at the time?

14 A. Yes.

15 Q. Okay. Because he knew at that point in
16 time that they hadn't been renewed?

17 A. Yes.

18 Q. Okay.

19 MR. HALVERSEN: This is the
20 last -- Exhibit 27. We'll mark this as Exhibit 28.

21 (Whereupon, Exhibits 27 and 28 were
22 marked for identification.)

23 BY MR. HALVERSEN:

24 Q. Take a look at that.

25 (Witness reviewing document)

1 Q. Do you remember signing this affidavit?

2 A. I do.

3 Q. Is that your signature on the second page?

4 A. That's my signature.

5 Q. And it looks like a copy of what we've
6 referred to in this -- today's deposition as Exhibit 9,
7 attached as an Exhibit A of the affidavit?

8 A. Uh-huh.

9 Q. And did you prepare this document?

10 A. No.

11 Q. Okay. So just so I'm clear, that the words
12 were not chosen by you that are in what you signed, is
13 that accurate?

14 A. Chosen by, no.

15 Q. Who drafted Exhibit 28?

16 A. Bobby.

17 Q. Mr. Bernstein?

18 A. Mr. Bernstein.

19 Q. And do you agree with everything that is in
20 paragraphs 1 through 6?

21 A. Yes.

22 Q. Paragraph 5 says, "I attended a proposed
23 closing at the office of Mark Weeks to have the
24 proposed loans close, but Anthony Whitfield was unable
25 to provide a first mortgage to the property located at

1 1055 Black Rush Circle, as he had transferred a on
2 behalf" -- I guess that's supposed to be a one half
3 "interest in the property to Cindy Whitfield, and she
4 refused to sign a Mortgage and Assignments of" rents,
5 "leases," rents, and profits for the property. I read
6 that correctly, but there might have been a typo,
7 right?

8 A. Correct.

9 Q. Are you aware if there's a first mortgage
10 on the property as we sit here today?

11 A. A first mortgage on the property? Yes.

12 Q. Yes.

13 A. Yes.

14 Q. Okay. Do you know if Mr. Whitfield's risk
15 rating is reported internally and externally outside of
16 the bank?

17 A. I do not.

18 Q. Okay. Do you know who would know the
19 answer to that question?

20 A. Ryan Werking.

21 Mr. Halversen: Let me just go
22 through and make sure I've got everything.

23 Q. I know I asked you -- we talked a lot about
24 Exhibit 9, and that you were calling it a "term sheet."
25 Can you think of any other borrowers where you drafted

1 a term sheet for?

2 A. I've drafted term sheets for many, many
3 borrowers.

4 Q. Okay. If that's something that we
5 requested and Mr. Bernstein told you to produce, could
6 you locate those term sheets?

7 A. I have a number on file.

8 Q. Okay. Same question with respect to
9 commitment letters?

10 A. Uh-huh.

11 Q. Okay.

12 A. Yes.

13 MR. BERNSTEIN: Just for the record,
14 even if he produces them to me, we are not waiving any
15 objections concerning confidentiality or applicability.

16 MR. HALVERSEN: I assumed that.

17 Q. Do you know who prepares the exception
18 reports? You don't prepare them?

19 A. I do not prepare them. But, yes, I do
20 know.

21 Q. Somebody in the credit department?

22 A. Yes.

23 Q. Who does that?

24 A. Ryan Griffin. And there's a difference
25 between financial and collateral exceptions, but

1 there's two separate reports. I know Ryan Griffin
2 does one.

3 Q. Okay. Do you know who Stan Ashburne is?

4 A. I do.

5 Q. Does he -- he doesn't work at Harbor
6 National Bank, does he anymore?

7 A. Not currently, no.

8 Q. Was he working there when you started?

9 A. No.

10 Q. Okay. How do you know Mr. Ashburne if you
11 started after he left?

12 A. Worked with him at SouthTrust Bank and
13 maintained communication throughout the years.

14 Q. Okay. Have you discussed this matter with
15 Mr. Ashburne?

16 A. No.

17 Q. I may have already asked you this, but I
18 apologize if I did. But did Mark Weeks tell you that
19 he needed a signed title endorsement in order to renew
20 the loans?

21 A. He needed a signed title endorsement?

22 Q. Right.

23 A. He would be providing the title
24 endorsement.

25 Q. Right. I know and we previously discussed

1 the idea for the title endorsement was from Mr.

2 Swanson, correct?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes.

6 Q. But did Mr. Weeks ever say, I need a title
7 endorsement or I cannot close Black Rush?

8 A. I guess it goes to our instructions. He
9 asked to close it based on our instructions, which is
10 without exception. So, did he state that he could not
11 close it? Only he could not close it to our
12 instructions.

13 Q. Understood. Did you call anybody at Harbor
14 National Bank while you were at the closing at Mark
15 Weeks' office?

16 A. I don't recall.

17 Q. Do you have a cell phone?

18 A. I do.

19 Q. What is your number for your cell phone?

20 A. It's 843-991-8334.

21 Q. And who is your service provider?

22 A. Verizon.

23 Q. When you were at First National Bank of the
24 South, I believe you told me that the people you worked
25 for were Rudy Gill, Bob Whit --

1 A. Whittemore.

2 Q. -- Whittemore. Jerry?

3 A. Calver.

4 Q. Calver. Rick?

5 A. Manley.

6 Q. Manley. Did you work with Wally Odom?

7 A. Wally worked with Tony.

8 Q. Okay. Do you keep in touch with Wally or

9 do you know his whereabouts?

10 A. No.

11 Q. How about somebody named Harrelson?

12 A. I saw David for the first time in a

13 long -- good while last week, two weeks ago.

14 Q. Who is David Harrelson?

15 A. He's a friend of mine.

16 Q. Okay. And how do you know David?

17 A. Worked together.

18 Q. At?

19 A. Carolina First and at First National.

20 Q. Where is David?

21 A. In Charleston.

22 Q. Okay. Did you discuss anything about Mr.

23 Whitfield --

24 A. No.

25 Q. -- and these issues that we're talking

1 about today?

2 A. No, no.

3 Q. Have you discussed any issues with Mr.
4 Whitfield with any of the people I just referenced --

5 A. No.

6 Q. -- Rudy Gill, Bill Whittemore (sic), Jerry
7 Calver?

8 A. No.

9 Q. Okay. Have you seen any of these people
10 recently or since last year?

11 A. Yes.

12 Q. Okay. Which ones?

13 A. Rudy Gill, Bob Whittemore.

14 Q. Where do you see them?

15 A. I have lunch with Rudy on a regular basis.

16 Q. Where are they now?

17 A. First Reliance.

18 Q. Do you know which branch they're at?

19 A. Downtown.

20 Q. Okay. Do you know anybody at CresCom Bank?

21 A. Yes.

22 Q. Who do you know there?

23 A. As far as knowing anybody well, I can't say
24 I know anybody well, but Bobby Warick (ph), Leon
25 Rooney (ph). That's all that comes to mind.

1 Q. Okay. Have you discussed with them any
2 issues pertaining to Mr. Whitfield?

3 A. No.

4 Q. Do you know anybody that works at SunTrust
5 Bank?

6 A. Yes. I know probably somebody at every
7 bank. Do you want me to name everybody at SunTrust
8 Bank?

9 Q. Let me just ask you --

10 A. I have not talked to any other bankers
11 about Tony Whitfield if that expedites the --

12 Q. That expedites everything.

13 MR. HALVERSEN: All right. We're
14 done. Thank you.

15
16 (Whereupon, the deposition was concluded
17 at 1:26 p.m.)

18
19
20 (Signature waived)

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF CHARLESTON)

5 I, Douglas K. Liperote, the officer before
6 whom the foregoing deposition was taken, do hereby
7 certify that the witness whose testimony appears in the
8 foregoing deposition was duly sworn by me; that the
9 testimony of said witness was taken by me to the best
10 of my ability and thereafter reduced to typewriting
11 under my direction; that I am neither counsel for,
12 related to, nor employed by any of the parties to the
13 action in which this deposition was taken, and further
14 that I am not a relative or employee of any attorney or
15 counsel employed by the parties thereto, nor
16 financially or otherwise interested in the outcome of
17 the action.

18
19 _____ Date _____

20 Douglas K. Liperote

21 Notary Public in and for the

22 County of Charleston

23 State of South Carolina

24
25 My commission expires August 15, 2015.

STATE OF SOUTH CAROLINA
 IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
 CASE NO. 2012-CP-10-5887

HARBOR NATIONAL BANK,) DEPOSITION OF:
) DAVID SWANSON
 Plaintiff,)
)
 -versus-)
)
ANTHONY M. WHITFIELD,)
)
 Defendant.)
)

DATE: Tuesday, May 13, 2014

TIME: 10:14 a.m.

LOCATION: Haynsworth Sinkler Boyd
 134 Meeting Street, Third Floor
 Charleston, SC 29401

REPORTED BY: JENNIFER M. HUGGINS,
 Certified Shorthand Reporter

APPEARANCES

For the Plaintiff: DUFFY & YOUNG
BY: SETH W. WHITAKER
Attorney at Law
96 Broad Street
Charleston, SC 29401

For the Defendants: HALVERSEN & ASSOCIATES
BY: BRENT S. HALVERSEN
Attorney at Law
171 Church Street
Suite 330
Charleston, SC 29401

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EXHIBITS

(No exhibits were offered or marked for
identification.)

1 (The reading and signing of the
2 deposition by the witness is waived.)

3 (DAVID SWANSON, having been first
4 duly sworn, testified as follows:)

5 EXAMINATION

6 BY MR. HALVERSEN:

7 Q. Good morning, Mr. Swanson. My name is
8 Brent Halversen. I just introduced myself to you.
9 And we are -- Mr. Whitfield is a defendant in a
10 case that's been filed by Harbor National Bank.
11 And I understand that's a client of this firm; is
12 that accurate?

13 A. That's correct.

14 Q. Okay. Have you ever had your
15 deposition taken before?

16 A. Yes.

17 Q. Okay. Tell me a little bit about
18 yourself. I know some things about you, but how
19 long have you been at the Haynsworth firm?

20 A. Well, I started off back in 1980 with a
21 small firm in Charleston called Bailey & Buckley.
22 It's not here anymore. And, about a year into
23 that, year and a half, I was made an offer by one
24 of the predecessor firms of Haynsworth, which was
25 Sinkler, Gibbes & Simons. Sinkler, Gibbes & Simons

1 merged in -- I don't know -- '77/'78 -- no, '88/'89
2 with a firm in Columbia, Boyd, Knowlton, Tate &
3 Finley.

4 It became Sinkler & Boyd, and then we
5 merged with Haynsworth Sinkler Boyd -- I mean,
6 merged with the Haynsworth firm and became
7 Haynsworth Sinkler Boyd. And so all of that spans
8 about 33/34 years.

9 Q. Okay. So you've been here --

10 A. So been with the same firm more or
11 less.

12 Q. Okay. And then, before that, you were
13 with a different firm?

14 A. Yeah, just for about a year.

15 Q. Okay. And what kind of work did you do
16 back then?

17 A. Where, with the --

18 Q. The first one.

19 A. -- the little firm?

20 Q. Yeah.

21 A. That was just a general practice.

22 Q. Okay.

23 A. Did -- they did some insurance defense;
24 did some real estate; did a lot of little -- you
25 know, a lot of stuff.

1 Q. Did you -- have you ever met Mr.
2 Whitfield before?

3 A. I -- I may have, but I don't remember
4 if I did.

5 Q. Okay. And tell me about the kind of
6 work you do now.

7 A. Well, it -- it's not just now. It's
8 what I've done for 30-something years is -- is --
9 it's mostly -- I call it all real-estate related,
10 and it -- it changes from, you know, every so often
11 with the economy.

12 But it mostly centers around real
13 estate acquisitions, real estate sales, lender
14 work. Lender work meaning representing lenders
15 either in closing loans, documenting loans or, in
16 some cases, with distressed real estate
17 representing buyers of loans on occasion. That was
18 popular some time ago. But I've done condemnation
19 actions. But -- and so it -- it's all a -- and all
20 that also entails preparations of contracts, leases
21 but all real-estate related.

22 Q. Gotcha. So you're a real estate
23 transaction lawyer?

24 A. Yeah. And title insurance. I do a lot
25 with title insurance because that's a part of --

1 most real estate transactions these days -- and
2 we've got a title agency like most lawyers do, and
3 I'm sort of the -- in charge of that title agency.

4 Q. Okay. Who are you authorized to write
5 policies for?

6 A. Investors, First American, Chicago,
7 Fidelity or Republic.

8 Q. Okay.

9 A. I think that's all of them.

10 Q. Are you -- do you write policies for
11 First American?

12 A. Yes.

13 Q. How about Stewart Title?

14 A. No.

15 Q. And then the -- the title company is a
16 separate entity from the law firm here?

17 A. Yeah. It's wholly owned by the law
18 firm.

19 Q. Okay.

20 A. It's just the way it's done in South
21 Carolina for whatever reason.

22 Q. Right. Have you reviewed any documents
23 in preparation for the deposition here today?

24 A. I have reviewed some documents that my
25 lawyer gave me.

1 Q. Okay. What were those?

2 MR. MCQUILLIN: Hold up now. I don't
3 -- is that -- I think that's work product, if it
4 was documents that I went over with him to prep him
5 for his deposition.

6 MR. HALVERSEN: Okay.

7 BY MR. HALVERSEN:

8 Q. Well, can you tell me -- can you tell
9 me who you've -- besides your lawyer, have you
10 talked to anybody?

11 A. No. I mean, not to -- not to prepare
12 for the deposition.

13 Q. Have you met with Scott Warren?

14 A. No.

15 Q. Okay. Have you reviewed any deposition
16 testimony?

17 A. I -- I did review Scott Warren's
18 deposition.

19 Q. Okay. Did you review any other
20 deposition testimony?

21 A. Sloop.

22 Q. Okay. Barry Sloop. Okay. Have you
23 had any discussions -- and I assume that the only
24 communication you had with the bank about this
25 whole issue was with Mr. Scott Warren in June of

1 2012; is that accurate?

2 A. Well, I don't know when that
3 conversation took place. I'm taking your --

4 Q. Okay.

5 A. -- your word for that because you know
6 when it is. I -- I can't -- I don't -- I hadn't
7 gone back and looked at the exact date and time of
8 when that took place. But, you know, have I talked
9 to anybody about it? Well, yeah, I probably have
10 down at -- the fellows down at Harbor National and
11 my clients. They're my friends. I know Charlie
12 Rivers, Willard Stout. I've known them both for a
13 long time. So, you know, I see them from time to
14 time and just talk to them about things so --

15 Q. Okay. So have you discussed this
16 matter with Mr. Stout or Mr. Rivers?

17 A. Well, I -- I probably have, you know,
18 but it hadn't been in any detail. It's sort of
19 just generally because I'm not -- I'm not except in
20 this capacity. You know, I'm not -- I'm not
21 represented by -- I knew Bobby Bernstein was, and,
22 now, I know Seth is so --

23 Q. Okay. Have you had any discussions
24 about this matter with Mr. Bernstein?

25 A. He -- he -- he called me one time, but,

1 you know -- he called me to say that my deposition
2 would probably be taken.

3 Q. Okay.

4 A. This was six/eight months ago -- or I
5 don't know. I don't know how -- something like
6 that. I said okay.

7 Q. Did he --

8 A. So here we are.

9 Q. Okay. Did he discuss any of the issues
10 with you about this -- this matter?

11 MR. WHITAKER: Well, hold on a minute
12 because that's getting into -- I mean, you know,
13 you've got two lawyers that both have the same
14 client. That's getting into -- you know, and also
15 work product if litigation was already being
16 threatened. So I'm not sure if that's
17 discoverable.

18 MR. HALVERSEN: Well, I disagree. I'm
19 pretty sure it is discoverable.

20 MR. WHITAKER: Well, I -- I object.

21 MR. HALVERSEN: Okay.

22 MR. WHITAKER: I don't know where --
23 where your question is going exactly, but, if
24 you're going to start talking about the substance
25 of what he talked about with Bobby, that's work

1 product between two attorneys who represent the
2 same client.

3 MR. HALVERSEN: Well, you've -- you've
4 asserted the advice of counsel defense so --

5 MR. WHITAKER: With respect to stuff
6 that happened at the time of this transaction, not
7 about something that happened after suit was filed.

8 MR. HALVERSEN: Well --

9 MR. WHITAKER: That's a different
10 analysis.

11 MR. HALVERSEN: Actually, it's not. If
12 they're opening -- if you are purposefully
13 injecting what Mr. Swanson informed your client
14 about, then discussions afterwards on the same
15 subject with the the same -- this same attorney is
16 -- would not be privileged either.

17 MR. WHITAKER: But it could be work
18 product, though, if it's after -- after litigation
19 was being threatened, which it certainly -- it
20 sounds like it was.

21 MR. HALVERSEN: Right. Well, even in
22 those instances, the work product is still
23 discoverable.

24 MR. WHITAKER: I'm not so sure about
25 that.

1 MR. HALVERSEN: Okay. I am. So, you
2 know, if -- I'm going to ask those questions. If
3 -- if you want to, you know, postpone the
4 deposition because of those --

5 MR. WHITAKER: I'm not saying anything
6 about postponing any depositions. Let's see where
7 the line of questioning goes.

8 MR. HALVERSEN: Okay.

9 MR. WHITAKER: I just wanted to make
10 that issue clear from the beginning.

11 MR. HALVERSEN: Okay. Well, you know
12 my position.

13 BY MR. HALVERSEN:

14 Q. What -- when did Mr. Bernstein call
15 you?

16 A. Like I say, I don't remember dates and
17 times. I -- you know, it was probably -- if I had
18 to guess, I'd say -- which I am, it's, you know,
19 like, wasn't a year ago, but maybe 8 to 12 months
20 ago, something like that.

21 Q. Okay. Did he discuss -- what did he
22 discuss with you?

23 A. He --

24 MR. WHITAKER: I'm going to object.
25 You can talk about the subject matter but not any

1 advice that Mr. Bernstein gave about the litigation
2 at that point, if that makes any sense at all.

3 A. No. What -- I mean, I'll tell you what
4 -- it was a short conversation, and I think -- I
5 think Bobby told me that Scott's deposition had
6 been taken. I don't know it was that day,
7 recently, whenever. And he said my name had come
8 up. I said, okay, in what context. And then he
9 told me, you know, about, there was a conversation
10 that Scott had with me, and, you know, he went into
11 that and just said, you know, your deposition will
12 probably be taken at some point, and that was it.

13 Q. Did he discuss anything about title
14 endorsements or --

15 A. No.

16 Q. -- any of the issues in the case?

17 A. No.

18 Q. Okay. Let's talk about specifically
19 what advice or what was -- what was discussed when
20 you had that communication from Mr. Warren. It's
21 my understanding that -- that you only had one
22 communication with Mr. Warren; is that accurate?

23 A. That -- well, yeah. I mean, that's
24 correct. About this particular -- about Mr.
25 Whitfield's closing, I -- that -- yeah. I only had

1 -- he called me one day.

2 Q. Okay. And we -- my office previously
3 sent a subpoena to the firm and --

4 A. Right.

5 Q. -- asked for documents. And it's my
6 understanding you-all did a review and couldn't
7 find any documents related to this issue; is that
8 accurate?

9 A. That's correct.

10 Q. Okay. Would -- did you bill the
11 client for the -- for the time on the phone to --
12 with Mr. Warren?

13 A. Well, we couldn't -- we couldn't find
14 any billing records, but that's -- you know, I --I
15 personally don't consider that too unusual. My
16 phone sits on my desk, and, when it rings, I pick
17 it up. And I'm usually doing about 5 or 10 other
18 things at the same time. And sometimes I forget to
19 write --

20 Q. Yeah.

21 A. -- a conversation down, and it really
22 didn't -- you know, it wasn't -- it didn't take
23 that long, really, what we talked about. It was --
24 you know, it -- I think we -- we just talked about
25 it, talked it over. I think he -- I gave him some

1 advice, and I think that's -- that's where we
2 ended, so --

3 Q. Okay. Let's talk about the phone call.
4 What do you recall from -- from Mr. Warren's phone
5 with you?

6 A. What I recall, I was sitting at my desk
7 that day. The phone rang. This is Scott. And so
8 Scott, he -- he outlines to me -- and it -- you
9 know, a fact situation, which is frequently what
10 happens when I get phone calls from lenders or
11 whomever.

12 And so the -- what -- what he was
13 talking about was, he had a closing. I don't know
14 if he mentioned Mr. Whitfield's name or not. That
15 may have -- he may have filled in the gaps later
16 on. He said, they had a closing -- or there --
17 there was a closing that was -- was anticipated,
18 proposed, whatever. And so -- and an issue had
19 come up.

20 The issue that came up was -- and it
21 was an extension of a loan -- of an existing, a
22 renewal extension, whatever you want to call it.
23 And the issue that come up was a half interest in
24 the property had been conveyed to a wife, Mr.
25 Whitfield's wife, ex-wife, whatever it was at that

1 time.

2 And so the issue was, well, what do we
3 need to do -- you know, from my perspective, he's
4 asking me what needs to be done to protect the bank
5 in that situation. And so, you know, in -- in my
6 mind, it's a -- I sort of -- I remember thinking
7 about that and saying, well, okay. And -- and I
8 don't know whether he brought up title endorsement.
9 He may have or I may have. It's one or the other.

10 It's -- it's something that we do a
11 lot, and, at that time, I think we were doing a lot
12 of these note purchases representing clients. And
13 what we would do, routinely, is have the title
14 updated and get -- we'd do a modification on
15 assignment of the note and mortgage to this new
16 buyer. We'd get an updated title, and then we'd
17 insist upon -- well, we would -- we would get an
18 endorsement from the title company endorsing that
19 loan to show the new owner of the loan.

20 And that way the -- our buyer -- our
21 client is protected going forward for any gap in
22 coverage for the title insurance policy. Now,
23 there's a similar situation -- or a similar
24 analysis here because what we're doing is, we've
25 got a new owner of the property. The -- the new

1 owner -- and -- and this is what -- how -- this is
2 what I talked to Scott about.

3 The new owner may not -- may not agree
4 that that should be extended or not. I don't --
5 and so, if the new owner doesn't agree with it,
6 they may, at some point in the future, object to
7 that. And their objection would be, well, we never
8 agreed to it; therefore, we're not bound by it.

9 And that objection in the law works in
10 the -- in -- again, in a different -- a little bit
11 different context, but more of the same when you
12 have a junior creditor and a senior creditor, two
13 mortgages on a piece of property. And if the -- if
14 the first mortgage holder -- the second mortgage
15 holder is relying, to a certain extent, upon this
16 first loan, you know, interest rate, term, all that
17 kind of stuff.

18 If the first mortgage holder says,
19 well, I'm going to go out and extend this -- extend
20 this loan out for 20 years and raise the interest
21 rate a few percentage points, that has an impact on
22 the second. And there's -- you just can't do that
23 without some sort of consent. Not in all cases,
24 but, in most cases, without some sort of the
25 consent, the safe way from a lender's position is

1 easy.

2 You get an endorsement, and that covers
3 you. You get an endorsement, it brings the title
4 coverage forward, and you get -- and the
5 endorsement -- the title company will typically
6 require a consent or a signature from whoever has
7 that interest, that -- well, be it a junior
8 mortgage, or, in this case, a fee interest.

9 Q. Did you discuss all of those
10 particulars with Mr. Warren on the phone?

11 A. No. He -- he was asking me what -- I'm
12 just kind of giving you a little bit of background,
13 what was going through my --

14 Q. Thank you.

15 A. -- in my head, and -- and -- because
16 that's the kind of things I think about when
17 bankers ask me a question like that is, what needs
18 to happen to protect the bank, what is the risk
19 associated with going forward without getting
20 anything from this new property owner. This
21 property -- this 50 percent, I think it was -- I
22 don't -- I assume it was a 50 percent interest in
23 the property. He probably told me that, but I --
24 and I certainly thought that that interest could
25 not be ignored.

1 Q. Okay. Did you tell Mr. Warren that --
2 that obtaining the title endorsement in this
3 situation was something that was absolutely
4 necessary or advisable, or did you -- did you give
5 any equivocation on -- on getting the title
6 endorsement as a prerequisite to doing this deal?

7 A. Well, he asked me my advice as to
8 whether he should do it without -- with or without.
9 I told him he should get a title endorsement.

10 Q. Okay. So, basically, you were telling
11 him to -- don't do it without getting the title
12 endorsement; is that accurate?

13 A. Well, yes.

14 Q. Okay.

15 A. Well, I -- I didn't tell him that.
16 He's got to make his own decision. He's asking me
17 for advice. They can then take that advice and do
18 what they want with it.

19 Q. Sure. Just like any client?

20 A. Yeah, that's right.

21 Q. You --

22 A. That's right.

23 Q. You can give them advice --

24 A. All I can do is tell them pros and
25 cons. And so I think that's what I did. I told

1 him that there was some risk, if he went forward
2 without that.

3 Q. Okay. And what would -- and I -- I
4 take it from your -- what you're telling me is the
5 risk would be that somehow the -- the spouse would
6 object to the fact that the -- the loan was
7 extended; is that accurate?

8 A. Right. And -- and, again, in -- in --
9 in my business, in the real estate practice, we --
10 we fairly frequently run across divorces, and they
11 usually raise redflags with me because there's --
12 sometimes there's things that might have gone on in
13 the divorce proceeding that affect real property,
14 but they don't really get transferred over to the
15 real estate side.

16 If an order says, well, you've got to
17 convey a half interest in this house to your
18 ex-wife, and -- for instance -- and -- and if that
19 -- if part of that conversation was, yeah, well
20 I've got a loan on it, but it's going to mature in
21 2012, for instance, then somebody may put some
22 reliance on that. I don't know what went on. I,
23 as a real estate lawyer and -- and as a bank
24 lawyer, I don't know what went on in a real estate
25 -- I mean, in a divorce transaction.

1 But they -- they always worry me
2 because there's other things that are typically
3 somewhat contentious after the fact, for whatever
4 reason, because there's usually lingering issues.
5 And it's many times hard to get anybody to do
6 anything because it -- there are just bitter
7 divorces sometimes. Sometimes they are not, but --

8 Q. Did Mr. Warren share any documents, do
9 you -- to review and in forming your opinion?

10 A. Nope. He just -- I -- I mean, I -- I
11 get calls all the time, people looking for advice.

12 Q. Okay. Because the spouse in theory
13 could have the opportunity to object to that
14 transaction, which, I believe, is -- is what the --
15 the basis of your opinion was, does that mean that
16 the spouse would prevail in this instance?

17 A. No. I mean, I don't know whether the
18 spouse would prevail or not. It's a matter of
19 whether the bank wants to take that risk or not.

20 Q. Okay.

21 A. And the banks -- in my experience,
22 again, my 30 years experience, banks are not in the
23 business of taking a lot of risk with loans.
24 They'll take a risk on certain parts of the loans
25 but not on -- not on title and real estate. You

1 know, not title-type risks. They -- they make a
2 loan. They want a title policy. They want a --
3 you know, they want it clean.

4 Q. Well, let me ask you, because I know
5 you're a sophisticated real estate lawyer. Can you
6 quantify the risk for me to a --

7 A. The risk?

8 Q. -- lender -- can you quantify the risk
9 in this circumstance to the bank in renewing that
10 loan without having the title endorsement in place
11 when the wife took title subject to the preexisting
12 mortgage?

13 A. Sure.

14 MR. WHITAKER: Object to the form. You
15 can answer, but I'm objecting to form.

16 A. It's -- and, you know, I can try and
17 explain this, but it's -- it's -- it's just -- and
18 I'll -- I'll do my best, but, here, we had a
19 preexisting loan, a lot that was -- I don't know
20 how old it was. But it was a title policy that --
21 that -- that was issued at the time the loan was
22 booked. So that title policy protects the bank in
23 -- in the first instance. Now --

24 Q. Let me just stop you right there, and I
25 don't mean to interrupt your train of thought, but

1 I just want to make sure we're on the same page.

2 Does the title policy cover claims that antedate
3 the origination of the title policy?

4 A. Antedate, you mean afterwards?

5 Q. Before.

6 A. Yes. Yes. Now, that's --

7 Q. Predates.

8 A. -- what I'm getting to.

9 Q. Okay.

10 A. Predates, yes. It covers everything up
11 to that -- there's a date on the policy, effective
12 date. Anything after the effective date, it does
13 not cover. And so then, if we fast forward to, you
14 know, some period of time further down, a -- an
15 interest -- a 50 percent interest in the property
16 is transferred, and there's an extension of the
17 loan.

18 Now, if -- if there -- let's just go
19 with two scenarios here. Let's say that the bank
20 doesn't give me a call, and they close. If -- if
21 the loan were to go into the default thereafter,
22 then there is a risk. The risk there is that the
23 other 50 percent owner would say, hey, I didn't
24 agree to this extension, and, therefore, my
25 property -- my half interest -- your mortgage is

1 subordinated to my half interest or released from
2 my half interest.

3 And -- and that's what happens in the
4 junior creditor-senior creditor scenario. And that
5 -- there's a lot of law in that. I've had that
6 happen before in foreclosure cases I've handled.
7 And they make that argument. You shouldn't have
8 modified that loan to extend the term of it. I
9 relied upon the term as it was, and, therefore,
10 you're prejudice my position in this property.
11 Therefore, I'm not subject to your mortgage
12 anymore, and that's -- there's law on that point.

13 Q. Is there -- is there a law that says
14 that that --

15 A. Case law.

16 Q. -- that case law -- case law that says
17 that that contention trumps a previously existing
18 secured first priority mortgage?

19 A. Yes. It's a -- it's a subordination.
20 It's an equitable-type subordination because --
21 and, you know, there's -- there's a three- or
22 four-prong test, as I recall, and -- and -- as to
23 what you have to do to prejudice the rights. But
24 the -- the -- and so -- so that's one scenario.

25 Now, the other scenario is -- or, well,

1 let's continue on with that one second, I'm sorry.
2 So the bank decides to foreclose. The other
3 property owner comes in and counter-claims or
4 whatever and says, well, you're -- you're out of
5 luck. You've subordinated because of -- you have
6 extended this loan or whatever you've done to the
7 loan.

8 Now, there's no title coverage for that
9 because what caused that was something that
10 happened. You've extended that loan, and, well, I
11 guess it's -- arguably there's no title coverage.
12 You can take a position, well, no, my mortgage is
13 still a first because it was a first then. The
14 title company could very well come back and say,
15 well, no, you -- you modified that mortgage, and
16 you didn't get coverage on that modification.

17 So, again, the second scenario, if we
18 go with the modification, that's where the bank is
19 protected. And it's -- it's -- it's -- you know,
20 it's a -- it's pretty much a standard. When you
21 modify a loan, we get -- and loans are modified all
22 the time, mortgages, people extending loans, doing
23 whatever else they're doing. And the general
24 practice of a bank -- most banks is to -- but they
25 don't -- you know, is to require a modification.

1 It's not unusual to require a modification, not at
2 all.

3 And so if they do -- and, again, back
4 to my -- back to my example, and so, if they do
5 have a modification and they do get a title
6 coverage on that, then the title coverage, in
7 short, brings the effective date of that policy
8 forward to the closing date, and it ensures --
9 specifically ensures that modification that is
10 recorded.

11 Therefore, if there is then a claim
12 later on from this person that has the half
13 interest, there's coverage. There's clear
14 coverage. There's no -- there's no problem with
15 coverage then. There might be -- they might have
16 arguably some coverage under the others, but I
17 wouldn't -- the -- there's no reason to take that
18 risk.

19 Q. I think I follow what you're telling
20 me.

21 A. Okay.

22 Q. In the scenario -- in your hypothetical
23 scenario, where the spouse were to make some kind
24 of equitable subordination argument and you're
25 saying then, by bringing the policy forward, it

1 would be brought within coverage, correct?

2 A. Right.

3 Q. Irrespective of the insurance coverage,
4 would that claim still have any basis for
5 prevailing, irrespective of the insurance coverage?

6 A. Well, yeah, I think it could.

7 Q. You think the claim could prevail?

8 A. I think there could -- and, again, you
9 know, some of that has to do with what I was saying
10 before was that, I don't know what went on -- you
11 know, I get a call, and I don't know what went on
12 in the divorce proceeding. I don't want to know
13 what went on in the divorce proceeding. I just
14 know there are lots of them that -- that -- that
15 don't go very well.

16 And, when they get around to real
17 estate, sometimes it doesn't happen with -- with
18 divorce lawyers. And so they -- it all worries me
19 and it's redflags. And so, when -- when I see a
20 situation like that, it -- I can just imagine the
21 bad stuff, which is -- which is what real estate
22 lawyers do all the time because it frequently
23 happens.

24 But -- and -- and that being that --
25 well, they could have had this agreement, as I

1 referred to. They could've had some agreement
2 within the divorce proceeding that this loan was
3 going to be paid off when it came due, and -- and
4 there weren't going to be any extensions, et
5 cetera. So, you know, why even bother to get into
6 requiring a -- a full review of the divorce
7 proceeding or anything like that when it's -- it's
8 relatively easy just to ask for an endorsement, and
9 that protects the bank.

10 That's my job to protect the bank.
11 It's not to -- to -- to run up a big fee trying to
12 do a whole bunch of due diligence on whether it can
13 be done without that. It's -- it's a normal
14 customary-type procedure to get an endorsement, and
15 it's really not -- it's typically not that hard to
16 do. You get a title update, and then you get a
17 company that's going to issue you an endorsement
18 and ensure that modification.

19 Q. Let me ask you this: Could this
20 transaction have been renewed without the title
21 endorsement?

22 A. It probably could have.

23 Q. Okay. Let me ask you another question.
24 And I think this goes back to the theoretical --
25 and underpinnings of the equitable subrogation

1 argument.

2 A. Subordination.

3 Q. Equitable subordination, sorry. You
4 went through a few factors, such as, you know, the
5 interest rate being increased or some impact that
6 would be potentially prejudicial to a junior
7 lienholder, and then except, in this context, it
8 wouldn't be a junior mortgagee. It would be the
9 interest of the ex-wife as a fee holder, correct?

10 A. Correct.

11 Q. Okay. In this case, did Mr. Warren
12 discuss with you the fact that the -- the details
13 of the transaction, such as the fact that no new
14 monies were being advanced; the interest rate was
15 actually going down, not up, and the fact that the
16 term was being renewed for five years, which is
17 less than the statute of limitations for a
18 mortgage, did any of those factors -- were any of
19 those factors discussed?

20 A. I -- I don't -- I can't remember for
21 sure, but I -- I probably would've asked how it was
22 being modified. And -- but I -- I don't recall for
23 sure because I know -- well, I know what the -- the
24 extension was because the -- the -- I know he told
25 me it was going to be renewed or extended for a

1 term, five years. I don't -- I don't remember
2 which, but, to me, that was enough for me that --
3 to -- to say that a -- that a modification should
4 be done.

5 Q. Well, and you're -- you're saying
6 modification.

7 A. And let me -- let me -- let me add to
8 that. And I think it's -- and I've never really
9 had that come up before with a -- with another
10 owner, but I think it's -- to me, it's a different
11 situation -- a little bit different situation than
12 a junior lienholder. And, I think, it's -- I think
13 that person has more of an interest, and it would
14 be -- I would be more concerned about an objection
15 from -- from a fee holder than a junior lienholder.

16 And -- because it -- it's unusual that
17 -- a little bit unusual that you get in the middle
18 of a loan like that, and you get another owner on
19 the property, and then you want to renew the loan.
20 It -- it would be very unusual not to get that
21 person involved in some way or another. I would
22 feel real uneasy about advising the bank, yeah, you
23 can go forward; don't worry about that.

24 Q. Well, let me tell you this. Let me ask
25 you this: If -- and I understand what you're

1 saying, that there was some inherent theortetical
2 risk to renewing the loan without doing the
3 endorsement bringing coverage forward because of
4 the possibility of the ex-wife objecting to the
5 transaction on the basis of an equitable
6 subordination claim. But wouldn't you agree with
7 me that there was more risk for a problem or
8 foreclosure if they just didn't renew the loan
9 without the endorsement?

10 A. I don't know. I mean, I don't know
11 what else was going on with the loan or anything
12 else, you know. So you mean -- well, you've got to
13 ask that question again because, I mean, if you're
14 saying, was there more risk that the other -- the
15 fee owner -- the ex-wife was going to raise an
16 issue with it.

17 Q. Or the -- or the other coowner --

18 A. Well, I --

19 Q. -- in terms of the loan not renewing,
20 the loan going into foreclosure and the bank being
21 sued for not --

22 A. All right. Yeah, but --

23 Q. -- renewing the loan?

24 A. No, I can't get -- I can't get into
25 evaluating that kind of risk. You know, that's --

1 because I don't -- I don't know what -- I don't
2 know all the facts that surround all of that
3 situation, and I'm not going to comment on that.

4 Q. Okay. Would you agree with me, all
5 else being equal, that in terms of an equitable
6 subordination claim, the fact there were going to
7 be -- there was going to be any prejudice or an
8 objection made, all things being equal, with the
9 interest rate going down and not up, no new monies
10 being advanced, that there's less of a risk of a
11 problem with an equitable subordination claim?

12 A. Yeah -- no, I would agree with that.
13 In theory, there would be less of a risk, but there
14 -- there's still definitely risk, and you're doing
15 something to a loan on now which the borrower
16 doesn't control all of the property. And that --
17 that -- that worries me. You know, you're
18 modifying a loan for a borrower that only has a 50
19 percent interest. So that -- you know, that --
20 that's the fact, and so, the fact is, how do you
21 deal with that.

22 Q. I understand your testimony. And you
23 indicated you reviewed Mr. Sloop's deposition,
24 correct?

25 A. Yes.

1 Q. Do you recall Mr. Sloop giving the
2 opinion to the closing agents' office, where he
3 said, Theresa, I agree that the wife should sign
4 any modification, but, regardless of whether she
5 signs, it's still subject to the original mortgage?
6 Based on what you're telling me, I think you -- you
7 would disagree with him on that.

8 MR. WHITAKER: Object to the form. You
9 can answer.

10 A. No, I -- I don't think I disagree with
11 that. It's still subject to the mortgage.
12 Nobody's saying -- I never said it wasn't subject
13 to the mortgage. It -- there's risk that there's
14 defenses to that that they have -- she would have a
15 defense -- a potential claim defense that the
16 mortgage has been subordinated as to her interest
17 because of what the bank has done. That's the
18 risk.

19 Q. Okay. But, as we sit here today, you
20 can't quantify that risk for me?

21 A. Well, I think I did quantify it for
22 you.

23 Q. Can you -- can you quantify it in
24 terms of -- of any kind of magnitude in terms of,
25 you know, percent chance of risk of a percent

1 chance of --

2 A. No.

3 Q. -- of a problem?

4 A. I don't -- I don't get into that, but
5 the -- you know, the bank asked me to look at that,
6 and I told them what my -- what my advice would be
7 on that. And, based on the fact that it's -- it's
8 really not a big deal to get an endorsement and an
9 update, that's what they should do. And -- and, if
10 -- if for some reason it becomes impossible -- or
11 to get the other 50 percent owner to sign on, well,
12 that's sort of an issue, too. So -- and I don't
13 know whether that happened or not, but, if it did,
14 then --

15 Q. Explain that to me.

16 A. Well, because that -- that means that
17 -- well, she may claim an unincumbered interest in
18 the property, for one. That's first and foremost.
19 It's a redflag. She -- she's not signing -- or
20 she's not signing maybe because there are all these
21 lingering issues in a -- in a divorce which seem to
22 go on for a long time. You know, I don't know, but
23 I don't -- I don't really care to know, as a bank
24 lawyer.

25 What I'm trying to do is protect the

1 bank. If -- if that -- if that's a problem, that's
2 a redflag, and that's something, you know, the bank
3 has to look at. They're looking to me for advice.
4 My advice is, well, you know, I can't tell you it's
5 okay. I can tell you, you ought get a
6 modification. You ought to get her to sign on, if
7 you can, and that's -- that's how you ought to move
8 forward.

9 Q. Is it -- so you write policies for
10 First American. I'll submit to you that the
11 original title policy was with First American. Is
12 -- is it possible that an endorsement could have
13 been obtained with First American doing the
14 endorsement on an original First American title
15 insurance policy?

16 MR. WHITAKER: Object to the form. You
17 can answer, if you are able.

18 A. Well -- well, what do you mean by on
19 the original form?

20 Q. Well, you read Barry Sloop's
21 deposition, and -- and I believe what Mr. Sloop
22 testified to was the fact that he was contacted
23 because he is with Stewart Title and Mark Week's
24 office writes policies for Stewart Title. But they
25 could not write an endorsement on a different

1 company's --

2 A. Right.

3 Q. -- insurance policy. So, I guess, what
4 I'm saying is, is it possible to effect a title
5 endorsement on -- in this case, on the preexisting
6 First American insurance policy?

7 A. I mean, I -- I think it's --

8 MR. WHITAKER: Object to the form.

9 A. Yeah. I mean, I -- I think it's the
10 same analysis, whether it's Stewart Title or First
11 American. They're going to look at the same thing.
12 I don't know what -- yeah. I don't know what
13 Stewart -- yeah, Stewart couldn't -- they wouldn't
14 want to endorse that policy. Maybe they could.
15 They'd probably have to issue just a new policy or
16 something like that.

17 Now, First American could endorse it,
18 obviously. They -- they've got to do an update and
19 underwrite it, which I -- but I think, once you got
20 around to explaining some of the facts to the
21 underwriter, the Barry Sloop-types, that they're
22 going to say, well, I don't know if I like that
23 unless the other fee owner signs on.

24 Q. Okay. So -- and I think what you're
25 saying is, in -- in effecting an endorsement in

1 this kind of situation, the original title
2 insurance company may not even want to do the
3 endorsement; is that accurate?

4 MR. WHITAKER: Object to the form.

5 A. Well, yeah. I mean, they -- they look
6 at each case.

7 Q. Okay.

8 A. You know, there's -- there's a lot of
9 reasons you might want to endorse a loan. I mean,
10 there's lots of different reasons you do it for.
11 It mostly has to do with modifications or new
12 owners or new advances, you know, and -- and banks
13 want endorsements to -- to -- really to bring the
14 title -- they want to know the status of title and
15 that they're insured for -- from the date of
16 whatever they're doing, the date of the
17 modification, advance, whatever.

18 And so that's what it does. It brings
19 that effective date forward and gives them that
20 coverages. Otherwise, there's a little bit of a
21 gap in coverage there, and that could be an issue
22 later on.

23 Q. I guess I'm just not clear on what --
24 well, basically, all I'm trying find out is -- is,
25 you gave the recommendation to get a title

1 endorsement, correct?

2 A. Correct.

3 Q. So how hard or difficult would it be to
4 get a title endorsement on that original First
5 American policy, and I -- from what you're telling
6 me, First American may not want to do that
7 endorsement; is that --

8 A. No, they may not.

9 MR. WHITAKER: Object to the form.

10 A. Yeah. Well, okay. No, that's --
11 that's correct. They may not -- once they
12 understand the facts, they may not want to do that
13 endorsement. My advice was, you really -- you
14 shouldn't go forward with -- with a new fee owner
15 of a half -- a 50 percent undivided interest, you
16 shouldn't go forward with an extension renewal of
17 the loan without getting an endorsement.

18 Now, I -- whether you could get that
19 endorsement or not, I don't know. That's not what
20 we -- you know, I didn't tell him, and the
21 endorsement was impossible to get. You know, I --
22 I didn't know what the -- whether it could be
23 received or not. You know, it would depend on
24 whether that fee owner -- I suspected it would
25 depend on whether that fee owner would sign off on

1 it. And -- and I gather that's what happened, that
2 the fee owner would not sign off.

3 Q. And, when you say sign off, do you mean
4 in -- in the form of a modification of the
5 mortgage?

6 A. Just in a consent.

7 Q. Okay. Do you know -- I know you write
8 policies for First American. Do you know anybody
9 -- do you know who the claim's counsel is over at
10 First American?

11 A. No.

12 Q. Or do -- or do you have any idea who
13 could give the opinion at First American whether it
14 would be feasible to do a title endorsement on one
15 of their original policies for a situation like
16 this?

17 A. I -- I -- I don't -- I mean, the person
18 I deal with is a lawyer in their Columbia office
19 called Teri Stomski, I think her name is. You
20 know, she's a -- she's lawyer underwriter. We call
21 -- we call them with questions, and it -- you know,
22 and ask them, can we do this.

23 Q. Did you -- at this time, did you call
24 First American to see if it was possible to -- just
25 I know you're anticipating my question. Did you

1 call First American to see if it was feasible to
2 get a title endorsement in this situation?

3 A. Well, no. What my role in this
4 transaction, I wasn't the title guy. I was the --
5 I was the bank guy.

6 Q. Okay.

7 A. You know, I was giving advice to the
8 bank.

9 Q. Okay. And all of the things we have
10 discussed this morning in terms for -- of your
11 rational for the advice you gave to Mr. Warren,
12 that was every -- those were things you were
13 considering when Mr. Warren called you on that day?
14 Or is -- are these opinions that you have formed
15 after then?

16 A. Well, you know, that's hard to tell.
17 But I think a lot of it was at the -- at the same
18 time. I mean, not all of it, obviously, or --
19 because I didn't have that long conversation with
20 him. But the -- the core of it was, we have a --
21 we have a loan with a borrower secured by a piece
22 of property owned formerly by the borrower and now
23 has been conveyed out to a non-borrower. And
24 that's -- you know, so, with those facts, what do
25 you do? And that's --

1 Q. Well, is it of any significance that he
2 -- that Mr. Whitfield still owned the property, or
3 is that immaterial in your mind?

4 MR. WHITAKER: Object to the form.

5 A. You mean he still owned the 50 percent
6 interest?

7 Q. Right, an undivided --

8 A. Yeah.

9 Q. -- 50 percent interest?

10 A. No. I mean, it's -- it has a bearing
11 on it, but it's not -- it's not so much his
12 ownership; it's the -- the adverse ownership, the
13 other ownership that causes the issue because the
14 other owner is not a borrower, and, now, she owns
15 -- she has an interest, a 50 percent interest in
16 that property, which is subject to a mortgage. And
17 so, once you start modifying that mortgage, you
18 have to think about -- think about the risk.

19 Q. When you were talking to Mr. Warren,
20 did you discuss -- well, we've talked about title
21 endorsements. Did you talk of anything about doing
22 a modification of the mortgage? Was that something
23 he brought up, or is that something you brought up?

24 A. No. I think he probably talked about
25 the -- a modification, but I -- I don't -- I really

1 don't remember whether he brought it up or whether
2 I did. But we definitely talked about a
3 modification, and that that's what ought to happen,
4 and that, to do it right, it would be a
5 modification, and there would be a title
6 endorsement that would -- that would, in effect,
7 ensure that modification, and the modification
8 would be recorded, so --

9 Q. A modification of the mortgage?

10 A. Yes.

11 Q. Okay. Was anything discussed about
12 doing a renewal without -- as part of this
13 transaction, doing a renewal agreement, a contract
14 that's like a supplemental contract between the
15 bank and Mr. Whitfield without modifying the
16 mortgage?

17 A. No.

18 Q. Okay. Let me just see what else I've
19 got. Did Mr. Warren discuss the fact that the bank
20 was agreeing to renew eight other properties in
21 addition to the -- the one about this -- the
22 material property?

23 A. No. He didn't mention anything about
24 any other loans.

25 Q. He didn't. Is there any reason in your

1 mind that renewing those loans, that it would be
2 necessary to get a title endorsement for the
3 marital home in order to do the renewal of the
4 other loans absent a contractual agreement between
5 the parties to that effect?

6 MR. WHITAKER: Object to the form.

7 A. Yeah. And I -- I don't -- I don't know
8 anything about these other loans, so, you know, I
9 wasn't asked about -- he didn't bring up any other
10 loans.

11 Q. Let's put it this way. Your concern,
12 in asking for the title endorsement, was for
13 potential claims that the spouse, ex-spouse may
14 have with regard to that property only, correct?

15 A. Correct.

16 Q. Okay. Did you advise Mr. Warren that
17 -- that he needed to procure an affidavit from the
18 borrower, that the property was to be pledged for
19 business purposes?

20 A. No. I didn't get into that. I read
21 about that in that -- I guess his deposition, but
22 he didn't ask me about that particular issue.

23 Q. Okay. So that wasn't advice you gave
24 him?

25 A. No.

1 Q. Okay. If Mr. Warren said that, would
2 you disagree with him?

3 A. If he said what?

4 Q. If he suggested that -- or stated that
5 you told him to get a business-purpose affidavit
6 from Mr. Whitfield for the house that the ex-spouse
7 was living in? If he said that, would you disagree
8 with him?

9 A. Yeah. I think I would disagree with
10 that.

11 Q. Okay. All right. The transfer, the
12 deed transfer to the ex-spouse, do you believe that
13 that's a defect in the title?

14 MR. WHITAKER: Object to the form.

15 A. The deed transfer to the spouse?

16 Q. Right. Would you characterize that as
17 a title defect?

18 A. No.

19 Q. Okay.

20 A. Well, let me -- I mean, it was -- no.
21 No, it's not a defect. It was just a transfer -- a
22 transfer of one-half undivided interest.

23 Q. Okay. I think I know the answer to
24 this, but, with regard to all of this stuff, have
25 you provided a written opinion to Harbor National

1 Bank about these matters?

2 A. No.

3 Q. Okay. Not in 2012 or at any point
4 since then?

5 A. No.

6 Q. Okay. Have you discussed these matters
7 in any level of detail -- and I don't know what you
8 want to -- what you talked about -- I don't want to
9 know what you talked to Mr. McQuillin about, but
10 have you discussed these matters, which we've
11 discussed this morning, about the advice of getting
12 a title endorsement and theoretical basis for that
13 advice? Have you discussed that with anyone else
14 besides Mr. McQuillin and Mr. Warren?

15 A. No. People in the office, you know.

16 Q. And -- and at Haynsworth.

17 A. Coworkers, yes.

18 Q. Yeah. Aside -- I don't want -- want to
19 know about that. But from anybody at Harbor
20 National Bank?

21 A. Only in the context of -- of it coming
22 up in conversation with Charlie or Willard --
23 Charlie Rivers, Willard Stout because I see them.
24 They're downstairs on the first floor.

25 Q. Okay.

1 A. And, I mean, it wasn't in any detail.
2 I talk to them about a lot of stuff.

3 Q. Okay. So, for lack of a better phrase,
4 you might have given them the cliff notes version
5 of what we just discussed?

6 A. Well, no. I mean, it -- it's more --
7 no. I wouldn't have really -- I don't know. If
8 they had -- that may have come up. I can't even
9 remember that. But, you know, the -- I probably
10 have talked to them, in general terms, about the --
11 that, yes, I would still give that same advice, and
12 it wouldn't -- but I -- I'm just trying to think
13 back with what -- you know, usually the
14 conversations were not about my conversation with
15 Scott. They're just about the litigation in
16 general.

17 Q. Okay. Have you had any discussions
18 about the issues we talked about this morning with
19 Mr. Whitaker or Mr. Duffy?

20 A. No.

21 Q. Okay. And I believe you said that you
22 did -- the only thing you discussed with Bernstein
23 was the issue of the fact that your deposition was
24 probably going to be taken?

25 A. Yep. Yes.

1 Q. But did you discuss any of the -- of
2 the facts that we've talked about today, the deed
3 transfer, the Harbor National Bank mortgage? Did
4 you discuss any of that with Mr. Bernstein?

5 A. Well, you know, if -- and, like I say,
6 he called me one day. It was from his car or
7 something, as I remember. But, you know, he said
8 that he had this deposition with Scott. My name
9 came up, and, you know, he said you did this. You
10 know, and that's -- that's what happened. And your
11 deposition is probably going to get taken.

12 Q. Okay. He said that you gave the advice
13 to get a title endorsement? He -- he mentioned
14 that?

15 A. Well, he said whatever -- you know,
16 whatever it was that Scott had said, right.

17 Q. Okay. So what Scott had said was the
18 fact that you told the bank to get a title
19 endorsement?

20 A. Yeah. I mean, whatever Scott said. I
21 -- I'm pretty sure that's what I told the bank.

22 Q. Okay.

23 A. That they needed to go get a title
24 update, title endorsement, and --

25 Q. And that --

1 A. -- then they can go forward.

2 Q. And you discussed the fact that a title
3 endorsement was needed with Mr. Bernstein?

4 A. No. I don't know if we got into all
5 that.

6 Q. Well, you told me you discussed what
7 Scott had said --

8 A. Yeah.

9 Q. -- in his deposition? And as it --

10 A. I did. No. And -- I mean, but he was
11 just -- I think the purpose of his call was to tell
12 me that my deposition was going to be taken some
13 day. And -- because my name had come up in the --
14 in Scott's deposition. So how much we talked about
15 what it was in there, it, to me, didn't -- I don't
16 remember much about that, so --

17 Q. But you did discuss more than the fact
18 that his deposition was going to be taken as it
19 pertains to these issues, correct?

20 A. More -- well, yeah, probably a little
21 more than just the deposition. He just didn't say,
22 I'm -- your deposition will probably be taken, see
23 you later.

24 Q. And not discuss why?

25 A. Right. That's right, so --

1 Q. Okay. That's all I'm trying to figure
2 out. Again, I think I know the answer to this
3 question, I have to ask it. Did you do any legal
4 research contemporaneous with giving Mr. Warren the
5 advice you gave him?

6 A. No.

7 Q. Okay. Let me ask you this: Is -- is
8 the title insurance that's on -- in place on that
9 property, is it still viable?

10 A. Yes.

11 Q. Is the fact that she's on title a
12 defense to coverage, if a claim is made today?

13 A. Well, indirectly, and, by indirectly, I
14 mean, that if -- if something were to come up after
15 -- after the time she was conveyed title, it --
16 that were the source of a claim, then somebody may
17 -- it -- it may affect what's on that -- the
18 coverage under that policy. But, you know, you get
19 into -- it's -- the coverage issues are typically
20 cutoff at the time of the policy, so --

21 Q. So it doesn't --

22 A. -- if anything happened after, it's not
23 -- it shouldn't really be an issue.

24 Q. So the fact that she's on title
25 shouldn't matter to a -- a claim that was put into

1 that policy, correct, because that happened
2 afterwards?

3 A. No. It depends on the claim; depends
4 on -- in the -- in the example I gave you, it --
5 that -- it wouldn't make a big difference.

6 Q. Well, wouldn't coverage be denied
7 irrespective of the fact that Cindy Whitfield is on
8 title since the -- the loan was originated in 2007,
9 and she was put on title after the loan was
10 originated?

11 A. The -- the claim is going to come from
12 somebody, such as Mrs. Whitfield asserting a prior
13 interest. Now, if she asserts a prior interest --
14 a prior interest to a foreclosure because they're
15 -- the company is ensuring the mortgage, and
16 they're ensuring us a first mortgage.

17 If subsequent to that, that loan is
18 modified and the title is conveyed to another party
19 and then -- those two factors are then the subject
20 of a claim, which they would be if it would be a
21 counter-claim or whatever because she would have to
22 be named in a foreclosure proceeding to wipe out
23 her interest, in effect, or -- or to have it sold
24 free and clear of her interest and the -- because
25 she was subordinate, she would claim, well, I'm not

1 subordinate. And so that's where the claim would
2 come from. And I don't think you'd get any title
3 coverage for that.

4 Q. Okay.

5 A. You wouldn't have coverage under the --
6 the 2007, if that's the date of the policy.

7 Q. So your -- your equitable subordination
8 theoretical justification for the title endorsement
9 would -- I'm just trying to figure out how it would
10 manifest it -- manifest itself successfully in
11 terms of her argument that her one-half interest --
12 are you saying that she would not subject -- her
13 one-half interest was not taken subject to the
14 renewal?

15 A. No.

16 Q. Okay. Explain to --

17 A. And, no. It would be -- it -- it's --
18 she -- well, again, this is -- this is what I
19 think. Her interest -- she took -- she took title
20 subject to the mortgage. I'm assuming she knew
21 about the mortgage. All -- it would -- it would've
22 been disclosed in an update to the title. So she's
23 probably charged with that as public record. She
24 took title to it, and -- but she didn't -- I don't
25 know what she knew about that mortgage, if anything

1 at all, or what the term of it was, anything like
2 that.

3 And so, when it -- when it goes -- when
4 it comes -- so when it goes to get foreclosed,
5 well, it gets extended and then foreclosed. And
6 where it manifests itself is she says, well, I
7 didn't agree to any -- any extension of that loan.
8 I was told, I thought -- I don't know what would
9 happen. I'm just guessing of what her theory would
10 be. But her theory would be some theory based on
11 the fact that she was relying that -- on the fact
12 that that loan was going to be paid off in 2012.

13 And now that it's been extended, her
14 rights have been prejudiced, and, therefore, the
15 bank, by its actions has subordinated its interest
16 in her half of the loan -- or, I mean, her half of
17 -- has subordinated its interest in the loan to her
18 fee interest. So her --

19 Q. To her one-half interest?

20 A. Her half -- right. So her fee interest
21 is free and clear of it in -- in effect.

22 Q. And have you -- have you seen a case in
23 South Carolina on those facts where a court has
24 held that the fee interest would trump the
25 preexisting first mortgage holders interest?

1 MR. WHITAKER: Object to the form. You
2 can answer.

3 A. No. I don't -- I don't think there's a
4 South Carolina case on it. There's cases in other
5 jurisdictions that have to do with the junior
6 creditors and -- and is a -- it's -- it's -- it's a
7 test that's done.

8 Q. But you said junior creditors. You
9 didn't say coowner, fee interest --

10 A. Right.

11 Q. -- trumping secured --

12 A. Oh, no, that's right. And I think it's
13 not a matter of trumping. It's just whether the --
14 whether the bank's conduct has in effect -- has
15 affected a subordination or a release of its
16 interest against that property. There's a number
17 of subordination cases in -- in South Carolina,
18 particularly on purchase money mortgages and things
19 like that. But there -- there's -- there's a lot
20 of different theories on how conduct of a lender
21 can cause problems to a junior lienholder, and I
22 don't think there's -- I think there's no
23 difference. And I think a junior owner or a
24 so-called junior owner is in a -- I -- I worry
25 about that more than a -- than a junior creditor --

1 Q. Okay.

2 A. -- as far as from risk to the bank of a
3 potential claim or adverse result.

4 MR. MCQUILLIN: We've been going for
5 about an hour. You want to take a break?

6 MR. HALVERSEN: Sure. I'm almost done.
7 It's a good time.

8 (A recess transpired.)

9 BY MR. HALVERSEN:

10 Q. Did anybody at the bank discuss with
11 you the fact that new -- new notes were being
12 drafted in order to effect this renewal?

13 A. No.

14 Q. Okay. Was anything discussed about
15 whether the bank still owns these notes?

16 A. No.

17 Q. Do you know if the bank still owns
18 these notes?

19 A. I don't -- I don't know anything about
20 the ownership of the notes.

21 Q. Okay. Let me just show you something
22 and see if you can identify that the -- this is
23 Exhibit 9 to Scott Warren's deposition, and it's
24 the June 26th, 2012 letter. Have you ever seen
25 that letter?

1 A. Yeah. I didn't look over all these
2 exhibits, but I have -- I have seen that letter.

3 Q. Is that something you drafted?

4 A. No.

5 Q. Or is that a form letter you might have
6 drafted for the bank?

7 A. No.

8 Q. You don't -- do you do that for the
9 bank?

10 A. Well, I mean, sometimes I'll do --
11 sometimes, if I'm representing them on a specific
12 loan, I will do a commitment letter. But I don't
13 think this is a commitment letter.

14 Q. Is that a form that you-all use at the
15 bank?

16 A. There's no y'all. I'm -- I'm a lawyer,
17 but I don't know. I don't know if this is a form
18 or not. I don't -- I haven't seen -- I haven't
19 seen this as -- as it being a form that the bank
20 might use, so --

21 Q. Well, or -- I guess, let me ask it this
22 way: Is that a form that you recognize that you
23 have here at Haynsworth that you use to provide
24 them?

25 A. No.

1 Q. Okay. All right. That's all I wanted
2 to figure out. Willard Stout, I took his
3 deposition, and he said that he, quote, gave you
4 the file or we gave you the file with regards to
5 this matter. I just want to confirm, based on your
6 -- what you've previously told me, they didn't give
7 you any documents to review in forming the opinion
8 you gave to Mr. Warren?

9 MR. WHITAKER: Object to the form.

10 A. No. I didn't get a file.

11 Q. Okay.

12 A. I got a -- I got a phone call from
13 Scott Warren.

14 Q. Okay. And, as we discussed, you
15 remember the phone call or the gist of the
16 telephone call?

17 A. Yes.

18 Q. Okay. Did Mr. Warren ever contact you
19 after that with regards to this matter?

20 A. I -- I don't think so. I don't think I
21 heard from him about -- about this is case till --

22 Q. Until the litigation?

23 A. Yeah, until I -- somebody told me it
24 was in litigation, so --

25 Q. Okay. Did you ever tell Mr. Warren

1 that he should -- he could talk to First American
2 about doing the endorsement?

3 A. No.

4 Q. Okay.

5 A. I mean, he couldn't have done the
6 endorsement anyway. You know, First American would
7 talk to one of his agents. You know, so I don't --
8 you know, no, I wouldn't have -- I wouldn't have
9 ever told him that.

10 Q. But I think you'd agree with me that
11 the only -- the only entity that could affect the
12 endorsement without issuing a new policy would be
13 First American?

14 A. Right.

15 Q. Okay. But it would be possible for any
16 other title company to do the endorsement in this
17 situation except for the -- or except for the fact
18 that in addition to issuing the endorsement, they
19 would have to generate a whole new policy
20 presumably?

21 MR. WHITAKER: Object to the form.

22 A. Yeah -- no. And, just thinking about
23 that, you know, if Stewart Title -- there's
24 probably some way they could've issued a -- they
25 would issue a policy ensuring the mortgage, and

1 then they would -- then they conceivably would be a
2 little -- could -- could issue an endorsement that
3 would be more or less at the same time that would
4 ensure the modification. So, I mean, they could
5 effect the same coverage. And I think the cost is
6 more or less the same, if they've got to reissue
7 credit from the First American policy, which they
8 probably could get. So you end up paying them 50
9 percent, half-rate premium.

10 Q. But I think, based on what we discussed
11 earlier, as part of -- as part and parcel of doing
12 that, somehow the ex-wife would've had to
13 acknowledge or give her consent for that
14 transaction?

15 A. Well, that -- that's something that the
16 underwriters would have to deal with and -- in
17 order to -- the question would be in order to issue
18 that modification ensuring the modification to -- I
19 mean, issue the endorsement ensuring the
20 modification to the mortgage is whether the title
21 company would require that consent.

22 And, I mean, my -- what I said, I
23 think, was that, yes, they probably would require
24 that. But that's -- that's an underwriting issue
25 that, you know, that lawyer agents talk to title

1 companies about every day because they -- they take
2 a little bit more risk sometimes than -- than
3 lawyers want to take because they're in that
4 business.

5 Q. As part of your advice to Mr. Warren to
6 procure a title endorsement, were -- were you
7 telling him -- and I apologize if we've already
8 covered this -- were you telling him that he should
9 get a modification of the mortgage as well, or were
10 you just saying procure a title endorsement?

11 A. No. I think -- I mean, I think what we
12 talked about earlier was that he should get a
13 modification to the mortgage, record that
14 modification and get an endorsement to the existing
15 -- or get an endorsement or get title coverage,
16 however it's -- it's -- it's gotten that would've
17 had the effect of ensuring that modification.

18 Q. Are you aware of whether the bank ever
19 asked the closing agent to modify the mortgage in
20 this transaction?

21 A. I don't have any idea.

22 Q. Okay. Is the title insurance that's in
23 place on the property still in effect?

24 A. I think you already asked that one
25 time. Yes.

1 Q. Okay. All right. I apologize.

2 A. The -- well, the title insurance that
3 insures that mortgage should still be in effect --

4 Q. All right.

5 A. -- to my knowledge.

6 Q. And I think what your testimony is, is
7 that the bank gets a legal benefit to -- requiring
8 the title endorsement, such that it would prevent
9 the ex-wife from making any equitable subordination
10 claims; is that accurate?

11 A. They reduce their risk of that -- of a
12 potential claim, yes.

13 Q. Even if they had gotten a title
14 endorsement or a title endorsement was effected,
15 the ex-wife could still make those claims, could
16 she not?

17 A. Yes.

18 Q. Okay. When you read Mr. Warren's
19 deposition, was there anything in there that --
20 that you disagreed with about what he said?

21 A. I --

22 MR. WHITAKER: Object to the form.

23 A. Yeah. I don't -- I don't remember it
24 word for word, what he -- you know, it -- it's --
25 when it's a conversation that took place a couple

1 years ago, it's -- it's never going to come out
2 exactly the same as what -- what each side thinks.
3 But the gist of it -- well, generally, yes, I did
4 agree with -- with what he had to say about our
5 conversation. I don't know about the rest of it,
6 so --

7 Q. Oh, I understand. But you're not --
8 you don't specifically take issue with anything he
9 said in there as it regards to conversations with
10 you?

11 A. No.

12 Q. Okay.

13 A. I mean, I don't know about that
14 affidavit business, but that's -- that's -- we
15 talked about that.

16 Q. Right. We've talked about that. Did
17 you discuss that new notes were being drafted for
18 the -- well, I know you didn't talk about the other
19 properties, but for the property that the ex-wife
20 was in, did you discuss that there was a new note
21 that was drafted by the bank?

22 A. No.

23 Q. Did anything come up in your
24 conversation with Mr. Warren -- and I understand
25 this is two years ago -- regarding the fact that

1 the relationship with this borrower was strained in
2 any way?

3 A. No, I don't think it did at that time.
4 I just don't -- I don't think it did. He was just
5 asking a question.

6 Q. He didn't say, hey, we're -- we're
7 trying to find a way to get rid of this guy or
8 anything like that?

9 A. No --

10 MR. WHITAKER: Object to the form.

11 A. -- he didn't. He didn't say anything
12 like that.

13 Q. That's -- I just want to find out,
14 that's all. Okay. Let me just take a quick break
15 with my client, and I think we're done.

16 (A recess transpired.)

17 BY MR. HALVERSEN:

18 Q. I know you said Mr. Bernstein called
19 you about six or eight months ago, and we discussed
20 that conversation. Did you have any conversations
21 with Mr. Bernstein after that, between then and
22 now?

23 A. Between then and now? Let me think for
24 a second.

25 Q. About this matter.

1 A. I think he only called me once, but --
2 as far as I can remember. It was just that one
3 time.

4 Q. Did he talk to you anytime before that
5 -- anytime before six or eight months ago about
6 this matter?

7 A. I think I only remember one time.

8 Q. Okay.

9 A. I mean, it -- it may -- I'm not saying
10 that one of them may not have happened some other
11 time with some short conversation. But I -- all I
12 remember is one time.

13 Q. Okay. And that was the -- the --

14 A. That was -- yeah.

15 Q. -- what we've discussed?

16 A. That's when he called me and he told me
17 that Scott's deposition had been taken.

18 Q. Okay. Let me represent to you that the
19 -- in case it wasn't clear from the deposition
20 testimony that you read, that the -- the same
21 attorney that wrote the original First American
22 policy was -- his name is Stanley Claypoole, and he
23 was the same attorney that prepared the deed, the
24 one half interest to the -- to the spouse. Was it
25 possible for Mr. Claypoole to have updated the

1 title policy to reflect the change in ownership at
2 that time?

3 A. Sure. And that would've -- would've
4 also taken the form of an endorsement, if -- if the
5 new owner had wanted coverage. And what that
6 would've done is, again, it brings the effective
7 date of the policy forward to the date of recording
8 that deed. And so, if -- if Mr. Whitfield had a
9 tax lien against him, well, then he would have
10 received coverage for that by -- by virtue of that
11 endorsement. If -- if the title policy were not
12 updated, so to speak, by issuing the endorsement,
13 no title coverage for -- for Mrs.

14 Q. Is that something that Mr. Claypoole
15 should have done?

16 A. No. That's up to everybody. Lots of
17 time with sort of family-type transfers, people
18 don't want to pay a title premium. It costs money.
19 You don't get it done for free. So, once you start
20 talking about the expense, somebody says, no, I
21 don't want to pay that.

22 Q. Let me ask you this: Is that something
23 that the title slash agent -- strike that. Is that
24 something the title agent slash attorney,
25 Mr. Claypoole, should have at least discussed the

1 option with Mr. Whitfield at that time, whether or
2 not he wanted to update the title policy in the
3 form of an endorsement at the time of the --

4 A. Well, I --

5 Q. -- deed transfer?

6 A. I mean, I don't know who Mr. Claypoole
7 was representing, but it's really -- it would've
8 been the -- would've been Mrs. that -- that he
9 would've had that discussion with. If -- if she
10 wanted to get an updated -- or to get a policy that
11 protected her, then she'd have to pay for an update
12 and pay for a premium -- an endorsement premium.

13 Q. Well, just so I'm clear, we're -- when
14 we were talking about the -- the hypothetical
15 scenario of the -- of the claim that would be made,
16 an equitable subordination claim, the fact that a
17 title endorsement would have been issued would
18 have, according to you, I believe, would -- it
19 would potentially -- and in order to
20 Mr. Whitfield's benefit, not Mrs. Whitfield,
21 correct?

22 MR. WHITAKER: Object to the form.

23 A. No, no. You mean on the -- the
24 endorsement on the -- on the loan modification?

25 Q. Right.

1 A. No. I mean, that -- that doesn't have
2 -- all that is lender coverage, mortgagee coverage.

3 Q. Okay.

4 A. It has nothing to do with Mr. Whitfield
5 or Mrs. It -- it just -- it protects the bank in
6 case -- it brings that effective date forward and
7 ensures the modification of the mortgage. It still
8 ensures the mortgage, and it ensures the mortgage
9 as modified by that modification.

10 Q. Okay. Is that something, then, that
11 Mr. Claypoole should have brought to the attention
12 of the lender that potentially there is an
13 inadequate or -- an inadequate amount of mortgagee
14 insurance coverage out there in effecting that
15 transaction?

16 MR. WHITAKER: Object to the form.

17 A. No. I mean, I don't -- I don't think
18 that's Mr. Claypoole's job at that stage. That's
19 -- that would be something a lender would have to
20 weigh in on. And I don't -- I don't even know -- I
21 don't know that the lender, Harbor -- I -- I mean,
22 I don't know anything about the facts that's
23 surrounding that transfer. But I -- I don't know
24 whether -- whether Harbor knew about the transfer
25 or whether it -- it came up in the context of this

1 modification or -- or when they might have known
2 about it. I don't have any idea.

3 Q. Well, assuming the bank was aware that
4 the transaction originally was being performed to
5 provide the ex-wife a place to live in, isn't it
6 not reasonably foreseeable that a -- the borrower
7 may transfer a partial interest to a spouse?

8 MR. WHITAKER: Object to the form.

9 A. I don't think that I can -- that's -- I
10 can't -- I can't speculate on all that.

11 Q. Well, I'm not asking you to speculate.
12 I'm just --

13 MR. WHITAKER: Yes, you are.

14 MR. HALVERSEN: No, I'm not.

15 MR. WHITAKER: Yes, you are.

16 MR. HALVERSEN:

17 Q. So the answer --

18 A. My question is --

19 Q. -- would be?

20 A. I don't know.

21 Q. All right. I believe you indicated
22 that, when that transaction was done transferring
23 the one-half as -- one-half interest to the spouse,
24 there was no obligation on his part to update the
25 title policy; is that --

1 A. No obligation on whose part?

2 Q. On Mr. Claypoole's part?

3 A. Well, I -- I don't know what went on
4 when that happened. You know, again, I -- I don't
5 -- I don't know what kind of -- I'm not going to
6 speculate on what -- on what Stanley -- how he was
7 engaged to do that or what he might have been asked
8 to do or not do in that transaction. I don't have
9 any idea, so I'm not going to -- I'm just not going
10 to answer that type of question.

11 MR. HALVERSEN: All right. Thank you
12 for your time.

13 THE WITNESS: Yep.

14 EXAMINATION

15 BY MR. WHITAKER:

16 Q. I just have a couple of follow-up
17 questions. It won't take but a minute,
18 Mr. Swanson. There's been a good bit of
19 questioning about risks and -- and what risks the
20 bank might be taking and can you quantify this or
21 that risk and -- and all that sort of thing. And I
22 just wanted to clarify a couple of points. First
23 of all, as the bank's lawyer in this situation, it
24 was your job to advise the bank on how to protect
25 itself from risk to its collateral, correct?

1 A. Correct.

2 MR. HALVERSEN: Objection, asked and
3 answered.

4 Q. And you've testified at some length
5 about the possible problems with not having any
6 kind of endorsement to the existing title policy or
7 a new title policy in place, correct?

8 A. Correct.

9 Q. And there may be a lot of different
10 problems potentially, but is it fair to say that
11 the one fairly simple solution that helps reduce
12 the bank's risk is it for to -- for it to either
13 get a title endorsement or a new policy?

14 MR. HALVERSEN: Objection.

15 A. Correct.

16 Q. And so that was your advice to the
17 bank?

18 A. Yeah. My advice was to get an
19 endorsement and a modification and not -- not a --
20 we didn't talk about new policy.

21 Q. Okay.

22 A. But it could've been done with a new
23 policy.

24 Q. And banks are not in the business of
25 taking collateral that has substantial title risks,

1 correct?

2 MR. HALVERSEN: Objection.

3 A. Well, I -- I'd say banks are not in the
4 business -- again, in my experience in representing
5 banks -- I've represented plenty of banks. They're
6 not -- they're in the -- they're not in the
7 business of making loans on collateral that has
8 sort of any title issues, any objectionable-type
9 title issues -- any title issues that are beyond
10 the norm, I should say.

11 Q. And would you characterize the title
12 risk that you were aware of here as fitting into
13 that realm of beyond the norm?

14 A. Yes.

15 MR. WHITAKER: Those are all my
16 questions, thank you.

17 REEXAMINATION

18 BY MR. HALVERSEN:

19 Q. Just to follow-up, Mr. Whitaker asked
20 you whether these risks were beyond the norm -- or
21 I believe his word was substantial. It was a
22 substantial risk. When I asked you before, you
23 said you wouldn't be able to quantify the risk, but
24 are -- it sounds to me like you are quantifying the
25 risk?

1 A. No. I didn't quantify the risk.
2 That's -- I was answering his question because I
3 don't think they have to be substantial. I think
4 -- and so that's why I -- I qualified what he was
5 saying by saying beyond the norm. They don't --
6 banks don't take risk on title. They're -- they're
7 risk adverse. They do underwriting on a borrower.
8 They ask their lawyers to -- to do due diligence in
9 underwriting on title issues.

10 And, again, in my experience, if
11 there's any kind of issue about title that they
12 can't get insurance over -- now, and that's the way
13 they solved these issues with title. They get
14 endorsements. They get specialized coverages that
15 can protect them in -- in certain situations. I
16 mean, lots of situations come up in title. But
17 banks are very particular about that, and -- and
18 they don't -- they don't take that kind of risk.

19 Q. And you believe this was a risk on the
20 title?

21 A. I believe this was a risk to the bank.
22 And, yes, it was a risk that her -- the ownership
23 of 50 percent of the interest in the property by
24 somebody who was not a borrower, yes, that was a
25 risk.

1 Q. Okay. All right. Thank you.

2 A. A potential risk.

3 MR. HALVERSEN: Thank you.

4 MR. WHITAKER: Thanks.

5 (The deposition concluded at 11:47

6 a.m.)

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1 CERTIFICATE

2
3 I do hereby certify that the witness whose
4 attached deposition was taken before me in the
5 aforementioned matter was, by me, first duly sworn
6 to testify the truth, the whole truth, and nothing
7 but the truth; that the testimony contained in said
8 deposition was, by me, reduced to writing in the
9 presence of said witness by means of computerized
10 transcription. The said deposition is a true and
11 accurate transcript of the whole of the testimony
12 given by the said witness, as aforesaid.

13 I do further certify that I am not
14 connected by blood or marriage with any of the
15 parties or their attorneys or agents, and I am not
16 an employee of either of them, nor interested
17 directly or indirectly in the matter of controversy
18 either as counsel, attorney, agent, or otherwise.

19
20
21
22

23 Jennifer M. Huggins

24 Court Reporter And Notary Public

25 My commission expires: 02/07/2022

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT

HARBOR NATIONAL BANK,
Plaintiff,

-vs-

Case No.:
2012-CP-10-5887

ANTHONY M. WHITFIELD,
Defendant.

THE 30(b)(6) DEPOSITION OF SCOTT WARREN,
taken on behalf of the Defendant, on March 24, 2015,
commencing at 1:35 p.m., at the Law Offices of Duffy &
Young, 96 Broad Street, Charleston, South Carolina,
29401.

Reported by: Douglas K. Liperote
 Spectrum Reporting Services

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A P P E A R A N C E S

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ALSO PRESENT: Anthony M. Whitfield

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I N D E X

Page

EXAMINATION

By Mr. Halversen

4

Certificate of Reporter

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E X H I B I T S

DEFENDANT'S

Page

- 1 Cell Phone Records
- 2 June 25, 2012 E-mail
- 3 January 26, 2012 Letter
- 4 Title Opinion
- 5 Series of E-mails
- 6 July 2, 2012 E-mail

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1 SCOTT WARREN, having been first
2 duly sworn, testified as hereinafter set forth.

3 DIRECT EXAMINATION

4 BY MR. HALVERSEN:

5 Q. Could you please state your full name for
6 the record?

7 **A. Scott Warren.**

8 Q. And I know we just talked about your
9 deposition was taken, I believe it was the end of 2013,
10 and the bank was noticed for what's called a Rule
11 30(b)(6) corporate representative deposition, and
12 either the bank or your attorneys have designated you
13 to appear for some questions that are indicated on the
14 30(b)(6) Notice.

15 And are you familiar with the notice;
16 have you seen the notice?

17 **A. Yes.**

18 MR. HALVERSEN: Okay. And I've been
19 informed that as to Items Numbers 1, Number 7 and
20 Number 8, the bank designated you, although, Brian,
21 there was something regarding Topic Number 1 that I
22 believe that there was another witness that would
23 testify as to a different time frame?

24 MR. DUFFY: That's right.

25 MR. HALVERSEN: And what was that

1 time frame which this witness does not have knowledge
2 about?

3 MR. DUFFY: Essentially, I would
4 think a reasonable breaking point is the end of June of
5 2012, though I'll let you explore if he has sufficient
6 knowledge some short time after that. But,
7 essentially, Mr. Werking has more knowledge as to the
8 July, August time frames.

9 MR. HALVERSEN: Okay. So Mr.
10 Werking, in addition to the Number 3, 4 and 5, which I
11 believe the bank has designated Mr. Werking, that at
12 some point after June of 2012 would probably generally
13 be more within Mr. Werking's province?

14 MR. DUFFY: That's right.

15 MR. HALVERSEN: Okay.

16 BY MR. HALVERSEN:

17 Q. Did you review any documents before you
18 came here today to prepare for your deposition?

19 A. Yes.

20 Q. Which documents did you review?

21 A. Let's see. Prior deposition.

22 Q. Your prior deposition?

23 A. Uh-huh.

24 Q. Any others?

25 A. There were others.

1 Q. Do you remember which ones?

2 A. **Swanson.**

3 Q. You read David Swanson's testimony?

4 A. **Yes.**

5 Q. Any other depositions?

6 A. **I think -- I believe that's it.**

7 Q. Okay.

8 A. **My deposition.**

9 Q. Right. Were you provided with any
10 documents to review other than those deposition
11 transcripts?

12 A. **Nothing that we weren't provided**
13 **previously. E-mails. I had the opportunity to go back**
14 **and review E-mails and other -- anything to refresh my**
15 **memory of my purpose today.**

16 Q. Were those E-mails with other people in the
17 bank or E-mails with attorneys?

18 A. **These were E-mails from me -- or my E-mails**
19 **that you all had.**

20 Q. From the time?

21 A. **Correct.**

22 Q. Okay. Let me just first start off and show
23 you -- and we'll mark this as Exhibit 1.

24 MR. Duffy: Just as a matter of
25 housekeeping, Brent, do you want to keep it going for

1 the 30(b)(6) as this would be Number 3, or is it easier
2 to split them up?

3 MR. HALVERSEN: You mean as to each
4 category? I mean, you know --

5 MR. DUFFY: No. Go ahead. You can
6 handle it as you wish. I thought that for the 30(b)(6)
7 deposition it might be easier just to have him go
8 through because I thought he might refer to more than
9 one, but I didn't mean to interrupt. Go ahead and do
10 it however you intended.

11 MR. HALVERSEN: Okay. We'll mark
12 this as Exhibit 1. And I'll represent to you that
13 these are telephone records we've procured from your
14 cell phone.

15 (Whereupon, Exhibit 1 was
16 marked for identification.)

17 BY MR. HALVERSEN:

18 Q. If I represented to you that the first
19 phone call on June 27 -- do you see that from the
20 bottom up, about 10 lines or so?

21 A. Yes.

22 Q. Do you see that -- it says 12:15 p.m. and
23 there's a phone call to 452 -- or a phone call with the
24 number 843-452-1417?

25 A. Uh-huh.

1 Q. Do you recognize that phone number?

2 A. Yes.

3 Q. Whose phone number is that?

4 A. My friend, Rudy Gill.

5 Q. Okay. And I'll represent to you that the
6 number below that is Mr. Whitfield's cell phone number,
7 then there were two other calls exchanged between you
8 and Mr. Gill, and then another call to Mr. Whitfield at
9 1:30. And I'll also represent to you for the purposes
10 of the question that you met with Mr. Whitfield later
11 on that day to review the loan documents?

12 A. Right.

13 Q. Is there a reason why you were calling Mr.
14 Gill in this period of time?

15 A. Yes.

16 Q. Okay. Why?

17 A. Probably lunch.

18 Q. Okay.

19 A. You'll see his number on there quite a bit.

20 Q. I did see his number a couple different
21 times, but --

22 A. You'll see it many, many times. He's one
23 of my closest friends.

24 Q. Okay. At this time did you discuss any of
25 the issues regarding Mr. Whitfield's loans with Mr.

1 Gill?

2 **A. No, I don't see why we would have. I don't**
3 **recall those conversations. But I think if you'll look**
4 **at my phone records, you'd probably see calls about**
5 **three times a week at lunchtime.**

6 Q. I saw later in the week, or later in July a
7 grouping of calls, and I saw an earlier call at the
8 beginning. But as to this time period, you're telling
9 me that there were no discussions -- you didn't ask for
10 any advice about preparing the loan commitment or term
11 sheet with Mr. Gill?

12 **A. No, no. No, I wouldn't have asked any**
13 **advice.**

14 Q. If I asked Mr. Gill that, he would tell me
15 the same thing?

16 **A. He would tell you the same thing.**

17 Q. All right. I'm just asking you the
18 question. Thank you.

19 Regarding Mr. Swanson's advice for
20 procurement of the title endorsement, did you ever
21 share with Mark Weeks at the time, and that would have
22 been either before the closing or right there at the
23 closing; did you ever share the information about the
24 advice regarding the title endorsement with Mark Weeks?

25 **A. Did I share the information about the title**

1 **endorsement?**

2 Q. Right. Did you ever talk --

3 **A. He was working on getting the title**
4 **endorsement, so.**

5 Q. Okay. Did you discuss though with Mr.
6 Weeks any level of detail about why the bank wanted the
7 title endorsement with Mark Weeks?

8 **A. Well, because we had already gotten the**
9 **title opinion back or -- when are you asking, before or**
10 **after we knew Cindy Whitfield was on there?**

11 Q. I guess we're going to -- what I'm really
12 just trying to find out is, did you ever discuss with
13 Mark Weeks the fact that David Swanson had given this
14 advice regarding the title endorsement? Do you ever
15 recall telling Mark Weeks that the reason why we want
16 this title endorsement is because this guy named David
17 Swanson gave us this advice?

18 **A. I know there was an E-mail where I said I**
19 **talked to bank counsel, and it referenced the title**
20 **endorsement, and that's to the best of my recollection**
21 **as far as specific conversations with Mark. I don't**
22 **know if I ever said "David Swanson." I can't answer**
23 **that specifically as far as if I named him by name, or.**

24 Q. Right. And that's all I'm trying to find
25 out. And I know -- I believe I know what E-mail you're

1 talking about where I believe it was sent to Teresa
2 Farley, who is someone in Mark Weeks' office that said,
3 I contacted bank counsel and we need, A, a title
4 endorsement; B, a business purpose affidavit. Is that
5 the same E-mail we're talking about?

6 **A. Yes.**

7 Q. Okay. Aside from that, as we sit here
8 today, and I believe your testimony is you don't recall
9 bringing -- or having any conversation with Mark Weeks
10 identifying that it was actually David Swanson's advice
11 for the title endorsement with Mark Weeks?

12 **A. I can't say if I ever said that it was**
13 **David Swanson.**

14 Q. As we sit here today, you can't recall
15 specifically telling Mark Weeks that the reason we need
16 this title endorsement is because of something that
17 David Swanson told us?

18 **A. Correct. I think I said that, but...**

19 Q. Okay. In your last deposition I believe
20 you talked about after the closing you had had some
21 conversations with Mr. Whitfield in the parking lot, do
22 you recall that?

23 **A. Uh-huh.**

24 Q. Is that a yes?

25 **A. Yes, I'm sorry. Yes.**

1 Q. And in that conversation, same question,
2 did you ever tell Mr. Whitfield that the reason why the
3 bank wanted a title endorsement was because the bank's
4 attorney, Mr. Swanson, had suggested or confirmed that
5 that was something that the bank should do in order to
6 renew his loans?

7 A. No. I don't recall that, is probably the
8 best way to say it.

9 MR. HALVERSEN: Let's just take a
10 break.

11 (Whereupon, a short recess
12 was taken.)

13 BY MR. HALVERSEN:

14 Q. Regarding Exhibit 1, this is one page of
15 all of the phone records, your cell phone records, and
16 it did not appear to me that Mr. Swanson's phone number
17 was identified. We couldn't identify it in these
18 records.

19 Do you recall as we sit here today, I
20 mean, it's a long time ago, I understand, but do you
21 recall as to whether you called him from your cell
22 phone to get the advice that's referenced in that
23 E-mail where you indicated "I called bank counsel," the
24 E-mail you sent to Teresa Farley; was that a telephone
25 call you placed on your cell phone or was it from a

1 land line?

2 **A. If it's not on the cell phone records, then**
3 **it would be a land line.**

4 Q. Okay. And as we sit here today, do you
5 have any recollection as to whether you -- independent
6 recollection that you remember calling Mr. Swanson from
7 your office versus somewhere else?

8 **A. I couldn't tell you. At that time I was in**
9 **cubes, and I called from many different places. I**
10 **can't tell you which -- where I was when I made that**
11 **phone call, exactly which phone number.**

12 Q. Okay. And did you only have one phone
13 conversation with Mr. Swanson before the closing?

14 **A. I can't recall if it was one or more, but**
15 **at least one.**

16 Q. Okay. So it could have been more than one?

17 **A. It could have been more than one.**

18 Q. Okay. And that's before the closing?

19 **A. Correct.**

20 Q. Okay. Let me show you another document,
21 and we'll mark this as Exhibit 2 to your deposition.

22 (Whereupon, Exhibit 2 was
23 marked for identification.)

24 BY MR. HALVERSEN:

25 Q. Have you seen this document before, this

1 E-mail?

2 MR. DUFFY: Take your time to look
3 at it.

4 A. I would say so. I see my name on there.

5 Q. Okay. And there's an E-mail in the middle
6 from Teresa Farley to you dated June 25 at 10:43 in the
7 morning, and she asked for the loan commitment letter
8 indicating loan amount and terms. And then it looks
9 like Felicia Pringle responded and said, "Scott will
10 E-mail #1 and #2." And, presumably, that's
11 referring to the Number 1 and 2 below, the loan
12 commitment letter and the buyer's phone number and/or
13 E-mail address.

14 Did the bank ever send the June 26, 2012
15 letter to -- term sheet, commitment letter to the
16 closing attorney?

17 MR. DUFFY: Object to the form, but
18 you can answer.

19 A. I couldn't say. May have, may not have. I
20 really can't say if -- you have the E-mails, and I
21 think it...

22 Q. Well, we're here today as you've been
23 identified as the representative of the bank as to the
24 conditions and requirements for the loan renewal.

25 A. Correct.

1 Q. And as part of the bank's dealings with Mr.
2 Whitfield, you drafted -- you personally drafted the
3 June 26, 2012 letter on behalf of the bank and sent to
4 Mr. Whitfield?

5 **A. Correct.**

6 Q. Okay. As you sit here today, though, you
7 can't tell me whether or not though the bank, in fact,
8 sent that and delivered that letter to the closing
9 attorney?

10 **A. As far as whether it was sent, no. Did I**
11 **draft it? Did I -- I do not specifically remember**
12 **sending it. That's not to say I didn't, but...**

13 Q. Okay. All right. When Mr. Stout was
14 deposed he indicated that that letter, the June 26,
15 2012 letter -- he assumed that the letter was reviewed
16 by an attorney, but indicated he didn't know if, in
17 fact, it was.

18 Was that June 26 letter reviewed by an
19 attorney before it was either given to the closing
20 attorney or delivered to Mr. Whitfield?

21 MR. DUFFY: Object to the form, but
22 you can answer.

23 **A. No, I don't believe so.**

24 Q. Okay. And is there a reason why it was not
25 reviewed by an attorney?

1 **A. We don't always have letters reviewed.**

2 Q. Commitment letters or term sheets reviewed
3 by attorneys?

4 **A. Correct.**

5 Q. Are there circumstances in which a
6 particular commitment letter or a term sheet will be
7 reviewed by an attorney and circumstances where it
8 won't be reviewed by an attorney?

9 **A. Yes.**

10 Q. And what are those circumstances?

11 **A. An example would be when I have David**
12 **Swanson draft loan documents versus using our**
13 **computer-generated or laser -- I think it's called**
14 **laser form documents.**

15 Q. Okay. And Mr. Swanson did not draft the
16 June 26, 2012 letter for the bank?

17 **A. No.**

18 Q. And what circumstances would the bank have
19 Mr. Swanson draft a term sheet or a commitment letter?

20 **A. I believe I just answered that: When we**
21 **have him preparing documents.**

22 Q. Okay. So when you mean documents, you mean
23 the actual notes or documents that are going to be
24 executed by the parties of the transaction?

25 **A. Correct.**

1 Q. Okay.

2 A. Or upon a specific request.

3 Q. Okay, understood. And I believe the only
4 person that was involved in drafting that letter was
5 you, correct, on behalf of the bank?

6 A. Correct.

7 Q. Did anybody else have any input into the
8 contents of that document?

9 A. I sent it to, I think Ryan Werking, and I
10 believe Ryan Griffin in E-mails to ask him if they had
11 any input.

12 Q. Did they provide you any input with regards
13 to the content of that letter?

14 A. As far as the content, I don't believe
15 there were any changes. It would have been by E-mail.
16 I don't believe those referenced any changes.

17 MR. HALVERSEN: We'll mark that
18 letter we're discussing as Exhibit 3 to this
19 deposition.

20 (Whereupon, Exhibit 3 was
21 marked for identification.)

22 BY MR. HALVERSEN:

23 Q. Is there any reason why the bank worded the
24 first paragraph to say that it was not a commitment to
25 lend, but was the general terms and conditions if the

1 loan were going to close on June 28, 2012?

2 MR. DUFFY: Object to the form. You
3 can answer.

4 A. If you say is putting not a commitment to
5 lend is language I use for term sheets and establishing
6 a closing date as far as June 28, 2012, we were
7 facilitating a discussion trying to agree upon terms
8 that would be suitable to the bank and Mr. Whitfield.

9 Q. The discussion, though, took place with Mr.
10 Rivers and Mr. Whitfield the week before this letter
11 was generated, correct?

12 A. The discussion for this letter?

13 Q. No, the discussion for the terms. You
14 indicated that this document was to facilitate
15 discussion between the bank and the customer, correct?

16 A. Correct.

17 Q. But the terms of the agreement had already
18 been reached by Mr. Rivers and Mr. Whitfield the week
19 before, correct?

20 MR. DUFFY: Object to the form. You
21 can answer.

22 A. I know they had a discussion and they had
23 talked about some general rules. This was providing
24 more detail.

25 Q. Okay. And --

1 **A. Or general terms I guess is probably the**
2 **better way to say it.**

3 Q. Well, I guess what I'm asking you is, if
4 the bank gave this to a customer, would it not be
5 reasonable for the customer to assume that the bank was
6 willing to lend money on those terms and conditions if
7 the loan was going to close by June 28, 2012?

8 MR. DUFFY: Object to the form. You
9 can answer.

10 **A. Just a simple yes or no?**

11 Q. Yeah.

12 **A. No.**

13 Q. Why not?

14 **A. Because it says this is not a commitment.**

15 Q. It says it "is not a commitment to lend but
16 is our proposal for the general terms and conditions of
17 the subject loans if the transaction were to close on
18 June 28, 2012." And the bank delivered this letter to
19 Mr. Whitfield the day before the closing, correct?

20 **A. Mr. Whitfield met me at the office and we**
21 **reviewed this in person. It was very clear it was not**
22 **a commitment.**

23 Q. It was not a commitment to lend, but was
24 terms of the deal if the loans were going to close the
25 next day, correct?

1 **A. Can you say it again? Let me make sure I'm**
2 **following you.**

3 Q. Okay. You gave this to Mr. Whitfield the
4 day before the closing, correct?

5 **A. Correct.**

6 Q. Did this not represent to Mr. Whitfield on
7 behalf of the bank that this was the terms of the deal
8 if the loans could be closed the next day on June 28?

9 **A. No.**

10 Q. Why not?

11 **A. There's other conditions in there. Yes, as**
12 **far as the closing date and then upon conditions being**
13 **met.**

14 Q. Okay. Where are those other conditions in
15 this letter?

16 **A. "Collateral: The borrower's attorney will**
17 **be responsible for conducting the closing and ensuring**
18 **that the bank maintains its priority interest in the**
19 **collateral. The bank will require a minimum of title**
20 **updates and new title opinions but additional services**
21 **and documentation may be required."**

22 Q. So those are the conditions you were
23 talking about?

24 **A. That is one of the conditions. There's**
25 **other general conditions listed, as well as agreeing**

1 **upon everything else.**

2 Q. Okay. But the reason why you're telling me
3 that the conditions in this letter operated to not be a
4 commitment to lend is because those conditions were not
5 met?

6 **A. Why it's not a commitment letter?**

7 Q. Why -- I believe you testified that these
8 conditions were not met in closing on June 28, correct?

9 **A. Correct.**

10 Q. Okay. Now, as it regards to "The Bank
11 maintains its priority interest in the collateral," how
12 did the bank not have a priority interest in the
13 collateral?

14 MR. DUFFY: Object to the form. You
15 can answer.

16 **A. Specific to a piece of collateral or as a**
17 **whole?**

18 Q. Well, let's go through it then. For 98
19 Willow, did the bank -- how did the bank not maintain
20 its priority interest in the collateral of 98 Willow?

21 **A. Specifically, 98 Willow, was there anything**
22 **that showed on the title opinion that was of concern?**

23 Q. Right.

24 **A. Not on 98 Willow.**

25 Q. Okay. What about 131 Tryon?

1 **A. No, there was nothing of concern specific**
2 **to that one.**

3 Q. Okay. 109 Mallory?

4 **A. Nothing of concern specific to that one.**

5 Q. 118 Clay?

6 **A. Nothing specific.**

7 Q. 308 Shortleaf?

8 **A. Same.**

9 Q. 9708 Jamison?

10 **A. Same.**

11 Q. 732 Gahagan?

12 **A. Same.**

13 Q. 110 Mepkin?

14 **A. Same.**

15 Q. 1055 Black Rush Circle?

16 **A. Yes, there was concern on that one.**

17 Q. And how was it that the bank did not
18 maintain its priority interest at 1055 Black Rush
19 Circle by renewing this loan for another 5 years and
20 changing the interest rate?

21 MR. DUFFY: Object to the form. You
22 can answer.

23 **A. It was deeded to Cindy Whitfield, or**
24 **interest that was deeded to Cindy Whitfield.**

25 Q. And how did that defeat the bank's priority

1 interest in the collateral?

2 MR. DUFFY: Same objection. You can
3 answer.

4 A. How did it defeat or -- we were not able to
5 get a title endorsement or Mrs. Whitfield to sign on
6 the mortgage to make -- to assure us that she was aware
7 of this transaction.

8 Q. There's nothing in this exhibit --

9 A. She would have the ability to object.

10 Q. There's nothing in this exhibit, though,
11 that mentions a title endorsement, correct?

12 MR. DUFFY: Object to the form. You
13 can answer.

14 A. Specific to a title endorsement, no. It's
15 referencing title updates and title opinions.

16 Q. And so it's the bank's position that a
17 first priority interest in Black Rush was not
18 maintained by renewing the loan as was contemplated?

19 MR. DUFFY: Object to the form. You
20 can answer.

21 A. The first priority lien was not maintained
22 if we closed without an endorsement, or...

23 Q. And that was something that the bank
24 mandated through David Swanson's advice, is that right?

25 A. From advice received from David Swanson?

1 Q. Right.

2 A. Yes, I received advice from David Swanson
3 regarding that.

4 Q. And it didn't come from the closing
5 attorney?

6 A. I'm trying to recall what Mark's position
7 was on it. To be honest, I can't remember what Mark
8 said at the table that day. But I can recall that Mark
9 was working on getting an endorsement, and when we had
10 an opportunity to make a decision based on any feedback
11 from Mark, it would have been at the closing table. I
12 can't remember what his specific advice was.

13 Q. Mr. Weeks wasn't mandating the title
14 endorsement?

15 A. He was not?

16 Q. Right, that was something that --

17 A. No, no. He was not mandating it, no. He
18 was willing to close.

19 Q. In that same paragraph, doesn't it say that
20 "The borrower's attorney will be responsible for
21 conducting the closing and ensuring that the bank
22 maintains its priority interest in the collateral"?

23 A. It does.

24 Q. It doesn't say the bank's attorney, does
25 it?

1 **A. No.**

2 Q. And the second condition you mentioned,
3 "The bank will require a minimum of title updates and
4 new title opinions but additional services and
5 documentation may be required."

6 Are you aware of whether the title updates
7 and title opinions were performed on all these
8 properties?

9 **A. Yes.**

10 Q. On all the ones that are listed below?

11 **A. I remember seeing a title opinion that**
12 **referenced the title searches had been done, and I**
13 **believe you probably have a copy referencing one**
14 **specifically for Black Rush.**

15 MR. HALVERSEN: We'll mark that as
16 the next exhibit.

17 (Whereupon, Exhibit 4 was
18 marked for identification.)

19 BY MR. HALVERSEN:

20 Q. Is that the Title Opinion?

21 **A. Yes. Do you want the sticker on here or**
22 **here?**

23 Q. That's fine. And did the borrower's
24 attorney in Exhibit 4 indicate that there were any
25 issues with the title to Black Rush?

1 MR. DUFFY: Take your time to review
2 it.

3 A. Yes.

4 Q. Where is that indicated?

5 A. The issue to me was "Title in the name of
6 Anthony M. Whitfield and Cindy Whitfield as to Parcel
7 Number 5."

8 Q. Now, my question was, did the borrower's
9 attorney indicate in this letter any problems with the
10 title to the property?

11 A. Yes.

12 Q. Okay. Where did the borrower's attorney --

13 A. Just as I said: "Title in the name of
14 Anthony M. Whitfield and Cindy Whitfield as to Parcel
15 Number 5."

16 Q. Okay. He indicates that there's two owners
17 of the property, correct?

18 A. Correct.

19 Q. But did he anywhere in this opinion say
20 that there was a problem with the title or that the
21 title to Black Rush was not good and marketable?

22 A. Are you asking me if he used those specific
23 words?

24 MR. HALVERSEN: Could you read back
25 the question?

1 (Whereupon, the last question was
2 read back.)

3 MR. DUFFY: I'll object as asked and
4 answered, but you can answer.

5 **A. Going back to my original answer, yes,**
6 **there's my interpretation. Are you asking me if he**
7 **specifically said something?**

8 Q. I'm not asking for your interpretation.
9 I'm asking you what the borrower's attorney said about
10 the title to Black Rush? Was it good and marketable or
11 was it not according to what the borrower is indicating
12 in this letter?

13 **A. It doesn't say either.**

14 Q. It doesn't say that it's good and
15 marketable?

16 **A. It says "good marketable title to the**
17 **above-described properties."**

18 Q. Okay. And one of the above-described
19 properties is Black Rush, is it not?

20 **A. It is.**

21 Q. So the borrower's attorney in this opinion
22 is indicating to the bank at the time that the title to
23 Black Rush was good and marketable, as well as all of
24 the other loans, correct?

25 MR. DUFFY: Object to the form.

1 **A. Correct.**

2 Q. Okay. Let me show you another series of
3 E-mails.

4 (Whereupon, Exhibit 5 was
5 marked for identification.)

6 BY MR. HALVERSEN:

7 Q. And you can just take a couple minutes to
8 just read through that and familiarize yourself with
9 it.

10 **A. Okay.**

11 Q. Let's go to the last page, please.

12 **A. Okay.**

13 Q. It's an E-mail from Teresa Farley to Barry
14 Sloop, and it says, "Subject: Lender Title Policy
15 Question - Whitfield/Modification of Mortgage." Do you
16 see that E-mail?

17 **A. Yes.**

18 Q. And Teresa Farley in that E-mail indicates
19 that after the mortgage was done, a one half interest
20 in the property was given to Cindy Whitfield and the
21 property is in both of their names, and that she
22 resides there. And she indicates that they're now
23 modifying the note. There's no modification of
24 mortgage being recorded. And it's asking Barry Sloop
25 where this would leave the bank in the event they had

1 to foreclose on the property, and how it affects their
2 title policy.

3 Did I accurately recount what's in that
4 E-mail?

5 **A. I believe so, yes.**

6 Q. And my question is, do you know why the
7 closing agent was asking their underwriter a
8 question -- the lender title policy question --
9 specifically with regard to this E-mail, do you know
10 why they were asking their title attorney a question
11 that Teresa Farley posed?

12 **A. Why they would be asking?**

13 Q. Right. Is that something the bank tasked
14 Ms. Farley to ask her, or do you know, or did she do
15 this on her own volition?

16 **A. No. It was a question from one of her bank**
17 **lenders.**

18 Q. And that would be Harbor National Bank?

19 **A. That would be safe to assume that's Harbor**
20 **National.**

21 Q. Okay.

22 **A. And myself.**

23 Q. All right. So, do you recall or does the
24 bank know as we sit here today how it came about that
25 Teresa Farley was instructed to ask that question from

1 their underwriter?

2 MR. DUFFY: Object to the form. You
3 can answer.

4 **A. Specifically, in the time frame that we're**
5 **dealing with, I would assume that Teresa and I talked**
6 **or we had come to learn that Cindy Whitfield was on it**
7 **either through the title opinion or through the title**
8 **opinion search.**

9 Q. Okay.

10 **A. Or other discussions. I had already spoken**
11 **with Mr. Whitfield I believe. I know that came up in a**
12 **discussion when I sat with Mr. Whitfield that day,**
13 **and...**

14 Q. And that was the day before the closing?

15 **A. Correct.**

16 Q. June 27?

17 **A. Correct.**

18 Q. Okay. And the previous exhibit, Exhibit 4
19 indicates that the title opinion was sent from Weeks'
20 office to you, the bank, on the 27th, correct?

21 **A. Correct.**

22 Q. And what's the time indicated on that?

23 **A. The time was 11:14:36 a.m.**

24 Q. And is that the first time the bank became
25 aware that Cindy Whitfield was on the title to the

1 property?

2 **A. I don't believe so, but to be honest, I**
3 **couldn't give you a time stamp on when we became aware.**

4 Q. Okay. Do you know -- I mean, as we sit
5 here today, do you know when the bank first became
6 aware that she was on the title?

7 **A. Sometime prior to closing. That's...**

8 Q. Okay. Was it prior to being delivered the
9 title opinion? I think you said it was, but you
10 couldn't say exactly when?

11 **A. No, I can't say exactly when. This is**
12 **where -- the title opinion is where it formally said,**
13 **and, again, I couldn't tell you if it was with**
14 **discussions with Mr. Whitfield or Teresa Farley or Mark**
15 **Weeks. But, yes, it was -- as I said, I can't give you**
16 **a time stamp or an exact time and date I became aware,**
17 **but...**

18 Q. Fair to say the bank was aware she was on
19 title at the time you contacted David Swanson?

20 **A. Yes, yes.**

21 Q. Okay. And then Mr. Sloop responds, "Hey,
22 T, Cindy took title subject to the mortgage. She would
23 be named in the foreclose action as defendant, but they
24 should prevail." Did I read that accurately?

25 **A. Yes.**

1 Q. And then it looks like she forwards that
2 E-mail to you and Felicia Pringle and she says, "See
3 below response. Does this work for you?" And that is
4 when you respond and say, "Thank you for your work on
5 this. I called bank counsel" on how to handle it; (a)
6 We need a title endorsement, (b) We also need an
7 affidavit from Tony that these properties are owned and
8 pledged for business purposes. Right?

9 **A. Correct.**

10 Q. Do you recall whether after you got
11 Teresa's response, but before you sent that E-mail, is
12 that when you contacted David Swanson?

13 **A. I couldn't tell you time stamps, but you're**
14 **talking about 11:09 to 12:10, an hour, three years ago.**
15 **I couldn't tell you with confidence exactly what time I**
16 **contacted him.**

17 Q. Right. Would it have been around this --
18 would it have been on this day?

19 **A. Would it have been -- it would make sense**
20 **to be on that day. I can't tell you exactly -- I can't**
21 **give you a time that I talked to David Swanson. But**
22 **yes, it would make sense it was that day; it would make**
23 **sense if it was the day before.**

24 Q. And, obviously, it had to be some point in
25 time before you wrote that E-mail?

1 **A. Yes.**

2 Q. Okay. These are additional terms that are
3 not in the June 26, 2012 letter, correct?

4 MR. DUFFY: Object to the form. You
5 can answer.

6 **A. Yeah. As far as -- no, I don't believe it**
7 **deviates from the letter.**

8 Q. Okay. And we covered that because I think
9 you said that --

10 **A. These are -- that's a general statement.**

11 Q. It's the bank's testimony that in the
12 collateral paragraph that that's covered in there, is
13 that right?

14 **A. Correct.**

15 Q. Okay. Let's go forward to the top page of
16 that last exhibit. And Teresa responds to your E-mail
17 about the procurement of the title endorsement, and she
18 says, "I think we can handle all this. The deal with
19 the maturity date is as follows: a mortgage of record
20 is valid for 20 years from the date of maturity if not
21 satisfied. If you were to record any modifications of
22 the mortgage, Cindy would have to sign it since she is
23 now on the deed, but according to the mortgage rule
24 above, your mortgage will still be valid anyways even
25 after the maturity date on the original recorded

1 mortgage has" satisfied (sic). "The deal would be
 2 whether or not your bank counsel is okay to not record
 3 any new modification of mortgage since the maturity
 4 date has changed. TF." And then she says, "Barry,
 5 please respond to my E-mail as to confirm or correct.
 6 Thanks." And Sloop, Barry Sloop, the lawyer at Stewart
 7 Title says, "Teresa, I agree that the wife should sign
 8 any modification. But, regardless of whether she
 9 signs" the modification (sic) -- I'm sorry, I read that
 10 wrong. "But, regardless of whether she signs, still
 11 subject to the original mortgage."

12 And then it looks like Teresa forwarded
 13 that to you and Felicia Pringle and says, "See below,"
 14 right?

15 **A. Right.**

16 Q. At that point in time the closing
 17 attorney's office is asking you, are they not, whether
 18 your bank counsel is okay not to modify the mortgage
 19 since -- based on the reasons she explains there,
 20 correct?

21 MR. DUFFY: Object to the form.

22 **A. Where does it ask that?**

23 Q. In Teresa Farley's E-mail to you and
 24 Felicia Pringle, CCing Barry Sloop, she says, "The deal
 25 would be whether or not your bank counsel is okay to

1 not record any modification of mortgage since the
2 maturity date has changed." And she says, "Barry,
3 please respond to E-mail as to confirm or correct."
4 And he says, "I agree that the wife should sign any
5 modification." "Regardless of whether she signs, still
6 subject to the original mortgage."

7 And then she forwards this E-mail to you,
8 correct?

9 **A. Uh-huh, correct.**

10 Q. At that point in time did you call back Mr.
11 Swanson and say, hey, I've got another attorney at a
12 title company telling me she may not have to sign
13 anything?

14 **A. Again, I can't give you a specific time I**
15 **called David Swanson, but my conversation with David**
16 **Swanson, whether it was before or after, covered this**
17 **issue.**

18 Q. Okay. So as we sit here today, the bank
19 can't represent whether you called him before your June
20 27, 2012, 12:10 p.m. E-mail, or if it was after you
21 received this E-mail from Mr. Sloop?

22 MR. DUFFY: Object to the form.

23 **A. No, I cannot attest that it was in that two**
24 **hour time frame if we're following this chain of**
25 **E-mails.**

1 Q. And just so we're on the same page, I think
2 we're clear that, according to your testimony, the bank
3 called Mr. Swanson before you sent the E-mail that said
4 I called bank counsel, correct?

5 **A. Correct.**

6 Q. Right. But whether or not you called Mr.
7 Swanson back after receiving this top E-mail on Exhibit
8 5, the bank can't state with any reasonable assurance
9 whether you contacted him or not?

10 **A. No.**

11 Q. All right. Let's go to that E-mail, "I
12 called bank counsel" and your subparagraph (a).

13 "We need a title endorsement on Black
14 Rush only. We can rely on your title opinions and
15 existing policies for the others." And I assume you
16 mean the other loans, the non-Black Rush loans, is that
17 accurate? The second page?

18 **A. The second page here?**

19 Q. Right.

20 **A. What are we looking at?**

21 Q. Your E-mail where you say, "I called bank
22 counsel"?

23 **A. Uh-huh.**

24 Q. And it says, "We need a title endorsement
25 on Black Rush only. We can rely on your title opinion

1 and existing policies for the others."

2 The others I assume is the other
3 non-Black Rush loans, correct?

4 **A. Yes.**

5 Q. "The E-mail to Stewart states that the
6 maturity dates are not changing but they are. The
7 maturity date on Black Rush was this past May."

8 Was that an explanation to the closing
9 attorney as to why the bank was demanding a title
10 endorsement?

11 **A. Is that an explanation?**

12 Q. Right.

13 **A. I think it's stating the difference between**
14 **what was written from Barry Sloop and the actual**
15 **maturity dates.**

16 Q. Okay. Well, Mr. Sloop didn't bring up the
17 maturity dates as an issue at all, correct?

18 **A. It says, "The E-mail to Stewart states that**
19 **the maturity dates are not changing but they are." And**
20 **the last page says, "since the loan amount previously**
21 **insured is actually less now and the maturity dates are**
22 **not changing."**

23 Q. Right. But I think what --

24 **A. I think I stated that the maturity dates**
25 **are changing.**

1 Q. Right. But my question was, Mr. Sloop
2 never brought up maturity dates as an issue in any of
3 these E-mails, right?

4 **A. That is from Teresa Farley.**

5 Q. Right. I understand. But that's what
6 Teresa Farley said. And then he responded to her
7 E-mail, correct?

8 **A. Correct.**

9 Q. Did Mr. Sloop in any of his responses bring
10 up the fact that the maturity dates were changing as
11 some kind of an issue or problem in his mind?

12 **A. No.**

13 Q. However, you mentioned in your E-mail that
14 the maturity dates changing was an issue, correct?

15 **A. Yes.**

16 Q. Okay. And it was an issue as it pertains
17 to the title endorsement?

18 **A. As an issue as explained to Mr. Sloop by**
19 **Teresa pointing out that difference. We have a chain**
20 **of E-mails --**

21 Q. Right.

22 **A. Teresa is giving Mr. Sloop information, and**
23 **I'm simply pointing out that the information she gave**
24 **him, the maturity dates did change.**

25 Q. Well, presumably, in responding to Teresa's

1 E-mails, he would have read Teresa's E-mails, correct,
2 about the maturity dates not changing?

3 All I'm trying to figure out is that, in
4 your mind, it was an issue that the fact that the
5 maturity dates were changing as it pertains to the
6 bank's requirement to get the title endorsement?

7 **A. No. It was an issue that the information**
8 **being presented -- I can't presume that he went back.**
9 **I can point out the obvious. That's simply -- that's**
10 **all that was done.**

11 Q. I'm really not talking about Mr. Sloop, I'm
12 talking about the explanation --

13 **A. You're asking my opinion, why did I put**
14 **that in there, and was it safe to presume that he went**
15 **back and read it? I did not presume that.**

16 Q. All I want to know is if the fact -- I
17 don't want to know -- I know you can't speak for Mr.
18 Sloop. All I want to know is that the fact that you
19 referenced maturity dates changing, is that somehow
20 relevant to the consideration of what you put in the
21 line before, as we need a title endorsement, because I
22 think the way anybody could read that is, we need a
23 title endorsement for Black Rush only; we can rely on
24 your title opinion for the existing for the others.
25 The E-mail states -- to Stewart states that the

1 maturity dates are not changing, but they are. The
2 maturity date on Black Rush was this past May.

3 So, all I'm trying to find out is, the fact
4 that you referenced in there that the maturity dates
5 were changing, does that have some kind of bearing on
6 why the bank was demanding a title endorsement?

7 **A. No.**

8 Q. So that line, the E-mail -- this E-mail
9 states to Stewart, da, da, da, da, that could be
10 somewhere else in the E-mail --

11 **A. Let me back up. Does it have a bearing as**
12 **far as getting an endorsement?**

13 Q. Right.

14 **A. That's -- if it -- yes, getting an**
15 **endorsement did have a bearing, whether that was a**
16 **factor in getting that endorsement, this says we have**
17 **not gotten an endorsement at this point.**

18 Q. I understand that. But the way -- since
19 it's right after where you say we need a title
20 endorsement, I read this as an explanation as to why
21 the bank was asking for a title endorsement, and you
22 can say yes or no, and that's all I'm trying to find
23 out from you.

24 Was that some kind of an explanation on
25 behalf of the bank as to why there was a title

1 endorsement needed?

2 **A. No.**

3 Q. Okay. So that could have been --

4 **A. That could have been a factor in getting**
5 **the title endorsement, whether Sloop or Stewart Title**
6 **writes it, and if -- when he says -- Teresa says that**
7 **the maturity date is not changing and it is, pointing**
8 **that out in case it comes up as we're seeking the title**
9 **endorsement if it would prevent us -- avoid any**
10 **surprises.**

11 Q. All right. So I think I understand what
12 you're saying. Basically, you're just saying that as a
13 correction --

14 **A. I'm just restating what was said earlier to**
15 **make sure everybody is on the same page.**

16 Q. I got you. That's all I'm trying to figure
17 out. So that was not some kind of explanation or
18 justification as to why the bank was requiring a title
19 endorsement?

20 **A. Correct.**

21 Q. Okay. And that was nothing that Mr.
22 Swanson ever discussed with you as to why you needed a
23 title endorsement?

24 **A. Because of the maturity dates?**

25 Q. Right.

1 **A. If there were certain things changing --**
2 **no, no. It was -- the conversation with Swanson to my**
3 **recollection was mainly about Cindy Whitfield being on**
4 **the title and how we can handle that.**

5 Q. Okay. So that statement about the maturity
6 dates changing, the fact that you placed it in there,
7 is really directed at Teresa and Barry?

8 **A. Correct.**

9 Q. Okay. Did the bank ever forward that
10 Exhibit 5, that E-mail? Did you ever forward that
11 E-mail to Mr. Swanson?

12 **A. No.**

13 Q. Did you ever forward any E-mails to him
14 regarding the Whitfield matter?

15 **A. No.**

16 Q. And the bank never provided any documents
17 to Mr. Swanson to form his opinions?

18 **A. I know you've requested that I double-check**
19 **E-mails back and forth to Swanson regarding this, and I**
20 **could not find any.**

21 Q. Okay. Thank you for checking.

22 Regarding the second page of Exhibit 5,
23 your E-mail that starts, "I called bank counsel," I
24 believe I asked this of you in your individual
25 deposition. Subparagraph (b) where it says, "We also

1 need an affidavit from Tony that these properties are
2 owned and pledged for business purpose."

3 You've had a chance to review Mr.
4 Swanson's testimony?

5 **A. Correct.**

6 Q. Mr. Swanson said that that demand did not
7 come from him?

8 **A. Correct. It said that.**

9 Q. And do you agree with that?

10 **A. No, I don't agree with it.**

11 Q. Okay. You're pretty sure he said you
12 better get a business purpose affidavit, or something
13 to that effect?

14 **A. Yes. It was discussed and, yes.**

15 Q. Okay. I think you testified you contacted
16 Mr. Swanson definitely before that E-mail that says "I
17 called bank counsel," and maybe afterwards, but you're
18 not really sure. Aside from the time -- is that a fair
19 characterization?

20 **A. Uh-huh.**

21 Q. Yes?

22 **A. Yes.**

23 Q. Okay. Aside from the time of the events of
24 what happened here with the closing, since then have
25 you talked to Mr. Swanson at all?

1 **A. Yes.**

2 Q. Okay. When did you talk to him and what
3 did you discuss?

4 **A. I couldn't tell you --**

5 MR. DUFFY: Object to the extent
6 it's for advice beyond the advice that relates to this
7 particular issue. If it's some other case, some other
8 client, then you can't discuss it.

9 Q. Yeah. And I don't want to know about any
10 other client. I don't want to know about any other
11 advice. I just want to know, have you talked to Mr.
12 Swanson since 2012 about the issues involved in this
13 case, with Mr. Swanson?

14 **A. I don't recall any specific conversations,**
15 **but I'm sure we've talked in passing. He's upstairs**
16 **and this is -- no, I don't think we've had any -- we**
17 **haven't had any formal discussions.**

18 **I would say that I do not recall any**
19 **specific discussions, but I wouldn't dismiss that --**
20 **I'm sure -- we've both had depositions and mentioned**
21 **them. I don't think we've gone into any detail on**
22 **them.**

23 Q. Okay. Before Mr. Swanson was deposed last
24 year, did you contact Mr. Swanson or did he contact
25 you?

1 **A. I contacted him.**

2 Q. Okay. And how did you know to do that?

3 **A. Because he served as bank counsel for many**
4 **deals, and he would be the person that I'd go to.**

5 Q. How did you learn that his deposition was
6 being taken?

7 **A. I believe he -- I saw him in passing and**
8 **heard that he was deposed.**

9 Q. Okay. All right. But I guess I was asking
10 about before Mr. Swanson, and I thought you said that
11 you had talked to Mr. Swanson before he was deposed?

12 **A. Yes. I talked to Mr. Swanson before he was**
13 **deposed.**

14 Q. And I'm not talking about this --

15 **A. Okay. So, this is what I'm thinking. We**
16 **obviously had a discussion that's been discussed and --**

17 Q. Right. And I'm not talking about 2012.
18 I'm talking about last year, talking to Mr. Swanson
19 before Mr. Swanson was deposed?

20 **A. No, I didn't. No, no, I...**

21 Q. About the issues involved in this case?

22 **A. I can't -- I can't recall any.**

23 Q. Are you sure?

24 **A. I'm trying to be as sure as I can.**

25 Q. Okay.

1 **A. No, I did not prepare David Swanson for a**
2 **deposition --**

3 Q. I'm not asking if you prepared him. I just
4 want to know if you talked to him about the issues in
5 this case after 2012, and before right now. That's it.

6 **A. It could have come up, but I don't recall**
7 **any specific conversations. I think I mentioned that**
8 **we were deposed. I know that he was deposed.**

9 Q. But you didn't talk about, hey, that phone
10 call where you gave me advice or nothing of that
11 nature?

12 **A. I'm sure it came up, but no. No lengthy --**
13 **no conversations that stick out to me as far as detail,**
14 **but yes, he was -- yes. He was deposed based on his**
15 **conversation with me, and I'm trying to be as clear**
16 **with you as I can. Yes, it's come up, but I don't**
17 **remember any significant discussions.**

18 Q. So you had some discussions with him, but
19 they're not significant or you can't recall what they
20 are. Is that fair?

21 **A. Yes. Probably in passing.**

22 Q. You know who Mr. Bernstein is?

23 **A. I do.**

24 Q. Did Mr. Bernstein provide any advice to the
25 bank that a mortgage was required to be signed by Cindy

1 Whitfield in order to renew these loans?

2 **A. To the bank, I couldn't tell you. To me,**
3 **no.**

4 Q. Okay. Who would know the answer to that
5 question?

6 **A. Probably Ryan Werking or Charlie Rivers.**

7 Q. But as regards to Mr. Whitfield's loan
8 renewal --

9 **A. I did not work with Bobby Bernstein on my**
10 **time working on --**

11 Q. And that would be anytime before June 28,
12 2012?

13 **A. Anytime before June -- again, I was on --**
14 **was brought into this very late in the game. I can**
15 **only speak to when --**

16 Q. And that's all I want to know.

17 **A. Yes. During my involvement, no, I don't**
18 **recall speaking to Bernstein or -- with Swanson is who**
19 **I went to.**

20 Q. Okay. When you were at the closing, did
21 Mr. Weeks call Cindy Whitfield's attorney while you
22 were in the room?

23 **A. Yes.**

24 Q. Do you remember if he was using like a
25 phone on the desk or was he using his cell phone? I

1 mean, I don't expect you to remember. I'm just asking.

2 **A. I remember there was a phone on the desk or**
3 **side table, and I couldn't tell you if -- I know he**
4 **picked that up and made probably a number of calls, but**
5 **I don't know if he used his cell phone or a conference**
6 **room phone or what phone he used it for.**

7 **Q. But it sounds like you're pretty sure you**
8 **were in the same room when he tried to call him?**

9 **A. I was in the same room.**

10 **Q. Did he get a hold of maybe somebody from**
11 **his office and not Cindy Whitfield's actual attorney to**
12 **the best of your recollection?**

13 **A. To the best of my recollection, either the**
14 **attorney -- I believe it was the attorney was out,**
15 **either -- some sort of medical issue. Whoever he was**
16 **trying to get a hold of he could not reach. Not being**
17 **on the other end of the phone or part of the**
18 **conversation, that's the best I can answer it.**

19 **Q. I understand. But did you get any sense**
20 **that there was any kind of feedback from the office**
21 **based on what you were observing from the phone call,**
22 **positively or negatively, or just kind of like "the**
23 **guy's not here," something to that effect?**

24 **A. Yeah. I really can't speak to that, but I**
25 **mean, I don't know of anything that was negative or**

1 **positive as far as feedback that was coming back. I**
2 **just know that we could not get a hold of Cindy**
3 **Whitfield's representative or Cindy, whoever they were**
4 **contacting, and then who was -- the phone call went to**
5 **Cindy Whitfield's attorney.**

6 Q. Right. Okay. And in your first
7 deposition, and if you reviewed it, I believe you
8 indicated that he was out on back surgery, something
9 like that?

10 A. **Yes, that's what I remember.**

11 Q. Okay. Anything more, or that's about the
12 extent of what you recall from Weeks making that phone
13 call?

14 A. **Yes, that we weren't going to be able to**
15 **speak with that representative, that person because**
16 **they were out with back surgery.**

17 Q. Okay. Let me go to another set of E-mails.
18 We can take a break if you'd like, but I don't think it
19 will be terribly much longer.

20 MR. DUFFY: Well, if you're at a
21 breaking point, can we just stop for five minutes?

22 MR. HALVERSEN: Yeah, sure.

23 (Whereupon, a short recess
24 was taken.)

25 BY MR. HALVERSEN:

1 Q. Another series of E-mails. This was after
2 the closing.

3 **A. Uh-huh.**

4 Q. Attempted closing. Do you remember these
5 E-mails?

6 **A. I do.**

7 MR. DUFFY: Are you going to mark
8 them?

9 MR. HALVERSEN: Yeah, we'll mark
10 this as Exhibit 6.

11 (Whereupon, Exhibit 6 was
12 marked for identification.)

13 BY MR. HALVERSEN:

14 Q. At the top is an E-mail from Mark Shannon
15 to you, and it has an attachment "1-4 Family Real
16 Estate for consumer purposes" --

17 **A. And, I'm sorry. I meant to bring that with**
18 **me today. I printed it off, and it was a blank closing**
19 **checklist, basically, but I'll get that to you.**

20 Q. You got the message about that?

21 **A. I did. I did, and I'm sorry. I left it in**
22 **my desk.**

23 Q. Yeah, if you could forward that to either
24 Seth or Brian?

25 **A. Sure.**

1 Q. Because that's -- it just wasn't attached
2 to the E-mail, and we would like to see that, assuming
3 your attorneys will provide that to us.

4 There was another kind of just logistical
5 question I had about these E-mails, and that is, if you
6 look at the first E-mail on the back, it says -- the
7 subject line is "Whitfield - 1055 Black Rush Circle."

8 **A. Uh-huh.**

9 Q. And then at some point, the second page it
10 gets forwarded.

11 **A. Uh-huh.**

12 Q. And then there's an intervening E-mail
13 though that says, "RE: Loan Compliance Question." And
14 then on the top it goes back to "RE: Whitfield - 1055
15 Black Rush Circle." And I don't know if you were on
16 the subject line in the chain that says "RE: Loan
17 Compliance Question," but I've looked in the files that
18 have been produced and I couldn't find the original
19 E-mail that states "Loan Compliance Question." And it
20 may not be something that is in your in-box, but to the
21 extent you could look in your in-box and see, because
22 it doesn't appear to be the originating E-mail for
23 "Loan Compliance Question." So if your attorneys asked
24 you to do that, is that something you would be able to
25 do?

1 **A. I would. I'd be happy to.**

2 Q. Okay, thanks.

3 MR. DUFFY: It looked like Mark just
4 pasted it in there.

5 **A. That's what I was -- I didn't want to**
6 **assume, but that's my guess.**

7 Q. It does kind of look like that. And I
8 think we're actually going to depose Mark next month,
9 so it's probably maybe a better question for him.

10 Well, we covered a lot of this in your
11 first deposition. But the bank has asserted that in
12 order to renew these loans, two conditions had to be
13 met which weren't, and one was a title endorsement and
14 the other is that Cindy Whitfield sign a mortgage for
15 the Black Rush property, right?

16 **A. Can you say that again? I'm sorry.**

17 Q. The bank has maintained a position that the
18 loans were not renewed because either a title
19 endorsement had to be procured, or Mrs. Whitfield had
20 to sign a mortgage, right?

21 **A. Correct.**

22 Q. Now, as part of Cindy Whitfield signing a
23 mortgage, are you aware of whether a mortgage was
24 actually ever prepared for her signature?

25 **A. Prior to closing?**

1 Q. Right.

2 A. I don't believe so.

3 Q. Okay. Was there ever anything that called
4 upon Cindy Whitfield to be personally liable on the
5 debt for Black Rush in order to renew that loan?

6 MR. DUFFY: Object to the form.

7 A. I'm not sure I understand the --

8 Q. Okay. Was there ever any part of the
9 underwriting for the Black Rush loan renewal that
10 called upon Cindy Whitfield to be obligated on the debt
11 in order to renew the loan?

12 A. As far as financial review?

13 Q. In terms of any of the underwriting, any
14 decision-making that the bank undertook as a part of
15 considering the loan renewal to Mr. Whitfield for the
16 Black Rush property, was there any kind of indication
17 that the bank was going to make her personally liable
18 at any point in time in order to renew the loan for the
19 Black Rush property? Is there any indication that you
20 have --

21 MR. DUFFY: Same objection.

22 A. If I can answer it this way: Cindy
23 Whitfield was not part of the initial underwriting.

24 Q. Right. Okay. So, I think the answer to
25 that question would be that the bank was not calling

1 upon her to be personally liable on the debt had the
2 loan been renewed?

3 MR. DUFFY: Object to the form. You
4 can answer.

5 A. That is difficult to answer. Specifically
6 her, no.

7 Q. Okay. And I believe I understand the bank
8 is saying they wanted her to sign a mortgage or
9 acknowledge that there was a mortgage. Is that what
10 was contemplated by the bank's demand that she sign a
11 mortgage as opposed to signing a promissory note or
12 signing any kind of instrument that would make her
13 personally liable on the debt? Do you understand what
14 I'm saying?

15 A. I think I do. Yes, it --

16 Q. Let me ask it a different way.

17 A. That would be good.

18 Q. Okay. If, hypothetically, Mr.
19 Weeks had gotten in touch with Cindy Whitfield's lawyer
20 and she said, I'll sign a mortgage, no problem, then
21 what would the bank have done in order to have gotten
22 that physical document for her to sign at that point in
23 time?

24 A. We would have printed a mortgage or
25 modified a -- postponed the closing.

1 Q. Understood. You'd have to get some time to
2 get that document produced, but is that something that
3 the bank would have drafted or Ms. Pringle would have
4 drafted? I mean, because we know it wasn't drafted.
5 But if that had happened, what would it have looked
6 like, what would the document have looked like?

7 **A. A mortgage or a modification of the**
8 **mortgage.**

9 Q. It would be a modification of the mortgage?

10 **A. It would be a mortgage or a modification of**
11 **the mortgage. There's a number of different ways to**
12 **probably put it together, and I would probably talk to**
13 **Felicia and figure out what the best way to do that**
14 **was.**

15 Q. Okay. And in that scenario, whether --
16 having a line for her to sign on the mortgage, was the
17 bank contemplating that in that event, she would be
18 having any personal liability on the debt, or was it
19 simply to acknowledge that the bank had an interest in
20 the Black Rush property?

21 **A. There's a couple different ways to answer**
22 **that question, and --**

23 Q. Well, give me every way you could answer
24 it.

25 **A. It was important for her to acknowledge it,**

1 **yes. And would there be any liability for her if she**
 2 **owned that interest in the property and the loan didn't**
 3 **perform? She could lose her interest in that property.**
 4 **So, it could -- we were not having her sign the note or**
 5 **guarantee it. That's probably the better way to --**

6 Q. Okay. And I think another way to answer
 7 that question, if you agree with me, would be to say
 8 that the bank would not be looking to anything more
 9 than the collateral as it pertains to Mrs. Whitfield to
 10 satisfy its security interests, its lien?

11 **A. Yes. We needed Mrs. Whitfield in order to**
 12 **give us what we -- what was thought to be a perfected**
 13 **interest in the collateral through her signature.**

14 Q. Okay. And you told me that you weren't
 15 expecting her to be personally liable on the debt, but
 16 the bank wanted her to acknowledge the bank's mortgage
 17 to the extent of her interest in the collateral, is
 18 that accurate?

19 **A. Uh-huh.**

20 Q. Yes?

21 **A. Yes.**

22 Q. Okay. Is there anything in writing between
 23 the bank and Mr. Whitfield that stated that a mortgage
 24 had to be executed by his ex-wife in order to renew
 25 this loan?

1 **A. In writing from me to Mr. Whitfield?**

2 Q. Yes. You or the bank.

3 MR. DUFFY: I'll object, if you can
4 just ask him a time frame -- can you clarify a time
5 frame?

6 Q. Is there anything in writing that you're
7 aware of where the bank asked for, required,
8 conditioned Mr. Whitfield's ex-wife signing a mortgage
9 as a condition of renewing the Black Rush property that
10 was done before June 28, 2012?

11 **A. I think -- no, not from me. Not from me.**

12 Q. Okay. And understand that you're here to
13 testify as to, you know, the bank's knowledge as to the
14 conditions and requirements for the renewal of Mr.
15 Whitfield's loan --

16 **A. Let me say this: I was intimately involved**
17 **during this time period, and I'm not aware of any**
18 **E-mails coming from me or anybody else from the bank**
19 **during my time working with him.**

20 Q. That mandated that Cindy Whitfield sign a
21 mortgage in order to renew the loan?

22 **A. Prior to June -- what was the closing date?**

23 Q. The 28th.

24 **A. The 28th? No, I'm not aware of any E-mails**
25 **from the date that I started with him, which I'd have**

1 to look to see when that was. I think it was about
2 four or five days. Whether any E-mails went out prior
3 to that, I couldn't speak to.

4 Q. Okay. And that would go for E-mails or any
5 kind of document?

6 A. Or any kind of document specifically asking
7 -- saying we needed Cindy Whitfield to sign a mortgage?

8 Q. Right.

9 A. As I said, I don't know of --

10 Q. You're not aware of any?

11 A. I'm not aware of any. When you ask me to
12 speak for the bank I know what you're saying, but I am
13 trying to answer you as honestly as I can.

14 Q. Right.

15 A. And if it would come to me I can say with
16 certainty, and the best of my knowledge, from nobody
17 else.

18 Q. Right. So, about a week before the closing
19 you were reassigned to be Mr. Whitfield's loan officer?

20 A. Right.

21 Q. There wouldn't have been anybody else
22 dealing with Mr. Whitfield other than you in that
23 period of time?

24 A. Prior to myself working on it, I know Angie
25 Bell and Willard Stout had involvement.

1 Q. Right. But after you were assigned up
2 until June 28, 2012, you would have been the only
3 person dealing with Mr. Whitfield regarding these
4 renewals?

5 **A. Correct. Unless it went through Charlie**
6 **Rivers or somebody higher in the ranks than me.**

7 Q. And one of the subjects for the 30(b)(6)
8 deposition, Item Number 12, which I think Brian and
9 Seth indicated that Scott Warren would be speaking to,
10 but in light of your E-mail yesterday, I would assume
11 that would be Mr. Werking, because it asked for the
12 person with the most knowledge as to any advice Harbor
13 National Bank received as to the technicalities,
14 preparation of the closing of Mr. Whitfield's loans
15 through July of 2012, and that wouldn't be something --

16 **A. We were talking about June 28?**

17 Q. Right.

18 **A. After June 28 when we were trying to get**
19 **the title endorsement and were working on that up until**
20 **getting to the closing table, that was what we were --**
21 **that was the avenue that was preferred by Mr.**
22 **Whitfield, and after that we -- there was discussion of**
23 **putting her on the mortgage or having her sign the**
24 **mortgage if we couldn't get the endorsement.**

25 Q. Okay. And I just want to be clear about

1 what you're telling me, and I think, based on your
2 previous testimony from your first deposition, you
3 indicated that when you met with him the day before the
4 closing you may need a title endorsement or the wife to
5 sign a mortgage --

6 **A. Correct.**

7 Q. -- and you indicated that it would maybe be
8 easier to get a title endorsement versus having the
9 ex-wife sign a mortgage, is that accurate?

10 **A. No, not -- well, easier. As it was**
11 **explained to me by Mr. Whitfield, he did not want to**
12 **contact the ex-wife, and it was easier from that**
13 **standpoint if he was not willing to contact the ex-wife**
14 **to have her sign a mortgage. It was the most -- it was**
15 **the best opportunity to meet his requirements and mine**
16 **and the bank's.**

17 Q. Okay. So it's your understanding that a
18 title endorsement could have been procured without
19 having Mrs. Whitfield have any say in the matter
20 whatsoever, is that your understanding?

21 **A. That would be up to the title company, not**
22 **myself as far as whether she had any say and whether**
23 **they would just write it. So, we've gone through a**
24 **number of E-mails and discussions. Whether she would**
25 **ultimately have to sign, you could say after the fact,**

1 **yes or no. I don't write the endorsement.**

2 Q. I understand, but it sounds like --

3 **A. That was -- that was the -- if we could do**
4 **it without Mr. Whitfield contacting Cindy if the title**
5 **company was simply going to provide that endorsement,**
6 **yes, that would have made Mr. -- I believe Mr.**
7 **Whitfield happy and satisfied our needs at the same**
8 **time.**

9 Q. Okay. And it's your -- you were operating
10 under the assumption I believe at that point in time
11 that procuring the title endorsement would not entail
12 having to deal with Mrs. Whitfield, is that accurate?

13 **A. Yes.**

14 Q. Okay. And Mr. Whitfield was not demanding
15 a title endorsement, correct?

16 **A. No.**

17 Q. That was something that came from you from
18 Mr. Swanson, correct?

19 **A. Yes.**

20 Q. Okay.

21 **A. Or it was discussed with Swanson, whether**
22 **he brought the idea or I did.**

23 Q. And we covered that in your last deposition
24 I think?

25 **A. Yeah.**

1 Q. You never saw Mr. Whitfield's divorce
2 decree?

3 **A. I don't believe so.**

4 Q. Is that in the bank's possession anywhere?

5 **A. Not that I've -- no, I don't believe so.**
6 **If they have gotten it after the fact or -- it wasn't**
7 **in the file.**

8 Q. Okay. And in this exhibit, the one you've
9 got right there, the bank compliance person is
10 indicating that, "If the husband is responsible for
11 providing the home to the wife per the divorce decree,
12 it is really important to see if the bank attorney
13 believes the bank is protected."

14 At that point in time did you follow-up
15 regarding anything about the divorce decree or
16 procuring it, or did anybody ask you for it?

17 **A. After July 2?**

18 Q. Right. After you received this E-mail.

19 **A. No, huh-uh. No.**

20 Q. And I think we covered that in your first
21 deposition.

22 Were these renewals a -- was it a refinance
23 of the previous loans?

24 **A. Was it a refinance of the previous loans?**

25 Q. Uh-huh. Would you describe it as a

1 refinance?

2 **A. No.**

3 Q. Do you know why the bank wanted to use a
4 closing attorney if it wasn't a refinance?

5 **A. Why we wanted a closing attorney?**

6 Q. Right.

7 **A. Yeah. There were a couple of reasons.**
8 **There was obviously discussions with Mr. Whitfield**
9 **prior to my involvement and during my involvement that**
10 **he felt that he didn't understand the original**
11 **documents, what his -- had represented, and we wanted**
12 **to make sure he had a very clear understanding, and for**
13 **him to have counsel.**

14 Q. Because there were some disagreements over
15 the bank's interpretation of the loan -- the previous
16 loan documents and Mr. Whitfield's interpretations?

17 **A. Correct.**

18 MR. DUFFY: Object to the form.

19 Q. Is that why on the June 26 letter you put
20 in here that, "The proposed renewals/modifications will
21 be closed under the supervision of the borrower's
22 attorney. The borrower's attorney must ensure (a) the
23 new closing documents are constructed and executed to
24 be enforceable loan documents and (b) ensure that the
25 parties signing the documents are educated about the

1 content, their responsibilities and the nature of their
2 involvement," is that why you put that in there?

3 **A. Yes. That's part of it, and then also to**
4 **make sure our interest was perfected.**

5 Q. Protected?

6 **A. Perfected, protected. Probably means the**
7 **same thing.**

8 Q. Okay. Is that customary language that you
9 use on term sheets or commitment letters?

10 **A. No, no. This was more detailed. Again,**
11 **if -- that is more detailed.**

12 Q. Okay. Crafted to this specific situation?

13 **A. Yes. Crafted to try to provide a simpler**
14 **explanation for Mr. Whitfield to understand.**

15 Q. Were you aware that the bank, before you
16 got involved, had drafted 60 day notes for Mr.
17 Whitfield to sign?

18 **A. I do remember seeing something about those.**
19 **I can't really -- that wasn't during my time. I can't**
20 **really speak to them.**

21 Q. Do you know whether those documents were
22 intended to be executed with the supervision of an
23 attorney?

24 **A. Again, I can't speak to 60 day notes and**
25 **wasn't involved. I'm not avoiding your question, I'm**

1 **just not the one that was involved or in a position to**
2 **answer it.**

3 Q. That would be Ms. Bell because she was the
4 loan officer at that time?

5 **A. Correct, correct.**

6 Q. Are you still employed by the Bank of North
7 Carolina?

8 **A. Yes.**

9 Q. Did they move you to the same position?

10 **A. Yes. Similar, but probably a different**
11 **title, same responsibilities.**

12 Q. So you're still a commercial loan officer?

13 **A. Uh-huh.**

14 Q. Just a different title?

15 **A. I think they call it commercial**
16 **relationship manager instead of commercial lender.**

17 Q. Is Ryan Griffin still employed by the Bank
18 of North Carolina?

19 **A. Yes.**

20 Q. Kathy Hall?

21 **A. Yes.**

22 Q. Mark Shannon?

23 **A. No.**

24 Q. What about Ryan Werking?

25 **A. Yes.**

1 Q. Alicia Ward?

2 A. No.

3 MR. DUFFY: I'm going to object to
4 these questions. I don't know that he's prepared on
5 behalf of the bank to answer who all works there and
6 doesn't work there and what their capacity is.

7 A. I'm probably not the best person.

8 Q. I mean, if you don't know, you can tell me
9 you don't know.

10 MR. DUFFY: Well, I haven't prepared
11 him to answer those, so he's not going to.

12 MR. HALVERSEN: Well, they're fact
13 questions. I mean, he either knows them or he doesn't
14 know them --

15 MR. DUFFY: Not -- if he works there
16 has nothing to do with the topics that are raised about
17 what happened in 2012, and he's not going to answer
18 them.

19 MR. HALVERSEN: Are you instructing
20 him not to answer?

21 MR. DUFFY: Absolutely. It's way
22 outside his scope of the deposition.

23 MR. HALVERSEN: Well he's already
24 answered some of them. Are you instructing him from
25 now ongoing not to answer them?

1 MR. DUFFY: Could you repeat my last
2 answer, please?

3 (Whereupon, the last response was
4 read back.)

5 MR. DUFFY: Well, you know, we can
6 leave it as is. Yes, I'm objecting and instructing him
7 not to answer anything that has something to do with
8 2015 instead of 2012, which are the topics he was
9 designated to answer.

10 MR. HALVERSEN: These people worked
11 there in 2012, but we'll just set it aside for now.

12 BY MR. HALVERSEN:

13 Q. Does the bank have any relationship with
14 Robert Pratt?

15 A. I believe so.

16 MR. DUFFY: I'm going to object and
17 ask what the relevance is to those topics, 7 and 8 and
18 1 for the time frame listed?

19 Q. During the time frame of 2012, did the bank
20 have any relationship with Mr. Robert Pratt?

21 MR. DUFFY: Same objection. It has
22 nothing to do with the topic and the time frame is
23 irrelevant.

24 MR. HALVERSEN: Okay.

25 BY MR. HALVERSEN:

1 Q. All right. We're going to take a break and
2 I think we're pretty much done. I'll just see if
3 there's any follow-up questions I have for you.

4 (Whereupon, a short recess
5 was taken.)

6 MR. HALVERSEN: I don't have any
7 more questions for you. Your attorney may have some
8 questions or he may not.

9 MR. DUFFY: I don't have any. Thank
10 you.

11 (The deposition was concluded at 3:24
12 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF CHARLESTON)

5 I, Douglas K. Liperote, the officer before
6 whom the foregoing deposition was taken, do hereby
7 certify that the witness whose testimony appears in the
8 foregoing deposition was duly sworn by me; that the
9 testimony of said witness was taken by me to the best
10 of my ability and thereafter reduced to typewriting
11 under my direction; that I am neither counsel for,
12 related to, nor employed by any of the parties to the
13 action in which this deposition was taken, and further
14 that I am not a relative or employee of any attorney or
15 counsel employed by the parties thereto, nor
16 financially or otherwise interested in the outcome of
17 the action.

18

19 _____ Date _____

20

Douglas K. Liperote

21

Notary Public in and for the

22

County of Charleston

23

State of South Carolina

24

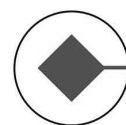
25 My commission expires August 15, 2015.

In the Matter Of:

HARBOR NATIONAL BANK vs ANTHONY WHITFIELD

DAVID SWANSON

April 18, 2017



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1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

4 VIDEOTAPED DEPOSITION OF DAVID M. SWANSON

5 HARBOR NATIONAL BANK,

6 Plaintiff,

7 vs. CASE NO. 2012-CP-10-5887

8 ANTHONY WHITFIELD, CINDY WHITFIELD AND DAVID SWANSON,

9 Defendants.

10
11
12
13 DEPONENT: DAVID M. SWANSON

14 DATE: April 18, 2017

15 TIME: 2:06 PM

16 LOCATION: HAYNSWORTH SINKLER BOYD, P.A.
17 134 Meeting Street
18 3rd Floor
 Charleston, SC 29401

19 REPORTED BY: NANCY ENNIS TIERNEY, CSR (IL)

20
21
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23
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25

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39 ALSO PRESENT: Anthony M. Whitfield
40 Doug White - Clearview Legal Video

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1 THE VIDEOGRAPHER: The date today is
2 April 18th, 2017, and the time is 2:06. This is the
3 video deposition of David Swanson in the matter of
4 Harbor National Bank vs. Anthony Whitfield, et al.,
5 being heard in the State of South Carolina, the Court of
6 Common Pleas, County of Charleston, Case Number
7 2012-CP-10-5887.

8 This deposition is being held at Haynsworth
9 Sinkler Boyd located at 134 Meeting Street in
10 Charleston, South Carolina.

11 Counsel, please identify yourselves for the
12 record.

13 MR. SLOTCHIVER: Dan Slotchiver for Anthony
14 Whitfield.

15 MR. HALVERSEN: Brent Halversen for Anthony
16 Whitfield.

17 MR. DUFFY: Brian Duffy here for the bank
18 parties.

19 MR. OVERSTREET: David Overstreet
20 representing David Swanson.

21 MS. GARAN: Kassandra Garan here for Cindy
22 Whitfield.

23 DAVID SWANSON, having been first duly sworn,
24 testified as hereinafter set forth.

25

1 EXAMINATION

2 BY MR. SLOTCHIVER:

3 Q. Mr. Swanson, we met a few minutes ago. I'm Dan
4 Slotchiver, and I am taking your deposition in the case
5 captioned Harbor National Bank vs. Anthony Whitfield,
6 Cindy Whitfield and David Swanson.

7 I think it's a little more elaborate than
8 that, but we will leave it at that for this purpose.

9 You have given a deposition in this case
10 already, correct?

11 **A. Yes, sir.**

12 Q. Or in the preceding case before it was amended?

13 **A. In some case. I don't know which one it was.**

14 Q. You understand the rules of depositions?

15 **A. I can't swear to that either.**

16 Q. All right. Well, let's go through it briefly
17 with you then. I am going to ask you questions about
18 your knowledge pertaining to this case and facts
19 surrounding it.

20 I am going to ask at any time if you don't
21 understand my question, will you please let me know,
22 stop me and let me know?

23 **A. I will.**

24 Q. I am going to ask that you answer any question
25 that I give you orally. If you nod your head or say

1 uh-huh or huh-huh, the problem is the court reporter
2 cannot take that down accurately.

3 **A. Good. I understand.**

4 Q. If at any point you need a break, it's not an
5 endurance test. If you want to break any time, let me
6 know and we will be happy to give it to you.

7 **A. Okay.**

8 Q. Is that fair enough?

9 **A. That's fair.**

10 Q. Anything prohibiting you from giving your
11 deposition today?

12 **A. No.**

13 Q. I am going to show you a copy of what is labeled
14 Amended Re-Notice of Deposition for David Swanson marked
15 as Exhibit 1 and ask if you have seen this before.

16 **A. Well, David Overstreet sent me a Notice of**
17 **Deposition, so if this is the same one, yes, I have seen**
18 **it before.**

19 Q. Who is Mr. David Overstreet to you, sir?

20 **A. He's my lawyer.**

21 Q. Okay. Other than his firm, are you being
22 represented by any other counsel on this matter?

23 **A. I mean, we have an in-house counsel, Mr.**
24 **Quattlebaum, but I think probably David, he's definitely**
25 **in charge.**

1 Q. Is Haynsworth Sinkler Boyd also defending you in
2 this matter?

3 A. No.

4 Q. Okay. Let's go ahead and mark that and then I
5 will ask you some questions about it.

6 (Defendants' Exhibit No. 1 was marked for
7 identification.)

8 Q. (BY MR. SLOTCHIVER): Contained within this
9 Notice we have attached an Exhibit A that asked you to
10 bring with you two different categories of items. The
11 first one is all documents reviewed prior to and in
12 preparation for your first deposition on May 13, 2014.

13 Have you brought any documents in response
14 to this subpoena?

15 A. No. I have not brought anything.

16 Q. Is there a reason why you could not bring the
17 documents?

18 A. Well, two thousand -- May 13, 2014 was a long
19 time ago, and if I -- I'm just thinking back as to what
20 I reviewed for that, and I don't think I reviewed
21 anything more than pleadings and depositions.

22 And it would have been the same depositions,
23 if they were there, Scott Warren's and Barry Sloop's, or
24 whoever's deposition was available. That's all I would
25 have --

1 Q. Okay. Fair enough. Would you go through and
2 list for me what you would have reviewed, whether it's
3 pleadings -- I know you have referenced the depositions
4 you would have seen, but what pleadings or other
5 documents would you have read in preparation for your
6 deposition?

7 **A. I can't remember that far back as to exactly what**
8 **I reviewed.**

9 Q. Would there be anything that would refresh your
10 recollection?

11 **A. I don't think so.**

12 Q. How about in category Number 2 on the Notice? It
13 says, "All documents reviewed prior to and in
14 preparation of your second deposition, such deposition
15 set to occur on April 18, 2017", which is today.

16 Have you brought with you any documents in
17 response to Category 2 of the subpoena?

18 **A. No.**

19 Q. Are you able to identify each item responsive to
20 this category?

21 **A. Yes. For this deposition I reviewed, again, I**
22 **reviewed my testimony, my deposition transcript from the**
23 **2014 deposition. I reviewed Barry Sloop's deposition**
24 **and I reviewed Scott Warren's deposition.**

25 Q. Anything else?

1 A. That's it.

2 Q. No pleadings?

3 A. No pleadings. Now, I mean, I will say that
4 throughout the years, intervening between those two
5 depositions, from time to time David Overstreet or -- I
6 don't know where they would come from, but I would end
7 up with an e-mail with some pleadings or motions or
8 things like that and I would read them, sometimes, not
9 all the time.

10 Q. Have you had any conversations with anybody other
11 than Mr. Overstreet about your testimony set for today?

12 A. Well, no. I mean, I talked to -- you-all took
13 Nick's deposition, and he came into my office and I
14 talked to him about his -- he talked to me about his
15 deposition, but --

16 Q. What did he tell you?

17 A. Nothing, just about what went on and what kind of
18 questions were asked to him.

19 Q. Can you elaborate a little bit?

20 A. Like how we open up files and stuff like that,
21 you know, and phone calls, something about some phone,
22 how phone calls were stored or whatever. I don't --
23 that's about what he told me.

24 Q. Anything he told you that was surprising?

25 A. Not really.

1 Q. Anything he told you that you disagreed with?

2 A. No.

3 Q. Have you talked to anybody else about this case
4 other than Mr. Overstreet since your last deposition?

5 A. Since my last -- since 2014?

6 Q. Yes, sir, since 2014.

7 A. Well, again, from time to time I talk to people
8 at Bank of North Carolina or Harbor, or whatever name it
9 was using at whatever time, and Charlie Rivers, perhaps,
10 Willard Stout.

11 And, you know, they just -- it comes up in
12 conversation. It's not -- I don't rush in and talk to
13 them about this case. It just comes up.

14 Q. Well, and since you referenced that, let's talk
15 about where we are right now. We are at your office at
16 Haynsworth Sinkler Boyd, correct?

17 A. Correct.

18 Q. On Meeting Street?

19 A. Yes.

20 Q. Right down from the courthouse?

21 A. Yes.

22 Q. And you are on the 3rd floor?

23 A. Yes.

24 Q. Where is that in relationship to the Harbor
25 National Bank, now Bank of North Carolina?

1 **A. They are on the 1st floor.**

2 Q. Okay. So you see them on a regular basis?

3 **A. Yeah. I have known Charlie Rivers all my life,**
4 **friend of mine.**

5 Q. What have you talked to Mr. Rivers about?

6 **A. Nothing. He talks to me, but he doesn't -- you**
7 **know, this lawsuit is not something that -- he doesn't**
8 **give me any great details. He just tells me it's a --**
9 **you know, it's a case that, of course, they would rather**
10 **not be involved in.**

11 Q. Has he discussed the pleadings with you?

12 **A. No.**

13 Q. Has he discussed any of the allegations with you?

14 **A. No.**

15 Q. How about Mr. Stout?

16 **A. No.**

17 MR. OVERSTREET: Dan, I don't mean to upset
18 your flow, but just with reference to the exhibit on the
19 Depo Notice, as we discussed off the record before we
20 started, I am happy to provide you with a copy of those
21 three depositions for Number 2. I assume you already
22 have them, but I can go get you copies.

23 MR. SLOTCHIVER: I have them. I am just
24 trying to identify what he would have looked at --

25 MR. OVERSTREET: Sure.

1 MR. SLOTCHIVER: -- in preparation. If it
2 was anything outside of the documents that I have access
3 to, I would have asked you to do that. But, no, we're
4 fine. Thank you.

5 Q. (BY MR. SLOTCHIVER): Did Mr. Nicholson tell you
6 that we discussed areas such as conflict checks and
7 general files?

8 A. Oh, well, yeah. General files, yeah.

9 Q. Okay. How about conflict checks?

10 A. No, we didn't talk about conflict checks.

11 Q. Do you participate in conflict checks? Is that
12 part of your protocol?

13 A. Yeah. Yes.

14 Q. I heard you.

15 A. No, I wanted to make sure the court reporter did.

16 Q. Tell me what you do when a case comes in in order
17 to confirm there is not a conflict.

18 A. If a case comes in, then I ask my secretary to
19 set up a file. In order to set up a file she needs
20 certain information. She needs names, client, anybody
21 that may be adversarial with the matter involved,
22 certain things that are coded somewhere.

23 And then those go out on a conflict check,
24 or go into a system, go to some other person who then
25 puts them out on our daily conflict checks. Then they

1 go to the firm as a whole to check with -- to check for
2 conflicts, and anybody that may have a problem will call
3 in or e-mail or whatever.

4 Q. Is there a timeline between when the conflicts
5 checks go out and when you first give legal advice?

6 A. Well, yes and no. Before we get a file opened,
7 it takes probably a day, or a day and a half, two days,
8 unless there is a conflict.

9 If a conflict comes up -- I mean, what that
10 system does is it cross-references. It does a data
11 search, I guess, of every single file the firm has ever
12 opened going way, way back, and so frequently there is a
13 big stack of potential conflicts, and so then you have
14 to kind of look through those to see if there is any
15 real conflict.

16 And then after you get through all of that,
17 then you say sign -- if there are some potential
18 conflicts, you have to sign a form that says no
19 conflicts and then a file is opened.

20 Now, in our fast-moving world today, lots of
21 times with clients it's somewhat of a judgment call, but
22 it's a very reasoned judgment call where you don't have
23 time to open a file.

24 If somebody calls you, and you know it's a
25 real live controversy and someone is seeking real live

1 advice from you, well, you have to give it to them.

2 Or they need a contract right away, you
3 know, then sometimes we will start on preparing a
4 contract maybe a little bit ahead of time than a file is
5 officially opened.

6 Q. Even without knowing if there is a conflict?

7 A. Well, it's during, sort of, your internal
8 conflict check, I would call it. I have been here for
9 36 years, and you can get to know sort of who a firm
10 represents in that amount of time.

11 Now, you don't know it all, I agree, but you
12 know -- I'm talking about big clients, people you have
13 represented before. Brand-new clients, no, you have no
14 way of knowing. But for repeat clients, you have a
15 pretty good idea.

16 Q. So from the corporate, you would know the large
17 clients more than you would know the everyday people?
18 Is that a fair statement?

19 A. It just depends on what you call large and not so
20 large. For my clients, I pretty much know if there is
21 going to be a conflict or not, you know, a real
22 conflict.

23 Q. So if you know if there is going to be a
24 conflict, is it not necessary to do a conflict check?

25 A. Yes. We do a conflict check every time, no

1 **question about that.**

2 Q. Okay. You talked about some items that you would
3 want to know. I am going to hand you what has been --
4 we will mark this **Exhibit 2**. It's labeled at the top
5 New File Setup Sheet, and we understand this is the form
6 that was in existence back in 2012.

7 Have you seen that before?

8 **A. Yeah, I have seen it before. This is what my**
9 **secretary fills out.**

10 Q. Where does she get the information from in order
11 to fill that out?

12 **A. She gets it from me.**

13 Q. Do you fill that out yourself and then hand it to
14 her?

15 **A. No. You would give her something like a letter**
16 **of intent that has all the names on it, addresses, all**
17 **of that information, or I just tell her what it is.**

18 MR. SLOTCHIVER: Let's mark this as
19 **Exhibit 2**, please.

20 (Defendants' **Exhibit No. 2** was marked for
21 identification.)

22 Q. (BY MR. SLOTCHIVER): Under what circumstances is
23 a conflict check not necessary to be done, or is it
24 always done?

25 MR. OVERSTREET: Object to the form.

1 A. Well, I mean, it's -- I guess I would say when
2 I'm -- if I'm opening up a file that I'm going to send a
3 bill out on that I know I'm going -- it's going to be
4 sort of a real live file, then, yeah, we will do a
5 conflict check and open a file.

6 Because that gets -- that's how you generate
7 a bill, ultimately, is through file opening, and you
8 record time on a file, and then get a bill at the end of
9 whatever you are working on.

10 Q. How do you decide if it's a file that you're
11 going to open up in order to send a bill out on or if
12 it's a file that you're not going to open up?

13 A. It's just sort of a judgment call.

14 Q. What do you use as qualifiers to make that
15 determination? And, by example, is it the value of the
16 advice you are giving or is it the amount of time that
17 is going to be involved?

18 A. No. I mean, it may be the time involved, but if
19 it's -- in my business, the real estate business,
20 lending business, whatever, you frequently get calls
21 from clients, friends, whatever, and they will call and
22 ask you a question, a generic type question, no names
23 involved, say, hey, I have this certain situation, what
24 should I do, and so the question will be answered and
25 that will be the end of it.

1 You know, sometimes that will result later
2 on maybe in a follow-up call from this person, client,
3 and you may end up opening a file, maybe not.

4 Q. Do you consider those quick, short telephone
5 calls, are they -- are you giving legal advice or
6 general advice?

7 MR. OVERSTREET: Object to the form.

8 A. I'm just answering questions. You know, I
9 haven't been retained by anybody, and they are not
10 giving me names. They are not -- you know, they are not
11 paying me for it. So, no, I'm just answering the
12 question.

13 Q. (BY MR. SLOCHIVER): How would the client know
14 that -- strike that.

15 Under that scenario, is it your intent that
16 the client be able to rely on the advice you are giving?

17 A. Well, no. Under that scenario I don't think
18 there is any attorney-client relationship.

19 We have an engagement letter process, also,
20 that, you know, when we open a file -- when we haven't
21 done any work for a client previously, we send an
22 engagement letter, but I don't consider it an
23 attorney-client relationship at that time, not when we
24 are just talking generalities of "what if" type
25 situations.

1 Q. Do you know what the clients would consider it to
2 be?

3 MR. OVERSTREET: Object to the form.

4 A. I don't -- like I say, I don't call it a client.
5 You do, not me.

6 Q. (BY MR. SLOTCHIVER): With regard to the matter
7 at hand, Harbor National Bank, now Bank of North
8 Carolina, and Anthony Whitfield, did you do a conflicts
9 check?

10 A. No.

11 Q. What is a general file as opposed to a separate
12 file?

13 A. Well, a general file is a separate file, and it's
14 a -- it's just -- it's usually an 001, 0001 file.

15 I don't write general files, because what
16 happens is everybody else in the hall starts piling a
17 whole bunch of unrelated time entries into your file,
18 and it becomes difficult to build those files sometimes
19 because the client will look at them and see all of
20 these different things and say, well, what is all of
21 this? I don't use them. Well, I use them very
22 infrequently. I will say that.

23 Q. Did you open a general file in this matter at
24 hand.

25 A. In the Whitfield matter?

1 Q. Yes, sir.

2 A. No. I didn't open any file.

3 Q. What do you normally bill at? What was your
4 hourly rate back in 2012?

5 A. 2012?

6 Q. Yes, sir.

7 A. Don't know, but probably in the three hundreds,
8 \$350-an-hour range.

9 Q. And what increments do you normally bill at?

10 A. Increments? .2s, point -- you know, is that what
11 you mean?

12 Q. Yes, sir.

13 A. Yeah.

14 Q. And your typical client, is it generally
15 institutions, banking organizations, or is it generally
16 individual people?

17 A. It's a lot of both. I represent institutions,
18 and I represent individuals, and I represent real estate
19 investors, real estate companies.

20 Q. Do you remember having a conversation with Scott
21 Warren about Anthony Whitfield prior to the closing
22 taking place, which never took place?

23 A. Well, I'm a little confused about that, because I
24 thought the allegations were this conversation never
25 took place.

1 Q. Well, they are, sir. I'm asking do you remember
2 having that conversation?

3 A. Yes, I remember it.

4 Q. And have you had a chance to determine the exact
5 date and time of when that alleged conversation took
6 place?

7 A. No. I hadn't -- I didn't look back and memorize
8 all that. I'm sure you know it.

9 Q. Where would you look back to see it?

10 A. I wouldn't. I didn't write it down anywhere.
11 Well, where I would look back is in maybe one of those
12 depositions. And it was probably in there, I just
13 didn't commit it to memory.

14 Q. In a deposition that you gave or in a deposition
15 that somebody else would have given?

16 A. I don't think it -- I don't know if it was in
17 mine or not. I don't remember. It may have been in
18 Scott Warren's. I don't know.

19 Q. Well, I will represent to you that I wasn't here
20 at your first deposition.

21 A. I know.

22 Q. I have read the first deposition. I haven't seen
23 it in there. But I did see reference to, on Page 9 of
24 your deposition, where you said, "I hadn't gone back and
25 looked at the exact date and time of when that took

1 place."

2 But I was curious where you would go in
3 order to confirm when it took place. You are welcome to
4 look at that. I'm just reading it.

5 A. No, I believe you. No, I don't know where I
6 would look. I haven't looked back -- I don't know.

7 Q. Do you keep a journal or a document of some sort?

8 A. No. I don't have -- the only thing I keep is my
9 time, and I already looked at that. There is no time
10 written down. I didn't write down a time because I
11 didn't consider it something that I could bill, so --

12 Q. Why would it not have been something you could
13 bill?

14 A. Just because I get phone calls all the time like
15 that, and I don't bill them.

16 Q. When you are contacted and asked to give advice,
17 do you, in a real estate transaction, do you normally
18 like to look at the documents and the contracts before
19 you give that advice?

20 A. It all depends on how the phone call goes. You
21 know, if somebody is asking me, well, what do I do about
22 this contract, and here is what the provisions say, no,
23 I don't -- it just depends on what it is and what I'm
24 asked to do, what the fact situation is, what the
25 question is.

1 Q. Do you think it would have been prudent to have
2 looked at the historical real estate transactions, the
3 deeds, the mortgages with reference to Mr. Whitfield and
4 the Black Rush property prior to giving the advice that
5 you gave to the bank?

6 MR. OVERSTREET: Object to the form.

7 A. Well, no, because what I was asked was a very
8 generic type question. It didn't go into Mr. Whitfield.
9 It didn't go into a property address. It didn't go into
10 mortgages, you know, who had the mortgage, who -- you
11 know, it was a generic type question. That's the way it
12 was posed to me.

13 Q. (BY MR. SLOTCHIVER): What do you understand
14 about the Black Rush property now different than you
15 would have been advised then?

16 A. I don't really know a whole lot different from
17 what I was told then, if, in fact, that's the property
18 that Scott Warren was asking me about.

19 Q. Are you even confident that Mr. Whitfield was the
20 person for whom Scott Warren was asking about?

21 A. Well, subsequently I find that out, yes.

22 Q. How did you find that out to the point that you
23 are comfortable relying on that statement?

24 A. Well, it was probably reading some depositions or
25 reading some pleadings or something.

1 Q. How often would Scott Warren reach out to you for
2 advice?

3 A. Every so often, not extremely often.

4 Q. Could it have been a different piece of property
5 he was talking to you about with a different client?

6 A. I don't know. I don't think so. He doesn't
7 believe that.

8 Q. I'm more interested, sir, in what you can attest
9 to from your knowledge.

10 A. Well, I think all I can tell you is what Scott
11 and I talked about, right?

12 Q. Tell me about that conversation.

13 MR. OVERSTREET: Hold on. Go off the record

14 VIDEOGRAPHER: Off the record at 2:32.

15 MR. OVERSTREET: I have a list of all the
16 questions that were asked in the first deposition, and
17 the judge in the hearing said you can't ask the same as
18 the deposition. The one in the deposition asked is what
19 do you recall from Mr. Warren's phone call, so we can't
20 plow over that same ground.

21 MR. SLOTCHIVER: I don't think I'm going
22 into the phone call. But if he's going --

23 MR. OVERSTREET: What do you recall from the
24 phone call? Is that not what you just asked him?

25 MR. SLOTCHIVER: Is he talking about the

1 phone call or is he talking about subsequent
2 conversations he had with him?

3 MR. OVERSTREET: Do you want to read back
4 his question?

5 (Question read back.)

6 MR. SLOTCHIVER: I don't know what --

7 MR. OVERSTREET: The question asked from
8 Brent was what do you recall from that phone call. Is
9 that not the same question?

10 MR. SLOTCHIVER: I don't know if they are or
11 not. It depends on where the -- at what point it is the
12 conversation came from.

13 MR. OVERSTREET: We are talking about --

14 MR. SLOTCHIVER: I will be happy to clarify
15 with him, though.

16 MR. OVERSTREET: Go ahead.

17 MR. SLOTCHIVER: If it is the phone call, I
18 agree with you.

19 MR. OVERSTREET: Okay. Fair enough.

20 VIDEOGRAPHER: On the record at 2:33.

21 Q. (BY MR. SLOTCHIVER): Other than the conversation
22 that you allegedly had in the phone call with Scott
23 Warren, have you had any other conversations with Scott
24 Warren about these properties?

25 A. No.

1 Q. Let me show you a copy of the title to the real
2 estate and ask if you have seen that before.

3 MR. SLOTCHIVER: We can mark that as
4 Exhibit 3.

5 (Defendants' Exhibit No. 3 was marked for
6 identification.)

7 A. I don't know if I have seen it or not. I may
8 have seen it, again, in some of these pleadings or
9 motions or memorandums in support of motions or
10 whatever, but --

11 Q. (BY MR. SLOTCHIVER): Just to be to clear, and it
12 will help us in moving matters along, did you see any
13 documents prior to -- prior to allegedly giving the
14 advice to Scott Warren on the telephone?

15 A. No.

16 Q. Do you see in the third paragraph of this
17 document where it says, "This conveyance, and acceptance
18 by grantee of this deed, is subject to the terms and
19 conditions and outstanding balance due under that
20 certain real estate mortgage to Harbor National Bank in
21 the original principal amount of \$325,000, and duly
22 recorded in the RMC office"?

23 MR. OVERSTREET: Is this identified as one
24 of the documents in the Notice that you were going to be
25 asking him about in this deposition?

1 MR. SLOTCHIVER: I'm sorry?

2 MR. OVERSTREET: Is this identified, under
3 the rules, as one of the documents you would be asking
4 about in this deposition, the 30(j)?

5 MR. SLOTCHIVER: I don't think we are
6 limited under the documents we can ask about in this
7 deposition. He's named as a party in the matter.

8 MR. OVERSTREET: So is the answer to that
9 question no? Because I get to step out and talk to him
10 about the document if you haven't identified it. I
11 don't see it here. We can pull the rule, if you want.
12 I think it's 30(j)(5) or something like that.

13 MR. SLOTCHIVER: Let's go off the record for
14 a second.

15 VIDEOGRAPHER: Off the record at 2:35.

16 MR. OVERSTREET: You need to identify the
17 document you are asking about two days before the
18 deposition.

19 MR. SLOTCHIVER: That's fine. You can talk
20 about it. You can talk about this one, also, if you are
21 going to do it.

22 MR. DUFFY: What is that one?

23 MR. OVERSTREET: The mortgage.

24 I can group them. It will be faster.

25 Do you have any more you want us to talk about?

1 MR. SLOTCHIVER: I might. I have some
2 pleadings. I have got some pleadings we intend to ask
3 him about.

4 MR. OVERSTREET: Okay. And we can go
5 document by document, however you want to do it.

6 MR. SLOTCHIVER: If you want to talk, that's
7 fine. I don't have that many documents, but I did have
8 pleadings.

9 MR. OVERSTREET: Anything you are going to
10 show him and ask him questions about is what I'm
11 interested in.

12 MR. SLOTCHIVER: Sure. You are welcome to
13 look at them. I will tell you, I have a copy of the
14 pleadings, the responsive pleadings in Berkeley and
15 Dorchester County, and I plan to ask him about those and
16 the answers to them. They are all pretty much the same,
17 but if you want them, I will give you copies of them.

18 MR. OVERSTREET: Yeah. Whatever you are
19 going to put in front of him, I want to see.

20 MR. SLOTCHIVER: Sure. I think this is it.

21 MR. OVERSTREET: Okay.

22 (A recess was taken.)

23 VIDEOGRAPHER: On the record at 2:44.

24 Q. (BY MR. SLOTCHIVER): Mr. Swanson, before we jump
25 back into the question I was asking before we took a

1 break, let me ask you this, and I was looking during the
2 break to see.

3 What was the generic question that you were
4 asked? I didn't see that term used in your prior
5 deposition.

6 **A. The generic question by Scott Warren?**

7 Q. Yes, sir.

8 **A. Well, I say generic question. It may have been**
9 **more than one question. But the general facts were that**
10 **there was a -- the bank had a mortgage on a piece of**
11 **property. That piece of property -- a half interest in**
12 **that piece of property was transferred. I don't know**
13 **whether he told me it was pursuant to the divorce**
14 **decree. I think he did. I just don't remember.**

15 **And then they wanted to modify that**
16 **mortgage, and so the question being can we modify that**
17 **mortgage without getting the half of -- the 50 percent**
18 **undivided property owner to sign onto.**

19 Q. Okay.

20 **A. Or consent, whatever.**

21 Q. Anything else?

22 **A. No. That was the question.**

23 Q. Can you give an answer to that question without
24 looking at the title or the mortgage?

25 **A. Yes.**

1 Q. How?

2 A. Well, if I'm giving that sort of advice to a
3 lender, and I presume that's why Scott was calling me,
4 was he was going to say, okay, as lender's attorney what
5 would you do in this situation.

6 And I would say -- or what I told him was
7 that, well, in order to be the -- sort of the prudent
8 path to follow would be to get a title update and pass
9 that risk -- any risk that may be associated with the
10 transfer of that one-half undivided interest, transfer
11 that risk to a title company by way of an endorsement to
12 the existing title policy.

13 Q. Before we took a break I showed you a copy of the
14 title to the real estate, which is now marked as
15 Exhibit 3, and the language that says, "This conveyance,
16 and accepted" (sic) "by the grantee of the deed", who,
17 as the document references, this is a conveyance from
18 Anthony Whitfield to Cynthia -- Cindy Whitfield, "is
19 subject to the terms and conditions of the outstanding
20 balance due under that certain real estate mortgage."

21 Do you see that language?

22 A. I see it.

23 MR. OVERSTREET: I'm sorry, Dan. Do you
24 have another copy?

25 THE WITNESS: Here is two of them right

1 **here.**

2 MR. OVERSTREET: Are there two of them?

3 Well, you need to look at one of them.

4 **THE WITNESS: Well, there is another one.**

5 MR. OVERSTREET: Thank you. I'm sorry.

6 Q. (BY MR. SLOTCHIVER): What does that mean to you?

7 MR. OVERSTREET: Object to the form.

8 **A. Well, all that's stating is that the property is**
9 **conveyed subject to the mortgage.**

10 Q. (BY MR. SLOTCHIVER): Okay. Let me show you a
11 copy of the mortgage. We will mark this as **Exhibit 4**.

12 (Defendants' **Exhibit No. 4** was marked for
13 identification.)

14 Q. (BY MR. SLOTCHIVER): Have you seen this document
15 prior to today?

16 **A. I don't know. I can't swear that I have not, so**
17 **I may have seen it attached to a complaint or a**
18 **foreclosure or a deposition -- not a deposition, or a**
19 **pleading or whatever.**

20 Q. Let's ask it differently. Have you seen this
21 document prior to the lawsuit?

22 **A. No, I have not seen it prior to the lawsuit.**

23 Q. And if you look at the second page of the
24 document under Number 4 where it states, "Secured debt
25 defined. The term 'secured debt' includes, but is not

1 limited to the following: The promissory note(s),
2 contract(s), guaranty(ies) or other evidence of debt
3 described below and all extensions, renewals,
4 modifications or substitutions."

5 Do you see that language?

6 **A. I see it.**

7 Q. What does that mean to you?

8 MR. OVERSTREET: Object to the form.

9 **A. Well, it just -- it means what it says.**

10 Q. (BY MR. SLOCHIVER): Okay.

11 **A. What it means is that the mortgage will continue**
12 **to secure that note and all extensions, renewals and**
13 **modifications. Just what it says.**

14 Q. Is it your testimony that you were able to give
15 advice to the bank regarding the status of the legal
16 title to property without ever reviewing the title or
17 the mortgage, these documents right here that you have
18 just looked at as Exhibits 3 and 4?

19 **A. What my testimony was is that in order to proceed**
20 **with caution with this half interest being convey -- an**
21 **intervening conveyance of the one-half undivided**
22 **interest in this property, that the prudent way for the**
23 **bank to move forward would be to get an endorsement to**
24 **their title commitment.**

25 Q. So you did give them advice, legal advice?

1 **A. That's what I told them they should do in that**
2 **situation.**

3 Q. You would agree that was legal advice?

4 MR. OVERSTREET: Object to the form.

5 **A. Whatever you want to call it.**

6 Q. (BY MR. SLOTCHIVER): Well, I'm just trying to
7 confirm with you. Would you agree that that is legal
8 advice?

9 MR. OVERSTREET: Objection.

10 **A. I don't know what you call it. You know, that's**
11 **what I'm telling you. I'm not sure what the definition**
12 **of legal advice is, but it -- I mean, they were calling**
13 **me with a question.**

14 **They didn't say they had a loan that they**
15 **were about to extend, modify or whatever. He just told**
16 **me the question that he had.**

17 Q. (BY MR. SLOTCHIVER): I read your deposition,
18 sir, and in it on Page 19 the question was, "Did you
19 tell Mr. Warren that obtaining the title endorsement in
20 a situation was something that was absolutely necessary
21 or advisable, or did you give any equivocation on
22 getting the title endorsement as a prerequisite to doing
23 this deal?"

24 And your response was, "Well, he asked me my
25 advice as to whether he should do it without -- with or

1 without, and I told him to get a title endorsement?"

2 **A. Good.**

3 Q. So that was your term, not mine, that you gave
4 him advice?

5 **A. I gave him advice, yes.**

6 Q. Hindsight is a funny thing. But now that you
7 have had an opportunity to read these documents, would
8 you have still given the same advice to Mr. Warren?

9 **A. Absolutely.**

10 Q. Was there a reason why you couldn't review the
11 documents?

12 **A. I don't know. I don't have any idea. I wasn't**
13 **asked to review the documents.**

14 Q. Would you agree with me that these documents
15 allow for extensions and contemplate them?

16 **A. These documents do not provide the level of**
17 **assurance to the bank that they will continue to have an**
18 **effective lien on that property --**

19 Q Under what --

20 **A. -- in the face of that conveyance of an undivided**
21 **one-half interest to Cindy Whitfield.**

22 Q. Have you read the document that provides the
23 basis for the one-half conveyance?

24 **A. The deed?**

25 Q. Or the divorce decree?

1 **A. No, I haven't read the divorce decree.**

2 Q. Would that be helpful to you, to read the divorce
3 decree?

4 **A. I don't know.**

5 Q. Is there a reason that you could not have asked
6 to see it?

7 **A. I didn't -- well, no, nobody offered it or --**
8 **nobody asked me to review a divorce decree. I had a**
9 **limited set of facts that I was asked to give advice on.**

10 Q. Did you tell the client that with the limited set
11 of facts you could only give limited advice?

12 **A. I did give kind of limited advice. It was**
13 **limited to the set of facts he gave me.**

14 Q. Did you understand that you were under any kind
15 of time constraints and he needed an answer before you
16 could perform a full analysis?

17 MR. OVERSTREET: Object to the form.

18 **A. He just asked me a question and I answered it. I**
19 **didn't get into details about time and documents, and he**
20 **didn't offer any, so I answered the question.**

21 Q. (BY MR. SLOTCHIVER): In a perfect world of
22 giving real estate advice, wouldn't it be beneficial to
23 look at all the documents before you give an opinion?

24 **A. It just depends on the context of the phone call.**
25 **This was a very -- there wasn't any indication that**

1 **there were -- that there was anything but that question**
2 **that he needed answered or that he wanted my thoughts**
3 **on, which I gave him.**

4 Q. You agree that this transaction could have been
5 effective without a title endorsement, correct?

6 **A. No, I don't -- not from the bank's perspective.**

7 Q. Do you remember testifying previously that the
8 transaction could have been effective without the title
9 endorsement?

10 **A. Well, anything can be done --**

11 MR. OVERSTREET: Object to the form.

12 **A. -- without anything.**

13 MR. OVERSTREET: Hold on a second. Let's go
14 off the record.

15 VIDEOGRAPHER: Off the record at 2:54.

16 MR. OVERSTREET: Now, one thing the judge
17 did do is let him come back here and ask him a bunch
18 more questions because he's now a party. He said you
19 specifically cannot ask the same questions.

20 I don't know that the judge contemplated
21 that you would read his own testimony back to him and
22 then start asking him questions about that, but I would
23 presume to say he would probably say that was out of
24 bounds as well.

25 MR. SLOTCHIVER: What page are you looking

1 at?

2 MR. OVERSTREET: What page am I looking at
3 of the hearing?

4 MR. SLOTCHIVER: Of the deposition, of the
5 deposition transcript.

6 MR. OVERSTREET: I'm not looking at a page.
7 I'm talking to you about the judge and the Court ruling
8 as to what you could ask him today.

9 Do you understand what I'm saying?

10 MR. SLOTCHIVER: I do. What's the issue?

11 MR. OVERSTREET: Do you want me to restate
12 everything I just said?

13 MR. SLOTCHIVER: Sure.

14 MR. OVERSTREET: Was it not clear the first
15 time?

16 MR. SLOTCHIVER: I don't think it was.

17 MR. OVERSTREET: Okay. The judge allowed you
18 to depose him for a second time because you guys brought
19 him in as a party. So going against the rule that says
20 you can only depose a person once, he allowed you to
21 depose him again, but he put some limitations on that.

22 One of those was you can't ask him the
23 exact same questions. You can go into the subject
24 matter, but you can't ask him the exact same questions.

25 My point is, I think if the judge knew

1 you were handing -- you were asking him questions about
2 how he answered in his first deposition, he would have
3 prevented that as well.

4 MR. SLOTCHIVER: Well, the only time I asked
5 him a question about how he answered the first time
6 was --

7 MR. OVERSTREET: This is the second time
8 you've done that. This is the second time. I'm not
9 going to sit here all afternoon for you to say you said
10 this the first time. This isn't trial. You don't get
11 to depose him twice and then cross him on the stand.

12 MR. SLOTCHIVER: David, if he gives me a
13 response which seems to be inconsistent with what I
14 understand he has said before, I get to ask him about
15 it, okay? That's it. Otherwise, I'm not going to do
16 it.

17 MR. OVERSTREET: But you shouldn't be asking
18 him the question in the first place, Dan. You were
19 supposed to ask him questions the first time, which
20 Brent did. Now you can't come back and re-plow the same
21 ground.

22 MR. SLOTCHIVER: I'm not trying to re-plow
23 the same ground. I'm really not.

24 MR. OVERSTREET: That is exactly what you
25 are doing. When you are saying he said this two years

1 ago, now let me ask you about it and see if you still
2 agree with it.

3 MR. SLOTCHIVER: Well, the difference is I'm
4 showing him documents and asking him if those documents
5 changed his opinions.

6 MR. OVERSTREET: Yeah. You are showing him
7 documents he's never seen before.

8 MR. SLOTCHIVER: I think I can do that.

9 MR. OVERSTREET: You are showing him on the
10 fly and why don't you tell me your legal opinions about
11 that.

12 MR. SLOTCHIVER: I get it. I know. I can
13 do that. He wasn't a party before. Now this stuff
14 became relevant. It wasn't relevant before.

15 MR. OVERSTREET: It wasn't relevant before?

16 MR. SLOTCHIVER: No.

17 MR. OVERSTREET: You also argue that the
18 phone call never happened in the first place. How is
19 that relevant anyway? If the phone call never happened,
20 who cares what he looked at?

21 Your theory in your pleadings is that
22 he's lying about the phone call, so what does this have
23 to do with anything?

24 MR. SLOTCHIVER: And one of the defenses
25 that has been asserted by the bank is reliance on

1 counsel, and I'm trying to determine --

2 MR. OVERSTREET: You keep saying that. You
3 keep saying that, but I don't see that anywhere.

4 MR. SLOTCHIVER: -- whether or not this is
5 appropriate.

6 You don't see it in the pleadings?

7 MR. OVERSTREET: Yeah. Where is that raised
8 exactly?

9 MR. HALVERSEN: Paragraphs 38, 39.

10 MR. OVERSTREET: Is it an affirmative
11 defense?

12 MR. HALVERSEN: It says for a first defense
13 to the --

14 MR. OVERSTREET: So it's not an affirmative
15 defense?

16 MR. HALVERSEN: Or a defense -- it does not
17 say the word affirmative.

18 MR. OVERSTREET: Well, we can keep going. I
19 mean, it's fine. I'm not going to stop the deposition.

20 What I'm not going to do, though, and we
21 can go talk to the judge again about it if you want to,
22 is I'm not going to let you go and say did you say this
23 three years ago, let me ask you the same question again
24 and see if you give me the same answer.

25 MR. SLOTCHIVER: Let's keep going and see

1 what happens.

2 MR. OVERSTREET: The judge said don't do
3 that.

4 MR. SLOTCHIVER: I don't think he
5 contemplated the fact that I would not be able to ask
6 questions about items which a response was different or
7 not addressed before.

8 MR. OVERSTREET: You can ask questions about
9 the same subject matter, but shoving his deposition in
10 his face and saying do you agree or disagree with this
11 now that we are sitting here two years later --

12 MR. SLOTCHIVER: No, no, no. I said --

13 MR. OVERSTREET: You have done that twice
14 now.

15 MR. SLOTCHIVER: -- having this new
16 information before you --

17 MR. OVERSTREET: You are reading his
18 testimony back to him and saying --

19 MR. SLOTCHIVER: No, I'm not.

20 MR. OVERSTREET: -- do you have a different
21 opinion about it.

22 MR. SLOTCHIVER: Because of new information
23 presented to him. It's a whole different scenario right
24 now.

25 One second and we will go back on. Okay.

1 VIDEOGRAPHER: Back on the record at 3:00.

2 Q. (BY MR. SLOTCHIVER): Looking at paragraph -- or
3 Exhibits 3 and 4, would you agree with me that the
4 documents expressly state in writing that the interests
5 of Cindy Whitfield and the property was legally governed
6 by a written provision that her interest is subject to
7 the bank's previously existing lien?

8 A. Well, it says governed by this language in the
9 deed. Yes, it's subject to that mortgage, Harbor's
10 mortgage.

11 Q. Is there a circumstance wherein the wife could
12 object to the renewal transaction on equitable
13 subordination theory when the legal document expressly
14 covers that her interest is subject to the loan?

15 A. Well, I think they could. I think she could.

16 Q. Would you agree that, generally, equitable
17 arguments and theories are only made when there is
18 nothing in writing between the parties?

19 A. I don't know that. All I'm saying is that a
20 prudent way for the bank to proceed would be to get a
21 title update, get an endorsement to the existing policy.

22 Q. You said it was a prudent way?

23 A. Correct.

24 Q. Would it be prudent for a lawyer to ask his
25 client whether there are documents that exist between

1 the client and the parties that could potentially cover
2 any potential dispute?

3 **A. Well, that just wasn't part of the question that**
4 **was asked me. He was asking from a risk standpoint, I**
5 **think, is can we -- what do we need to do to extend this**
6 **loan, and I answered that question, or I answered it the**
7 **best I could.**

8 Q. Was Harbor National Bank a regular client of
9 yours in 2012?

10 **A. Yes.**

11 Q. How many transactions, approximately, would you
12 have done for them on a calendar year?

13 **A. I don't have any idea. You know, they would**
14 **engage us for either -- loan work. Sometimes they had**
15 **some leases of property they were doing or just other**
16 **types of transactions.**

17 Q. When you would be involved in real estate
18 transactions with them, did you ever include your
19 attorney's fees in the HUD closing statement?

20 **A. Yes, if it were loan work, yes.**

21 Q. Is there any reason why you could not have
22 included the attorney's fees in the HUD closing
23 statement in this particular matter and billed the
24 client for the advice that you allegedly gave him?

25 **A. Because I didn't bill him for that.**

1 Q. But is there any reason you could not have
2 incorporated that into the HUD statement?

3 A. Well, if I wasn't going to bill him for it, why
4 would I incorporate it into the HUD statement? It
5 doesn't make any sense.

6 Q. When did you make up your mind you were not going
7 to bill him for the advice?

8 A. Probably right after I hung up the phone.

9 Q. Do you know Angie Bell?

10 A. Yes.

11 Q. How long have you known her?

12 A. I have known her for probably five, six,
13 seven years.

14 Q. How did you first meet her?

15 A. I met her, I think, when she was working for
16 either Anchor Bank or Carolina First Bank. She worked
17 for my brother over there.

18 Q. The advice that Harbor National Bank claims that
19 you gave, was that limited to the Black Rush property?

20 A. I don't -- it was never -- Black Rush was never
21 brought up in my conversation.

22 Q. Was the county in which the property was located
23 brought up?

24 A. No.

25 Q. Were the amount of properties brought up?

1 **A. No.**

2 Q. Are you familiar now that there were eight
3 additional properties besides Black Rush for which there
4 was no closing?

5 **A. I don't -- I probably do know that probably**
6 **because I have read it someplace or somebody has told**
7 **me, but, yes, I understand that.**

8 Q. Are you familiar with the fact that the bank has
9 claimed that the basis or part of the basis for not
10 closing the deal on the Berkeley and Dorchester County
11 properties was predicated on the advice that they claim
12 that you gave in Charleston?

13 MR. DUFFY: Objection.

14 MR. OVERSTREET: Objection.

15 **A. I don't -- I don't know what they are basing it,**
16 **whatever they did, on or not. That's not -- I don't**
17 **know. That's their business.**

18 Q. (BY MR. SLOTCHIVER): Did anyone call you
19 regarding advice on whether to foreclose or renew the
20 98 Willow property in Dorchester County?

21 **A. No.**

22 Q. When is the first time you remember being called
23 by anyone from Harbor National Bank regarding Mr.
24 Whitfield after the advice to Mr. Warren?

25 **A. I don't have any way of knowing that, or I don't**

1 **remember any of that. I don't remember any calls after**
2 **that.**

3 Q. When is the last time you would have spoken to
4 somebody about it at Harbor National Bank, or was it an
5 ongoing client that you would have been speaking to
6 regularly?

7 **A. Well, yeah, I speak to --**

8 Q. Do you normally -- I'm sorry.

9 **A. I speak to the people down there often, you know.**

10 Q. How often do you not bill them for advice you
11 give them?

12 **A. Well, relatively frequently, I would say, and**
13 **that's not just Harbor National Bank. It's more than --**
14 **more than a few people will call up and just ask**
15 **questions.**

16 Q. Did you expect Mr. Warren to get back to you
17 after that telephone call about this transaction?

18 **A. No.**

19 Q. Were you aware of the fact that Harbor National
20 Bank and Mr. Whitfield had already made a deal to close
21 the property when you were contacted?

22 MR. DUFFY: Object to the form.

23 **A. No.**

24 Q. (BY MR. SLOTCHIVER): Can you tell me some other
25 transactions with which you have worked with Harbor

1 National Bank where you did not bill?

2 **A. No. I can't remember that. I mean, it wouldn't**
3 **have been transactions. It would have been just phone**
4 **calls.**

5 Q. Such as this one?

6 **A. Such as this one.**

7 Q. Who would they have been with?

8 **A. Any one of the loan officers.**

9 Q. What would the matters have been pertaining to?

10 **A. I don't know. You know, I don't remember**
11 **specifically, but it would have been just calls about**
12 **questions they had, questions about some file they were**
13 **working on, some loan they may have been thinking about**
14 **making or something like that.**

15 Q. What percentage of your business in 2012 was
16 dealing with Harbor National Bank?

17 **A. Probably a very limited low percentage.**

18 Q. Was it frequent that you gave risk analysis for
19 loan closings and renewals in that time period?

20 **A. State that again.**

21 Q. Sure. Approximately how many times did you give
22 risk analysis for loan closings and renewals in this
23 time period?

24 MR. OVERSTREET: Object to the form.

25 **A. Yeah. Well, I don't -- I don't know what you**

1 call risk analysis for renewals and loan closings. I
2 don't know what that is.

3 When I get a question, I answer it. If you
4 are talking to -- if you are saying that Scott Warren's
5 was that type of question, it's really not that often.

6 You know, they will call with questions
7 about title insurance because they don't -- that is
8 really not their forte, is to understand all of the ins
9 and outs of a title policy. And so they will call about
10 things like that that are not within their expertise.

11 Q. Do you know how many times you recommended
12 endorsements to Harbor National Bank for a closing on
13 renewals?

14 A. I don't have any idea.

15 Q. Would it be a regular thing that you would do
16 when there were no changes in the mortgage?

17 A. Well, that's -- it just depends on the question.

18 Q. But is that something you have done before or is
19 this the only time that you have done this?

20 A. Well, all I can say is if it were asked before,
21 that an undivided 50 percent interest in the property
22 had been conveyed, I would say the same thing. It just
23 depends on the facts that were presented.

24 Q. At any other time do you recall giving an opinion
25 to Harbor National Bank, or any bank, that they should

1 not close a renewal of an existing loan due to an
2 endorsement required when the mortgage was not being
3 modified or replaced?

4 **A. Well, I mean, right now I can't tell you that I**
5 **have never done that before, but I can't recall.**

6 Q. Who have you discussed the theory of equitable
7 subordination risks with at the bank or at your law
8 firm?

9 **A. I haven't talked to anybody at the bank about it,**
10 **I don't think, I mean, unless they would have asked me**
11 **something about it, but I don't -- I can't remember**
12 **that.**

13 **Yeah, I have talked to a few people around**
14 **the office about it, just like you talk with anyone**
15 **else.**

16 Q. Who would you have talked about it with at the
17 law firm?

18 **A. I don't know. David Humphreys or -- probably.**
19 **He's closer to my office.**

20 Q. Did he concur with your opinion about a risk?

21 **A. I don't -- well, he concurred with my opinion**
22 **about the advice given, about the endorsement would be**
23 **the best way to protect the bank.**

24 Q. Can you tell me the difference between a
25 refinance and a loan renewal?

1 A. Well, refinance is a -- typically, when you get a
2 new lender, they will come in and pay off the existing
3 financing.

4 Loan renewal is generally the same lender
5 renewing or extending the term of the existing loan.

6 Q. Do you generally have to have a real estate
7 closing for a renewal or extension?

8 A. It just depends.

9 Q. On what?

10 A. Well, it depends on what kind of renewal you may
11 be doing. It may be -- there may be additional money
12 loaned. There may be changes in terms. There may be
13 extending -- substantial extension of a maturity date or
14 any number of things. And I don't -- it's just -- I
15 think sometimes banks will just renew loans without any
16 kind of formal closing.

17 Q. What if the amount is not increased?

18 A. What about it?

19 Q. And the only thing that changes is the term
20 period?

21 A. Well, again, depends on the facts.

22 Q. That is the facts.

23 A. Well, the facts are -- if they are the facts that
24 Scott Warren asked me about, there were other things
25 besides that, because the property -- a 50 percent

1 undivided interest in the property had been transferred,
2 so it was different.

3 MR. SLOTCHIVER: Let's go off for one
4 second.

5 VIDEOGRAPHER: Off the record at 3:14.

6 (Brief pause.)

7 VIDEOGRAPHER: On the record at 3:16.

8 Q. (BY MR. SLOTCHIVER): If Mr. Warren had advised
9 you about the other eight loans, the ones referencing
10 properties in Dorchester and Berkeley County which did
11 not have this 50 percent transfer, would you have
12 advised him there was no reason not to close on those
13 loans?

14 MR. OVERSTREET: Object to the form.

15 A. You know, I don't have any way of knowing what I
16 would have advised him, and I don't think I'm here today
17 to give advice on what might have happened if certain
18 things had happened. I was given only a certain limited
19 amount of information in that phone call.

20 Q. (BY MR. SLOTCHIVER): Okay. Under the same
21 information you were given, but taking away the 50
22 percent ownership, was there any reason not to have
23 closed that loan?

24 A. What you are asking is if Scott had said, well,
25 we got an extension and there had not been a conveyance?

1 Q. Right.

2 A. I don't know. I can't -- I don't know what I
3 would have told him. I would have to have those -- I
4 don't know.

5 Q. You would have to have what?

6 A. Well, I would have to just think about it. And,
7 you know, if the facts had presented themselves that
8 way, I mean, it may not have -- let me just think about
9 it for a minute.

10 So if we just have an extension, a pure
11 extension -- if his question to me is I have a
12 mortgage -- and he probably wouldn't have called me in
13 that situation.

14 If I have a mortgage and I want to extend it
15 and nothing has happened, then what should I do? Well,
16 I would probably still tell him to get an endorsement
17 just because that -- if he wants to do it, that's his
18 question. I mean, that's his underwriting issue.

19 But if I'm a lawyer giving him some advice,
20 I'm going to tell him he needs to have the title updated
21 and get an endorsement.

22 Q. Did you understand that Mr. -- that Tony
23 Whitfield and Cindy Whitfield were married or not
24 married at the time that this occurred?

25 A. I don't have any idea. I didn't form an opinion

1 **as to whether they were married or unmarried.**

2 Q. Would it make a difference?

3 **A. I don't know.**

4 Q. Let me show you a copy of a document labeled
5 Supplemental Affidavit of Mark Weeks and ask you to take
6 a moment to look at this.

7 MR. SLOTCHIVER: While he's looking at that,
8 would you send down the other copy that I sent down to
9 Brian?

10 **A. All right. I have read it.**

11 Q. (BY MR. SLOTCHIVER): Is there anything in this
12 document you take exception to?

13 MR. OVERSTREET: Object to the form.

14 MR. DUFFY: Same objection.

15 **A. Well, I'm not going to go through the whole**
16 **document. You are going to have to ask questions about**
17 **it because there is a lot I object to.**

18 Q. (BY MR. SLOTCHIVER): I can go through it with
19 you, if you would like, paragraph by paragraph.

20 **A. I think you're going to have to.**

21 Q. Okay. Paragraph 3?

22 **A. What about it?**

23 Q. Do you agree with it or disagree with it?

24 MR. OVERSTREET: Object to the form.

25 **A. I don't agree with it.**

1 Q. (BY MR. SLOTCHIVER): Let's start with the first
2 sentence. It says, "I do not believe the bank had a
3 valid or legal reason in relying upon Mr. Swanson's
4 opinion in deciding not to close on Mr. Whitfield's
5 loans."

6 Do you believe that the bank did rely on
7 your opinions?

8 MR. OVERSTREET: Object to the form.

9 **A. I don't know. I wouldn't know whether they did**
10 **or not.**

11 Q. (BY MR. SLOTCHIVER): Okay.

12 MR. OVERSTREET: As we go through, Dan, I
13 just have a standing objection, if you will allow it,
14 because I don't have a copy of it in front of me.

15 To the extent that any facts are
16 represented in the affidavit rather than Mark's
17 opinions, I would object to it.

18 MR. SLOTCHIVER: Sure.

19 Q. (BY MR. SLOTCHIVER): Do you agree that the
20 advice rendered concerning the Black Rush property had
21 nothing to do with the other eight loans?

22 **A. I didn't give any kind of advice concerning the**
23 **Black Rush property. I gave advice concerning a set of**
24 **facts that Scott Warren had asked me.**

25 **You're saying -- Weeks is saying that it was**

1 **related to the Black Rush property. That is not what**
2 **I -- that's not how the conversation went.**

3 Q. Just to be clear, you had a very limited amount
4 of information provided to you, is that correct?

5 **A. That's correct.**

6 Q. And without more information it's hard to give
7 advice, isn't it?

8 **A. It depends on what the question is. I gave the**
9 **advice based on the facts I had.**

10 Q. As the information you had was very limited,
11 would you agree with me that reliance on the advice
12 should likewise have been limited?

13 **A. I don't know. That's up to the bank.**

14 Q. Mr. Weeks says that in his opinion the bank had
15 no valid or legal reason to refuse to close the loan
16 renewal on Black Rush property either, based on the fact
17 there was no new mortgage and no new modification of the
18 mortgage provided to his office for Mr. Whitfield to
19 sign.

20 No one advised his office that a new
21 mortgage or new modification of a mortgage was required
22 to be signed in order to renew the loans, and neither
23 was needed in fact or law to renew the loan.

24 MR. OVERSTREET: Object to the form.

25 Q. (BY MR. SLOTCHIVER): Would you agree with me

1 that normally that information would be provided to the
2 closing attorney?

3 A. I don't know. I mean, I don't -- Mr. Weeks was
4 not representing the bank. He was representing -- I
5 don't know who he was representing, Mr. Whitfield, Mrs.
6 Whitfield. He was representing somebody on the other
7 side of the bank.

8 Q. Well, let's assume he was representing Mr.
9 Whitfield.

10 Would you agree with me that it would be
11 normal policy for that information to be provided to him
12 if it was going to be required?

13 A. Well, I can only guess that maybe that's why
14 Scott was calling me, you know, to try and figure out
15 whether they were going to require something from Mrs.
16 Whitfield.

17 Q. Are the calls about what they would and would not
18 require, are they generally done before or after a deal
19 is solidified?

20 A. I don't -- that is bank underwriting. That's
21 not -- I don't know.

22 Q. In your experience, do you usually get calls
23 seeking advice after a deal has been made or before it's
24 been made?

25 A. I get them at all times of the deal, usually at

1 **the last minute.**

2 Q. Do you agree or disagree with anything in
3 Paragraph 4?

4 MR. OVERSTREET: Object to the form.

5 **A. " The Black Rush loan could not have been renewed**
6 **had it not been for the bank's unilateral decision to**
7 **demand a title endorsement."**

8 Well, my only comment to that would be
9 typically the bank is -- it's the bank's money, and the
10 bank has a right to unilaterally decide as to how money
11 is loaned. And so I don't agree with that if he's
12 raising some objection to the unilateral decision to
13 demand a title endorsement.

14 Q. (BY MR. SLOTCHIVER): But if he's merely saying
15 that it was the bank's unilateral decision to demand the
16 title endorsement, you would agree with that?

17 MR. OVERSTREET: Object to the form.

18 **A. No. I don't understand that question.**

19 Q. (BY MR. SLOTCHIVER): "The Black Rush loan could
20 have been renewed had it not been for the bank's
21 unilateral decision to demand a title endorsement",
22 is that a fair statement?

23 **A. I don't know. I don't know if it is or not.**

24 Q. He says one was not required, that he could have
25 closed the loan and still ensured the bank maintained

1 its priority interest in the collateral as he had
2 conducted a title search on all of the properties and
3 found there to be good and marketable title to all.

4 A. Again -- you know, and it's not my job to say
5 what the bank should have done or might have done in the
6 underwriting, but that's -- he's not representing the
7 bank. He's representing Mr. or Mrs. Whitfield.

8 And I don't -- I never saw -- I have never
9 seen any document, something that he offered to give an
10 opinion to the bank that everything would be just fine
11 if, in fact, this loan were closed without some sort of
12 an endorsement.

13 Q. If he had shown you that document or if you had
14 been provided that document, would that affect your
15 testimony?

16 A. I don't know. It just depends. You know, I
17 don't -- that's not what I was asked to do.

18 Q. You weren't offered that either way?

19 A. No.

20 Q. If you were provided the opportunity, would you
21 have contacted Mr. Weeks, the closing attorney, in order
22 to discuss some of these issues to see if they could be
23 worked out?

24 A. No. I would have -- my only contact would have
25 been to tell them that we need to get a title

1 **endorsement, an update and an endorsement, and if your**
2 **title company requires Ms. Whitfield to sign something**
3 **in order to ensure the mortgage as modified, then that**
4 **is something you are going to have to do.**

5 Q. Did you ever consult with legal counsel at
6 American Title about the title endorsement?

7 **A. That wasn't my job. No, is the answer.**

8 Q. Was there a reason you could not have consulted
9 with them?

10 **A. That's not my job. That's the closing attorney's**
11 **job, the title attorney, not the bank attorney.**

12 Q. And you don't know if the closing attorney ever
13 provided the document or was requested to provide the
14 document, is that correct?

15 **A. I don't have any idea.**

16 Q. If they had provided the document, you don't know
17 if that would have changed your opinion?

18 **A. I wasn't involved except for that phone call, so**
19 **I don't know what happened afterwards with these**
20 **interactions with Mark Weeks.**

21 MR. SLOTCHIVER: I don't think I showed that
22 to him. If you want to take a moment to chat with him,
23 you're welcome to do it.

24 MR. OVERSTREET: What is it? All right.

25 VIDEOGRAPHER: This is the end of tape

1 Number 1 in the deposition of David Swanson.

2 (Brief pause.)

3 (Defendants' Exhibit No. 5 was marked for
4 identification.)

5 VIDEOGRAPHER: This is tape Number 2 in the
6 deposition of David Swanson. We are on the record at
7 3:35.

8 Q. (BY MR. SLOTCHIVER): While we took a break we
9 marked the last exhibit we were looking at as Exhibit 5.
10 And I have handed to you a copy of a letter from Weeks &
11 Irvine.

12 MR. SLOTCHIVER: We can mark that as Exhibit
13 6.

14 (Defendants' Exhibit No. 6 was marked for
15 identification.)

16 Q. (BY MR. SLOTCHIVER): A few moments ago, Mr.
17 Swanson, you said that you never have seen a letter or a
18 document from Mr. Weeks about the title.

19 Have you had a chance to look at this one
20 dated June 27th, 2012, the day before the closing?

21 **A. I have.**

22 Q. Do you know if this was done on the same day of
23 this phone call?

24 **A. I don't -- I don't have any idea about that.**

25 Q. You would agree it was certainly done the day

1 before the closing was scheduled to take place?

2 **A. I don't know when the closing was.**

3 Q. Does representing to you that the closing was
4 scheduled to take place on June 28, 2012, does this
5 document -- or had you seen this document, would it have
6 alleviated any of your concerns?

7 **A. No.**

8 Q. Why not?

9 **A. Well, the whole issue is not so much whether --**
10 **well, what this is -- I will go back to the beginning.**

11 **This is a title update letter, and so Weeks**
12 **updated the title. He finds a good and marketable title**
13 **subject to the mortgage of Harbor National Bank.**

14 **And maybe I hadn't been clear, but there has**
15 **been no issue with the validity of the first mortgage.**
16 **The first mortgage was on the property. The first**
17 **mortgage was on the property following the conveyance to**
18 **Cindy, the half interest to Cindy Whitfield.**

19 **The issue is if the bank wants to then**
20 **modify that mortgage, then there is a potential, a**
21 **possibility that Cindy Whitfield could claim that, well,**
22 **she never consented to that mortgage and, therefore, you**
23 **have subordinated the mortgage to my interest.**

24 **And in order to alleviate any potential**
25 **problem with that, the best course of action for the**

1 bank is to get an endorsement to the title commitment,
2 or title policy. It's very easy to do, and relatively
3 inexpensive on a \$325,000 mortgage.

4 Q. For the modification of the mortgage?

5 A. For the endorsement to the title policy, existing
6 title policy.

7 Q. Would you agree with me that this was not a
8 modification, this was merely an extension?

9 MR. OVERSTREET: Object to the form.

10 A. It was a modification to extend the term of the
11 loan.

12 Q. (BY MR. SLOCHIVER): Is modification not a term
13 of art in the real estate world?

14 A. I don't know. I call it a modification.

15 Q. Are you aware of any cases that reference or that
16 address a scenario such as the one that you have just
17 discussed?

18 A. I have read them. I can't tell you by name, but
19 I have read cases from other jurisdictions. Like I
20 said, it's a potential risk for the lender.

21 Q. Are you aware of any case in the state of South
22 Carolina that has ever addressed concern about this
23 particular issue?

24 A. I haven't done any research on that, so I don't
25 know.

1 Q. Do you generally give advice without first having
2 done some research?

3 A. Well, the advice I gave was not about a legal
4 issue in South Carolina. It was about what the bank
5 should do to eliminate any risk.

6 Or actually all they are doing is
7 transferring risk over to the title company, which is
8 something they do every day with endorsements to title
9 policies.

10 Q. But if the matter became an issue, would the
11 matter be heard in the state of South Carolina?

12 A. Sure it would.

13 Q. So the South Carolina law would be the applicable
14 law?

15 A. It would be -- yes, it would, but it's also --
16 you know, my advice was given on what is normal,
17 customary and prudent as far as a lender and to minimize
18 their risk.

19 I explained all of this in my first
20 deposition. A lender's business is not to say, yeah, I
21 could do this, but I may just take a certain amount of
22 risk. It's to try to eliminate risk if they can. And,
23 I mean, that's the question that was asked me.

24 Q. If this matter has never been addressed in a
25 court that you are aware of in the state of South

1 Carolina, how would it be normal, customary or prudent
2 to do it?

3 MR. DUFFY: Objection to the form.

4 A. Well, in my experience as a real estate lawyer
5 for 36 years in dealing with title companies and dealing
6 with lenders, this is what was done.

7 I have been involved in cases where claims
8 have come up for things just like this when loans have
9 been modified, interest rates have been either
10 lowered -- not lowered so much, but increased when the
11 loans are modified to a certain extent where somebody,
12 either a second mortgagee, which is usually the case,
13 but I wouldn't see any difference with a new owner. I
14 wouldn't see any difference that they feel like they are
15 prejudiced in some way.

16 Q. (BY MR. SLOCHIVER): But in the cases you have
17 been involved with, they haven't dealt with the same
18 people at a lowered interest rate, have they?

19 A. No, but nor have they dealt with the divorce
20 situation.

21 Q. But you weren't aware of the divorce situation at
22 the time you gave the advice, correct?

23 A. I can't tell you. I think I said I wasn't sure
24 whether I was or not. I don't know whether Scott
25 mentioned a divorce or not. I just -- I don't remember.

1 Q. You would agree with me that you don't need to
2 modify the mortgage in order to extend the term?

3 A. No, I wouldn't agree with you there. If the
4 term -- this mortgage -- this mortgage has a -- this is
5 a recorded mortgage, correct?

6 This mortgage has -- it says which secures
7 the debt. "One note of even date" herewith (sic) -- or
8 "of even date in the principal amount of \$325,000 with
9 final payment due 5/3/2012."

10 Okay. That's the maturity date. So, as I
11 understand it, what you're telling me, I think, is that
12 that maturity date was being extended. So this is on
13 record as saying that it has matured.

14 And I have seen cases where people rely on
15 that -- some second mortgage could rely on that and say,
16 well, I thought that loan had matured.

17 So, again, the prudent situation -- the
18 prudent case for the lender would be to record something
19 there that would document on record that the term of
20 this mortgage had been extended.

21 Q. And the cases you have seen have had
22 substantially different fact patterns than this one?
23 You would agree with that?

24 MR. OVERSTREET: Object to the form.

25 A. Well, they are a little bit different. But if

1 you have -- if you think about it just in the terms of
2 parties that may be prejudiced by some kind of renewal,
3 extension, modification, no.

4 Q. (BY MR. SLOTCHIVER): Can you look at Paragraph 9
5 of the affidavit of Mr. Weeks?

6 A. All right.

7 Q. It says that Mr. Weeks has closed over 40,000
8 real estate loans in his career and has never seen a
9 single instance in which a property owner defeated a
10 bank's claim of lien by deeding a portion of its
11 ownership interest to another person.

12 Can you cite a circumstance wherein that has
13 happened?

14 MR. OVERSTREET: Object to the form.

15 A. Well, no, I can't cite one right now. But, you
16 know, he is closing loans. He's not foreclosing on
17 loans.

18 And when the issue comes up is when you
19 foreclose on a loan and a party, either a junior
20 lienholder or a party in the shoes of Cindy Whitfield
21 would raise a claim, potentially raise a claim.

22 And that's all I'm saying. I'm not saying
23 it's 100 percent slam dunk that that person would win.
24 All I'm saying is a potential claim, and that's what
25 banks do. They are risk adverse.

1 They don't get into making loans or
2 modifying loans and having, you know, some issues arise
3 or having some potential claim. That's just not the
4 business they are in.

5 Q. (BY MR. SLOTCHIVER): Do you know who was living
6 in the home, the Black Rush home?

7 A. I don't have any idea. Or I think somebody told
8 me -- or I think I read that recently. Cindy was living
9 there.

10 Q. In Paragraph 9 --

11 A. Maybe that's where I read it.

12 Q. Excuse me. In Paragraph 8 is maybe where you
13 read it.

14 In Paragraph 8 it says, "If Mr. Swanson's
15 testimony was the basis for the bank's refusal to close
16 the loans, I believe the bank was without excuse in its
17 decision not to close any of the loans. In particular,
18 there was no risk whatsoever to the bank in closing the
19 Black Rush loan based upon Mr. Swanson's hypothetical
20 concern that Mrs. Whitfield would object to the
21 transaction since Mrs. Whitfield was the main
22 beneficiary of the renewal, as it is my understanding
23 she lives in the home."

24 Would you agree that she was, in fact, the
25 main beneficiary of the renewal?

1 MR. OVERSTREET: Object.

2 MR. DUFFY: Object.

3 A. I don't have any idea.

4 Q. (BY MR. SLOTCHIVER): Would that information have
5 been beneficial to you?

6 A. No. You know, it goes back to -- and I think
7 this is all ground that was covered in the first
8 deposition.

9 If there was a divorce decree -- and this is
10 just -- this is why I would -- divorce is a big red flag
11 to me, because I don't know what happens in a divorce
12 setting.

13 Usually they are bitter divorces, typically.
14 And so -- also, generally, there is negotiations,
15 property settlements and all of that stuff within the
16 divorce proceedings.

17 All of that is sort of an unknown that the
18 bank doesn't need to be involved in. I don't need to be
19 involved in. That is something that Mark Weeks might
20 want to ask about because he's the one that has got to
21 ensure this.

22 And so, again, the easiest way for the bank
23 to move forward is just to say, like I have said ten
24 times before, is just get a title endorsement. That
25 takes care of all of those issues. The bank doesn't

1 need to look at all of that. They don't need to look at
2 the title. They don't need to worry about who it's been
3 conveyed to.

4 If the title company will sign on to it,
5 they take the risk. If not, well, then that's another
6 red flag that maybe they don't want to do the extension.

7 Q. When is it that you first started doing work at
8 Harbor National Bank, or for Harbor National Bank?

9 A. I don't know. I mean, I would say 10 or 15 years
10 ago.

11 Q. Are you aware of the fact that they did not have
12 a consumer mortgage department when they opened?

13 A. I don't know. I'm not aware of that. I don't
14 know anything about their consumer loan department.

15 Q. Are you aware that the banker's bank, Silverton
16 Bank, was processing all the consumer loans for Harbor
17 National Bank?

18 A. No.

19 Q. Let's do some background with you, and then we'll
20 take a few minutes break and see if we can wrap this
21 thing up.

22 Were you born here in Charleston?

23 A. Yes.

24 Q. And tell me about your educational background.
25 Where did you go to high school?

1 **A.** I went to high school, Dreher High School. Well,
2 let me go back. So I did grow up here, and when I was
3 just about to begin high school we moved to Columbia.

4 My father worked for First National Bank,
5 got a promotion and moved to Columbia. I went to high
6 school, Dreher High School in Columbia for four years.

7 From there I went to Tulane University in
8 New Orleans, left there after two years, went to
9 USC-Carolina in Columbia, and went to law school in
10 Columbia. I graduated in 1980 from law school.

11 **Q.** 1980?

12 **A.** Yes.

13 **Q.** And when did you start working at this firm?

14 MR. OVERSTREET: He went through all of that
15 in the first deposition. Do you want him to restate it?

16 MR. SLOTCHIVER: No. I will be happy to
17 restate it.

18 **Q.** (BY MR. SLOTCHIVER): Are you married?

19 **A.** Yes.

20 **Q.** Wife's name?

21 **A.** Cathy, Catherine, with a C.

22 **Q.** And where do you live?

23 **A.** I live in Country Club II subdivision.

24 **Q.** Who are your relatives that live in the
25 Charleston community? And, if it helps, to give last

1 names other than Swanson.

2 **A. Other than Swanson? I have some Orvins that are**
3 **relatives, a lot of -- I'm trying to think of their last**
4 **names. I have a few others scattered around. It will**
5 **come to me, but probably after you're gone.**

6 Q. You have got a brother in the banking business?

7 **A. Yes.**

8 Q. Does your wife work?

9 **A. No.**

10 Q. Do you have children?

11 **A. Yes, three.**

12 Q. Are they grown?

13 **A. They are all out of college, so, yeah.**

14 Q. Do they live in the Charleston community?

15 **A. One does, Charlotte.**

16 Q. Her last name is Swanson?

17 **A. Yes.**

18 Q. What does she do for a living?

19 **A. She works over at Whole Foods, Mt. Pleasant.**

20 Q. What clubs or organizations do you belong to?

21 **A. Country Club of Charleston, Carolina Yacht Club,**
22 **downtown Athletic Club.**

23 **Is your father still a member there?**

24 Q. If he is, he hasn't gone in years.

25 **A. No, he hasn't. I haven't seen him.**

1 Q. He used to go all the time, I know. I thought it
2 had -- frankly, I thought it had closed up.

3 **A. No, going strong.**

4 Q. I'll tell him.

5 Anything else? How about civic clubs, other
6 organizations, membership clubs?

7 **A. No, that's about it.**

8 Q. Church?

9 **A. St. Philip's.**

10 Q. You were named Real Estate Lawyer of Charleston,
11 Real Estate Lawyer of the Year two years ago, or last
12 year, is that correct?

13 **A. That's right.**

14 Q. Do you know who made that decision?

15 **A. I don't have any idea.**

16 Q. Is that under the time frame when Mr. Duffy,
17 Brian Duffy was the president of the bar?

18 **A. No, this wasn't a SC bar thing.**

19 Q. I'm sorry, the president of Charleston County
20 Bar.

21 **A. That wasn't a Charleston County Bar thing.**

22 Q. It was not?

23 **A. No.**

24 Q. Was it a national thing?

25 **A. Yes.**

1 Q. Do you have social relationships with any of the
2 persons involved in this case from Harbor National Bank,
3 now Bank of North Carolina?

4 A. Which persons are you talking about?

5 Q. Well, we can go through a list of them, but, for
6 example, Charlie Rivers?

7 A. Yes, I do have a social relationship with him.

8 Q. You have known him most of your life?

9 A. Yes.

10 Q. Who else?

11 A. That's probably it down there. I see Willard
12 from time to time over in the country club, but --

13 Q. What about the investors at the bank? Did you
14 have any connections with the investors of the bank?

15 A. Not anymore. I knew some of the Harbor
16 investors, some of the people -- the board members and
17 others, but I don't know any of the BNC people.

18 Q. Who did you know at Harbor?

19 A. Jim Kerr and Jim Stelling. I mean, I knew a lot
20 of them, but I can't recite them.

21 Q. Hartnett, Tommy?

22 A. Tommy Harkin?

23 Q. Hartnett.

24 A. Hartnett? Yeah, I knew Tommy. He used to be in
25 the building here. Who else is in there? I don't know.

1 **Larry Richter, he was an investor. He wasn't on the**
2 **board.**

3 Q. Eddie Buck, was he one of the investors?

4 A. **Yeah, Eddie was. He was definitely an investor.**
5 **I don't think he was on the board.**

6 Q. Any other investors you recall offhand?

7 A. **No.**

8 Q. Drew Epting maybe?

9 A. **Oh, yeah, he was there, big-time investor.**

10 Q. Mr. Trenholm?

11 A. **Allen Gibson was. He was on the board, and**
12 **Cynthia Lowery was on the board. I don't know whether**
13 **Trenholm was or not.**

14 Q. Of those people you just mentioned, did you have
15 a close -- do you have a close personal relationship or
16 friendship with any of them? You mentioned Kerr,
17 Stelling, Hartnett -- between you and me, you mentioned
18 Kerr, Stelling, Hartnett, Larry Richter, Eddie Buck, or
19 his family, Drew Epting, Allen Gibson, Cynthia Lowery.

20 A. **No. I mean, I know all of them, but I don't have**
21 **any close social relationship with them. I see them**
22 **around, and some of them I do some work, limited amount**
23 **of work for some of the Buck families.**

24 Q. Did you have an occasion to speak with any of
25 them about this case?

1 **A. No.**

2 Q. Are any of them members of the Carolina Yacht
3 Club or Country Club II?

4 **A. Yeah, a bunch of them.**

5 MR. SLOTCHIVER: Let's take a break for a
6 moment.

7 VIDEOGRAPHER: Off the record at 3:55.

8 (A recess was taken.)

9 VIDEOGRAPHER: On the record at 4:02.

10 Q. (BY MR. SLOTCHIVER): Mr. Swanson, have you
11 answered all the questions I have asked you to the best
12 of your ability?

13 **A. I have.**

14 Q. Is there anything you have stated today that you
15 would like to -- any opinion or any statement you made
16 that you would like to change?

17 **A. I don't think so.**

18 MR. SLOTCHIVER: I have nothing further.
19 Thank you, sir.

20 MR. OVERSTREET: I have no questions.

21 MR. DUFFY: No questions.

22 VIDEOGRAPHER: This concludes the deposition
23 of David Swanson.

24 MR. OVERSTREET: Oh, oh, Ms. Garan, sorry.

25 MS. GARAN: That's okay. It's no problem if

1 you did forget about me since I'm on the phone. But I
2 was listening, and I just had two very quick questions
3 for Mr. Swanson, if I can.

4 MR. OVERSTREET: Yeah. Go ahead.

5 EXAMINATION

6 BY MS. GARAN:

7 Q. Good afternoon, Mr. Swanson. This is Kassi Garan
8 with the Ferrara law firm. We represent Cindy Whitfield
9 in this matter.

10 And you testified earlier that you were
11 asked a general question from Mr. Warren. Did he ever
12 mention Cindy directly to you?

13 A. You mean mention Cindy Whitfield's name?

14 Q. Yes.

15 A. No, I don't think he did. All I -- I seem to --
16 and I just don't remember whether he mentioned a divorce
17 or not.

18 He may have when he mentioned that -- I
19 mean, he definitely mentioned a half interest had been
20 conveyed to somebody, to a wife or ex-wife or whatever,
21 so I assumed there was -- maybe I assumed there was a
22 divorce there. No, he never mentioned her name.

23 Q. Okay. And did you have any conversations
24 directly with Cindy Whitfield.

25 A. No.

1 Q. And did you ever require her to sign anything
2 directly?

3 **A. No.**

4 MS. GARAN: Okay. That's it. No further
5 questions.

6 VIDEOGRAPHER: This concludes the deposition
7 of David Swanson. We are off the record at 4:04, tape
8 Number 2.

9 (The deposition was concluded at 4:04 p.m.)

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1 STATE OF SOUTH CAROLINA)
)
2)
 COUNTY OF CHARLESTON)
3

4 I, Nancy Ennis Tierney, Certified Shorthand Reporter
and Notary Public for the State of South Carolina at
5 Large, do hereby certify that the witness in the
foregoing deposition was by me duly sworn to testify to
6 the truth, the whole truth and nothing but the truth in
the within-entitled cause; that said deposition was
7 taken at the time and location therein stated; that the
testimony of the witness and all objections made at the
8 time of the examination were recorded stenographically
by me and were thereafter transcribed by computer-aided
9 transcription; that the foregoing is a full, complete
and true record of the testimony of the witness and of
10 all objections made at the time of the examination; and
that the witness was given an opportunity to read and
11 correct said deposition and to subscribe the same.

12 Should the signature of the witness not be affixed to
the deposition, the witness shall not have availed
13 himself/herself of the opportunity to sign or the
signature has been waived.

14 I further certify that I am neither related to nor
counsel for any party to the cause pending or interested
15 in the events thereof.

16 Witness my hand, I have hereunto affixed my official
seal this 28th day of April, 2017, at Charleston,
17 Charleston County, South Carolina.

18

19

20

21

22

23

24 _____
Nancy Ennis Tierney, CSR (IL)
My Commission Expires:
25 June 12, 2024

1 ATTESTATION

2 In Re: Harbor National Bank v. Anthony
Whitfield, et al.
3 Case No.: 2012-CP-10-5887
Deposition of: David M. Swanson
4 Date Taken: April 18, 2017
Taken Before: Nancy Ennis Tierney, CSR (IL)

5

I have read the transcript of my deposition and find
6 that no changes are necessary.

7

David M. Swanson

8 Having read the transcript of my deposition, I wish
to make the following corrections:

9

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21

David M. Swanson

22 Sworn to and subscribed before me this _____ day of
_____, 2017, in _____ County, South
23 Carolina.

24

Notary Public
State of South Carolina
My Commission Expires: _____

25

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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-5887
HARBOR NATIONAL BANK,)
)
Plaintiff,)
)
vs.)
)
ANTHONY WHITFIELD and CINDY)
WHITFIELD,)
)
Defendant.)
_____)
)
ANTHONY WHITFIELD)
)
vs.)
)
DAVID SWANSON,)
)
Third-Party Defendant.)

* * * * *

DEPOSITION OF: ANTHONY WHITFIELD
DATE TAKEN: Thursday, June 1, 2017
TIME: 10:07 a.m.
PLACE: Halversen & Associates, LLC
171 Church Street, Suite 310
Charleston, South Carolina
REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

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1 S T I P U L A T I O N S

2 It is hereby stipulated and agreed by and
3 between the parties hereto, through their
4 respective counsel, that the reading and signing
5 of the transcript is reserved by the Deponent.

6 MR. OVERSTREET: Mr. Whitfield, you've
7 laid out a number of documents in front of you
8 before the deposition, and I'd just like to
9 ask you, if you would, please, sir, set those
10 documents aside, and I will hand you exhibits
11 over which I will ask you questions. What I'd
12 like for you to do is answer my questions
13 without any documents initially. And if you
14 need a document, I'm happy to hand one to you.

15 THE WITNESS: I disagree with that.

16 MR. OVERSTREET: You're not going to let
17 me control the deposition and use the exhibits
18 I see fit to use?

19 THE WITNESS: I'm going to use what has
20 been filed and which ones are referenced by
21 you to refer to. And I have your letter here
22 somewhere that says what you are going to ask
23 questions about. And I have those documents.

24 MR. OVERSTREET: Yes, sir. And I'm not
25 going to be asking you about those documents

1 specifically until we get to a certain point.
2 And if we do, I'll hand you a copy, as the
3 Rules require. But having you have 30 pages
4 laid out in front of you to ask whatever
5 questions you want is not really how a
6 deposition is supposed to work.

7 THE WITNESS: Well, things don't always
8 happen the way they're supposed to work.

9 MR. OVERSTREET: Well, we have Rules,
10 sir.

11 THE WITNESS: Well, show me what Rule
12 that is, because I don't know the Rule.

13 MR. OVERSTREET: It's Rule 30.

14 THE WITNESS: Why don't you get your
15 rule book out and show it to me?

16 MR. OVERSTREET: Sir, I don't have to do
17 that.

18 I'll refer to Brent. Are you just not
19 going to ask him to put his documents away?

20 MR. HALVERSEN: I think he has a right
21 to look at documents he wants to to refresh
22 his memory. I think he's not going to
23 interfere with the exhibits you put out for
24 him to question about (sic). I think if
25 you're going to ask him about an exhibit, he

1 can look at the exhibit and answer it in any
2 way he wants. If you want to ask him a
3 question that you don't want him to refer to
4 his personal notes on, I think you can ask
5 him, fair enough, to say, I would like to ask
6 you that question and not refer to your
7 personal notes. If he says, Well, I can
8 answer it to the best of my ability, but I'd
9 like to look at my personal notes, I mean, you
10 can decide whether or not you want him to look
11 at those notes or not in answering the
12 question. I think that's pretty much --

13 MR. OVERSTREET: I'd like for him not to
14 look at any of those documents, unless he
15 needs to.

16 MR. HALVERSEN: I mean, I guess if
17 that's the way you want to structure the
18 deposition, then that's your prerogative.

19 MR. OVERSTREET: Well, he's not
20 listening to that.

21 THE WITNESS: Any of these documents
22 that are transcripts or pleadings, I don't
23 have a problem putting them aside. If you
24 make any reference to it, then I want to pull
25 it out and look at it.

25 A. Those are my notes to rely on for this

1 deposition.

2 Q. And are these notes that you prepared?

3 A. Yes.

4 Q. And when did you prepare those notes?

5 A. Mostly the last few days.

6 Q. All right. Did anybody help you draft
7 these notes?

8 A. No.

9 Q. Do these notes contain your
10 understanding of the facts in this case?

11 A. Yeah. Absolutely.

12 Q. And do these notes contain any opinions?

13 A. There may be an opinion there, but most
14 of it is based on fact.

15 MR. OVERSTREET: Do you guys have an
16 extra copy Brian might --

17 MR. HALVERSEN: We can make one, I
18 guess.

19 MR. OVERSTREET: Do you want me to stop
20 or keep going?

21 MR. DUFFY: You can keep going.

22 BY MR. OVERSTREET:

23 Q. Sir, we just had a little bit of a
24 disagreement about all the documents you have set
25 in front of you. Can you tell me what other

1 documents are sitting in front of you right now
2 that you don't want to put away?

3 A. Well, these right here are just some
4 documents in four of the SouthTrust loan files --

5 Q. Okay.

6 A. -- that were originated through Rivers
7 and his bunch over there, Ashburn (ph), and I
8 think Werking.

9 Q. What about this stack right here?

10 A. These four.

11 Q. What about this stack right here?

12 A. This stack, this is part of Mr.
13 Swanson's deposition -- last deposition. This is
14 the Fifth Amended and Fourth Amended Complaint.
15 These are e-mails, I believe, from Mr. Warren's
16 deposition that you mentioned in your letter. So
17 you should have those. You said you were going to
18 ask some questions about them. This is the last
19 14 pages of -- I believe it might have been
20 Amended Four. I would have to see because I
21 wasn't planning on bringing the whole Fourth
22 Amended. It was only this stuff that was changed.
23 Let me see if -- yeah, it has to be. This had got
24 separated, so this must go with this. Okay.

25 This is the Motion to Amend to add new

1 parties. You should have one of those. This is a
2 Subpoena for, it looks like, phone numbers. There
3 you go. You have that also.

4 Q. Yes, sir. And this third stack -- just
5 for the record, you're listing out all the
6 documents sitting in front of you that you brought
7 with you today, correct?

8 A. Correct.

9 Q. All right. If you could continue,
10 please, sir.

11 A. This is Mr. Warren's deposition. The
12 index, I'm not sure about. Because it says
13 6/17/14, and that was my second deposition. Then
14 it says 11/12/13, and that's Warren's deposition.

15 Q. What else have you got there?

16 A. Anyway, it's an index to one of the
17 depositions. And this is Warren's condensed
18 deposition on the 13th of November, because he had
19 two depositions.

20 Q. Yes, sir.

21 A. This is part of the Subpoenaed phone
22 number information, and it's -- that's it. You
23 have all of that.

24 Q. And have you described for me at this
25 point all of the materials that you brought with

1 you today that are sitting in front of you?

2 A. I believe so. Do you see anything else
3 that I didn't talk about? That's it.

4 Q. Is it correct for me to assume, once
5 again, that you're refusing to put any of those
6 documents away as I ask you questions?

7 A. No. Putting them away -- if you want to
8 talk about them, I think we need to make them
9 exhibits.

10 Q. Yes, sir. Is it correct for me to
11 assume that, as I've asked you, you're going to
12 refuse to put those away while I ask you
13 questions?

14 A. I'll put them away as long as you don't
15 ask me any questions that are in these documents,
16 so I can refer to them. Is that fair?

17 Q. Yes, sir. That's fair.

18 A. Okay. So we'll put them all in a nice
19 little stack here. Do you want to put them on the
20 other side of the bowl for now?

21 Q. Yes, sir. That's fine. So, really, the
22 only thing that you have sitting in front of you,
23 as we move forward with the deposition, would be
24 what we marked as Exhibit 1, which are your notes
25 that you prepared in this four-page document; is

1 that correct?

2 A. That's it.

3 Q. All right. Thank you.

4 MR. OVERSTREET: Let's mark this as
5 Exhibit 2.

6 (Deposition Exhibit No. 2, 5/30/17
7 letter from Earhart Overstreet to Mr. Slotchiver
8 identifying documents for use at deposition, was
9 marked for identification.)

10 Q. Sir, I believe you referenced a letter
11 that I sent your counsel's office --

12 A. Yes, I did.

13 Q. -- identifying documents under 30(j)(8)
14 which I may ask you about today. Is that Exhibit
15 2 the letter you're referring to?

16 A. Yes.

17 Q. Okay. And you received a copy of that
18 before the deposition --

19 A. Yes.

20 Q. -- is that fair to say? If you could,
21 just for purposes of Eve's sanity, if you could
22 wait until I finish my question, and I'll try to
23 wait until you finish your answer, so the record
24 is clear. Okay?

25 A. Sure.

1 Q. So I know that you've given extensive
2 testimony already in this case, so I don't intend
3 to plow the same ground, because I think that
4 would be inefficient for everybody involved. That
5 being said, this is my only chance to take your
6 deposition since Mr. Swanson has gotten involved
7 as a party. So there will be, invariably, some
8 overlap. But I just wanted to let you know that
9 I'm not trying to go through all the issues that
10 have already been gone through. Is that fair?

11 A. Sure.

12 Q. So, sir, the Rules require me to inform
13 you, and I'm sure you're aware, that essentially
14 this is my one and only chance to take your
15 deposition. And any questions you have about any
16 questions I ask are to be directed to me, not to
17 your counsel. And, also, once the deposition has
18 begun -- so at this point I now -- you're not to
19 talk to your counsel about the substance of your
20 testimony. And if you do, I can actually ask
21 questions about that and a Court can compel you to
22 answer those questions. Do you understand that?

23 A. Yes.

24 Q. Okay. If you need to take a break or
25 anything like that --

1 A. Oh, I'll let you know. I have a water
2 pill for my heart condition, so it could come at
3 any time.

4 Q. Yes, sir. It's not an endurance
5 contest. And if you don't understand a question I
6 ask, please ask me to rephrase it, and I'm happy
7 to do so.

8 A. Oh, I can guarantee I will.

9 (Deposition Exhibit No. 3, Notice of
10 Deposition, was marked for identification.)

11 Q. Sir, I've marked as Exhibit 3 a copy of
12 the Notice of Deposition in this case. And I may
13 refer to this case as the Charleston County case.
14 But is this the Notice for which you're sitting
15 here today?

16 A. It looks like it.

17 Q. All right. And what I may do is go
18 chronologically a little bit and then skip around.
19 But just for ease of everyone's understanding what
20 we're doing, I'll probably start with some 2007
21 questions. My understanding is that the initial
22 loans -- at least some of the initial loans
23 related to this case were initially closed in
24 2007?

25 A. Seven of them.

1 Q. Yes, sir. Seven of the nine; is that
2 right?

3 A. Correct.

4 Q. And, really, just to focus you in even
5 more, I probably won't have many questions about
6 any other properties than the Black Rush property.
7 Because that seems to have become the most
8 relevant with regard to my client. So I don't
9 know if that helps you or not --

10 A. Fine with me.

11 Q. -- at all with the rest of the
12 questioning. And this is the part where I said
13 there may invariably be some limited overlap, but
14 I'll try not to make it extensive.

15 (Deposition Exhibit No. 4, Settlement
16 Statement - Black Rush Circle, was marked for
17 identification.)

18 Q. Mr. Whitfield, I've marked as Exhibit 4
19 what appears to be a copy of a HUD-1 from an April
20 23rd, 2007, transaction. And my understanding is
21 that this was the original transaction associated
22 with what we've been referring to as the Black
23 Rush property. Is that correct, to your
24 knowledge?

25 A. Is this the HUD-1 for Black Rush? Yes,

1 sir, dated April 23rd, 2007.

2 Q. And this property is in Dunes West; is
3 that right?

4 A. That's right.

5 Q. And does your ex-wife, Cindy, live there
6 now?

7 A. Yes.

8 Q. And she's lived there since this
9 closing?

10 A. She moved in after the closing.

11 Q. But she's lived there for a number of
12 years?

13 A. Yes. We were still married, by the way.

14 Q. Okay. Sorry. So this was a marital
15 residence at some point?

16 A. Yes. It was the marital residence for
17 over a year when the divorce was final in 2008 --
18 June of 2008. So she was not an ex. She's been
19 referred to as an "ex" all that time, and she was
20 not an ex.

21 Q. Understood.

22 A. I just want to make that clear.

23 Q. And this is a single-family home,
24 correct?

25 A. That's correct.

1 Q. Do you know how many square feet it is?

2 A. About 3,000.

3 (Deposition Exhibit No. 5, Note, was
4 marked for identification.)

5 Q. Sir, I've marked as Exhibit 5 what
6 appears to be a document associated with this
7 transaction. Do you know what this is?

8 A. It looks like a copy of a Note.

9 Q. And to your knowledge, is this the Note
10 that's relevant to this April 23rd, 2007,
11 transaction on the Black Rush property?

12 A. Well, I've already testified to that in,
13 I think, the first deposition with Mr. Bernstein.
14 I don't believe this is a legitimate document.

15 Q. You don't believe this is accurate?

16 A. No.

17 Q. All right. Would you agree with me that
18 there was a five-year balloon note on this
19 particular property?

20 A. Well, I found out later. But I didn't
21 realize it was, because it wasn't supposed to be a
22 balloon payment.

23 Q. Understood. So your position is that --
24 in the April 2007 closing, you didn't realize you
25 were getting a five-year balloon note; is that

1 fair to say?

2 A. Correct.

3 (Deposition Exhibit No. 6, Real Estate
4 Mortgage 4/23/07, was marked for identification.)

5 Q. Sir, I've marked as Exhibit 6 what
6 appears to be a mortgage dated April 23rd, 2007,
7 which if you reference Exhibits 4 and 5, match up
8 on the date. To your knowledge, is this the
9 mortgage associated with the Black Rush property
10 from the April 2007 closing?

11 A. It looks like it. But, again, as I
12 stated in my first deposition, I question the
13 authenticity of the document being the original.

14 Q. Okay. But you would agree with me that
15 there was a mortgage placed on the property in
16 April of 2007?

17 A. Oh, yeah. I have no question of that.

18 Q. And do you have any reason to believe --
19 I'll represent to you that it's been represented
20 to me that this is it. Do you have any reason to
21 believe that this isn't a copy of the mortgage?

22 A. It depends on what mortgage. You see,
23 the problem is -- and I think I said in prior
24 testimony -- that Mr. "Slick" Claypoole, you know
25 the attorney --

1 Q. Yes, sir.

2 A. -- he has a habit of giving borrowers
3 blank copies, thinking you're getting signed
4 copies. So I have no way to verify the original
5 with the copies I signed at closing. It's a
6 pretty clever move. It protects the bank from
7 anybody coming back and questioning the documents.

8 Q. Do you know if this is a copy of the
9 mortgage that was actually filed as a record with
10 regard to the Black Rush property?

11 A. I think -- if you compare it to what the
12 recorded copy is --

13 Q. Yes, sir.

14 A. -- with the stamp on it, then you can
15 verify that yourself.

16 Q. You're just not sure as we sit here
17 today?

18 A. I'm not sure.

19 Q. So I'll preface this next line of
20 questioning with a comment that --

21 A. I have another -- something else I want
22 to get on the record. I haven't seen anything on
23 this mortgage that describes whether it's a
24 commercial property or a consumer property.

25 Q. You're talking about Exhibit 6, sir?

1 A. Exhibit 6. I don't see anything on the
2 note or the mortgage that says it's a consumer
3 versus a business loan. As a matter of fact,
4 under the "Purpose" on the note, it says, "To
5 purchase 1055 Black Rush Circle." So I just want
6 to make that clear.

7 And the other thing I want to make clear
8 is that when these loans were originated, Harbor
9 National Bank was not registered or licensed to
10 originate consumer loans. So they either shipped
11 them out and sold them or they set them up as
12 commercial property, commercial loans, in a
13 fraudulent scheme to cover themselves and collect
14 commissions and defraud borrowers into believing
15 they were really the originators when they weren't
16 doing anything but servicing loans. So anyway,
17 got any more questions on that?

18 Q. On your comments, no, sir. I'm just
19 going to move on to my next exhibit.

20 A. Okay.

21 Q. So I want to preface my comments -- or
22 my questioning with I have no desire to ask you
23 the specifics of your divorce, but I'm going to
24 attach the divorce decree and ask you a couple of
25 questions about the language related to the Black

1 Rush property, because it is relevant here.

2 A. Are you making that an exhibit?

3 Q. Yes, sir.

4 (Deposition Exhibit No. 7, Final Order
5 and Decree of Divorce, was marked for
6 identification.)

7 Q. I've marked, sir, as Exhibit 7 what
8 appears to be a Final Order and Decree of Divorce,
9 dated June 13th, 2008, between Cindy and Anthony
10 Whitfield.

11 A. Actually, I'm going to interrupt you for
12 a second. This is not all one document; these are
13 two documents. And there are two different dates
14 that they were signed by the Court.

15 Q. Yes, sir. I was about to get to that.

16 A. I just wanted to make sure we get those
17 dates in.

18 Q. So the first two pages of Exhibit 7 are
19 the Final Order and Decree. And then the next set
20 of pages is the Property and Support Settlement
21 Agreement that appears to have been entered in on
22 April 5th, 2007. So tell me if I'm incorrect, but
23 my understanding is that this Final Order and
24 Decree essentially encompassed the 2007 agreement
25 and made it part of the Final Order?

1 A. Yes.

2 Q. And in this April 2007 Property and
3 Settlement Agreement, that's where the language
4 exists that deals with the marital residence that
5 we've been referring to as the Black Rush
6 property; is that fair to say?

7 A. Yeah. This is the documents that Mr.
8 Swanson never looked at.

9 Q. Yes, sir. And if you look with me --
10 well, I probably can ask you this without you even
11 having to look at it. But did the property
12 agreement essentially require you, to your
13 knowledge, to pay off the note in full from seven
14 years of the final divorce on the Black Rush
15 property?

16 A. That's what it says in here.

17 Q. And that is a term you agreed to in your
18 divorce?

19 A. Yes. But after seven years, it would
20 have been paid off probably way before that if the
21 market had turned. And, number two, there was
22 still a possibility, since the wife was living in
23 there for free, that I could have gotten the loan
24 extended again or the payoff extended.

25 Q. And another term of this agreement, sir,

1 that we've marked as Exhibit 7 was that you would
2 convey one-half of the interest in the Black Rush
3 property to your wife as a joint tenant, with the
4 right of survivorship; is that correct?

5 A. Yeah. There was requirements that had
6 to be met before that happened.

7 Q. And you agreed to deed her a half
8 interest, correct?

9 A. That was known from the beginning.
10 Angie Bell, Harbor National Bank, had copies of
11 all these documents; they knew exactly what was
12 required. It was referenced in the sales
13 contract. Have you seen a copy of the sales
14 contract, Mr. Overstreet?

15 Q. I have. But I'll ask the questions.

16 A. Well, I just want to make sure we get
17 that on the record.

18 Q. Just to make sure the record is clear,
19 one of the terms of your divorce was that you
20 agreed to deed half an interest in the Black Rush
21 property to Cindy Whitfield; is that a fair
22 statement?

23 A. That's paragraph 2.

24 Q. So, yes?

25 A. Yes.

1 Q. All right. Thank you. Is there a
2 reason that you didn't go ahead and deed one-half
3 interest to her in the April 23rd, 2007, closing?

4 A. Well, gosh, you're asking me a question
5 that should already be in the decree, if you read
6 it, the Settlement Agreement. See if I can find
7 it here. First of all, before I would deed it to
8 her, she would have to -- this would have to be
9 signed by the Court before I closed on it. It had
10 to be approved by the Court, the Settlement
11 Agreement. It was approved by the Court before
12 the closing date.

13 Then the next thing she had to do was
14 she had to then move out of the marital home into
15 the Black Rush property. Once she got everything
16 moved, I agreed to deed it over to her, the 50
17 percent, which was already all known up front by
18 Ms. Bell, Rivers, Stout, the whole bunch over
19 there.

20 Q. So as I understand it, essentially the
21 reason you didn't go ahead and deed her the
22 one-half interest in the April 23rd, 2007, closing
23 is because she hadn't moved out of the other house
24 yet?

25 A. Correct.

1 Q. And that was a condition that you all
2 had discussed and agreed upon?

3 A. Yes.

4 (Deposition Exhibit No. 8, Title to Real
5 Estate, was marked for identification.)

6 Q. Sir, I've marked as Exhibit 8 what
7 appears to be a deed. Is this the deed in which
8 you provided the one-half interest to Cindy
9 Whitfield on the Black Rush property?

10 A. Hold on a second. I'm making some
11 notes.

12 Q. Sure.

13 A. It looks like it.

14 Q. All right.

15 A. It's dated -- what is the date on this?

16 Q. It says July 24th on the --

17 A. It was sworn on July 24th. Let's see.
18 Was it signed? It looks like the 24th of July.

19 Q. Yes, sir. So just to be clear, we've
20 got the April 23rd, 2007, closing of the Black
21 Rush property. And then a few months later, on
22 July 24th, 2007, you deeded one-half interest to
23 Ms. Cindy Whitfield; is that fair?

24 A. Right, per the Settlement Agreement.

25 Q. Yes.

1 A. I keep my word. Anything else on that
2 one?

3 Q. No, sir. So as I understand it, the
4 Black Rush property, along with eight other
5 properties, needed to be modified and/or renewed,
6 whatever nomenclature you want to use, in 2012,
7 after this five years expired. Is that a fair
8 statement?

9 A. Well, yeah. They was supposed to be
10 renewed. That was promised to me by Ms. Bell and
11 Harbor National Bank.

12 Q. Yes, sir. And the fact that the Black
13 Rush loan was not renewed or modified, or whatever
14 you call it, is really one of the main reasons
15 we're here today and one of the main reasons Mr.
16 Swanson is involved in this case; is that a fair
17 statement?

18 A. I would say that's probably the most
19 relevant reason. But there's other reasons why
20 the other deal didn't close too, because of Mr.
21 Swanson.

22 (Deposition Exhibit No. 9, 1/8/16
23 Defendant's Fifth Amended Answer, Affirmative
24 Defenses, Cross-Claim and Counterclaims, was
25 marked for identification.)

1 BY MR. OVERSTREET:

2 Q. So, sir, I've marked as Exhibit 9 what
3 appears to be a copy of the Defendant's Fifth
4 Amended Answer, Affirmative Defenses, Cross-Claims
5 and Counterclaims in this case. And I'll
6 represent to you that my understanding is that
7 this is the pleading in which the actual claims
8 against Mr. Swanson are stated. Is this a
9 document that you've reviewed before?

10 A. Hold on a second. Yeah, it looks like
11 it.

12 Q. All right. Why did you sue Mr. Swanson?

13 A. Oh, that's a big question. That's why I
14 have my little notes over here. Well --

15 Q. You're looking at Exhibit 1, and I'm
16 happy to let you do that. I just wanted to
17 reference that for the deposition.

18 A. Well, I'll tell you what, we'll first
19 say, whatever I pled in here, that's the reasons.
20 And then I'm going to add my notes and facts --

21 Q. Yes, sir.

22 A. -- from the discovery.

23 Q. That's fine. I just want you to tell me
24 in your own words why you sued Mr. Swanson.

25 A. I'll tell you exactly why. The facts

1 are in here.

2 Q. If you would turn to page 16 in that
3 exhibit, sir, that's where it starts.

4 A. Where it starts "Mr. Swanson"?

5 Q. Yes, sir.

6 A. Well, he abused process; engaged in a
7 conspiracy with a number of people, defrauded me.
8 And I think that's the main causes of actions
9 we've got in here. Let's see. Civil conspiracy,
10 abuse of process, and I think there's fraud in
11 here somewhere.

12 Q. And is it your position, Mr. Whitfield,
13 that --

14 A. I haven't finished the question.

15 Q. Oh, please continue.

16 A. You want to know why I think he
17 conspired?

18 Q. Sure.

19 A. Okay. Here we go. Well, where do I
20 start? There's no mention of Mr. Swanson or
21 Haynsworth Sinkler Boyd from between June 28th,
22 '12, the scheduled closing, until 11/13/13, when
23 Scott Warren named him in his deposition. So
24 that's quite a long time without having Mr.
25 Swanson show up anywhere. When Mr. "Bernie"

1 Bernstein decided in a hurry to drop off a box of
2 documents without reviewing them, in violation of
3 attorney-client privilege -- because there were a
4 number of attorney-client privileged documents in
5 there; there were over three pages (sic) dropped
6 off, and I personally reviewed them myself, and
7 many were privileged -- Swanson was never
8 mentioned in any of those documents. Incredible.
9 This was around March -- January, March of 2013,
10 so that was about nine months before Mr. Scott
11 Warren's deposition. No mention; no e-mails,
12 nothing on anything.

13 Four and a half years later, the case,
14 and he's still -- we only have a trickling of
15 stuff. We only have a fabricated phone call and
16 fabricated advice from Mr. Swanson that he says he
17 gave on the 28th of June 2012. Of course, he
18 doesn't -- he can't really say when the phone call
19 was because he doesn't know. And you all at
20 Haynsworth Sinkler Boyd -- excuse me. You don't
21 work there. You work for a different company --
22 destroyed all the files -- the phone calls to
23 cover his butt.

24 Next, there are no written opinions
25 given to Warren -- Scott Warren or Haynsworth or

1 Harbor National Bank loan officers or Rivers or
2 anybody, no opinions whatsoever, nothing in
3 writing. There are no notes from Swanson from any
4 file. He -- it never existed. No notes in
5 Warren's files, Rivers, Stout, Werking or anyone
6 at HNB that proves that he had any conversations
7 with anybody at Harbor National Bank at any time.
8 And there were no generic questions asked either.
9 There were specific questions, and the deposition
10 which we have today proves that Mr. Warren asked
11 specific questions about my ex-wife, Cindy
12 Whitfield -- wife at the time -- being deeded 50
13 percent and the Black Rush issue, of which Warren
14 concocted a requirement for an endorsement, which
15 is based on no law whatsoever. Okay?

16 I'm moving on here.

17 Q. And just --

18 A. I'm not finished yet.

19 Q. Just for the record, you're referring to
20 Exhibit 1 as you're going through your response?

21 A. We can refer to Exhibit 1.

22 Q. Is that correct, sir?

23 A. That's correct. Okay. There are no
24 notes anywhere from Swanson or Attorneys Weeks,
25 Bernstein, Sloop, Stewart Title, Jaskiewicz -- my

1 ex-wife's attorney -- regarding my renewal
2 closings and any problems that existed or supposed
3 to have existed.

4 There are no e-mails from any Harbor
5 National Bank officers regarding Swanson's advice
6 not to close any of the renewals or to any of the
7 just named above -- I just named -- individuals
8 and attorneys.

9 Mr. Swanson has no record of any record
10 or conversation or advice to Warren -- Scott
11 Warren -- or any basis of law in making his
12 opinion of risk, or legal advice, I should say.
13 The level of risk to the bank or any reference to
14 any of the loan documents and the file documents,
15 including the Whitfield Divorce Settlement
16 Agreement, the Black Rush sales contract, deeds,
17 mortgage, commitment letter 6/26/17 (sic). "The
18 fabricated advice given by Swanson and Warren has
19 no support of any law and is refuted by the
20 closing attorney, Weeks."

21 "Swanson admits in his deposition that
22 he never reviewed any of my loan files, nor
23 conducted any legal research before he concocted
24 the defense of equitable subordination. This is
25 not just negligence by Swanson to the bank, but

1 only an attorney who gives legal advice not
2 supported by law or without reviewing all the
3 facts is a fool in my opinion."

4 Q. Mr. Swanson is a fool?

5 A. Yes, he's a fool. Or he's very foolish,
6 either way you want to look. A fool is foolish.
7 "Swanson law firm, Haynsworth Sinkler Boyd, has no
8 record of any call around 6/28/12. Furthermore,
9 Swanson stated he has no idea what exact date the
10 call was received, which he clearly fabricated.

11 "Swanson law firm, Haynsworth Sinkler
12 Boyd, destroyed the phone records it had kept
13 after they were put on notice that the phone call
14 was an issue and even after being served a
15 subpoena for records.

16 Records from AT&T show no phone call was
17 received from his office line, where Swanson said
18 he received the call.

19 "The bank -- Harbor National Bank --
20 claimed the reason for backing out of the deal a
21 year later, in the lawsuit (Warren depo 11/13/13),
22 to close my nine loan renewals on 6/28/12 was
23 because of advice it got" -- the bank got -- "from
24 a 'mystery lawyer,' who never appeared in the
25 pleadings or on a witness list until that time."

1 Even the first Interrogatories Mr.
2 Bernstein answered, when he dumped the box, Mr.
3 Swanson's name wasn't listed anywhere nor any
4 statement of what he was going to testify to.
5 Amazing.

6 "After the closing date 6/28/12 and the
7 closing that HNB refused to honor and backed out
8 -- the bank's compliance people told Warren that
9 the issue 'screamed attorney involvement' but no
10 one ever contacted Swanson ever again." Because
11 he never was talked to in the first place. "If he
12 was originally consulted, then why didn't they go
13 back to him for help?

14 "Swanson has no billing record or a file
15 on the Black Rush loan and closing advice.

16 "Swanson never contacted the closing
17 attorney, Mark Weeks, to discuss the endorsement
18 which the bank was demanding at closing or spoke
19 with Weeks after the planned closing. Both
20 Swanson and Weeks have said in sworn statements
21 that an endorsement was not required to close
22 Black Rush of any of the nine loans.

23 "Swanson was an agent for First American
24 Title, as well as the original closing attorney,
25 Stanley Claypoole, who placed the title insurance

1 on Black Rush in April of 2007. Both could have
2 written the endorsement easily and no consent was
3 required for any endorsement from my ex-wife --
4 since this would be additional insurance provided
5 the bank that was not necessary for the bank's
6 protection per the mortgage, deeds and the
7 applicable law. Another fraud" -- or more fraud.

8 "Before and after the closing, which
9 was backed out by HNB," Harbor National Bank,
10 "their compliance officer, Patti Blendon, advised
11 the bank that" --

12 THE WITNESS: Am I going too fast?

13 A. -- "advised the bank that Black Rush was
14 a consumer loan, and that if my Divorce
15 Decree/Settlement Agreement stated that if I was
16 solely responsible for the payment of the
17 mortgage, that my ex-wife did not have to sign
18 anything in order to close the loan renewal,
19 especially since there were no changes in the
20 mortgage or the loan amount.

21 "Had Swanson reviewed the Black Rush
22 entire file, he would not have given such
23 negligent advice" -- fabricated advice, if he
24 really gave advice, but we don't believe he ever
25 made the phone call to Warren.

1 Q. You don't think the phone call exists?

2 A. No. I don't. And if it did exist, his
3 advice is based on fraud -- a fabricated,
4 concocted statement that he gave at his deposition
5 -- both depositions.

6 Q. Can -- do you want to keep going?

7 A. I'm not finished.

8 Q. Keep going. Sorry.

9 A. Do you want me to go back and repeat
10 that since you interrupted me? "Had Swanson
11 reviewed the Black Rush entire file, he would not
12 have given such negligent advice to Warren to not
13 honor the deal made and to not close because of a
14 fabricated risk to the bank. The only risk to the
15 bank was failing to close.

16 "Why did bank insist" -- Harbor National
17 Bank -- "on commercial loan docs when Blendon
18 advised them and they knew that Black Rush was a
19 consumer loan since April 2007? Harbor National
20 Bank -- Rivers and Stout, Werking -- conspired
21 with Swanson to keep all these loan documents and
22 the divorce documents from being considered when
23 Swanson gave his perjured statements in his
24 deposition.

25 "Warren testified that he needed two

1 things to close: A title endorsement and a
2 business purpose affidavit, saying all the
3 properties were being owned and pledged for
4 business purposes. Harbor National Bank was
5 asking me to lie, because they knew even at the
6 time that my wife was living in Black Rush.
7 Warren said this request from (sic) Swanson.
8 Swanson denied this request came from him in his
9 first deposition. One of them is lying.

10 "Swanson did not attend the 7/25/12
11 meeting or ever gave advice or" what was asked to
12 give -- "or was asked to give any legal advice how
13 to proceed after the closing 6/28/12 was cancelled
14 by Harbor National Bank," Scott Warren.

15 "I believe, when Swanson volunteered to
16 play the fraud game, he was assured by his
17 coconspirators and the bank attorneys that he
18 would never be caught. Haynsworth Sinkler Boyd
19 destroyed the phone records at their office to
20 assure the secrecy, not knowing that the Homeland
21 Security Act required phone companies to maintain
22 records indefinitely.

23 "The case could have settled by the end
24 of 2013 had Swanson not agreed to conspire,
25 defraud, and abuse process for Harbor National

1 Bank. Due to Swanson frauds and conspiracy, I
2 incurred huge additional expenditures for attorney
3 fees, costs and expert witnesses" fees.

4 There's one other comment I have about
5 Mr. Warren's entering the picture. His name
6 didn't come up until November 13, '13. Mr.
7 Bernstein was on the hot seat as being the
8 attorney that was giving the bank counseling on
9 how to go. Mr. Bernstein didn't want to be
10 pointed at as the conspirator or the liar for the
11 bank. So he got together -- he had to get
12 together with Mr. Duffy, because Mr. Duffy had to
13 have been discussing this. Because Mr. Bernstein
14 was already headed to be disqualified as the
15 attorney in this case and be removed as
16 representation.

17 Five days later, on November 18, Mr.
18 Duffy makes an appearance. Very suspicious. And
19 then, all of a sudden, this concocted story by Mr.
20 Swanson and the phone call pops up at his
21 deposition. I think it was May 14th of '14.
22 Amazing. But Mr. Swanson was never mentioned
23 anywhere in any discovery, any e-mails found, no
24 notes, no nothing, bills, records; he never looked
25 at anything. So someone recruited him to lie for

1 the bank. And we know who it was.

2 "Swanson did not get a
3 generic/hypothetical question from Scott Warren on
4 6/28/12. Deposition testimony of Warren shows
5 that Warren was asking specific questions about
6 the Black Rush loan, my ex-wife's involvement in
7 the purchase transaction and ownership" -- she was
8 still my wife -- "50 percent transfer of title
9 among other things. Swanson lied numerous times
10 in his deposition and stated that 'he did not care
11 about the divorce nor the terms agreed in the
12 decree.'" Didn't care.

13 "Swanson does not know when the call
14 came in from Scott Warren." Was it 6/27? 6/28?
15 After 6/28? "And he denied that my name was
16 mentioned"; says otherwise in the Warren
17 deposition.

18 "Harbor National Bank puts blame on
19 Swanson advice for not closing the other eight
20 renewals. But Swanson testified in 2014 that he
21 never even knew there were eight other loans being
22 closed. More lies.

23 "Swanson was needed to volunteer and
24 assist Harbor National Bank in getting them out of
25 a very bad situation. The CEO," Mr. Rivers,

1 "board of directors, officers, shareholders and
2 many bank investors are his long-time buddies,
3 especially CEO Rivers, who Swanson stated was a
4 childhood pal."

5 And I need -- if you don't mind, I have
6 a couple pages of Mr. Swanson's deposition I need
7 to discuss.

8 Q. Sure.

9 A. Okay. In Mr. Swanson's second
10 deposition, which we took not too long ago, I
11 think it was June -- no -- May 17th? -- I don't
12 have a date on it. But Mr. Slotchiver asked Mr.
13 Swanson about who he had social relationships with
14 at the bank, Harbor National Bank, now Bank of
15 North Carolina. And he asked Dan, "Which persons
16 are you talking about?" And Dan asked him again,
17 "Well, we can go through a list of them, but, for
18 example, Charlie Rivers?"

19 "Yes, I do have a social relationship
20 with him."

21 And, question, "You have known him most
22 of your life?"

23 Answer, "Yes."

24 Question, "Who else?"

25 Answer, "That's probably it down there."

1 I see Willard" -- that's Willard Stout he's
2 referring to -- "from time to time over in the
3 country club, but --"

4 And then Dan goes in and asks, "What
5 about the investors at the bank? Do you have any
6 connections with the investors at the bank?"

7 "Not anymore," answer. "I knew some of
8 the Harbor investors, some of the people -- the
9 board members and others, but I don't know any of
10 the BNC people."

11 We're not talking about BNC people.

12 Question, "Who do you know at Harbor?"

13 Answer, "Jim Kerr and Jim Stelling."

14 For the record, those are board of
15 directors.

16 "I mean, I knew a lot of them, but I
17 can't recite them."

18 Question, Tommy Hartnett?

19 Tommy Hartnett.

20 Yes, he knows him. Tommy Hartnett was
21 the chairman of the board for Harbor National
22 Bank; chairman of the board of directors, former
23 Congressman Tommy Hartnett.

24 "Yeah, I knew Tommy. He used to be in
25 the building here. Who else is in there? I don't

1 know." Oh. "Larry Richter" -- God -- "he was an
2 investor" -- another attorney investor. "He
3 wasn't on the board."

4 Eddie Buck -- Buck Lumber, big investor,
5 knows him real well.

6 "Yeah, Eddie was. He was definitely an
7 investor. I don't think he was on the board."

8 "Any other investors you recall
9 offhand?"

10 Answer, "No."

11 Question, "Drew Epting maybe?"

12 Answer, "Oh, yeah, he was there,
13 big-time investor."

14 Question, "Mr. Trenholm?"

15 Answer, "Allen Gibson was. He was on
16 the board, and Cynthia Lowery was on the board. I
17 don't know whether Trenholm was or not."

18 Let's see.

19 "Of those people you just mentioned, did
20 you have a close -- do you have a close personal
21 relationship with or friendship with any of them?
22 You mentioned Kerr, Stelling, Hartnett -- between
23 you and me, you mentioned Kerr, Stelling,
24 Hartnett, Larry Richter, Eddie Buck..." or
25 Stanley, "Drew Epting, Allen Gibson, Cynthia

1 Lowery."

2 Answer, "No. I mean, I know all of
3 them, but I don't have..." close relationships.

4 "I see them around and some of them I do some
5 work, limited amount of work for some of the Buck
6 families."

7 "Did you have an occasion to speak with
8 any of them on this case?

9 "No.

10 "Are any of them members of the Carolina
11 Yacht Club or Country Club II?

12 "Yeah, a bunch of them."

13 Of course, Mr. Swanson is also a member
14 of those.

15 That's all I have to say on that issue.
16 Let's go back and finish my comments here.

17 Q. Just for the record, you were referring
18 to an excerpt of Mr. Swanson's testimony from his
19 deposition in the last several minutes you've been
20 reading. Is that correct, sir?

21 A. Correct.

22 Q. Sorry. Go ahead.

23 MR. DUFFY: My only point is we've
24 obviously got a lot of ground to cover today,
25 and my request would be that you refer to the

1 pages of the deposition rather than read them
2 all. Otherwise -- and to the extent this goes
3 longer than everyone anticipated, I'm stating
4 an objection now.

5 THE WITNESS: I don't need to read any
6 more probably from depositions, but I had to
7 get that in the record. Okay?

8 A. I'll go back and finish the paragraph I
9 was stating about Mr. Swanson's involvement with
10 Harbor National Bank people. Let's see. "The
11 CEO, board of directors, officers, shareholders
12 and many bank investors are his long-time buddies,
13 especially CEO Rivers, who Swanson stated was a
14 childhood pal."

15 He also stated in his deposition that he
16 frequently went in and talked about legal matters,
17 including this case. Because Mr. Rivers and
18 Harbor National Bank is on the bottom floor of the
19 building that Swanson's offices -- Haynsworth
20 Sinkler Boyd is on the third floor.

21 "Many of these are personal clients.
22 Their plan was to convince me that I had a weak
23 case and settle my case for peanuts or just make
24 me think my position was hopeless and give up and
25 sign quitclaim deeds over to them and pay their

1 attorney fees and 14 percent default interest.
2 All based on fraud. A fabricated call and
3 concocted advice. More stress" on me "on top of
4 stress and more stress." Now almost five years
5 into this case.

6 So you already have it marked as an
7 exhibit.

8 Q. Just for the record, sir, for the last,
9 I don't know, 20 minutes or so you've been reading
10 practically verbatim from Exhibit 1, which is the
11 summary you prepared last night; is that fair to
12 say?

13 A. Yes.

14 Q. So I just want to be clear, your
15 position is that the phone call between Scott
16 Warren and David Swanson never occurred?

17 A. Correct.

18 Q. You think they're both lying --

19 A. Yes.

20 Q. -- after the fact?

21 A. After what fact?

22 Q. After they said it occurred.

23 A. Yeah. They're lying.

24 Q. And you believe that they concocted this
25 notion that the phone call occurred after the

1 closing didn't go forward?

2 A. Oh, yeah. When Harbor National Bank got
3 real concerned, then they had to bring in some
4 other guns, and they had to convince somebody to
5 lie for the bank to get them out of the hole they
6 were in, and Mr. Swanson volunteered.

7 Q. Do you know, according to your theory,
8 when that happened?

9 A. I just told you, about the time Mr.
10 Duffy came in the picture -- it's a little strange
11 that Mr. Duffy came in five days after Mr. Warren
12 named your client, Swanson -- David Swanson in his
13 deposition on November 13th. I find that pretty
14 much tied that Mr. Duffy had quite a few
15 conversations with Mr. Swanson before that name
16 came up.

17 Q. So was a title endorsement -- or getting
18 a title endorsement on Black Rush never an issue
19 before the closing was supposed to go forward?

20 A. Repeat that question.

21 Q. Sure. The issue with this title
22 endorsement and whether or not the bank should or
23 needed to get one, was that never brought up
24 before the closing in 2012?

25 A. There was only mention that it may be

1 needed the day before closing. That's a little
2 late to start making excuses not to close.

3 Q. So you would agree with me that the
4 issue with the title endorsement was at least
5 raised before the closing was set to close?

6 A. No. It wasn't raised. It was just
7 mentioned by Scott Warren that we may need an
8 endorsement if Cindy Whitfield won't sign the
9 documents, which she wasn't required to sign in
10 the first place.

11 Q. And he mentioned that before the June
12 28, 2012, scheduled closing?

13 A. No. It was at the closing, and when he
14 got into that.

15 Q. So he mentioned that at the June 28,
16 2012, closing?

17 A. Right. He insisted that she had to sign
18 the mortgage. There was no mortgage there to
19 sign. It was never prepared.

20 Q. And is June 28, 2012, which is the day
21 of the scheduled closing, when you first learned
22 of any issue with requiring a title endorsement?

23 A. That's the first time I heard that there
24 was going to be any requirement or it was going to
25 shut down all nine closings, yeah.

1 Q. Had you heard anything about the need
2 for a title endorsement on the Black Rush property
3 before the date of the scheduled closing?

4 A. It was just briefly mentioned, because
5 it appeared that they found that there was a title
6 transfer, that they already knew, and that's why
7 they did the -- I believe that was the whole
8 purpose of doing the title work, was to find the
9 title transfer so that they could use that against
10 me. Because they didn't need to do any title
11 search.

12 Q. So my real question is just timing, and
13 I think I understand your answer to be the title
14 endorsement issue was raised with you before the
15 closing. It was at least mentioned to you the day
16 before the closing?

17 A. I don't remember exactly. I just know
18 that there was -- a term sheet they want to call
19 it, but it was a commitment letter -- and there
20 was nothing on there that said endorsement was
21 required.

22 Q. I guess what I'm trying to get clear is,
23 it's not as if you heard of this title endorsement
24 issue for the first time a year later when Scott
25 Warren was deposed, is it?

1 A. That was the basis for not closing on
2 June 28.

3 Q. You're not answering my question. My
4 question is, it's not as if you learned of the
5 title endorsement issue for the very first time a
6 year later after the scheduled closing, is it?

7 A. I'm not following what you're saying.
8 First of all --

9 Q. You just told me --

10 A. -- Mr. Weeks, the closing attorney --

11 Q. If you didn't follow my question --

12 A. -- and two other experts said the
13 endorsement wasn't required.

14 Q. If you didn't follow my question, I'd
15 like to rephrase it. Okay?

16 A. Okay.

17 Q. You just said that Scott Warren had
18 mentioned an issue with the title endorsement to
19 you either before or at the June 28th, 2012,
20 closing. So my question is, isn't it fair to say,
21 then, that you didn't learn of this title
22 endorsement issue months after the scheduled
23 closing; you knew about it at the time of the
24 scheduled closing?

25 A. I guess, yeah. I don't know what you're

1 getting at. But Swanson never came in the picture
2 and said the endorsement was required. Never
3 heard a peep from him.

4 Q. You've just testified that you believe
5 Scott Warren and David Swanson both are lying
6 about this phone call that occurred in or around
7 June 27th, 2012, about the title endorsement on
8 the Black Rush property, right?

9 A. I said he mentioned it. That's why he
10 didn't close Black Rush on the 28th of June.

11 MR. OVERSTREET: Can you read back that
12 question?

13 (The court reporter read back the
14 previous question.)

15 A. Yeah.

16 Q. That being said, setting that aside, is
17 it fair to say you don't have any independent
18 knowledge about whether the phone call did or
19 didn't occur?

20 A. The knowledge is there's no phone record
21 verifying the phone call. And there's no
22 documentation. There's nothing, and Mr. Swanson
23 has no file or no record of any phone call, any
24 advice given. I've already listed everything why
25 I believe he was engaged in conspiracy. It's

1 already on the pleadings as well. He wasn't
2 called.

3 Q. Has anybody ever told you that that call
4 didn't occur?

5 A. Yeah.

6 Q. Who?

7 A. My attorney.

8 Q. Other than your attorney?

9 A. Well, I guess AT&T.

10 Q. Has anyone in person ever told you --

11 A. AT&T has persons.

12 Q. We can get into whether or not your
13 subpoena --

14 MR. SLOCHIVER: I'm sorry. Let me move
15 to strike any reference to any conversations
16 he's had with us as attorney-client privilege.
17 I just want to put that on the record.

18 MR. OVERSTREET: No problem.

19 BY MR. OVERSTREET:

20 Q. We can get into whether the subpoena you
21 sent to AT&T was sufficient. But, really, my
22 question is about living human beings. Has any
23 human being ever told you that the phone call that
24 Mr. Warren and Mr. Swanson said occurred in or
25 around June 27th, 2012, about the Black Rush

1 property didn't occur?

2 A. I don't recall.

3 Q. Why would Mr. Swanson lie about that
4 phone call?

5 A. I don't know. You need to ask him.

6 Q. Well, do you think he had some motive?

7 A. Obviously. I guess he has favors, just
8 like quid pro quo, with the people at Harbor
9 National Bank. He obviously, you know, is going
10 -- was promised more business by helping Harbor
11 National Bank. And banks work together. So if
12 one bank finds out that someone was willing to lie
13 for another bank, other banks say, Hey, let's give
14 him some business. We could use him to lie for us
15 later.

16 Q. So you think --

17 A. Oh, by the way, he also got awarded the
18 real estate lawyer of the year. And I guess maybe
19 his Harbor National Bank people got all these
20 attorneys that do work for the banks to vote for
21 him, to be real estate attorney of the year.
22 Amazing. Now, how much money do you think him and
23 Haynsworth Sinkler Boyd is going to make off that
24 big award and that plaque and all that in the
25 website about his kudos of how great a lawyer he

1 is? He'll probably have people calling from New
2 York and California to do work for them. I say he
3 embellished himself by doing this favor for Harbor
4 National Bank.

5 Q. Sir, is it fair to say that you think
6 that Mr. Swanson lied about the existence of the
7 phone call to gain the favor of Harbor National
8 Bank?

9 A. Yeah.

10 Q. Is there any other reason?

11 A. I don't know what his reasons were. I
12 don't know if he's getting a cash payment if the
13 case goes away. I don't know what his -- what
14 he's going to get. He had incentive to do it,
15 whether it was just because he was pals and
16 drinking buddies with those people at the clubs or
17 whether Mr. Rivers -- he owed Mr. Rivers a favor
18 back because Mr. Rivers probably took him out on a
19 60-foot fishing boat quite a lot. So who knows?
20 I don't know what his motive was. But it was
21 stupid. A bad mistake. He didn't think he was
22 going to get caught. That's why he did it. He
23 was convinced by the attorneys in this case that
24 he'd never get caught. All you've got to do is
25 destroy the phone records over at Haynsworth

1 Sinkler Boyd and we'll never find out. But you
2 all don't know about the Homeland Security Act; it
3 requires phone records to be kept indefinitely.

4 Q. Do you think that the reason --

5 THE WITNESS: I'll take a break. Thank
6 you. Please try to stick to the new
7 questions. But I've got to relieve myself due
8 to my congestive heart condition -- did you
9 get that? -- caused by Harbor National Bank
10 and the stress you put me through.

11 That's funny, Mr. Duffy?

12 Get that on the record. He's laughing.

13 MR. DUFFY: You don't know what I'm
14 laughing at. I'm not at the laughing at the
15 deposition.

16 THE WITNESS: Aren't you laughing a lot?
17 You're smiling?

18 MR. DUFFY: I don't think anything about
19 you is funny.

20 (The deposition went off the record.)

21 BY MR. OVERSTREET:

22 Q. We just took a short break. Mr.
23 Whitfield, what I'd like to do now is move
24 chronologically to the time around the scheduled
25 2012 closing that did not go forward. And I'll be

1 asking you again some questions about the Black
2 Rush property specifically. My understanding is
3 that the closing was originally scheduled for June
4 28, 2012. Does that sound right to you?

5 A. Correct.

6 (Deposition Exhibit No. 10, E-mail
7 chain, was marked for identification.)

8 Q. Sir, I've marked as Exhibit 10 an e-mail
9 string that you were not actually part of but has
10 been produced as discovery in this case. It
11 appears to be correspondence between the closing
12 lawyer's paralegal, Teresa Farley, as well as a
13 representative from the bank, Felicia Pringle, and
14 a representative from the bank, Scott Warren.
15 It's a three-page document.

16 And if you could turn with me to the
17 second page of Exhibit 10, I'd like to ask you a
18 question. First, do you know if this is an e-mail
19 you've ever seen before?

20 A. Yeah, I think so.

21 Q. So, sir, looking at halfway down the
22 second page of Exhibit 10, it appears to be an
23 e-mail from Teresa Farley on June 26, 2012, which
24 I think we've established is a couple days before
25 the scheduled closing. And Mr. Weeks was supposed

1 to be your closing attorney; is that right?

2 A. Yes.

3 Q. So looking at the list of things that
4 Mr. Weeks' paralegal sends to the bank folks, it
5 indicates that she still needs a couple things
6 before the closing. And on No. 2 it says, "Please
7 note that Cindy Whitfield is on this property deed
8 and will need to sign the Charleston County
9 mortgage."

10 Now, did you know that two days before
11 the closing, your lawyer was telling the bank that
12 Ms. Whitfield needed to sign the deed (sic)?

13 A. No.

14 Q. Okay. I'm sorry. I meant to say the
15 mortgage.

16 A. There was no mention in the commitment
17 letter either. And that was given to me the day
18 before the closing.

19 (Deposition Exhibit No. 11, E-mail
20 chain, was marked for identification.)

21 Q. Sir, I've marked as Exhibit 11 another
22 e-mail string of which I believe you were not a
23 part either. But it appears to be about a day
24 closer to the scheduled closing. And it's a
25 three-page document that appears to be some back

1 and forth between some of the bank folks and the
2 closing attorney Mr. Weeks' office, and Barry
3 Sloop. Is this an e-mail chain you've seen
4 before?

5 A. I think so.

6 Q. All right, sir. If you could look with
7 me on the second page of Exhibit 11, at the top
8 there appears to be an e-mail from Scott Warren
9 dated June 27th, 2012, at 12 p.m., which I think
10 we've established is the day before the scheduled
11 closing. And it reads --

12 A. What are you referring to?

13 Q. Yes, sir. The second page of Exhibit --

14 A. I'm on the second page.

15 Q. -- 11.

16 A. I see e-mails dated June 27th. That's
17 not the day of closing.

18 Q. No, sir. I said the day before.

19 A. Okay. I'm sorry. I misheard you.

20 Q. Looking at the second page, sir, of
21 Exhibit 11, there appears to be an e-mail from
22 Scott Warren dated June 27th, which I believe is
23 the day before the scheduled closing. Do you see
24 that?

25 A. The one from Warren to Farley?

1 Q. Yes, sir.

2 A. Okay. The top one.

3 Q. Yes, sir.

4 A. It's pretty small print.

5 Q. Yes, sir, it is. And the text of the
6 e-mail, which appears to be from Scott Warren to
7 your closing lawyer's staff, says, "Teresa, thank
8 you for your work on this." And the next
9 paragraph says, "I called bank council (as
10 written) to get some advice on how to handle it.
11 We need a title endorsement on Black Rush only.
12 We can rely on your title opinion and existing
13 policies for the others."

14 Were you aware that Mr. Warren sent a
15 letter to your title lawyer indicating the day
16 before closing that he had spoken with bank's
17 "council" and was told that he needed a title
18 endorsement?

19 A. He didn't discuss it with me, and he
20 never mentioned that he discussed anything with
21 "bank council" on June 28th. And I don't see why
22 we had a closing scheduled on June 28th and why we
23 all showed up to close on June 28th if there was
24 an issue that wasn't resolved.

25 This is another lie, because we don't

1 have any proof that he contacted any "bank
2 council" on the 27th, and especially Mr. Swanson.
3 Because the only contact Mr. Warren said he had
4 with Mr. Swanson was a phone call, of which cannot
5 be verified was ever made.

6 Now, if he went down there and talked to
7 Mr. Swanson, why didn't Swanson say that? Why
8 didn't Mr. Swanson -- you know, since they're in
9 the same building, why didn't Mr. Swanson go
10 upstairs -- or downstairs and see Mr. Warren, or
11 why didn't Mr. Warren walk upstairs? But there's
12 no mention of any of that discussion with "bank
13 council."

14 The only "bank council" I can think of
15 would be the compliance officer, Patti Blendon,
16 who is not an attorney. And she told him it was a
17 consumer loan, and that Cindy Whitfield didn't
18 have to sign anything if it says in the divorce
19 decree I'm a hundred percent responsible for the
20 debt. Does that answer your question?

21 Q. No, sir. Did you know that the day
22 before the closing Scott Warren sent an e-mail to
23 your lawyer's office saying, "I called bank
24 council to get some advice on how to handle it.
25 We need a title endorsement on Black Rush only"?

1 MR. HALVERSEN: Object to the form.

2 A. I didn't get a copy of this e-mail. I
3 never got informed by the closing attorney that
4 that requirement was made.

5 Q. Have you seen this e-mail before?

6 A. As a matter of fact, this is a
7 conversation with a paralegal. It's not with Mark
8 Weeks. Mark Weeks said in his affidavit that no
9 endorsement was required to close. There was no
10 law or any reason that would support a requirement
11 for an endorsement on Black Rush. There was no
12 mortgage prepared for my ex-wife to sign. So this
13 is all fraud.

14 Q. Have you seen this e-mail before today?

15 A. I may have.

16 Q. Is it a part of the package of documents
17 you in fact brought with you today?

18 A. Could have -- could be.

19 Q. So now we have testimony -- sworn
20 testimony from Scott Warren that a call occurred
21 on approximately the 27th about the title
22 endorsement issue?

23 A. He didn't say the 27th he had a call.

24 Q. We have sworn testimony from Mr. Swanson
25 that the call occurred, and now we have an e-mail

1 from Mr. Warren to your closing attorney's office
2 saying, I had a conversation with the bank's
3 "council" to get some advice and we need a title
4 endorsement.

5 MR. SLOCHIVER: Object to the form. It
6 misstates the facts.

7 A. You misstated the facts. That's not
8 true.

9 Q. Are all three -- let me ask a question.

10 A. You already made a question.

11 Q. Are all three of --

12 A. You're asserting false facts. The facts
13 are in Mr. Warren's deposition. He said he
14 received the call the day of closing the next day
15 (sic). He didn't ever talk to "bank council"
16 before the closing or "bank council" after the
17 closing.

18 He was even advised it screamed of
19 attorney requirements by Ms. Blendon, and he never
20 called anybody. He didn't call Swanson; he didn't
21 even make an attempt to go to Weeks to say, Weeks,
22 you need to call Swanson because Swanson says we
23 need an endorsement. Swanson's name never came
24 up. It's all fraud and a conspiracy.

25 Q. How do you explain this e-mail?

1 A. He can say what he wants to in an
2 e-mail, but Scott Warren -- he's not all there. I
3 guess he made that up to cover his butt. I don't
4 know what he made it up for.

5 Q. So the day before closing, he's hatching
6 this conspiracy?

7 A. Maybe he called Bernie -- Mr. Bernstein.
8 Maybe. Maybe that's who he called.

9 Q. Let me ask you this --

10 A. Mr. Rivers says that Bernstein was who
11 he went to for advice, not Swanson.

12 Q. Do you mind if I ask you a question?

13 A. Sure.

14 Q. So is it your opinion, then, that he was
15 hatching this conspiracy the day before the
16 closing when he sent this e-mail?

17 A. I'm saying that he said he talked to
18 "bank council" when he didn't. He talked to
19 Charlie Rivers and Mr. Stout, and they said, This
20 is what we want. So tell him this is what we need
21 because this will screw things up so we don't have
22 to close tomorrow.

23 Because the deadline on this so-called
24 terms agreement -- commitment agreement was one
25 day to close. You're supposed to give a borrower

1 30 days on a commitment letter.

2 Q. So you're just not really sure how to
3 justify this e-mail; is that fair to say?

4 A. There's no proof he talked to anybody.

5 Q. Except for the fact that he sent an
6 e-mail directly afterward saying that he did?

7 A. Yeah. He also sent an e-mail to
8 himself. He talks to himself, too. Did you know
9 that? It's called Scotty-beam-yourself-up. He
10 just makes e-mails to himself, and we have that
11 too.

12 Q. Do you think he's lying in this e-mail
13 on June 27th, 2012? That the e-mail is made up as
14 well?

15 MR. SLOTCHIVER: Which e-mail? I'm
16 sorry.

17 MR. OVERSTREET: The top of page 2 of
18 Exhibit 11 that starts with "Teresa."

19 A. Well, he's lied before. Why wouldn't he
20 be lying here? Where is the proof of who he
21 talked to? Why didn't he tell Mr. Weeks, I talked
22 to so-and-so "council"? If he talked to
23 "council," why didn't he tell Weeks that?

24 Q. Can I ask you this question: If he had
25 said in this e-mail instead of "I called bank

1 council," that I called David Swanson, would that
2 have satisfied you?

3 A. That would have made it a little more
4 relevant, if he said, I called David Swanson.
5 But, see, David Swanson didn't exist back then.
6 David Swanson didn't exist until November 13,
7 2013, about the time Mr. Duffy got hired.

8 THE WITNESS: Right, Mr. Duffy?

9 MR. DUFFY: I'm glad you're enjoying
10 yourself.

11 MR. OVERSTREET: Let's mark this next
12 one, please.

13 (Deposition Exhibit No. 12, E-mail
14 chain, was marked for identification.)

15 BY MR. OVERSTREET:

16 Q. Sir, I've marked as Exhibit 12 what
17 appears to be another string of e-mails on which
18 you were not included. But it again appears to be
19 on this June 27, 2012, day, which I think we've
20 established is the day before the scheduled
21 closing. It's, again, from Teresa Farley, who I
22 think we've established worked for your closing
23 attorney, Mark Weeks. And it says to the bank and
24 someone at Mr. Claypoole's office, "Ann/Stamley:
25 Please advise that you can provide an endorsement

1 to this existing policy to extend the maturity
2 date to July 10, 2017."

3 Does this in fact show that the day
4 before the closing, your attorney, the bank and
5 other parties were working on trying to obtain a
6 title endorsement to the existing policy so that
7 the property could close the next day?

8 A. That's what it says.

9 Q. Do you have any reason to believe that's
10 not accurate?

11 A. Well, it says what it says.

12 MR. DUFFY: I don't think phones are
13 supposed to be on in depositions.

14 THE WITNESS: I'm turning it off.

15 (Deposition Exhibit No. 13, E-mail
16 chain, was marked for identification.)

17 BY MR. OVERSTREET:

18 Q. Sir, I've just marked as Exhibit 13
19 another e-mail chain dated that same date, the day
20 before the scheduled closing, but a couple hours
21 later. And it appears to be a chain between your
22 attorney Mr. Weeks' office, and Scott Warren and a
23 lady named Tracie Lewis. Is this an e-mail you've
24 seen before?

25 A. I don't recall.

1 Q. Sir, in looking at the bottom of Exhibit
2 13, there's an e-mail from Scott Warren to Teresa
3 Farley at Mr. Weeks' office at 4:00 p.m., the day
4 before the scheduled closing, indicating -- or
5 saying, "Assuming we get the proper endorsement,
6 what time do you want to close?"

7 A. That's what it says.

8 Q. So did you know if they were still
9 working on getting the title endorsement for the
10 Black Rush property at 4:00 the day before the
11 closing?

12 A. I didn't even know they were working on
13 an endorsement.

14 Q. Even though he's having all these
15 e-mails back and forth with your lawyer's office?

16 A. I didn't know about any of these e-mails
17 or any of these conversations until we got the box
18 from Mr. Bernstein when he dumped them on us.

19 Q. Your lawyer's office didn't tell you
20 this was going on?

21 A. No. I didn't know about it until I
22 showed up at closing.

23 Q. Do you know if Mr. Weeks got deposed in
24 this case?

25 A. Yes, he did.

1 Q. Do you recall whether or not Mr. Weeks
2 said that he believed the bank's counsel was David
3 Swanson?

4 A. No. It depends on when his deposition
5 date was, I guess. What was the deposition of Mr.
6 Weeks? Do you have any idea?

7 Q. 2014.

8 A. So we need to know if it was after May
9 when Mr. Swanson -- no. Actually, after November
10 13, '13, when Mr. Warren was deposed and mentioned
11 Scott -- Swanson for the first day. That was five
12 days before Mr. Duffy was hired.

13 Q. Based on what we've looked at, Mr.
14 Whitfield, would you agree with me that the issue
15 of a title endorsement for Cindy Whitfield's
16 signature came up prior to the scheduled closing
17 on June 28, 2012?

18 A. There was no issue.

19 Q. You wouldn't agree with that?

20 A. No. I would say, there was no issue.
21 If there was an issue, they should have put it in
22 the term -- the so-called terms agreement was
23 supposed to be a commitment letter. And they
24 would have said, Well, we can't close, so why
25 don't we just put off the closing until we get

1 this taken care of? No. We went to closing.

2 Q. So all the correspondence with your
3 lawyer's office and the bank, that's not an issue
4 under your definition, right?

5 A. According to my closing attorney it
6 wasn't, plus a few other experts.

7 Q. Would you agree that Scott Warren told
8 you about the title endorsement issue either on
9 the afternoon of the closing or shortly before it?

10 A. No. It was right at the closing.
11 Actually, Mr. Weeks walked in to the closing and
12 said, I have bad news; I can't get the
13 endorsement. And that was the first time I knew
14 he was even trying to get an endorsement.

15 Q. You recognized the fact that the bank
16 did in fact require a title endorsement for the
17 Black Rush closing at this point?

18 A. No. Really, the motive was to get me to
19 substitute collateral for Black Rush. It was just
20 a smokescreen.

21 Q. But they were requiring an
22 endorsement --

23 A. They could require what they want to.
24 They could require me to stand on my head if they
25 want to because they're the bank.

1 Q. Can I ask my question, sir?

2 A. I answered the question.

3 Q. Would you agree with me that the bank
4 was requiring an endorsement in order to close on
5 the Black Rush property?

6 A. Yes, they were.

7 Q. And would you agree with me that Scott
8 Warren told you at closing that they couldn't
9 close without that endorsement?

10 A. Yes.

11 Q. You just dispute that David Swanson ever
12 recommended that to the bank, correct?

13 A. I don't know. What he recommended is
14 what he said in his deposition. Between the two
15 of them, they both got together and conspired and
16 came up with this fabricated endorsement
17 requirement, of which your client even said was
18 not required, of which your client was an agent
19 with First American Title. And, by darn, all of
20 these people at Harbor National Bank are his
21 buddies. It wouldn't take him much to do an
22 endorsement, would it? If he's an agent for First
23 American Title, it probably wouldn't have cost 50
24 to a hundred bucks. He could have done it for
25 free, because this advice he gave him was supposed

1 to be free. He didn't charge him for it.

2 THE WITNESS: I hope I didn't go too
3 fast.

4 Q. Mr. Swanson never represented you, did
5 he?

6 A. No. We were on opposing sides. As a
7 matter of fact, I'm glad you brought that up.
8 Maybe he had a beef with me because I kind of
9 buried him in a landlord/tenant suit eviction back
10 before Judge Ned Harper (sic). You might ask him
11 about that. Okay? I think it was in the late
12 '80s.

13 Q. You seem angry today.

14 A. Yeah. I haven't been getting a lot of
15 sleep, this insomnia from all the pressure you
16 guys put me through, and costs. Because you just
17 keep blocking and not producing documents, hiding,
18 destroying records. You know, yeah, I get a
19 little irritated. I'm also irritated because Mr.
20 Duffy should have never been in this case. You
21 know why? Because he violated the rules of
22 confidentiality and discussed this case with Blair
23 Jennings back before he -- Blair Jennings left.

24 Q. If we could get back to my case.

25 THE WITNESS: Oh, I just want to get

1 that on the record, because I am going to file
2 a Bar action on you. Laugh about that too,
3 Mr. Duffy.

4 MR. DUFFY: I'm not laughing.

5 THE WITNESS: I do have proof.

6 MR. DUFFY: Good for you.

7 THE WITNESS: You can answer to the Bar.

8 MR. OVERSTREET: Let's mark this.

9 (Deposition Exhibit No. 14, Financial
10 Statement Anthony M. Whitfield 10/1/2011, was
11 marked for identification.)

12 BY MR. OVERSTREET:

13 Q. Sir, I've marked as Exhibit 14 a
14 Financial Statement. It's dated 2011, so I
15 recognize the fact that it's outdated. And so
16 part of my questioning is to ask you your
17 knowledge about the current state of your
18 financial affairs. Is Exhibit 14 a document you
19 prepared?

20 A. Yes.

21 Q. And it indicates that at least in
22 October of 2011 you had a net worth of
23 approximately \$12,000,000. Is that right?

24 A. That's what it says.

25 Q. And is that accurate, to your knowledge?

1 A. As accurate as I could get it.

2 Q. Yes, sir. And it also indicates that
3 your real estate holdings in or around October of
4 2011 were valued at approximately \$20,000,000. Is
5 that correct?

6 A. I don't think that's correct.

7 Q. Take a look at the top, sir.

8 A. Okay. Yeah.

9 Q. All right. And to your knowledge, was
10 that correct, at least in 2011?

11 A. Um, yeah. Because the market had
12 already been -- had dropped some, but not that
13 much --

14 Q. Yes, sir.

15 A. -- not yet.

16 Q. And sitting here today, in June of 2017,
17 has the value of your real estate holdings gone up
18 from this \$20,000,000 number or gone down?

19 A. Well, that's a question I think you
20 should know the answer to, Mr. Overstreet. Have
21 you read the prior depositions? Have you read my
22 expert -- Albrecht's analysis? Have you seen how
23 many properties that I have sold? Have you seen
24 my deposition where Mr. Duffy was questioning me
25 about properties sold? Well, obviously your asset

1 value is going to go down if you sell 50 of your
2 properties or more, of which I have, so -- because
3 of the forced liquidations, because of Harbor
4 National's acts and with the help of Mr. Swanson.
5 We wouldn't be here today probably if Mr. Swanson
6 didn't jump in and volunteer.

7 Q. Can you tell me approximately what the
8 value of your real estate holdings are here today,
9 as we sit here?

10 A. No.

11 Q. Would it be more than 10 million?

12 A. I can't tell you that. I haven't done
13 an analysis.

14 Q. More than 5 million?

15 A. I don't know.

16 Q. More than 1 million?

17 A. I guess it would be more than 1 million.
18 I still own about 45 properties.

19 Q. About 45 properties?

20 A. That's not including the Harbor
21 National, which they stole from me.

22 Q. So you own about 45 properties now. Are
23 those all in the tricounty area?

24 A. Pretty much.

25 Q. And are they all residential?

1 A. Yes.

2 Q. Your net worth was indicated to be
3 around \$12,000,000 in 2011. Do you know what that
4 number is now, whether it's gone up or down?

5 A. You're asking me questions that don't
6 make sense, Mr. Overstreet. Obviously, if my
7 asset value -- you know assets minus liabilities
8 is net worth? So if your assets go down, well,
9 your liabilities could go down because you're
10 paying off with the principals. So obviously your
11 net worth is going to go down.

12 Q. I don't know what you've done since you
13 were deposed. You could have a hundred more
14 properties.

15 A. I've already told that, and I've
16 answered those questions. I haven't bought
17 another property since 2009.

18 Q. Okay. That's all I'm asking.

19 A. Okay.

20 Q. Do you know what your net worth is
21 today?

22 A. I just answered that question.

23 Q. You said you haven't bought another
24 property.

25 A. I can't -- what? What? Do I have a

1 computer in my head? You want me to come up with
2 a number? How am I supposed to get a number? I
3 have to analyze the properties, do CMAs, see what
4 they're worth today, because they've gone up
5 considerably. So I've lost even more money since
6 the last numbers by Mr. Albrecht, because the
7 values have gone up about 35 percent since 2011.

8 Q. Including the values of the assets you
9 hold, correct?

10 A. Yeah. Makes sense, doesn't it?

11 Q. Yes, sir.

12 A. They all went up. And all those
13 properties that I don't own anymore, I've lost all
14 of that increased depreciation.

15 (Deposition Exhibit No. 15, Real Estate
16 Mortgages/Rental Income April 1, 2012, was marked
17 for identification.)

18 BY MR. OVERSTREET:

19 Q. Again, sir, understanding that this
20 exhibit is outdated -- because it's noted to be
21 2012, and we weren't in the case yet -- it's the
22 best thing I have to go on. I just wanted to ask
23 you a couple of quick questions about it. The 45
24 properties that you currently own, are they
25 contained on this list that's Exhibit 15?

1 A. Yeah. I would believe so.

2 Q. And I can count, but I'm trying to
3 recall if you said how many properties are
4 actually on this list, approximately.

5 A. How many properties are on this list? I
6 don't know how many are on there.

7 Q. You said you got up to a hundred at some
8 point?

9 A. I had 125 at one time.

10 Q. But I don't know if this list is 125.

11 A. I don't know what it is, because it
12 changes. I had to update that every six months.

13 Q. Do you have an updated list that would
14 be like an Exhibit 15 but would be current to '17?

15 A. No, I don't.

16 Q. Do you have one that would be current to
17 '16.

18 A. To who?

19 Q. 2016?

20 A. No. I haven't had a need to, because I
21 haven't gone out to try to borrow any money.
22 That's the only time you really need to do a
23 financial statement.

24 Q. So is April 2012 the last date that you
25 would have prepared something like what we're

1 looking at in Exhibit 15?

2 A. That looks like it was prepared for Ms.
3 Bell before the closing in April. I updated it
4 one more time for her. She had updated financial
5 statements back earlier than that. But I updated
6 this.

7 Q. And my only question is, is there any
8 more updated version of this document?

9 A. Not that I know of.

10 Q. All right. Fair enough. Do you know
11 what the gross rents are that you collect on the
12 45 properties that you hold now, approximately,
13 monthly?

14 A. It varies. Because I have some
15 vacancies that I still am trying to get fixed,
16 with limited income to do it with.

17 Q. Could you give it to me within a hundred
18 thousand dollars?

19 A. It's under 40 or 45, when I had income
20 of 100,000 a month -- a month.

21 Q. So it's 45 -- or under 45?

22 A. It's not near 45 right now. I still
23 have nine vacancies.

24 Q. So would it be closer to 30 a month?

25 A. Thirty, thirty-five.

1 Q. And I'm assuming some of those
2 properties have mortgages and some don't? It just
3 depends?

4 A. Yeah. I sold a lot of my properties
5 that were free and clear to fund this case.

6 Q. How much money have you spent in
7 litigation costs for this case?

8 A. It's got to be close to \$500,000, but
9 that's probably half of what Mr. Duffy charged the
10 bank.

11 Q. Is your best estimate of litigation
12 costs that you've paid to date for these cases in
13 Berkeley County and Dorchester and Charleston
14 County \$500,000?

15 A. Most of it was for the Charleston County
16 case.

17 Q. Yes, sir. Is that your best estimate?

18 A. Of what?

19 Q. Litigation costs you've expended?

20 A. I'm estimating, but I know I've been
21 paying a lot over the last five years.

22 Q. You said the term \$500,000.

23 A. It's just an estimate. My attorneys can
24 figure that out for the jury and the Court.

25 Q. Yes, sir. And my question is, is that

1 your best estimate, as we sit here today?

2 A. Pretty much. That includes, I guess --
3 it may include experts. I paid experts about
4 75,000.

5 Q. So if we were to, say, ballpark your
6 litigation costs -- litigation attorney fees were
7 around 400 or so and then an additional --

8 A. Costs.

9 Q. -- 75 plus --

10 A. Costs, expert fees. I'm just guessing.

11 Q. Let me try to rephrase this. Sitting
12 here today, would it be a reasonable estimate, in
13 your opinion, to say that you've spent
14 approximately \$400,000 in attorneys' fees,
15 75-plus-thousand-dollars in experts, and then
16 costs as well on all of these --

17 A. Rough estimate, yeah. Very, very rough.
18 You would have to check with my attorney when
19 there comes a time to see where we are. We have a
20 lot more costs, apparently, because you're
21 dragging this case out.

22 (Deposition Exhibit No. 16, Charleston
23 County Public Index, was marked for
24 identification.)

25 Q. Sir, I've marked as Exhibit 16 what

1 appears to be a Charleston County Public Index of
2 all the lawsuits that you have been involved in as
3 a party. And I'll represent to you the total is
4 somewhere around 140. Does that sound accurate to
5 you?

6 MR. HALVERSEN: Object to the form.

7 A. I don't know how many you've got here,
8 but you know, there is another Anthony Whitfield
9 out there. So you'll have to pull every one of
10 these files yourself. But most of these files are
11 probably eviction proceedings, and you'll notice
12 that most of them were dismissed or settled. It
13 means the tenant paid their rent, and I dropped
14 it.

15 Q. Sir, I think, if you look under the
16 "Subtype" the eviction proceedings would be "Rule
17 to Vacate." And, yes, there are several of
18 those --

19 A. If you have any particular case you
20 want --

21 Q. -- but a small majority --

22 A. If you have any particular case that's
23 relevant, you can look it up. You should have
24 looked it up before you got here. Because there's
25 nothing relevant to this case.

1 MR. HALVERSEN: I'm just going to put a
2 standing objection on the record to all
3 questions about Exhibit 16.

4 A. I didn't pull up Harbor National
5 Bank's -- all their lawsuits. We could have
6 talked to Rivers and Warren about them. But they
7 screwed a lot of people over on foreclosures and
8 got deficiency judgments on them as well on
9 waivers of appraisal rights that were not even
10 legal.

11 Q. Do you have any reason to believe that
12 you haven't been a party to over a hundred
13 lawsuits in Charleston County?

14 A. I've been involved with a lot of
15 evictions. When you have 125 properties, you file
16 a lot of evictions. It adds up. I also have them
17 in Dorchester and Berkeley Counties. So why don't
18 you go pull them up while you're at it?

19 Q. I did.

20 A. But they're not relevant.

21 Q. Do you have any reason to believe that
22 you've been involved in over a hundred lawsuits in
23 Charleston County that were not related to
24 evictions?

25 A. That I had how many?

1 Q. Over a hundred?

2 A. No. Never. No. Very few.

3 Q. "Very few"; is that what you said?

4 A. Very few other than evictions.

5 Q. Have you sued other lawyers before?

6 A. Only sued one back. Countersued.

7 Q. Who was that?

8 A. You know who that is. Gosh, a notorious
9 case. Mr. Joseph Mendelsohn, the guy that gets
10 all your DUI people off.

11 Q. Have you ever sued Desa Ballard?

12 A. She handled an appeal for me one time.

13 Q. Have you ever sued Gerald Moore?

14 A. I didn't sue her. Is that what you
15 said? No, I didn't sue Desa Ballard. She
16 represented me.

17 Q. You didn't counterclaim her when she
18 sued you for not paying her fee?

19 A. She didn't sue me for not paying a fee.
20 I don't remember anything about that.

21 Q. Did Gerald Moore ever sue you for not
22 paying a fee, to your recollection?

23 A. I don't remember.

24 Q. Do you know if you've sued more than
25 three lawyers --

1 A. I haven't sued but one.

2 Q. You did say that.

3 A. I didn't really sue. I countersued.
4 Quit asking me the same question again. I'd
5 appreciate it.

6 Q. Do you know that a counterclaim counts
7 as a suit?

8 A. You can call it what you want to, but I
9 didn't start it. He could have avoided that
10 altogether if he wasn't so damn greedy.

11 Q. Who is that?

12 A. Mr. Mendelsohn.

13 MR. OVERSTREET: Let's take a quick
14 break. I think I'm about done, to be honest
15 with you.

16 MR. HALVERSEN: How much do you have,
17 Brian? Do you want to take a break for lunch
18 or do you just want to just go forward?

19 MR. DUFFY: I want to take a break for
20 lunch. I was wanting to add one thing for the
21 record. There have been a lot of accusations
22 here by Mr. Whitfield against other people
23 involving third-party issues for the bank.
24 And I just want to issue or offer a motion to
25 strike for that, those extraneous allegations

1 and claims that don't relate to this lawsuit.

2 I'm happy to detail them after the deposition.

3 I expect there are going to be some more.

4 But I want to put that on the record,
5 that I'm not trying to hit it every time it
6 comes up because it's often.

7 MR. HALVERSEN: We'll talk about it.

8 MR. OVERSTREET: We'll go off for a
9 minute.

10 (The deposition went off the record.)

11 BY MR. OVERSTREET:

12 Q. Sir, you asked me to pick out any
13 particular questions I had about any particular
14 lawsuits. It appears as if there are about 60
15 lawsuits filed by State Farm in which you filed a
16 counterclaim in each of them. Do you recall what
17 those were about?

18 A. They were about -- let's see -- bad
19 faith or -- bad faith insurance and fraud against
20 State Farm for Hugo claims. Remember Hurricane
21 Hugo; were you around during that?

22 Q. Yes.

23 A. Every one of them settled, and they paid
24 me. So I mean, you're fabricating stuff that is
25 nonexistent. My claims, whenever I was a

1 plaintiff, was very rare. But I won 99 percent of
2 them.

3 Q. Oh, you've won 99 percent of the claims
4 you've filed?

5 A. Pretty much. I don't file much. I
6 usually counterclaim, like against Harbor National
7 Bank for bringing a malicious suit. We wouldn't
8 be here today if they had closed those loans.

9 MR. OVERSTREET: Okay. Let's take a
10 break. I think those are all the questions I
11 have right now. I may have some more at the
12 end.

13 (The deposition went off the record.)

14 EXAMINATION

15 BY MR. DUFFY:

16 Q. Mr. Whitfield, you have in front of you
17 Exhibit 1. It looks like you have a few
18 handwritten notes on there. Can I take a look, or
19 can you tell me what it says?

20 A. Well, it says "Exhibit 1." It says
21 "Rule 11. "

22 Q. Why did you write "Rule 11" at the
23 bottom?

24 A. Because there's been so many violations
25 of Rule 11 in this case by your firm and Mr.

1 Bernstein, I just did that as a reminder.

2 Q. So you just have "Rule 11" written at
3 the bottom of your --

4 A. Yes.

5 Q. -- at the bottom of your Exhibit 1?

6 A. Yeah.

7 Q. And nothing else there?

8 A. Yes.

9 Q. Could you hand me the yellow folders,
10 please, that you brought with you? You said these
11 are documents from SouthTrust; is that right?

12 A. Yeah. Some documents from four of the
13 32 or 34 loans that Mr. Rivers approved for me at
14 SouthTrust.

15 Q. And how did you select these four?

16 A. Random.

17 Q. Random?

18 A. Uh-huh (indicating an affirmative
19 response).

20 Q. And you think these documents have some
21 relevance to this case?

22 A. Yeah. Yes.

23 Q. Have you produced these documents?

24 A. You got a copy of the Subpoenaed
25 documents that we Subpoenaed from Wells Fargo, and

1 I believe the QWRs that we requested from Wachovia
2 and Wells Fargo. So it would be a good idea for
3 you to look at them all.

4 Q. So the answer is that you have produced
5 these documents?

6 A. As far as I know, we have.

7 Q. Okay. And you have 100 Coachman Drive?

8 A. That's one of them.

9 Q. What do you think is relevant about the
10 materials in this folder?

11 A. Well, if you want to hand it back to me,
12 and I'll go through them and we can mark it as an
13 exhibit. Why don't we mark all of these as an
14 exhibit and I'll go through each one of them? How
15 about that?

16 THE WITNESS: Would you, please?

17 BY MR. DUFFY:

18 Q. Why don't you go through and tell me
19 what you think is relevant and I'll decide if I
20 want to mark it as an exhibit.

21 A. Pretty much everything.

22 Q. Pretty much everything. Okay.

23 A. The same for all of those.

24 Q. And these were selected at random?

25 A. Correct.

1 Q. So with -- everything on every document
2 from SouthTrust is relevant, in your opinion?

3 A. Yes.

4 Q. And you can't give me any answer beyond
5 that as to why you think --

6 A. I will. As soon as you mark it as an
7 exhibit, I'll go through each document.

8 Q. I've asked you --

9 A. I want to put it in the record.

10 Q. I've asked you to go through the
11 documents you brought with you which you
12 determined are relevant and tell me what -- why
13 you think it's relevant.

14 A. Why do you want to ask me questions
15 without making it an exhibit? Are you afraid of
16 something? Hmm? As a matter of fact, Mr. Duffy,
17 if you recall, we asked your client, Mr. Rivers,
18 about SouthTrust loans that he approved for me,
19 and we presented a set of note and mortgage on one
20 of my loans, and you wouldn't let us talk about it
21 because they weren't signed. You know why they
22 weren't signed?

23 MR. DUFFY: Move to strike all the
24 questions and --

25 A. No, no.

1 MR. DUFFY: -- as unresponsive.

2 A. You brought it up in my deposition, and
3 we didn't have signed because Mr. Claypoole didn't
4 give me signed. Now I have signed. We had to go
5 through a Subpoena to get signed documents. So
6 I'll start off with the first one, the Adjustable
7 Rate Note.

8 Q. For 100 Coachman Drive?

9 A. Correct. Now, one of the allegations,
10 or whatever, included Mr. Rivers promising me that
11 he would give me the same loans, the same
12 documents, the same terms that he gave me at
13 SouthTrust.

14 Q. That's your allegation?

15 A. Yeah. I said that clearly. And I would
16 have never gone to Harbor National Bank if he had
17 not agreed to do that.

18 Q. I want to make one thing clear. I'm
19 going to try not to cover things that we've
20 covered before. But if you keep talking about
21 them, I'm going to ask you whatever I want to ask
22 you. Okay?

23 A. Well, there was a question that was
24 raised, and I think you were complaining about us
25 changing the length of term on the SouthTrust

1 loans. I didn't remember I did some 15 years.
2 They were mostly 30, but there were some 15-year
3 amortizations; no balloons. So I will first point
4 out to you a couple of things.

5 Number one, these are the signed ones,
6 not the blanks that Mr. Claypoole gave me. Number
7 two, this loan with Coachman for 45,000, 7.375
8 percent was signed on June 26, 1998. The first
9 payment was August 1st, 1998, and was amortized to
10 be paid off -- the last payment July 1st, 2013.
11 So, Mr. Duffy, there was no balloon payments in
12 this one, none.

13 Secondly, it's interesting that this
14 note and all the SouthTrust notes, the signature
15 page is on the last page; not the first page. And
16 all the other pages are initialled, unlike the
17 notes from Harbor National Bank. So the pages
18 that aren't initialled are void. That's my
19 opinion.

20 Q. So it's your opinion --

21 A. Yes. Because you can't identify --

22 Q. You have to let me ask the question.

23 A. Go right ahead.

24 Q. Is it your opinion that any document
25 where you sign on the back but don't initial every

1 page is --

2 A. I just told you, Mr. Duffy. Don't put
3 words in my mouth.

4 Q. I'm asking you a question.

5 A. I'm telling you, the signature page was
6 the first page. It's supposed to be the last
7 page. I have never seen documents where the last
8 page isn't a signature page. Your client sets up
9 the notes so they don't see the back page, and
10 they don't see all the dirty clauses and cheating
11 clauses that you can rip off borrowers. So they
12 could just insert anything they want to with that
13 initial of the borrower. So that's what they did.
14 But these are all initialed --

15 Q. It's your testimony --

16 A. -- and Mr. Swanson -- I mean, Mr. Rivers
17 promised no balloons. Fannie -- excuse me --
18 Fannie Mae documents -- do you see where it says
19 "Fannie Mae" at the bottom? Can you see that?

20 Q. No.

21 A. Okay. It's right there at the bottom,
22 "Fannie Mae." Harbor National Bank's loans are
23 not Fannie Mae; they're not Freddie Mac.

24 Q. Does that make sense, they'd have
25 different documents?

1 A. They made their own documents up. They
2 hired some thieving printer that printed all those
3 clauses -- set-off clauses; cross-collateral --
4 that I had no idea that was in there. There are
5 so many ways they can default. If you spit on the
6 street, they could probably rip your house off.

7 Q. So is it your testimony, Mr. Whitfield,
8 that because you signed on the first page, you
9 didn't read the pages that followed, or are you
10 telling me that the pages that followed were not
11 part of the agreement you signed?

12 A. Well, they're not part if they're not
13 initialed. I don't remember seeing them. I
14 remember seeing the front page. And nobody
15 explained the back page -- nobody explained any
16 terms like -- oh, well, I had -- I'm talking -- I
17 had to come in the day before closing, June 28th,
18 so they could explain these new loan documents to
19 me because they didn't do it the first time. The
20 Waiver of Appraisal is void if you don't explain
21 the Waiver of Appraisal three days before closing.
22 And it has to be typed up before the signature
23 block on the mortgage to make it legal.

24 So they was cheating borrowers by filing
25 deficiency judgments and using a Waiver of

1 Appraisal not to appraise the properties when they
2 foreclosed on them.

3 Q. So your understanding, when you signed
4 agreements with Harbor National Bank, is that
5 there was more than one page to each loan
6 document?

7 A. There was this back page that I wasn't
8 aware of.

9 Q. Did you anticipate that the agreements
10 you were signing were single-page agreements?

11 A. Pretty much. I don't remember seeing --
12 Mr. Claypoole is pretty quick. He goes like this:
13 Initial that, initial that, initial that
14 (indicating).

15 He doesn't explain anything. He really
16 works well for the bank, doesn't he? So I never
17 saw those back pages, and I certainly would have
18 brought my attention if he had said, Oh, there's a
19 set-off clause in there that says that if you miss
20 a payment, they can take all the money that you
21 put in that bank and rip it off.

22 Q. So you understood at the time that Mr.
23 Claypoole was showing you the documents that there
24 was more than the page you were signing that was
25 part of the agreement?

1 A. I didn't remember seeing it, because I
2 didn't initial -- seven of those back pages,
3 there's no initial, and five of them are floating
4 around. Like this (indicating).

5 Q. Do you understand --

6 A. They're not part of the note.

7 Q. Did you understand at the time you
8 signed the document that the signature page was
9 not the only page of the agreement you were
10 signing?

11 A. No.

12 Q. So Mr. Claypoole --

13 A. How do you have an initial page after
14 the signature page?

15 MR. SLOTCHIVER: Just for the record,
16 everybody -- Mr. Whitfield, you're upset about
17 this. Let's just take a break and walk
18 through it.

19 Mr. Duffy, if we can all give each other
20 an opportunity -- you're being overspoken and
21 you're overspeaking. Let's just slow down and
22 maybe be more productive. I didn't mean to
23 interrupt, but I think that will move us along
24 a little better.

25 MR. DUFFY: Do you all want to take a

1 break?

2 MR. SLOTCHIVER: Just a five-minute
3 break?

4 THE WITNESS: I'm fine, as long as Mr.
5 Duffy doesn't try to ask me the same question
6 over and over again.

7 You like to do that.

8 MR. DUFFY: If you're asking me
9 questions, which you're not supposed to do,
10 I'll ask you questions --

11 MR. SLOTCHIVER: Let's take five minutes
12 and come back and try to go back on the
13 record.

14 THE WITNESS: Sounds good to me.

15 (The deposition went off the record.)

16 BY MR. DUFFY:

17 Q. Mr. Whitfield, you testified a minute
18 ago that you had a meeting with someone at the
19 bank to explain the loan documents to you before
20 this closing in the first instance, the 2007
21 closing; is that correct?

22 A. I think I testified to that in the
23 earlier deposition.

24 Q. So is that correct?

25 A. Yes.

1 Q. Was there something you didn't
2 understand about those --

3 A. I never saw the Harbor National Bank
4 documents until closing. Nobody showed them to
5 me. I had no idea that they were not these
6 documents that were promised to me.

7 Q. Mr. Whitfield --

8 A. I'm referring to the SouthTrust loan
9 documents that were promised to me -- SouthTrust
10 loan terms that were promised to me. No balloon
11 payments; 30- or 15-year amortizations, nonaccrual
12 360.

13 Q. Mr. Whitfield, you mentioned that you
14 had a meeting with people at the bank to explain
15 the loan documents; is that right?

16 A. Which bank?

17 Q. Harbor National Bank.

18 A. On the second round. The renewals; not
19 on '07.

20 Q. You mentioned that Mr. Claypoole was
21 shuffling papers in front of you, and you
22 demonstrated that for us. Is it fair for me to
23 presume that he had more than just signature pages
24 that he was putting in front of you?

25 A. There were initial pages, just like a

1 mortgage. Every mortgage page has to be initialed
2 and signed on the last page. As a matter of
3 fact -- let's see. I don't have the Harbor
4 National Bank, but let's talk about the mortgage
5 from SouthTrust on 100 Coachman.

6 Q. No. I don't want to talk about that
7 now.

8 A. You asked me a question. Please let me
9 answer it.

10 Q. I'm asking you about this specific
11 instance with Mr. Claypoole. I want to know what
12 documents he had in front of you.

13 A. These. Every one of these. He closed
14 every one of these with SouthTrust. I'm referring
15 to the mortgage that Mr. Claypoole closed. I will
16 point out to you this is --

17 Q. Did Mr. Claypoole --

18 A. Would you please let me answer the
19 question?

20 Q. No. Because I haven't asked the
21 question.

22 A. You did too. You asked me about the
23 Claypoole closing.

24 THE COURT REPORTER: I can't get
25 everybody down.

1 Q. Did Mr. Claypoole close any of the
2 Harbor National loans that you were involved in?

3 A. Yeah. He closed the -- he closed all
4 nine of those loans.

5 Q. And when you were describing for me his
6 process of shuffling papers quickly in front of
7 you, was that referring to Harbor National Bank
8 loans?

9 A. All of them. I mean, I've been to
10 closings where I sold houses and he's real quick
11 about telling people that, Oh, you don't need to
12 read any of that. He says -- his wording is that,
13 This is just legalese, and you don't need to read
14 anything. What you can do is just make sure you
15 make your payment, pay the insurance and the
16 taxes, and the bank -- and make your payment --
17 principal and interest every month, normally with
18 the escrow taxes, and you will never get
19 foreclosed on. The rest of this you don't have to
20 read; just initial on the bottom.

21 Q. So you're saying that was Mr.
22 Claypoole's practice back in the SouthTrust days?

23 A. Yeah, all the way back. He closed
24 hundreds of loans that were not just mine, but
25 also borrowers and buyers and also sellers. He

1 closed the buyers, and he closed for the sellers.

2 Q. So you knew, going into the loans for
3 Harbor National that he was closing, that that was
4 his practice?

5 A. Yeah.

6 Q. Did you stop and ask to read anything --

7 A. I explained -- I explained to the
8 borrowers (sic) what was in the mortgage myself,
9 because it was Fannie Mae or it was a V.A. loan.
10 And it has on the bottom "Fannie Mae, FHA, V.A.
11 Form." Those forms -- those are legitimate terms.

12 Q. I'm referring to Harbor National Bank
13 loans. Did you stop and ask for more time to read
14 any of the things that Mr. Claypoole was putting
15 in front of you?

16 A. Well, you know what? The problem is, I
17 trusted Charlie Rivers and his bunch of thieves,
18 and I didn't --

19 Q. Please answer my question first.

20 A. Please let me answer the question. You
21 asked me a question, why I didn't demand to read
22 everything.

23 Q. I asked, did you?

24 A. I didn't read every word verbatim.

25 Q. Did you ask for more time to read

1 anything?

2 A. No. Because I didn't think there were
3 going to be clauses in there that I didn't know
4 about, and I didn't know that he was going to pass
5 a second page of a note without my initial.
6 Because if I don't have my initial on it, he
7 couldn't have shown it to me.

8 Q. Did you initial any of the pages for
9 Harbor National Bank loans?

10 A. There were the mortgages; I believe they
11 were all initialed. And only two of the nine
12 second pages, and those are questionable also for
13 forgeries.

14 Q. So when you were shuffling through
15 papers, showing us how Mr. Claypoole did that,
16 you're indicating that he had a lot of papers and
17 just pointed you to the signature page; is that
18 right?

19 A. Pretty much. Why would the signature
20 page be on the front instead of the back page?

21 Q. Did you tell him, I think I need to
22 initial all of the other pages?

23 A. Hmm?

24 Q. Did you tell him you thought you needed
25 to initial the other pages?

1 A. I didn't see the other pages. If I had,
2 he would have put it in front of me and said, This
3 is the back page of the note, and this is what it
4 says in the note. Beware there's a set-off
5 clause; beware there's a cross-claim --
6 cross-collateral clause, and all this other
7 garbage that was not in these mortgages promised
8 to me -- the same documents, Fannie Mae, Freddie
9 Mac -- by Mr. Rivers. But that was a fraud. They
10 were not.

11 Q. So back to my question. You knew there
12 were other pages of documents, and you did not
13 stop to ask to read them or to inform Mr.
14 Claypoole that you thought you needed --

15 MR. SLOTCHIVER: Objection.
16 Mischaracterizes his testimony.

17 A. No. I didn't know what other pages
18 were. You're putting words in my mouth. Don't
19 ask me the same question over and over again
20 because you don't like my answer.

21 Q. I just want you to answer.

22 A. Yeah, I know. You like to ask me ten
23 times and see if you can get a different answer.
24 I've already answered the question.

25 MR. DUFFY: Move to strike as a

1 nonresponsive --

2 A. Well, don't ask me the same question
3 over and over again.

4 MR. DUFFY: -- (inaudible) -- bad
5 behavior.

6 A. I've already answered the question.

7 MR. DUFFY: Could you please repeat my
8 question, the last question?

9 THE COURT REPORTER: "So back to my
10 question. You knew there were other pages of
11 documents, and you did not stop to ask to read
12 them or to inform Mr. Claypoole that you
13 thought you needed" --

14 MR. SLOTCHIVER: And I placed an
15 objection on the record. Mischaracterizes
16 prior testimony.

17 Q. To finish --

18 A. Didn't he ask that question just before
19 that, the same question?

20 MR. DUFFY: Move to strike.

21 Q. The finish to that question is that you
22 didn't ask to or say that you needed to initial
23 it?

24 A. First of all, I didn't even know there
25 was a second page in the first place. Because

1 what is an initialed form, Mr. Duffy? That's to
2 acknowledge you read it or you were informed what
3 was on the document or the contract. I don't know
4 how much you know about real estate or any
5 contract law, but, obviously, you don't. Any
6 contract, you need to initial every page. You
7 need to confirm that you were informed and you
8 read every page.

9 Q. And if your understanding of the law is
10 incorrect, do you think the documents are all
11 valid?

12 A. I'm not making that opinion of law. I'm
13 not an attorney.

14 Q. You sure are bragging.

15 A. Well. Let's go over that mortgage real
16 quick, if you don't mind.

17 Q. I don't have a question on that right
18 now.

19 A. I'll have Mr. Halversen or Mr.
20 Slotchiver go into these in a little more detail
21 since you don't want to talk about them.

22 Q. Will you please hand those documents you
23 have from the 100 Coachman Drive to our court
24 reporter to have marked as the next exhibit in
25 line?

1 (Deposition Exhibit No. 17, 100 Coachman
2 Drive documents, was marked for identification.)

3 Q. Mr. Whitfield, these other loans from
4 SouthTrust, did you select these for the same
5 purpose of demonstrating what you understood your
6 history to be with SouthTrust loans?

7 A. Yes.

8 Q. And are you confident in testifying that
9 no loan that you ever had with SouthTrust had a
10 balloon payment?

11 A. Yes. There's some documents in there
12 that were not in Coachman, if you want to go
13 through them, like Truth-in-Lending statements,
14 which is kind of odd. He gave me Truth-in-Lending
15 and RESPA documents for residential rental
16 properties, but he couldn't give it for a consumer
17 loan for Black Rush?

18 MR. DUFFY: Move to strike. No question
19 pending.

20 Q. The other folders that you have pulled
21 materials for are 8206 Holly Knoll; is that
22 correct? Is that one?

23 A. Yes.

24 Q. 68 Princeton Road?

25 A. Yes.

1 Q. And 106 Peppertree Lane?

2 A. Yes.

3 Q. Okay. You can put those away, please.

4 And while you're doing that, will you grab that
5 green folder for me, please? I don't think we've
6 talked about that one. Is there anything in that?

7 A. No. So you don't want to talk about
8 these?

9 Q. No, sir. Mr. Whitfield, you've brought
10 with you three pages of Mr. Swanson's deposition
11 testimony, pages 72 through 74, I believe, from
12 the most recent deposition.

13 A. Yes.

14 Q. What was your purpose in selecting those
15 particular pages?

16 A. Um, to show Mr. Swanson's relationship
17 with all the Harbor National Bank people:
18 Officers, directors, shareholders, investors, so
19 forth.

20 Q. And do you believe that his having any
21 type of relationship with those folks means that
22 he's inclined to lie for them?

23 A. Absolutely.

24 Q. Is that how you are; do you have
25 relationships with people and then you're willing

1 to say things that --

2 A. No. I don't do that. I have integrity.
3 I'm a retired Air Force officer, Vietnam Vet; I
4 have integrity and honesty. I don't need to cheat
5 anybody; I don't need to lie. I make my living
6 honestly, unlike a lot of other people don't.

7 Q. So who all -- I'd like to find out from
8 you just who all you think was involved in the
9 conspiracy that you've alleged.

10 A. Well, I've already spelled it out here,
11 plus the fact that you entered the picture five
12 days from the date Mr. Warren was being deposed.
13 And mysteriously, all of a sudden, he had to cough
14 up the name of Mr. Swanson -- David Swanson, who
15 had never been mentioned at all the whole time.
16 And you happened to appear five days later.

17 But my opinion -- or my curiosity is,
18 when did you actually have discussions with Harbor
19 National Bank, and did you have any discussions
20 with Mr. Swanson about what lies and fraud he was
21 going to commit to protect the bank? Because Mr.
22 Bernstein called Mr. Swanson the day of the
23 deposition to allegedly tell Mr. Swanson his name
24 was first mentioned and he's probably going to get
25 deposed.

1 Now, a little suspicious to me is that
2 Mr. Bernstein should have told Mr. Swanson, back
3 when he made these (sic) so-called advice and
4 so-called phone call, that you're going -- I'm
5 going to have to list you as a witness, and you're
6 going to be deposed. That never happened.

7 So my question (sic) is: We have
8 Bernstein, we have Duffy & Young, and we have
9 Swanson, and we have Harbor National Bank people.

10 MR. DUFFY: And move to strike that.

11 Q. I didn't ask you for your questions. I
12 want to know your testimony --

13 A. I just answered.

14 Q. -- who you believe -- I want to know --

15 A. I just answered.

16 Q. -- people who you think conspired
17 against you.

18 A. I just answered.

19 Q. No. You said you had questions. I want
20 to know who you are willing to say you think
21 conspired against you.

22 A. I just said. Do you want me to repeat
23 it?

24 Q. I want to know names.

25 A. I just said Mr. Bernstein. I said Duffy

1 & Young; that's you, Whitaker, your ex-lawyer that
2 worked for you; the Harbor National Bank people,
3 including Rivers, Stout, Warren, anybody that was
4 involved with my loans. And let's see. Of
5 course, Mr. Swanson.

6 Q. Okay. So you think that Mr. Bernstein,
7 Mr. Whitaker, me, Mr. Swanson, Mr. Rivers, Mr.
8 Stout and Mr. Warren conspired against you?

9 A. There could have been more people. I
10 don't know.

11 Q. I want to know who you think it is.

12 A. I don't know. They've got some pretty
13 big hitters over there at Harbor National Bank. I
14 don't know who was involved. But I guess maybe if
15 we could go in and get some phone records, we
16 could probably find out who contacted who when.

17 Q. Now, your cause of action for civil
18 conspiracy that you have brought in the lawsuit is
19 against David Swanson. And it says, BNC Bancorp,
20 through its employee/agent, Scott Warren. Is that
21 what your claim in the lawsuit is limited to?

22 A. As of now, yeah.

23 Q. Do you have any present intention to add
24 anyone to the civil conspiracy claim or any other
25 party to the lawsuit?

1 A. As soon as we find more information to
2 prove it. But, you know, circumstantial evidence
3 is also allowed.

4 Q. So you have no present intention to add
5 anyone else?

6 A. I can't say if I will or not.

7 Q. Does that mean --

8 A. I'm not going to say whether I do or
9 not. That's down the road.

10 Q. No. Right now. I'm asking you right
11 now.

12 A. Well, I haven't made that decision right
13 now, if I'm going to add anybody else. I really
14 don't want to drag this out any more, but we'll
15 sure bring that up at the trial.

16 Q. Your claim for abuse of process is
17 against the same parties?

18 A. Is what?

19 Q. Is against the same parties currently
20 that the civil conspiracy claim is pending
21 against?

22 A. Correct.

23 Q. Do you have any present intention to add
24 anyone else?

25 A. Not at this time.

1 Q. Okay, Mr. Whitfield. You also brought
2 with you page 13 of 21 of one of your pleadings
3 with a lot of marks in red.

4 A. Which pleadings?

5 Q. I'm going to ask you to tell me, though
6 it is -- appears to be an unsigned version. Would
7 you please take a look at that and tell me if you
8 know which pleading that would be a part of and if
9 in fact --

10 A. I think it got separated when I was
11 making copies from the Fourth Amended Pleading.
12 If you can pull that out, the Fourth is in there
13 somewhere.

14 Q. You've brought with you the Fifth
15 Amended.

16 A. I brought the Fourth too. What is that
17 over there?

18 MR. HALVERSEN: Those are his exhibits,
19 I think.

20 A. I looked at it before we came in here.
21 Right there, Mr. Duffy. Let's see if page 13 is
22 the same page or it's missing. Page 13 is
23 missing. So this is the rest. Let me see if it
24 looks like it fits in. And that -- "or practices
25 unfair" -- so this is part of this. So if you've

1 got a stapler, if you want to staple it together.

2 Q. No. Keep it separate, how you brought
3 it. And the final page, again, is not signed,
4 page 21. But I had a question for you -- first --
5 I'm going to ultimately direct your attention to
6 page 19 of this. Can you just look through and
7 tell me if those red marks are yours?

8 A. Yeah. Yes, they are.

9 Q. Okay. What is the writing in the margin
10 on page 19 of 21?

11 A. RE attorney of the year, according to
12 Mr. Swanson -- real estate attorney of the year.
13 Excuse me.

14 Q. This is by paragraph 81, which is an
15 allegation that he was involved in these actions
16 for his own personal interest?

17 A. Correct.

18 Q. You brought with you a copy of the
19 November 13, 2013, deposition of Scott Warren.
20 And I want to call your attention to some marks in
21 the margin on pages 96 through 101, please.
22 Please take a minute to review them, and then I'll
23 ask you about them.

24 Please let me know when you've had a
25 chance to look at them.

1 A. I'm looking. You have to read what the
2 question was to see why I -- part of the answer.

3 Q. I wasn't rushing you; I just didn't want
4 you to think I was not letting you answer.

5 A. Well, first of all, I'd like to make
6 this statement on the record: These were all
7 underlinings during the discussions with my
8 attorneys, so they're attorney-client privilege.

9 Q. I do not intend to ask you about
10 discussions with your attorneys. But you brought
11 them here.

12 A. They were for my use to answer
13 questions. I wasn't -- particularly had anything
14 underlined. It was just to answer any questions
15 that you and Mr. Overstreet would have brought up
16 that I needed to refer to the deposition. That's
17 all that was brought for. Not for you to question
18 my communications with my attorney.

19 Q. It's not my purpose. But when you bring
20 it, I'm entitled to look at it.

21 A. You can look at it all you want to. You
22 can copy it; you can read it in the toilet,
23 whatever you want to do.

24 Q. Thank you. Are the markings yours?

25 A. Apparently, if it came from me.

1 Q. Well, you brought it with you.

2 A. I don't know. I don't think my attorney
3 marked anything. I was reading. I was talking to
4 him over the phone or discussing the deposition
5 with him in his office, either Brent or Dan.

6 Q. Okay. On page 96 of the deposition
7 there's a question that is, "Did you ever, when
8 you were in the parking lot, discuss the subject
9 of substituting collateral for Black Rush?" The
10 answer was, "Yes." And in the margin there's
11 handwriting that says, "The plan from the start."

12 A. That's attorney-client privilege.

13 Q. No, sir, I'm afraid it's not. What did
14 you intend by writing "The plan from the start"?

15 A. If my attorney says I can answer that
16 question, I'll answer it.

17 MR. HALVERSEN: If it's a communication
18 with me, then you cannot.

19 A. I've discussed that with Mr. Brent
20 Halversen, all about that discussion.

21 Q. I'm sure you've discussed this whole
22 case with Mr. Halversen. But I'm entitled to ask
23 you --

24 A. Well, you just did, and I just said
25 that's discussions that I had -- and I think we

1 may -- that's already in the pleadings somewhere.

2 Q. Then, good. It's not privileged. Tell
3 me what you mean "The plan from the start."

4 A. I don't know. You'll have to find it in
5 the pleadings if it's in the pleadings. But they
6 didn't close for some reason, and that's why I put
7 that down there. And it wasn't because of the
8 endorsement. That's why I questioned it.

9 Q. It's underlined "substituting collateral
10 for Black Rush." And it says, "The plan from the
11 start." And you referred earlier in your
12 deposition with Mr. Overstreet that in fact you
13 thought Harbor National's plan from the start was
14 to get you to substitute collateral into Black
15 Rush. Is that your testimony?

16 A. Yeah. I'll answer that. I said, yeah,
17 I believe that was the motive from the beginning.
18 Because it was a consumer loan that they set up as
19 a commercial loan, or they sold the paper to
20 Bankers' Bank or Silverton, take your pick,
21 because they needed to get rid of it. And they
22 needed me to sign an affidavit stating that Black
23 Rush was a business property, that was not.
24 Demanded it. And it was not. It was a consumer
25 loan. The only other alternative was to get me to

1 substitute the collateral of Black Rush, on that
2 loan, with other properties that are unencumbered
3 and cause me more problems with my finances. So
4 there's your answer.

5 Q. Okay. Is it your testimony, then, that
6 the allegations that you attribute and lodge
7 against the bank, you believe their purpose in
8 doing these things was to substitute collateral,
9 not to steal the properties, which I believe was
10 your testimony?

11 A. Not to steal the properties?

12 Q. Right.

13 A. They would probably continue to try to
14 steal the properties, but they just want more
15 properties to get Black Rush off the list, because
16 it was a consumer loan. They didn't know what to
17 do with it. They had to get other property to
18 collateralize the balance of the Black Rush, which
19 was about 314, and then get them off the hook on
20 the consumer loan.

21 Q. So is it your testimony that the bank's
22 intention in whatever representations it made to
23 you was to substitute collateral for Black Rush?

24 A. It's pretty obvious.

25 Q. Was --

1 A. Since you asked me that question, are
2 you familiar with the notes that we got during the
3 meeting that I had with Mr. Rivers on June 21st?

4 MR. DUFFY: Strike that.

5 Q. I'm not --

6 A. Do you know the second page of there he
7 has "substitution of collateral"? He emphasized
8 it. Which we discussed -- it was not discussed,
9 any requirement to substitute collateral, in our
10 agreement on June 21st. And in the commitment
11 letter written on June 26th, not shown to me until
12 the day before closing and giving me one day to
13 close, so they could extort substitution of
14 collateral out of me. Extortion.

15 Q. So is it your testimony that that was
16 their goal, that alone, substituting collateral,
17 or did they -- do you testify that they intended
18 to steal all of the properties from you?

19 A. I don't know what their intention was,
20 but it wasn't honest.

21 Q. Okay. On page 100, there's a question
22 from Mr. Halversen about a series of e-mails where
23 Mr. Warren e-mailed Mark Shannon and Kathy Hall --
24 strike that. I don't need to know those.

25 I'm moving to page 101, referring to an

1 e-mail from Mr. Shannon to Kathy Hall that says
2 "Kathy, we have a commercial loan renewal -- we
3 have a commercial loan renewal with a twist,
4 requiring guidance from our compliance experts."
5 And there is handwriting on the side that says,
6 "Legal advice non-lawyers." Is that your
7 handwriting?

8 A. Again, that's attorney-client privilege,
9 but you can probably figure out what I'm talking
10 about.

11 Q. Are you refusing to answer my question,
12 Mr. Whitfield?

13 A. I said it's attorney-client privilege,
14 yes.

15 Q. Okay. It's my position it's not,
16 because you brought it in to aid your testimony
17 and it's here in front of us, and I get to look at
18 it, so that privilege has been waived. But if you
19 want to claim it, go ahead and claim it. I'm just
20 asking you -- stating my position --

21 A. I'll take whatever my attorney tells me
22 to do.

23 MR. Halversen: I'm only instructing you
24 not to answer anything if it is a
25 communication you had with me or Dan.

1 A. Then I stick by that.

2 Q. Okay. So the notations and the
3 underlines in this deposition of Scott Warren that
4 you've brought with you today to aid your
5 testimony, those notations and underlines are
6 communications to your attorneys?

7 A. Yeah. Emphasized.

8 MR. HALVERSEN: And I think -- I'm just
9 going to say for the record -- Tony, if you
10 put that in the transcript, I think he has the
11 right to question you about it; I'm just going
12 to tell you right now. If it's something to
13 do with a communications that you had with me
14 or Dan, you cannot disclose it.

15 THE WITNESS: Okay.

16 A. I thought we discussed that, but go
17 ahead. Go ahead. What was the question again?

18 MR. DUFFY: Can you please repeat the
19 question?

20 THE COURT REPORTER: "So the notations
21 and the underlines in this deposition of Scott
22 Warren that you've brought with you today to
23 aid your testimony, those notations and
24 underlines are communications to your
25 attorneys?"

1 MR. DUFFY: Sorry. I was inarticulate
2 when I was asking you. I'll just start over.

3 BY MR. DUFFY:

4 Q. Mr. Whitfield, on page 101 of the
5 deposition transcript of Mr. Warren that you
6 brought with you today, there are handwritten
7 notes on the side "Legal advice non-lawyers" when
8 referring to the e-mail I read to you from the
9 transcript from Mr. Shannon to Ms. Hall. What was
10 your intention in writing that?

11 MR. SLOTCHIVER: And the only objection
12 on the record is, to the extent it deals with
13 communications between us about the subjects,
14 you can't testify. To the extent it deals
15 with anything else, you certainly can.

16 MR. DUFFY: Are you instructing the
17 witness not to answer?

18 MR. SLOTCHIVER: I'm instructing him not
19 to answer anything that deals with a
20 privileged communication between he and I. He
21 can testify as to what the document says, and
22 what it means, as long as it doesn't go into
23 the area of a communication between counsel
24 and himself.

25 A. Why don't you show me -- let me read it

1 and see what -- why there was a note there.

2 Q. Sure. Page 101.

3 A. This was -- I can only give you a short
4 answer, because this was discussed with my
5 attorneys. There was a reference in -- if you can
6 find that exhibit, that Mr. Warren consulted with
7 "council" -- "bank council," somewhere -- we don't
8 know where -- but he said he did it, we have no
9 proof he did it. And this was after -- I can't
10 remember. Would you pull that exhibit out, that
11 e-mail for me so we can refer to it?

12 Q. I don't have that with me.

13 A. It's right here. Mr. Overstreet talked
14 about it. I'll find it for you.

15 MR. OVERSTREET: 11, maybe.

16 A. 11.

17 Q. It's marked as 22 in this deposition.

18 A. In this deposition, it's 22?

19 Q. In the Scott Warren deposition, it's
20 marked as 22.

21 A. Oh, I need to know what it is in this
22 deposition.

23 Q. Mr. Whitfield --

24 A. There it is. I've got it. Give me an
25 opportunity to answer.

1 Q. I want to know what you're saying it is.
2 Is this the e-mail in -- being referred to in the
3 deposition of Scott Warren, or is this something
4 you were just bringing out to answer a question?

5 A. That has to do with the compliance
6 expert. Okay? This deposition -- this e-mail
7 refers to -- if this is the right e-mail --

8 Q. I'm sorry. Which exhibit is it to this
9 deposition?

10 A. It's 11. That's what Mr. Overstreet
11 said, but I don't think it's the one I'm looking
12 for. I want the one where he said he talked to
13 "bank council."

14 MR. OVERSTREET: Look at page 2.

15 A. Now, my contention is the "bank council"
16 was Patti Blendon. Because there was no other
17 attorney referenced to making any opinions, and
18 that means Swanson, Bernstein, anybody; no
19 communications whatsoever. But he had
20 communications with Patti Blendon.

21 Q. At that time, when he wrote that e-mail?

22 A. Yeah.

23 Q. And what is your evidence of that?

24 A. That he talked to "bank council." And
25 we had e-mails.

1 THE COURT REPORTER: I'm sorry. Are you
2 saying bad?

3 THE WITNESS: Bank.

4 And let me spell "council," how it's --
5 let me put it on the record. It's spelled
6 C-O-U-N-C-I-L.

7 A. Now, how do you spell "counsel" as an
8 attorney, Mr. Duffy?

9 Q. Not that way.

10 A. Thank you very much. So here's the
11 "council" right there. He had a "council" with
12 Blendon and maybe some Harbor National Bank
13 people. But he didn't have any legal counsel give
14 him any advice. So there you go. There's your
15 answer. And Patti Blendon, according to what I've
16 read in the FDIC documents where she was
17 subpoenaed in a trial against a bank by the FDIC,
18 she's been acting as an attorney without a license
19 for some time in this state. So there's your
20 reference.

21 Q. Mr. Whitfield, are you telling me that
22 you explain Mr. Warren's reference to calling
23 "bank council" as being Patti --

24 A. Blendon. That's the only one he could
25 have communicated with.

1 Q. You explain that because there was an
2 e-mail that was sent the Friday after the
3 scheduled closing to Ms. Blendon?

4 A. I don't remember. You would have to
5 pull the e-mails. I'm not going to quote an
6 e-mail without seeing it. But I know Patti
7 Blendon said a number of things. And then she
8 said, It screams for attorney representation or
9 attorney opinion. And that was after the 6/28.
10 So --

11 Q. Are you aware --

12 A. So after 6/28.

13 Q. Are you aware of any before -- that
14 would have been at the time Mr. Warren referenced
15 this calling "bank council" on June 27th? Are you
16 aware of any communications --

17 A. I'm not going to say because --

18 THE COURT REPORTER: I'm sorry. I'm
19 sorry.

20 Q. Are you aware of any communications that
21 Mr. Warren or the bank had about your properties
22 with Ms. Blendon --

23 A. She had a lot of communications that I
24 don't know --

25 Q. -- before June 27th, 2012?

1 A. As I said, there were a lot of
2 communications between Patti Blendon and Scott
3 Warren and I believe Rivers or whoever at Harbor
4 National Bank. But the e-mails, you'd have to
5 pull up the e-mails.

6 Q. So you're aware of none?

7 A. I'm not saying that.

8 Q. Are you aware of them? If you are, tell
9 me what they are.

10 A. All I know is there was discussions
11 going back from Patti Blendon, Scott Warren, the
12 attorney's office -- I think Weeks's office. So
13 there was a number of things going on.

14 Q. Put it this way: Would you be satisfied
15 that this reference to "council" wasn't Patti
16 Blendon if none of those e-mails had occurred by
17 this time that Mr. Warren is sending the e-mail on
18 June 27th of 2012?

19 A. I don't follow your question. You need
20 to word it better.

21 Q. You are determining that his reference
22 to calling "bank council" is a reference to
23 contacting Ms. Blendon; is that right?

24 A. It's the only proof we have that he had
25 any contact with anybody. He didn't have any

1 contact with any lawyers.

2 Q. She's not a lawyer, correct?

3 A. I know that. But he considered her a
4 lawyer.

5 Q. How do you know that?

6 A. Because he just -- he didn't even say
7 "counsel" with an E -- -S-E-L. So who is that?
8 Town council?

9 Q. Do you think he really intended to
10 suggest he was contacting someone who wasn't a
11 lawyer but was kind of like a lawyer so he didn't
12 really spell "counsel" correctly?

13 A. Could have. Seems to me like that's
14 what he did. Because if he was running into all
15 these problems, then where is the reference to
16 talking to Bernstein or Swanson or any other
17 lawyer? There's nothing in the record that showed
18 he talked to any bank counsel, -S-E-L.

19 Q. And what is in the record that he spoke
20 with Ms. Blendon by this time, on June 27, 2012,
21 that you're aware of?

22 A. I don't remember if there's an e-mail or
23 not. But maybe. I don't know. I would have to
24 look at all the e-mails. I'm not going to guess.

25 MR. DUFFY: I'd like to mark this as the

1 next exhibit. And we'll get a copy at the
2 break and you can take your original back with
3 you. I presume you would like to have the
4 original?

5 MR. HALVERSEN: Sure.

6 (Deposition Exhibit No. 18, Deposition
7 Transcript of Scott Warren, taken 11/13/13, was
8 marked for identification.)

9 Q. Mr. Whitfield, in the Fifth Amended
10 Answer, Affirmative Defenses, Cross-Claim and
11 Counterclaims, we discussed a minute ago that you
12 have causes of action for abuse of process and
13 civil conspiracy. Are you familiar with that?

14 A. Yes, somewhat. I'm not a lawyer.

15 Q. I'm just going to ask you to look with
16 me. Do you see that they're alleged against BNC
17 Bancorp?

18 A. Yeah.

19 Q. Do you have any understanding of BNC
20 Bancorp's involvement as opposed to the Bank of
21 North Carolina?

22 A. They're only in there, Mr. Duffy,
23 because they're now the owner of the bank. I
24 think that was my attorney's choice, to put that
25 in there.

1 Q. They're not a party to the case. I just
2 want to clarify --

3 A. Well, I don't know how they're not a
4 party to the case, because they own the bank now.
5 I think Mr. Slotchiver and Mr. Halversen had to
6 put them in there.

7 Q. So is it your testimony that your claims
8 for abuse of process and civil conspiracy are
9 actually against BNC Bancorp and not against the
10 Bank of North Carolina?

11 MR. HALVERSEN: Object to the form.

12 MR. SLOCHIVER: It calls for a legal
13 conclusion.

14 A. That calls for a legal conclusion. I'm
15 not going to answer that.

16 Q. I just want to know your opinion.

17 MR. HALVERSEN: Object to the form.

18 A. I'm telling you, I object. It calls for
19 a legal conclusion, and I'm not a lawyer. So you
20 take it any way you like.

21 Q. Do you have any understanding -- you've
22 just told me that you believe BNC Bancorp is
23 involved because it's the owner.

24 A. They're all together. It's all the
25 same. They have to be listed. That's not my

1 choice. That's a legal issue. Don't ask me legal
2 issues.

3 Q. I just need to know if you have some
4 understanding. But if you want to defer to your
5 counsel, then that's fine.

6 A. That's exactly what I just did.

7 Q. After you described what you thought
8 their involvement was.

9 A. Well, you shouldn't have asked me a
10 legal question. I don't know Bancorp versus Bank
11 Incorporated, or Bank, Inc.

12 Q. So you have no understanding of any
13 claim necessarily against BNC Bancorp?

14 MR. SLOTCHIVER: Objection.
15 Mischaracterizes --

16 A. I'm not answering that question.

17 MR. SLOTCHIVER: Objection.
18 Mischaracterizes the testimony.

19 Q. I have some questions about your
20 testimony when Mr. Overstreet was asking you
21 questions. You were talking about the purchase of
22 Black Rush, and I believe you said at one time it
23 was a marital residence. Is that right?

24 A. How -- what was the question and what
25 was my answer? Why don't you reread my question

1 (sic)?

2 Q. No, sir. I'm asking you if you think
3 Black Rush -- is it your testimony that at some
4 point it was a marital property?

5 A. It was always a marital property. I was
6 married to this woman when I bought it for her.
7 And it's never changed. It was a consumer loan
8 from day one. It still is a consumer loan.

9 Q. Let me pull out Exhibit 7, please.
10 Please turn to page 4 of 11. This is the section
11 where --it's a Property and Support Settlement
12 Agreement. Is that right?

13 A. Yes.

14 Q. Is it fair to say you and your wife were
15 separated as of April 5th, 2007?

16 A. No.

17 Q. No? Okay. Do you see the reference in
18 paragraph 2 that "shall purchase the house for the
19 wife"?

20 A. Let me respond to that a little further.

21 Q. Which one?

22 A. The last question, about my wife living
23 in the house. Did you read the contract -- the
24 sales contract?

25 Q. I'm asking you questions.

1 A. No. You're asking me a question that
2 you know the answer. You're trying to get a
3 different answer.

4 MR. DUFFY: Move to strike. Move to
5 strike.

6 A. I'm sorry you can't get the answer you
7 want, Mr. Duffy, but don't try to put words in my
8 mouth.

9 Q. I'm asking you a question.

10 A. Now, let me ask you this: Do you know
11 the date that Black Rush closed? April 23rd.

12 MR. DUFFY: Move to strike.

13 A. April 23rd.

14 MR. DUFFY: Move to strike. And if this
15 continues, I'm going to move for my fees for
16 this deposition.

17 A. No. Just go ahead. Ask me another
18 stupid question.

19 Q. Do you see the provision in paragraph 2
20 on page 4 of 11 that says you "shall purchase the
21 house for the wife"?

22 A. Yeah. That's what it says. That's what
23 it says. I'm trying to find where you're reading
24 that. Whatever it says is what it says.

25 Q. Are you telling me that -- did you all

1 live there together?

2 A. Boy, I'll tell you what, you guys don't
3 know anything. I mean, God. Why would I be
4 purchasing a house that we don't live in yet?

5 Q. You called it a marital home.

6 A. It's a marital home because I purchased
7 it for her, and she had to move out of my marital
8 home into her marital home, or our marital home.
9 We still owned a house jointly. She was a
10 residence, a consumer loan, and it's, by all
11 definitions, a consumer loan. She lived there as
12 my wife. We could have gone (sic) back together
13 again. It could be a second home. Whatever.
14 It's residential. It's not commercial. It was
15 never commercial.

16 Q. Please look at the top of that page 4 --

17 A. Okay.

18 Q. -- where it says, "The parties
19 acknowledge that the property located at 694
20 Hobcaw Bluff Drive is the marital residence."

21 A. It was the marital residence before we
22 decided to separate. Then it becomes both of us
23 have a marital home.

24 Q. When did you decide to separate?

25 A. When this was being drawn up.

1 Q. I asked you just a minute ago if you
2 were separated.

3 A. Quit trying to make semantics and
4 playing games. You know damn well it's a marital
5 home.

6 MR. DUFFY: Move to strike.
7 Nonresponsive again.

8 A. God -- mm, not going to say anything.

9 Q. I asked you at the beginning of this if
10 as of the 5th day of April 2007 you and your wife
11 -- you considered yourself separated?

12 A. What did you say? When?

13 Q. The 5th day of April 2007, when this is
14 dated.

15 A. You know that's a dumb-ass question,
16 because you know we weren't separated. I had to
17 buy the house -- first of all -- come on, Mr.
18 Duffy. Give me a break. How am I supposed to
19 move her in a house that I haven't purchased yet?
20 She was living at 694 Hobcaw Bluff Drive with me
21 until I could close on the house, with the
22 stipulation that the Court had to sign off on this
23 Settlement Agreement before I could close on a
24 house and move her into the other house, of which
25 I did. And the other agreement, if you can't

1 remember that far back, or you're just not trying
2 to remember, that after I closed on this house,
3 helped her move into Black Rush, I agreed to deed
4 over the 50 percent after she moved everything out
5 of the marital home, because I had an agreement to
6 pay her some equity and other generous payments,
7 and she had to be out of my house so that
8 separation could start. Because we didn't sue
9 each other for any grounds of divorce. And you
10 have to be separated legally for a year before you
11 can get a legal divorce. Now, I don't know if you
12 picked up on that, Mr. Duffy, but the final
13 divorce wasn't until a year later. We had to be
14 separated a year before I could get a divorce.

15 Q. You said you were separated when this
16 was being drawn up; is that accurate or not?

17 A. No.

18 Q. Okay.

19 A. You can read the damn documents and
20 figure that out. You don't have to try asking me
21 trick questions.

22 Q. That's why I was wondering why you said
23 it.

24 A. Why don't you just say, Hey, are you
25 sure, Mr. Whitfield, that's what you meant?

1 Q. That's what I'm trying to do, but you
2 keep arguing.

3 A. I just told you because -- you know, you
4 just think you're tricky, don't you? You really
5 think you're tricky? You're not tricky at all.
6 You get caught every time you lie.

7 MR. DUFFY: Move to strike.

8 A. Please. Go ahead. Move it to strike.
9 Trickery. Any more questions about that, let me
10 know.

11 Q. You mentioned earlier in your testimony
12 that you thought it was a fraudulent scheme, about
13 whether Harbor National Bank was an originator of
14 your loan?

15 A. Yeah. Yes.

16 Q. Is that part of your lawsuit?

17 A. I think it's somewhere incorporated in
18 there that they passed on a business loan when it
19 was a consumer loan. I think that's fraud,
20 especially when they couldn't give me a consumer
21 loan because they weren't licensed and registered
22 to originate consumer loans in 2006 through, I
23 think it was 2010; it might have been 2012. We
24 would have to check with the deposition of Kathy
25 Hall and Mr. Stout, who said, Oh, they didn't do

1 consumer loans. They just set them up as
2 commercial loans and frauded (sic) all the
3 borrowers.

4 Q. I had asked you, or you were asked
5 earlier about -- well, strike that.

6 You testified earlier about materials
7 that Mr. Bernstein delivered that had privileged
8 information in them.

9 A. They weren't privileged anymore when he
10 turned them over.

11 Q. You knew they were supposed to be
12 privileged?

13 A. No, I didn't. When anybody gives me
14 something, it ain't privileged anymore. I think
15 we already went over that with the Court. The
16 Court ruled they weren't privileged. So why don't
17 you go back and check your notes, check your file.

18 Q. Earlier in this deposition you testified
19 that the reason you didn't think the call to Mr.
20 Swanson occurred is because your attorney told you
21 the call didn't occur?

22 MR. HALVERSEN: Object to the form.

23 A. No. The proof was there --

24 MR. SLOTCHIVER: Object, to the extent
25 that it calls for any attorney-client privileged

1 communications.

2 A. Boy, that's a stretch.

3 MR. DUFFY: Let's mark that here, and
4 we'll go back and find his testimony, and I'll
5 ask you at a break, Eve, to find that. And
6 I'll ask you about it.

7 Q. Going back to Exhibit 11, Mr. Whitfield,
8 on the second page where Mr. Warren makes
9 reference to calling "bank council," I believe you
10 described this -- in your earlier testimony as a
11 fraud. Is that your testimony?

12 A. I don't know. What did I say? Why
13 don't you quote me?

14 Q. I'm asking you.

15 A. You're asking me for another answer for
16 the same question, and I'm not going to give you
17 another answer to the question. You're going to
18 have to go through there and find how I answered
19 it, because I'm not going to give you another
20 answer because you don't like the answer you got
21 the first time.

22 Q. I just want to ask you about it.

23 A. I'm not going to answer it again. Asked
24 and answered.

25 Q. Do you believe --

1 A. Asked and answered.

2 Q. Do you believe that Mr. Warren's e-mail
3 reflected in Exhibit 11 is part of the conspiracy
4 that you allege?

5 MR. SLOTCHIVER: Can you tell us which
6 e-mail you're talking about?

7 A. What do you mean?

8 MR. DUFFY: The one we've been talking
9 about for quite a while, Exhibit 11, where Mr.
10 Warren says, "I called bank council to get
11 some advice on how to handle it." Which, in
12 my recollection, Mr. Whitfield described as a
13 fraud, but the record will speak for itself.
14 And I want to know if he thinks that's a part
15 of the conspiracy.

16 A. The record will speak for itself. You
17 answered the question. Thank you very much.

18 Q. The next question is, is that part of
19 the conspiracy that you allege?

20 A. It probably is.

21 Q. Is it --

22 A. I'm not going to say for sure. But it
23 does seem awful suspicious that he said he called
24 "bank council" or contacted "bank council," and it
25 wasn't even spelled "counsel," -S-E-L, and we have

1 no proof that he talked to anybody. So you take
2 it whatever way you want to.

3 Q. You're the one making allegations about
4 a conspiracy.

5 A. It sounds to me like it's part of the
6 conspiracy.

7 Q. When do you believe the conspiracy
8 began?

9 A. I have no idea.

10 Q. What is your first indication, that
11 you're aware of, that something was part of a
12 conspiracy, in your opinion?

13 A. Well, the whole set of circumstances and
14 conduct by Harbor National Bank, starting about
15 February 2012, raised a lot of suspicions, because
16 I was supposed to close these renewals after my
17 tax return was produced. But then, all of a
18 sudden, I have a heart condition; and the next
19 thing I know, in April, Ms. Bell gets the -- seems
20 to have got together with the clan over at Harbor
21 National Bank and decided to make a whole new set
22 of requirements that weren't required before. So
23 you can take it from there. We should have closed
24 those loans before they matured in April. And
25 they dragged it out to June, let them expire, and

1 then tried to extort more terms out of me. Then I
2 went to Rivers, and he undid all these demands,
3 and then put them back in after refusing to close.

4 Q. So is it your testimony and it's your
5 understanding, as far as you're aware, that
6 February 2012 is when you saw actions that you
7 contend are part of a conspiracy by Harbor
8 National Bank?

9 A. I didn't say February. I said things
10 changed after February.

11 Q. I'm just trying to find out the days
12 that --

13 A. I'm just saying things changed after I
14 informed Angie Bell that I had heart failure and
15 had to go in the hospital and put a pacemaker in
16 for congestive heart failure. So they had
17 somebody they could just prey on, with a weak --

18 Q. Is that part of the conspiracy?

19 A. Yeah, I think that's part of it. They
20 like to prey on people, extort money out of them,
21 strong-arm them.

22 THE WITNESS: Put all that down.

23 Q. Okay. So that's February 2012. What
24 about any of the initial loan transactions? Do
25 you believe they were part of any conspiracy?

1 A. Which initial loan transactions? Read
2 the pleadings.

3 Q. I get to ask you questions about them.

4 A. I'm not going to answer the same
5 question I've already answered. We already did a
6 long deposition back in -- gosh, what was that? --
7 June 17th of '14? Why don't you look that up?
8 And -- you can pull it out right now. We'll pull
9 it out right now, and we'll go through the
10 questions you asked me.

11 Q. I want to know what your opinion is.

12 A. I'm not answering it again. I already
13 gave my opinion.

14 Q. Well, if it's not there, we'll reconvene
15 at your expense.

16 MR. SLOCHIVER: We're not going to
17 agree to that. If you want to take a few
18 minutes to look at it, you're welcome to do
19 it.

20 MR. DUFFY: I want him to answer the
21 question.

22 THE WITNESS: You give me the
23 deposition -- I mean, you give me the
24 transcript.

25 BY MR. DUFFY:

1 Q. Answer my question.

2 MR. SLOTCHIVER: I'm just putting on the
3 record we're not consenting to it. It doesn't
4 mean it won't happen, but we're not consenting
5 to it. You can do the deposition as you want.

6 BY MR. DUFFY:

7 Q. I'll ask you this way: Do you refuse to
8 tell me what you contend is -- put it this way:
9 Do you contend there were any actions by Harbor
10 National Bank that were part of the conspiracy
11 against you that occurred before February 2012?

12 A. I don't know what they were doing before
13 February '12. I don't have access to their
14 phones. I don't have access to files. Besides
15 that, they destroyed documents, they destroyed
16 e-mails. They culled the files numerous times. I
17 don't know what's in the files. But if everything
18 was intact, I bet I would find a lot of stuff.

19 Q. That you're aware of? Anything before
20 February 2012? I want to know if in your claim,
21 does conspiracy stretch back to '07, or does it
22 start in February 2012? That -- what is your
23 understanding of those actions?

24 A. Well, I think we've already pretty well
25 explained and hashed out all the fraud that Ms.

1 Angie Bell was involved in with Harbor National
2 Bank on the origination of the '07 loans. I don't
3 need to go back in over that. You've already been
4 informed of that. It's already in the pleadings
5 as well. It's in my prior transcripts.

6 MR. HALVERSEN: He's asking you about
7 the conspiracy, not fraud.

8 A. Which conspiracy?

9 Q. Do you contend there's more than one
10 conspiracy in this case?

11 A. Well, define "conspiracy"; when it has
12 to do with Harbor National Bank, if they're
13 colluding together, that's not a conspiracy. So I
14 don't have any proof that they had any outside
15 conspirators.

16 Q. Very good.

17 A. At least I don't think. I'll have to go
18 back and check. If I do, I'll let you know.

19 Q. In addition to the discussion on
20 conspiracies earlier in the deposition, you
21 threatened me with a Bar action; is that right?

22 A. Um, I didn't threaten you. I told you I
23 was going to take the Bar action. I should have
24 done it a long time ago. But you had an
25 opportunity to withdraw when my attorney put you

1 on notice that I have proof and I know that you
2 had discussions with Blair Jennings, my former
3 attorney, and you denied it. You lied, and you
4 know you did.

5 MR. DUFFY: Move to strike.

6 Q. I'm not arguing with you about that. I
7 asked you a yes-or-no question. Did you threaten
8 me with a Bar action?

9 A. I guess you want to call it a threat.
10 But it's a promise. How is that? It will be
11 coming soon, especially after you file a contempt
12 action on me to throw me in jail and then drop the
13 contempt action as soon as you open your mouth in
14 a hearing. Oh, by the way, have you a check for
15 our sanctions yet? It's about 20 grand.

16 MR. DUFFY: Move to strike.

17 Nonresponsive.

18 Q. You had a discussion about what you
19 think your fees and costs are to date earlier, and
20 you put the number at about \$500,000?

21 A. I'm just guesstimating. I don't add
22 them up on a regular basis. I just pay them.

23 Q. And do you have an understanding of
24 whether particular claims demand more fees from
25 you?

1 A. I can't answer that question. That's a
2 legal question. Rule 11.

3 Q. What's that?

4 A. Rule 11, a contempt action.

5 Q. Is that --

6 A. Just, you asked me why I wrote "Rule
7 11."

8 Q. Is that responding to a question?

9 A. That was when you said something about
10 me filing that Bar complaint, yeah, I just
11 mentioned Rule 11.

12 Q. I'm sure I'll see whatever it is you
13 have to say about it.

14 A. You will, I guarantee.

15 (Deposition Exhibit Nos. 19, 20, and 21,
16 List of homes, was marked for identification.)

17 BY MR. DUFFY:

18 Q. Mr. Whitfield, I'm going to hand you
19 Exhibits 19, 20 and 21.

20 THE WITNESS: I'm going to take a
21 bathroom break.

22 MR. DUFFY: Let's take five minutes.

23 (The deposition went off the record.)

24 BY MR. DUFFY:

25 Q. Mr. Whitfield, please look at Exhibit

1 19, which is a list of properties. And I want to
2 know which of these you still own. And if it's
3 easier to say which of these you do not own any
4 longer --

5 A. Do you mind if I write on there "still
6 own" underlined?

7 Q. Please. However --

8 A. Let's do that. "Still own as of
9 6/1/17." Well, stolen but still owned, Mepkin.
10 That goes for 109 Mallory, 308 Shortleaf. The
11 last time I remember, the deed is still in my
12 name, 118 Clay, 9708 Jamison, 131 Tyron Drive, and
13 98 Willow. And I'm going to put parentheses,
14 "HNB."

15 Okay. (Inaudible.)

16 THE COURT REPORTER: I'm sorry?

17 THE WITNESS: Never mind. I'm just
18 mumbling to myself.

19 A. There you go.

20 Q. Thank you, Mr. Whitfield. You've
21 underlined the majority of properties. But for
22 those that you did not underline, have you sold
23 those properties?

24 A. Those are sold.

25 Q. Were any of those properties sold at

1 below market value?

2 A. Yeah. Every one.

3 Q. Okay. So every one that's not
4 underlined was sold below market value?

5 A. Correct.

6 Q. Okay. Please look at Exhibit 19.

7 A. Wasn't that 19?

8 Q. I'm sorry. 20.

9 A. 20. Okay.

10 Q. Okay. We have references here to dates
11 that these properties were sold on. Could you
12 just look and satisfy yourself whether these are
13 properties that you had at one point owned but
14 have sold on -- roughly on the dates --

15 A. I can't give you verification of the
16 dates without looking at my records because I sold
17 so many of them. But I can tell you whether it
18 sold or not.

19 Q. We just --

20 A. I'll tell you what I'm going to do,
21 "Homes sold with check as of 6/1/17."

22 MR. HALVERSEN: Brian, we'll just state
23 for the record that these are not exhibits
24 that were provided to us two days prior to Mr.
25 Whitfield's deposition.

1 MR. DUFFY: If you all want to stop and
2 talk about them, you're welcome to.

3 MR. HALVERSEN: We'll reserve that
4 right, yes.

5 A. Is there another page to this or just
6 one page?

7 MR. SLOTCHIVER: We're just preserving
8 it.

9 A. Is this part of that?

10 Q. No, sir. That's a separate exhibit.
11 Were any of the properties checked, which would be
12 all of the properties on Exhibit 20 -- were any of
13 those sold at below market value?

14 A. Below market value? All of them.

15 Q. All of them. Okay. Could you please
16 look at the shorter list on Exhibit 21 and tell me
17 whether you own those properties?

18 A. Whether I own them?

19 Q. Yes.

20 A. I own -- it's not 2199. It's 2139
21 Dorchester. It's 417 Edward, not 471.

22 Q. These are the reasons we couldn't find
23 them for sure, I guess.

24 A. I'll just put sold by the ones sold.
25 "Sold," "sold" -- there you go. Those are the

1 ones sold. The only one left on there is 2139
2 Dorchester.

3 Q. Okay. On Exhibit 21, were any of the
4 properties sold, sold at below market value?

5 A. All of them.

6 Q. Were there any properties sold that are
7 listed on Exhibits 19, 20 or 21 that were sold to
8 any entity that you have an affiliation with?

9 A. No.

10 Q. Were any of them -- were all of them
11 sold to third parties you didn't know before the
12 transaction?

13 A. As far as I know. I don't remember any
14 of their names being somebody I dealt with prior,
15 anyway.

16 Q. Okay. Any of them sold, that you know
17 of, to a friend or family member?

18 A. No.

19 Q. The properties that are on Exhibits 19
20 and 21 that are listed as ones that you still own
21 --

22 A. Which ones?

23 Q. Do you own -- just the ones that you
24 still own -- do you own any of them free and clear
25 of any mortgage interest?

1 A. Not too many anymore. Commander. Um --

2 Q. Could you put an asterisk next to the
3 ones that are free and clear?

4 A. I'll put "F & C." It shouldn't take
5 long. This one is free and clear over here.
6 Excuse me. Gahagan -- 732 Gahagan is still owned
7 and under receivership with Harbor National Bank,
8 along with Mepkin, Mallory, Shortleaf, Clay,
9 Jamison, Tyron, and Willow Lane. I don't
10 recognize -- I mean, I have sold some more houses
11 since I think the analysis by Albrecht, my expert.
12 I think his analysis was in the end of '14.
13 Correct?

14 Q. I believe that's right.

15 A. I've sold more houses in '15 and '16.

16 Q. Do you have -- am I correct you haven't
17 bought any additional houses?

18 A. No. I can't afford to.

19 Q. Of the properties listed from Gahagan to
20 Willow Lane, are you familiar with whether there
21 are renters in any of them?

22 A. Excuse me. I'm laughing. Some of them
23 are just totally abused and neglected by Harbor
24 National Bank and their receivers. 308 Shortleaf
25 has been sitting there vacant for two years, and

1 it has about \$30,000 worth of repairs required.
2 It still has a branch through the roof from
3 Hurricane Matthew, and it's got grass and weeds
4 growing up 5 feet, roach-infested. I can see from
5 the windows. Of course, there's more than that.
6 The whole property. And I just saw an estimate
7 from a contractor -- I think Brent sent over to
8 me -- that was dated August of '16. That was
9 before Matthew. But nothing has been done to it
10 for two years minimum, maybe three.

11 Q. Do you --

12 A. That's all rent loss.

13 Q. Do you agree that the receiver should
14 use funds to repair those properties?

15 A. You stole them. You need to front the
16 money. Harbor National Bank -- they stole them;
17 they need to fix them, and they need to maintain
18 them. Mallory, I get constant letters from the
19 HOA for failing to maintain and not complying with
20 the covenants and restrictions or the homeowner
21 restrictions practically every other month.
22 Jamison is neglected. Willow -- you all didn't
23 seize that one. It didn't make a lot of sense.
24 I'm cutting the grass over there. I don't need to
25 be cutting the grass. I can't do anything with

1 it. What am I supposed to do, fix it up for you
2 so you can seize that under receivership, Mr.
3 Duffy? What am I supposed to do? Put money out
4 of my pocket -- Oh, Mr. Whitfield fixed it all up
5 for us. Now we'll file a motion to put that in
6 the group with the other ones.

7 Q. Do you agree it should be placed in
8 receivership?

9 A. Go for it. You already stole the other
10 eight. You want me to fix it up so you can steal
11 it from me?

12 Q. Do you agree that the other properties
13 that need reasonable repairs, that the receiver
14 should use funds collected from renting these
15 properties to make those repairs?

16 A. Rents from the property itself. And if
17 not, the bank needs to pay out of their own
18 pocket. They don't get to cross rent from another
19 house to fix a house they neglected. In other
20 words, you're not taking rent over (sic) a house
21 on Gahagan to fix Shortleaf. You take it out of
22 your pocket.

23 And you know what? By the way, you
24 mentioned this, I haven't seen any reports from
25 any receiver for a year. And that's why Mr.

1 Bernstein went and had me removed as a receiver,
2 because I wasn't good enough. I wasn't good
3 enough, because I only had 45 years experience in
4 the business. I'm kind of glad you took it off my
5 hands. But why am I supposed to manage them for
6 you and put money in the bank for a bunch of crook
7 banks? You want me to take care of the property
8 so you can enrich yourself? I'm saying "you"
9 because you represent the bank.

10 Q. Are you aware that the Court appointed a
11 receiver?

12 A. Oh, I'm certainly aware. Of course, the
13 Court doesn't make good decisions sometimes.

14 Q. Have you been raising any of these
15 issues of notices you've gotten or concerns you
16 have --

17 A. Yes, I have. Yeah.

18 Q. So any of the concerns that you had
19 would have been raised with the Court?

20 A. We didn't raise them with the Court, no.
21 We raised them with Mr. Bernstein, and we raised
22 them with your office. But your office just
23 sloughs them off too; you just ignore them. So
24 I'm telling you right now -- I'm telling it to
25 your face; you must be the lawyer in charge of the

1 receiver: You need to get your receiver and get
2 out there and fix these houses and get them
3 rented. You stole them from me; maximize the
4 income. You're not doing that. You're not
5 willing to do that, are you?

6 Q. There's not income from some of the
7 properties to support making repairs.

8 A. None. Well, that's not my problem. You
9 stole them from me.

10 Q. So you're not willing to allow
11 property --

12 A. No.

13 Q. -- rental income from the group of
14 properties in receivership to fund repairs for
15 other properties?

16 A. No. They're all independent. They're
17 all independent properties. And, no, they stand
18 on their own. You need to fix them and get them
19 rented. You can't cross income.

20 Q. Any of the properties that were sold on
21 the last three exhibits we've been looking at --
22 were any of them sold to where, in common
23 parlance, you would say they were under mortgage?

24 A. No. And there were a good many of them
25 free and clear. And there was a good many of them

1 that had very little mortgages on them because
2 I've been paying on them for many years.

3 Q. So there were net proceeds from all the
4 sales?

5 A. There was some with pretty decent
6 proceeds; some of them had little proceeds.

7 Q. Are any of the properties that you
8 currently own listed for sale?

9 A. Um, one, and another one is about to go
10 back on the market. I had to do some additional
11 upgrades. And the rest of them I'm trying to rent
12 so I can get my cash flow up. I can't afford to
13 go down any further on my cash flow.

14 Q. Do you have a general --

15 A. Some of them -- two of them need major
16 work. I can't even attempt to rent them until I
17 get about \$20,000 worth of repairs each on them.
18 The others I'm working on right now. And I would
19 be doing that right now -- I'd be supervising the
20 work, making sure it's done, but I'm wasting my
21 time in this deposition and all these other
22 hearings because you don't respond to discovery.
23 When are you going to get our files anyway, Mr.
24 Duffy? I'm waiting to see them.

25 THE WITNESS: You can strike that too.

1 MR. DUFFY: Yeah. Thank you.

2 BY MR. DUFFY:

3 Q. Do you have a sort of common range of
4 loan-to-value of the mortgages you're carrying on
5 any of these properties that aren't free and
6 clear?

7 A. Repeat that question.

8 Q. Without going through each one of them,
9 I'm curious of how much equity you have in the
10 properties that you still own.

11 A. I'm curious too. It's not just pull a
12 number out of your hat. You have -- you have to
13 go do an analysis. You have to find out what the
14 house could sell for. And then if you have to
15 sell it prematurely, and I can't sell it to my
16 tenant, where I don't have to pay a selling
17 commission to a buyer's agent of 3 to 4 percent --
18 do the math. If it sells for \$100,000, that's 3
19 to \$4,000 in just commission. Then if I have to
20 kick in closing costs to get it sold, that's
21 another 3 or 4 percent. And that comes all off
22 the top. And if I sold it to a tenant, I may pay
23 their closing costs, but I don't have to have it
24 sit vacant, losing rent, trying to sell, that I
25 had to do with these. The tenant will buy it, and

1 I pay their closing costs and save about 15 to 20
2 percent, including loss of rents, of which you
3 caused by forcing me to liquidate these houses and
4 take them off the rental market.

5 I'm sorry if I appear angry, but I am.

6 Q. No, no. Mr. Whitfield, since we last
7 took your deposition, you've also supplemented
8 responses to Interrogatories that added some
9 witnesses, so I want to ask you about what you
10 know about the witnesses.

11 A. Sure.

12 Q. The Supplemental Answers identify Cindy
13 Whitfield as a witness in the case. What do you
14 understand she knows that's relevant to this case?

15 A. Well, she's a party now. She knows
16 everything that went on regarding the Black Rush
17 loan.

18 Q. And do you contend that she is to blame
19 for not signing the documents necessary to close
20 the Black Rush renewal?

21 A. First of all, she's not legally required
22 to sign anything. And if, by some chance, some
23 Judge -- which we're going to move for a directed
24 verdict so we're not going to let the jury make
25 that technical legal question. If for some reason

1 they determine that she was required to sign these
2 so-called documents to close, when they weren't,
3 then she would be responsible for interfering with
4 the closing. That's how it works. That's why we
5 sued her.

6 Q. You brought a claim against her, didn't
7 you?

8 A. Well, you can read the pleadings, can't
9 you? Equitable indemnification, I think it's
10 called.

11 Q. So you think she had an obligation?

12 A. If she had an obligation. If the Court
13 finds that she was required to sign papers, which
14 I don't think she was, then she would be
15 responsible for my damages' cost because she
16 didn't sign them.

17 Q. Have you talked with Ms. Whitfield about
18 her being asked to sign documents for Black Rush?

19 A. She was advised through her attorney. I
20 don't have a lot of conversations with her. But
21 she was advised -- read -- what is her name? --
22 Felder's Affidavit if you want an update on that.
23 She has confirmation that Mr. Jaskiewicz, her
24 attorney, or the paralegal advised her not to sign
25 any papers. Read it.

1 Q. Okay. Kevin Seibert is listed as a
2 witness?

3 A. Uh-huh (indicating an affirmative
4 response). I guess he is. What does it say?

5 Q. Have you had any conversations with Mr.
6 Seibert about the case?

7 A. Oh, we had a deposition where he
8 suborned perjury of Cindy Whitfield.

9 Q. So do you blame Mr. Seibert in part for
10 the failure to have these properties closed?

11 A. I don't think he was involved at the
12 time. I think it was Jaskiewicz.

13 Q. Do you blame Jaskiewicz?

14 A. Yeah.

15 MR. SLOTCHIVER: Objection, inasmuch as
16 it calls for a legal conclusion.

17 A. Yeah. Forget it. If Jaskiewicz is at
18 fault and he gave her bad legal advice, that's her
19 responsibility to take it up with him.

20 Q. Okay. And tell me what is your basis
21 for your understanding of Mr. Seibert suborning
22 perjury.

23 A. He told my ex-wife how to answer
24 questions in a deposition and tried to cover it
25 up, claiming that the notes in her little book she

1 brought were all attorney-client privilege, which
2 they weren't, and they got caught. You can read
3 the transcript. I'm sure you have a copy of it.

4 Q. Who brought documents to the deposition?

5 A. My ex.

6 Q. And your attorneys asked for them?

7 A. Yeah. And he claimed they were all
8 attorney-client privilege in the notebook.

9 Q. Because they had talked about those
10 notes?

11 A. They had -- yeah. She was referencing
12 her notes, and then she wouldn't let us see them
13 because her attorney told her it was privileged in
14 the notebook. Well, in her rage, when she left,
15 she threw the notebook on top of a trash can, and
16 some employee in the office saw that Brent's name
17 was in there and brought the notebook to Brent.
18 That's how we got them.

19 Q. Are you aware whether you all advised
20 Mr. Seibert that the notebook, where there were
21 materials that were claimed to be privileged, had
22 been left?

23 A. Did we notify him?

24 Q. Yeah.

25 A. First of all, we didn't know -- Mr.

1 Halversen didn't know what it was until he looked
2 in it, and he didn't see anything privileged in
3 there. That's when we found out that she was
4 lying and perjuring herself at Seibert's advice.
5 Why don't you read the transcript? Okay.

6 Q. No. You said that he suborned perjury,
7 so I get to ask you about it. You listed him as a
8 witness. What I'm trying to understand is, what
9 is the difference between her claim of privilege
10 over notes that she discussed with her attorney
11 and yours over the notes in the deposition we
12 looked at earlier?

13 A. You'll have to read it. And the
14 notebook is an exhibit. But it says clearly that
15 she was told how to answer the questions and
16 refused to answer and say the truth, and that's
17 subornation of perjury.

18 Q. Okay. Mr. Stan, whose last name begins
19 with a J --

20 A. That's Jaskiewicz. That was her former
21 attorney.

22 Q. What is your understanding --

23 A. I just told you what his involvement
24 was. Asked and answered.

25 Q. Dena Hardison?

1 A. I just told you what her involvement
2 was.

3 Q. I'm not sure --

4 A. She's a paralegal for Jaskiewicz.

5 Q. What was her involvement?

6 A. She was involved in discussions with
7 Cindy Whitfield about not cooperating.

8 Q. And Candace Pratt is listed as a
9 witness. And she served as a receiver?

10 A. Uh-huh (indicating an affirmative
11 response).

12 Q. Are you critical of Ms. Pratt's efforts?

13 A. Am I what?

14 Q. Are you critical of Ms. Pratt's efforts
15 as a receiver?

16 A. To say the least. I sued her. And Mr.
17 Bernstein picks her as a receiver. I sued her
18 with a number of other agents that were involved
19 in a fraudulent scheme in -- with the property
20 manager for the V.A. property -- resale program.
21 So you need to pull up that case and find out what
22 it's all about. It went to appeal. Very good.

23 Q. Are you critical of her efforts as
24 receiver in this case?

25 A. Yes. Yeah. She was skimming money.

1 And what she did with the V.A.; bid rigging for
2 contracts, I'm sure she was doing that too. But
3 work wasn't getting done, money was disappearing.
4 And then she borrowed money from your client;
5 borrowed money at a lower rate than I ever saw.
6 How do you borrow money when you're supposed to be
7 a receiver and pay for it out of your pocket? So
8 read it.

9 Q. Do you contend that Ms. Pratt stole
10 money when she was a receiver?

11 A. I don't know what she did, but she
12 wasn't managing it. And she was running out of
13 money, and then she had to get loans directly from
14 Harbor National Bank.

15 Q. You just said skimming money, and I just
16 want to be sure I understand what that means.

17 A. Um, I'm not going to explain that to
18 you. Read the pleadings. I stand on the
19 pleadings.

20 Q. And in the pleadings -- at some point
21 along the amended pleadings you had said that Ms.
22 Pratt unilaterally leveraged the property with
23 loans from the Plaintiff and squandered the
24 properties' income for her own benefit. Is that
25 your contention?

1 A. Yes. I believe that.

2 Q. And how did she squander the properties'
3 income for her own benefit?

4 A. Well, she was -- she had deals with
5 contractors that were paying three, four times
6 what the repair would cost. I ought to know; I've
7 been in the business 45 years. I know what
8 repairs cost.

9 Q. What was her benefit from that?

10 A. I don't know. But I know that they were
11 involved in the V.A. fraud. And what they do is
12 they -- oh, and excuse me. I'll tell you what
13 else it's based on. Have you ever heard of the
14 Housing Assistance Program?

15 Q. Just please tell me.

16 A. Well, the Housing Assistance Program
17 came about in the '90s when the base closed, and
18 the Corps of Engineers was involved with selling
19 the houses of the military and civilian employees.
20 And they had to sell them through a Housing
21 Assistance Program. And they put out bids for
22 agents or brokers to sell their houses. Well,
23 Remax Realty -- actually, Professional Realty, Ms.
24 Candace Pratt, and you need to look up that too --
25 that's the same case.

1 Q. I'm really interested about what
2 happened with these properties.

3 A. She was involved with an agent that was
4 stealing and defrauding the HAP program and the
5 Corps of Engineers. So read the pleadings.

6 Q. Okay. In your pleadings, which you
7 directed me to, from my understanding of what you
8 think Ms. Pratt did wrong, it says that she
9 squandered the properties' income for her own
10 benefit. And you referenced paying contractors
11 too much. But I want to know what that means,
12 that it's for her own benefit.

13 A. It wasn't for the bank's benefit; it
14 wasn't for my benefit.

15 Q. What benefit do you think she got from
16 that?

17 A. I already told you. Read the pleading.

18 Q. I'm not reading a different case. I
19 want to talk about these properties with this
20 case.

21 A. She's either incompetent or she
22 squandered the money by paying contractors way too
23 much money. And where the difference went, I
24 don't know. But it didn't go in the bank and it
25 didn't go back to me.