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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Karl A. Folkens, Special Referee
Fifteenth Judicial Circuit

APPELLATE CASE NO: 2026-000090

Jericho State Capital Corp. of Florida, Appellant,

v.

Chicago Title Insurance Company, Respondent, AND Lynx Jerico Partners,
LLC, Appellant, v. Chicago Title Insurance Company, Respondent.

.

RECORD ON APPEAL

VOLUME THREE

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1 Q. How far back? I have AOL, but I don't know
2 how far back I can go.

3 A. I went back as far as I was able to. I
4 went back to 2007. I was able to bring up some stuff I
5 think.

6 Q. How did you determine whether an e-mail was
7 relevant to this transaction? Did you do a word search,
8 or did you look at the dates?

9 A. No. I looked at the deal. I looked under
10 Peachtree and I looked under T&J and I looked under World
11 Development, and I brought up everything in addition to
12 the ones between me and my attorneys, which I sent to the
13 attorneys.

14 Q. Prior to you, Jericho, obtaining the first
15 mortgage, did you reach some agreement with the holder of
16 the first mortgage as to how the eminent domain, any
17 condemnation award would be shared?

18 A. Did I prior to --

19 Q. Yes.

20 A. We tried to negotiate with --- there was a
21 consultant brought in who was running the show at that
22 point. We had worked trying to put together a thing.
23 That didn't work. He was then pushed out. They brought
24 in a new person.

25 First of all, it was a guy named Dan

1 Freeman, and then Bill Brinkman came in and we
2 subsequently put together a deal on that. That fell
3 apart because he was pushed out, and then it was forced
4 into liquidation.

5 Q. Because there is some documents you sent
6 me. There was a memorandum of understanding, but there
7 was nothing -- there's no agreement written. There was
8 just some paper exchanged back and forth. You never had
9 a deal.

10 A. No. We never had a deal.

11 Q. Did you all ever have any deal as to how a
12 title insurance claim would be filed, as to whether or
13 not the first mortgage holder would file a title
14 insurance claim?

15 A. Cursory, yes, of course.

16 Q. When was that?

17 A. When?

18 Q. Yes. Did you have any agreements as to how
19 --

20 A. No. There is no agreement. There was only
21 things that we tried to get agreed, apparently. MF08 was
22 in really bad trouble and they had their own issues.

23 Q. Were the communications that Jericho made
24 with Chicago Title limited with respect to filing this
25 claim? Were they limited to communications made by your

1 lawyer, Mr. Cohen, with Chicago Title?

2 A. Did I ever contact them?

3 Q. Here's what I'm trying to find out. Did
4 you ever have any conversations with any folks at Chicago
5 Title related to this claim?

6 A. Yes, recently. I called Rudy for advice,
7 not realizing this is the same thing.

8 Q. And Rudy is --

9 A. Rudy Riviera.

10 Q. He is a colleague of Mr. McCall?

11 A. Right.

12 Q. Other than that, I don't want -- when we're
13 at trial, I don't want you to testify, oh, I had this
14 two-hour conversation with claims counsel back in 2010.
15 I don't think you did.

16 But my question to you is: Were there
17 communications following this claim in communicating with
18 Chicago Title about this claim?

19 Other than your conversation with
20 Mr. Riviera, were they limited to letters going back and
21 forth between your attorney, Mr. Cohen, and Chicago
22 Title?

23 A. It was originally Mr. Cohen. I don't know
24 who he spoke to and how many times and whatever the
25 letters read, I don't know, and then Mr. Newby.

1 Q. Besides --

2 A. I have not had any conversations with
3 Chicago Title.

4 Q. As far you know, Mr. Svirsky has not
5 either?

6 A. No, not that I'm aware of.

7 Q. All right. Do you have any relatives that
8 live in Horry County?

9 A. No.

10 Q. I'm asking you because there will be a jury
11 maybe one day here in this case, and that's what we
12 normally do is find out if you have a first cousin in
13 Horry County that is going to be on the jury.

14 A. No.

15 Q. Do you know if Mr. Svirsky has any
16 relatives down there.

17 A. Not that I know of.

18 MR. NEWBY: We have a lot of Svirskys in
19 Horry County.

20 MR. KOUTRAKOS: Give me one second. That's
21 all the questions I have.

22 MR. NEWBY: I think I'll resist the urge.
23 Done.

24 (The reading and signing of this Deposition
25 was not waived.)

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY
CASE NO.: 2015-CP-26-1084

LYNX JERICH0 PARTNERS, LLC,
Plaintiff,
vs.
CHICAGO TITLE INSURANCE COMPANY,
Defendant.

_____ /

Cambria Hotel
141 Southwest 19th Court
Dania Beach, Florida 33004
Wednesday, March 16, 2016
12:00 p.m. - 2:45 p.m.

DEPOSITION OF SCOTT SKIVRSY
Pages 1-105

Taken before Tambria Lee Dery, RPR, FPR,
Registered Professional Reporter, Florida
Professional Reporter and Notary Public in and for
the State of Florida at Large, pursuant to Notice of
Taking Deposition filed in the above cause.

— — — — —

Job No. CS2238732

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14

15 ALSO PRESENT:

16 GLENN CHWATT.
17
18
19
20
21
22
23
24
25

I-N-D-E-X

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E-X-H-I-B-I-T-S

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1 THEREUPON,

2 SCOTT SVERSKY,

3 having been first duly sworn, and answered, "I do,"
4 testified upon his oath as follows:

5 DIRECT EXAMINATION

6 BY MR. KOUTRAKOS:

7 Q Mr. Svirsky, did I pronounce that right?

8 A Svirsky.

9 Q Svirsky. We've met before, my name is Jim
10 Koutrakos and I represent Chicago Title Insurance
11 Company. You sat in on a deposition in a related
12 case, so you probably heard all of this before, but
13 I think I need to put it on the record.

14 I'm going to ask you a series of
15 questions today and if you don't -- and there will
16 be questions you do understand, but if you do not
17 understand a question, please ask me to rephrase it,
18 tell me you don't understand and I'll try to provide
19 a better question for you. Do you understand that?

20 A Yes.

21 Q Do you believe that's fair?

22 A Yes.

23 Q The court reporter's taking everything we
24 say down today and so I have a bad habit probably
25 because of my ethnic background of talking over

1 people and so I will try my best to wait until
2 you're done speaking and if you can do the same for
3 me, I would appreciate it, okay?

4 A Sure.

5 Q Because the court reporter is transcribing
6 everything today, if you actually instead of saying
7 yes, you say uh-huh, she's going to actually put in
8 the transcript uh-huh, so let's try to stick with
9 verbal as opposed to nonverbal responses, do you
10 understand that?

11 A Yes.

12 Q Are you on any medications or have a
13 physical disability that affects your memory or your
14 ability to tell the truth today?

15 A No.

16 Q Are you capable of giving truthful
17 testimony today?

18 A Yes.

19 Q I'm not sure how long we will go today, I
20 will try to not take too long, but if you need a
21 break, just let me know and we'll break.

22 A Yes.

23 Q Okay. Can you please spell your name for
24 the record?

25 A S as in Sam, V as in Victor, I-R-S-K-Y.

1 First name is Scott, S-C-O-T-T.

2 Q I forgot to tell you something else.
3 Under the South, the Rules of Civil Procedure, I'm
4 required to tell you that if you need any
5 definitions, clarifications or explanations of
6 anything I ask you, you're to ask me as opposed to
7 your counsel. Also, you might hear an objection
8 being made. You have to answer a question unless
9 your attorney instructs you not to answer the
10 question, do you understand that?

11 A Yes.

12 Q Okay. Where were you born?

13 A Milford, Connecticut.

14 Q Okay. And how old are you?

15 A Forty-three.

16 Q Date of birth?

17 A 10-2-1972.

18 Q And where do you currently reside?

19 A Boca Raton, Florida.

20 Q Do you have an address?

21 A 3176 Saint Ann's Drive, Boca Raton,
22 Florida, 33497.

23 Q Do you have a business address?

24 A 3835 Northwest Boca Raton Boulevard,
25 Number 200, Boca Raton, Florida 33431.

1 Q Okay. And what is the business at that
2 address?

3 A I have a number of limited liability
4 companies, Svirsky Asset Management, Sverski Capital
5 Advisors, SDS Tax Lien Advisors; manager and member
6 of a number of other LLCs, mostly related to the
7 real estate industry.

8 Q If I went to that office, it would say
9 Scott Svirsky on it?

10 A No, it's under the Jericho companies.

11 Q Okay. So you share an office with the
12 Jericho companies?

13 A Correct.

14 Q So if I went to your office, it would say
15 Jericho on it?

16 A I believe it says The Jericho Group.

17 Q The Jericho Group, okay. Can you just
18 tell me a little bit about your educational
19 background?

20 A I went to the University of Miami from
21 1990 to 1994 and graduated with a business degree in
22 management.

23 Q Any education beyond your business degree?

24 A I did postgraduate work, you know, as a
25 Certified Financial Planner. That's, you know,

1 continuing education requirements related to being a
2 financial advisor, those types of educational
3 requirements.

4 Q Okay. Do you have any licenses?

5 A I do not any longer, no.

6 Q Have you ever had a license before?

7 A Yes.

8 Q For?

9 A 7, 63, 31, basically securities licenses.

10 Q Okay. And you no longer hold those
11 licenses?

12 A I do not.

13 Q Why not?

14 A I went into a different line of work.

15 Q And when you had a securities license,
16 what company did you work for using your securities
17 license or licenses?

18 A Dean Witter, which became Morgan
19 Stanley/Dean Witter and then Smith Barney, which was
20 part of Citigroup.

21 Q And when you worked for Dean Witter and
22 Smith Barney, where were those offices located?

23 A Aventura, Florida and Boca Raton, Florida.

24 Q You were born in Connecticut, but you now
25 live in Florida; how long have you been in Florida?

1 A Since going to college, 1990.

2 Q Okay. You've been continuously living in
3 southern Florida?

4 A Yeah, as opposed to college, my residence
5 was technically Connecticut, but --

6 Q Okay.

7 A Since graduation of college, South
8 Florida.

9 Q Okay. Because you moved from
10 Connecticut -- you started in South Florida --

11 A While I was in school, I suppose my legal
12 residence was probably Connecticut.

13 Q So they could charge you. There's no
14 difference to be out of state or in state with
15 Miami, right?

16 A Right. Correct.

17 Q Okay. Have you had any training in real
18 estate?

19 A No.

20 Q Do you have a real estate license?

21 A No.

22 Q Broker's license?

23 A No.

24 Q You understand what a deed, a mortgage is
25 and all those terms?

1 A Yes.

2 Q And those are terms -- would you have
3 learned those concepts on the job?

4 A Through owning, purchasing, selling real
5 estate.

6 Q Okay.

7 A And then on-the-job training, yes.

8 Q Okay. We talked about your office, you
9 talked about the different limited liability
10 companies you're involved with. Do you have an
11 employer?

12 A No, they're all essentially S-corporations
13 that flow to my personal tax return.

14 Q Okay. So you don't, you make money off of
15 investments, you don't have an employer for which
16 you do work and they give you, pay you a salary?

17 A No, I receive a 1099 as an outside
18 contractor from several different entities.

19 Q Okay. If you can just quickly, from
20 college to, from '94 till today, in your own words,
21 just go through your work history in general terms
22 from '94 until today.

23 A '95 until approximately 2001 was as a
24 financial advisor with Dean Witter and then became
25 named Morgan Stanley/Dean Witter. Approximately

1 2001 until 2015 with Smith Barney. And then from
2 2005 until present, various entities, Sverski Asset
3 Management, you know, that were involved in the real
4 estate industry.

5 Q Okay. So after you're done being a
6 stockbroker, is that fair, a stockbroker or a
7 financial advisor, how did you go into the real
8 estate business?

9 A Where I lived was in close proximity to
10 where my current partner, Glenn Chwatt, lives and we
11 did social and recreational things together and I
12 learned of his family's real estate lending business
13 that went back to the early 1970s and there was an
14 opportunity for us to raise outside assets from
15 individual investors to take advantage of that
16 lending history and that business model and I joined
17 in 2005 and have served various capacities during
18 that timeframe in the lending, commercial lending
19 space.

20 Q Okay. For example, The Jericho Group,
21 when you do work for Jericho, do you get a
22 consulting fee from Jericho?

23 A No, Jericho is just an overriding term.
24 The main source of income is the Jericho All Weather
25 Opportunity Fund, which is a domestic limited

1 partnership. And my entity Sverski Asset Management
2 is one of the general partners of the Jericho All
3 Weather Opportunity Fund.

4 Q Tell me about the Jericho All Weather
5 Opportunity Fund.

6 A It's a limited partnership.

7 Q And who is the general partner for that?

8 A Sverski Asset Management, which is my
9 entity; SKE Management, which is Glenn Chwatt's
10 entity. And then there's a third entity called
11 Magnum US Investments, which is a third partner's,
12 David Friedland's, entity.

13 Q Is it Friedland?

14 A F-R-I-E-D-L-A-N-D.

15 Q And the other entity was SKE Management?

16 A Yes.

17 Q And Sverski Asset Management?

18 A Correct.

19 Q Any other folks involved in Jericho All
20 Weather Opportunity Fund, LP, besides those three
21 entities?

22 A Those are the three general partners.
23 There's certainly other people involved in the
24 administration side, et cetera, et cetera.

25 Q Any limited partners?

1 A Yeah, there's a whole myriad of limited
2 partners.

3 Q Those are investors?

4 A Correct.

5 Q What's the relationship between Jericho
6 All Weather Opportunity Fund, LP and Jericho State
7 Capital Corporation of Florida?

8 A There's no direct relationship. In past
9 history, Jericho State Capital Corp. of Florida has
10 made loans and the Jericho All Weather Opportunity
11 Fund has occasionally participated alongside as a
12 pari passu participant and vice-versa where Jericho
13 All Weather Opportunity Fund has made loans, real
14 estate loans and Jericho State Capital Corp. of
15 Florida has participated as a pari passu
16 participant.

17 Q Say that again, what's the last word?

18 A Pari passu participant.

19 Q Okay. Let me ask you, we're here about
20 this property on the Intercoastal waterway. What do
21 you all call it?

22 A Peachtree Road.

23 Q The Peachtree Road property. The
24 Peachtree property. If I talk about property from
25 now on, unless otherwise indicated, I'm going to say

1 the Peachtree Road or Peachtree property, is that
2 right, 131-acres or so, okay?

3 A Yes.

4 Q The property that's the subject of this
5 case.

6 A Yes.

7 Q Okay. Who from all these entities we
8 discussed first got involved in that property, was
9 it you or was it Glenn?

10 A It was both.

11 Q Okay. Who first contacted you?

12 A Who first contacted? I don't recall.

13 Q Okay. Was this something that you sought
14 out to get involved in or somebody was looking for a
15 partner or a lender to get involved with the
16 Peachtree property?

17 A Jericho State Capital Corporation of
18 Florida had a wide range of real estate finance
19 brokers that would present lending opportunities to
20 the entity and the Peachtree property was a similar
21 occurrence.

22 Q Okay. Who are the folks who would provide
23 these lending opportunities, I mean --

24 A Myriad. It was attorneys, it was
25 accountants, it was real estate investment banks

1 from New York, Los Angeles, all over the United
2 States.

3 Q So it wasn't locally, it was nationally?

4 A Correct.

5 Q Had you all done work in South Carolina
6 before this project, before the Peachtree property?

7 A I can only speak for the Jericho All
8 Weather Opportunity Fund, and the answer is no.

9 Q Any of the other entities you're
10 associated with have any dealings with South
11 Carolina property?

12 A That I'm associated with?

13 Q Yes.

14 A Not that I'm aware of.

15 Q Okay. Do you recall first being contacted
16 by Jeff Shoup?

17 A As I said, I don't recall who initiated
18 the contact.

19 Q Okay. Just a general question, when that,
20 this loan opportunity was presented to Jericho State
21 Capital, right, let me check out my entities, this
22 loan opportunity which was presented, was that
23 present to the All Weather Opportunity Fund or was
24 it presented to Jericho State Capital?

25 A Well, there was a transition period;

1 initially, it was Jericho State Capital, because
2 Jericho State Capital, that was their business model
3 for 30-plus years prior to the Jericho All Weather
4 Opportunity Fund coming into existence. And as
5 investors came into the Jericho All Weather
6 Opportunity Fund and assets increased, the Jericho
7 All Weather Opportunity Fund then became the lead
8 lender.

9 Q Okay.

10 A And Jericho State Capital Corp. became a
11 minority participant.

12 Q Okay. You don't remember how, if anybody
13 contacted you with respect to the Peachtree
14 property, but do you remember who made the
15 presentation to the Jericho folks? I mean, who was
16 the one contacting you -- you don't remember that,
17 you don't remember who contacted?

18 A I don't remember who contacted and Jericho
19 folks, I don't know which entity you're referring
20 to.

21 Q Okay. Somebody approved this Jericho
22 loan, correct?

23 A Yes.

24 Q Who was that?

25 A I believe it was Glenn Chwatt.

1 Q Okay. Did you have any involvement in
2 that?

3 A Jericho All Weather Opportunity Fund was a
4 participant, which I was involved in.

5 Q Okay. Did you have to approve anything
6 yourself?

7 A Define approve. What are you referring
8 to?

9 Q Well, did Mr. Chwatt say, Scott, what do
10 you think of this deal? Anything, anything to that
11 effect or like that?

12 A Jericho State Capital Corp. of Florida
13 presented the opportunity to the Jericho All Weather
14 Opportunity Fund.

15 Q Okay.

16 A And my entity, Sverski Asset Management,
17 along with Magnum PS Investments and SRKD Management
18 collectively made a decision whether to participate
19 or not in a particular loan. In this Peachtree
20 instance, it chose to participate.

21 Q Okay. Did anybody express any concerns
22 from any of the general partners of Jericho All
23 Weather Opportunity Fund, any concerns about the,
24 whether this was a good idea or not, to your
25 recollection?

1 A I don't recall.

2 Q Okay. Let me just back up a little bit.

3 The Jericho State Capital entity, who are the
4 members of that?

5 A It's not my entity.

6 Q That's Glenn's entity?

7 A Correct.

8 Q Okay. Do you know if Glenn has any
9 partners?

10 A I believe it is him and his father and one
11 of his sisters.

12 Q Okay. Glenn Chwatt's father and his
13 sister, as far as you know. Anybody else?

14 A As far as I know, again, it's not my
15 entity, so I can't tell you for sure.

16 Q Okay. You have no involvement in Jericho
17 State Capital?

18 A I do not.

19 Q Does Jericho State Capital exist today, as
20 far as you know?

21 A I believe it's active.

22 Q Okay. Do you know what assets it owns, if
23 any, Jericho State Capital? And I know it's
24 confusing, because there's a lot of Jerichos, but
25 it's Jericho State Capital.

1 A The only asset that I'm aware of that it
2 owns jointly at this juncture with Jericho All
3 Weather Opportunity Fund, the Peachtree property
4 that you referred to and the Saucepan Bay property,
5 which is a property in North Carolina that was cross
6 collateralized with the Peachtree property.

7 Q Okay.

8 A So my understand is that the title has
9 both Jericho All Weather Opportunity Fund and
10 Jericho State Capital Corp. of Florida on those two
11 properties.

12 Q Are you sure about that?

13 A I believe so.

14 Q Okay. If, in fact, the All Weather
15 Opportunity Fund had an interest in the Peachtree
16 property, there would be some deed of some sort, you
17 would think, is that right?

18 A Well, I believe the foreclosure sales were
19 concurrent between North Carolina and South
20 Carolina, so certainly the North Carolina property
21 Saucepan has both names on the deed.

22 Q Okay.

23 A Not certain about the Peachtree property.

24 Q Would it concern you being a member of the
25 All Weather Opportunity Fund, if, in fact, the All

1 Weather Opportunity Fund has no interest at least of
2 record of the Peachtree property?

3 A No, because we have participation
4 agreements which spell out ownership rights.

5 Q Fair enough.

6 A Regardless of title.

7 Q Fair enough. Okay. Have you ever had
8 your deposition taken before?

9 A Yes.

10 Q How many times?

11 A Two or three.

12 Q Okay. Can you explain why your deposition
13 was taken, and what type of case it was in, whether
14 you were a party or not and so forth?

15 A I had a, did construction on my house and
16 I had a dispute with the contractor over the
17 remaining punch list and the price to be paid for
18 that remaining punch list.

19 Q And you were deposed in that case?

20 A Correct.

21 Q Okay. You sued the contractor?

22 A He actually sued me first and then I
23 counter sued and we went through depositions and it
24 was settled.

25 Q Okay. That's fine. The next deposition?

1 A The next deposition was for a case called
2 Pier 17 versus the Jericho All Weather Opportunity
3 Fund, Sverski Asset Management and myself
4 personally.

5 Q And what was that about? First of all,
6 where was that case filed?

7 A Fort Lauderdale, Florida.

8 Q Okay. And how long ago was that?

9 A I believe it was filed in 2010. It's
10 still ongoing.

11 Q Still ongoing. Can you tell me a summary
12 of what that case is about?

13 A Jericho All Weather Opportunity Fund gave
14 a commitment letter to fund a refinance of a piece
15 of land and construction of a marina and returned
16 the commitment fee and was unable to fund --
17 basically, was unable to fund as a result of the
18 economic conditions and the credit facility being
19 pulled gave back the commitment fee and then a
20 number of years later, the developer sued that as a
21 result of a lack of construction funding, that was
22 the reason why his project was unsuccessful.

23 Q And you've been deposed in that case?

24 A Yes.

25 Q Okay. Who's your lawyer in that case?

1 A Jim Telepman from Cohen Norris Sheen
2 Weinberger and Wolmer.

3 Q Okay. And that case is ongoing?

4 A It's under appeal, yes.

5 Q It's under appeal, okay. What did the
6 trial court decide in that case?

7 A It provided a judgment against the Jericho
8 All Weather Opportunity Fund and Sverski Asset
9 Management as a general partner, but my personal
10 liability was thrown out or whatever the term is.

11 Q There's no personal judgment against you?

12 A Correct.

13 Q But there is against the All Weather
14 Opportunity Fund and SAM, Sverski Asset Management?

15 A Correct.

16 Q What was the judgment amount?

17 A I don't recall specifically, but it was
18 about five million dollars, lost profits.

19 Q Was that a jury trial?

20 A It was a judge trial.

21 Q Judge trial. Is there any insurance for
22 that, any insurance coverage?

23 A No.

24 Q When was that judgment entered, to the
25 best of your recollection?

1 A Probably 12 to 18 months ago maybe.

2 Q Interest, as far as you know, interest
3 would be accruing on that judgment?

4 A Correct.

5 Q Has the appeal been argued?

6 A Briefs have been filed.

7 Q Okay. And you were deposed in that case?

8 A Yes.

9 Q Okay. All right. The third case?

10 A Third case was a foreclosure action that
11 the Jericho All Weather Opportunity Fund went
12 through.

13 Q Okay.

14 A It's called Sea Breeze.

15 Q And where was that foreclosure action
16 filed?

17 A Fort Lauderdale.

18 Q And just a debt collection action, a
19 mortgage foreclosure?

20 A Yeah, we, the Jericho All Weather
21 Opportunity Fund was foreclosing and as a general
22 partner, I was deposed.

23 Q Deposed as to the amount due under the
24 note secured by the mortgagee you were foreclosing?

25 A I'm not sure why, what their motivation

1 was, but ultimately, there was a foreclosure action
2 that was completed and the judgment in favor of the
3 Jericho All Weather Opportunity Fund.

4 Q Any other depositions besides those three
5 depositions, that you recall?

6 A Not that I can recall.

7 Q Have you ever testified in court before?
8 And I presume you probably testified in the Pier 17
9 case in court?

10 A Yes.

11 Q Did I ask you if that's in federal court
12 or in state court?

13 A That is state.

14 Q Okay. Did the court make any findings
15 about your testimony; did the judge make any
16 findings?

17 A I don't really understand the question.

18 Q Okay.

19 A I mean, I was, no judgment was --

20 Q Okay.

21 A The case against me was dropped.

22 Q Fair enough, fair enough. Okay.
23 Testified in court. Any other time besides the Pier
24 17 case?

25 A I testified in the Sea Breeze bankruptcy.

1 Q Okay.

2 A Court proceeding.

3 Q The borrower filed for bankruptcy?

4 A The borrower filed for bankruptcy.

5 Q Any other time you recall testifying in
6 court?

7 A Not that I can recall.

8 Q Have you ever testified before any
9 administrative tribunals?

10 A Not that I can recall.

11 Q Have you ever had your Series 9, not
12 Series 9, your Series 6 it was called?

13 A 7.

14 Q 7, sorry. Was it ever suspended?

15 A No.

16 Q Okay.

17 A Not that I can recall.

18 MR. KOUTRAKOS: Okay. All right. I'm
19 going to show you what is marked as Exhibit 1.

20 (Defendant's Exhibit 1 was marked for
21 identification.)

22 BY MR. KOUTRAKOS:

23 Q This is Exhibit 1. Mr. Svirsky, have you
24 seen Exhibit 1 before?

25 A Yes.

1 Q And this is a Notice of Taking Deposition
2 and this is the Notice of Deposition for the
3 deposition, for this deposition today, correct?

4 A Yes.

5 Q Have you looked at all the areas of
6 inquiry that will be involved in this deposition?

7 A Yes.

8 Q And do you understand today that you'll be
9 testifying on behalf of the entity called Lynx
10 Jericho Partners, LLC?

11 A Yes.

12 Q And you feel comfortable you're the most
13 knowledgeable person at Lynx Jericho Partners, LLC
14 to testify about the matter listed in Exhibit 1,
15 matters 1 through 23?

16 A Yes.

17 Q Okay. Great. Is there anybody else at
18 Lynx Jericho Partners, LLC who would know anything
19 about these areas of inquiry, would it be Glenn?

20 A Yes.

21 Q All right. Anybody else associated with
22 Lynx Jericho Partners who would know something about
23 it, any of these areas of inquiry?

24 A There are other partners in Lynx Jericho
25 Partners, LLC that, I mean, I haven't -- if you

1 would like me to go through --

2 Q No, no --

3 A They might have passing knowledge of some
4 of the items.

5 Q Okay. All right. But you and Glenn as
6 the two folks associated with that entity, you and
7 Glenn would know the most, correct?

8 A Yes.

9 Q Did you bring any documents with you
10 today?

11 A Personally, no.

12 Q Okay. Did anybody else? I mean, if you
13 look at the notice on the third page, it asks you to
14 bring documents related to the areas of inquiry.

15 Have you brought any documents today
16 that would be different from the documents your
17 lawyers may have produced in discovery in this case?

18 A No.

19 Q Okay.

20 MR. KOUTRAKOS: Scott, South Carolina
21 Scott, there aren't any other documents besides
22 what you've produced?

23 MR. MASEL: As far as I know, that's
24 correct.

25 MR. KOUTRAKOS: All right. I see a stack

1 of documents over there, that has nothing to do
2 with that production request, is that right?

3 MR. MASEL: That's correct.

4 MR. KOUTRAKOS: Thanks, Scott.

5 BY MR. KOUTRAKOS:

6 Q Okay. Now I want to talk to you about the
7 formation of Lynx Jericho, which is one of the, one
8 of the areas of inquiry. And I want -- we all know
9 why it was formed, it was formed to purchase the
10 note and mortgage originally given by Peachtree, the
11 Peachtree entity to RE Loans, is that right? Among
12 other things.

13 A Yes.

14 Q Okay. Tell me in your own words how Lynx
15 Jericho Partners, LLC was set up. What's the
16 structure of it?

17 A The structure is that Lynx Asset Services
18 put up the two-and-a-half million dollars to
19 purchase the Peachtree and Saucepan first mortgages
20 from the liquidating bankruptcy trustee from I
21 believe it was MF '08, LLC. So the original,
22 original first mortgage was with RE Loans, LLC and
23 at some point, they transferred it to their lender
24 at the time, Wells Fargo Foothill and then repaid
25 that collateral somehow and had that mortgage

1 released and then transferred it to an affiliated
2 entity, MF '08. So there were a number of, those
3 were the chain of assignments along the way.

4 Q Let me stop you for a second. When you
5 say you had the mortgages released, what do you mean
6 by that?

7 A The mortgage was collateral for the RE
8 Loans' credit facility. And this, again, this is my
9 understanding, I'm not a member of any of those
10 entities, but RE Loans had a credit facility it
11 assigned that mortgage as collateral to Wells Fargo
12 Foothill, I guess it somehow arranged for Wells
13 Fargo Foothill to release that collateral, I can
14 only assume they repaid their credit facility in an
15 amount that was sufficient for Wells Fargo Foothill
16 to release that mortgage.

17 Q Okay.

18 A That went to MF, that went to RE Loans.
19 RE Loans then sold, transferred, I don't know what
20 mechanism or how it ended up in MF '08, LLC.

21 Q Let's stop you, this will save you time.
22 MF '08, is that an entity that you had heard about
23 before?

24 A No.

25 Q Is it related to RE Loans that you know

1 of?

2 A Yes.

3 Q Okay. It's -- okay.

4 A And that is the entity that went into
5 bankruptcy was the MF '08 entity.

6 Q And RE Loans went into bankruptcy, too, is
7 that right, or --

8 A I don't know the answer to that.

9 Q But MF '08 was a -- do you know the
10 principal behind it?

11 A Similar principals to RE Loans.

12 Q Is it Barry Neg or Ng?

13 A It's Barney.

14 Q Barney?

15 A Ng. But I don't know what his capacity
16 was, but it's the in the family, Ng. It was a
17 number of member participants.

18 Q You were familiar with Barry --

19 A Barney.

20 Q Barney, thank you. You were familiar with
21 Barney or at least RE Loans because when you were
22 with Jericho, I mean, you were there
23 contemporaneously, I mean, you knew they were the
24 first mortgage holder on the property, the Peachtree
25 property on which Jericho State Capital was going to

1 hold a second mortgage, right?

2 A Correct.

3 Q So you knew of that entity?

4 A Correct.

5 Q And you knew Barry -- Barney, excuse me,
6 was involved in that transaction, or his company
7 was?

8 A Correct.

9 Q Okay. Okay. So you were talking about
10 the loan gets back, the RE Loans' first mortgage.

11 A So MF '08 went into bankruptcy and the
12 liquidating trustee was selling the two mortgages
13 through the bankruptcy proceeding and neither
14 Jericho State Capital Corp. of Florida nor the
15 Jericho All Weather Opportunity Fund had the means
16 to purchase those mortgages from bankruptcy.

17 Q Okay.

18 A So Lynx Asset Services proposed to buy the
19 mortgages out of bankruptcy and we formed -- or an
20 LLC was formed called Lynx Jerico Partners, LLC.
21 And the structure of it is there are A shares which
22 are owned by Lynx Asset Services, I believe, who
23 contributed the full two-and-a-half million dollars
24 and there are B shares which are held by SRKD-SAM
25 Advisors, LLC, which is my entity and Glenn Chwatt's

1 entity were the two managers of that entity.

2 Q Okay. It's a combination of Svirsky Asset
3 Management and Glenn's other company, SRKD
4 Management, is that right?

5 A The name, yes.

6 Q All right.

7 A They're separate, obviously separate
8 entities.

9 Q Understood. Understood.

10 A So there are B shares which contributed
11 zero dollars to the purchase of the mortgages and
12 there's an operating agreement which outlines a
13 waterfall of proceeds where Lynx Asset Services gets
14 its two-and-a-half million dollars that it put up to
15 purchase the mortgages, plus an interest rate, plus
16 a carried interest going forward, even after its
17 principal and interest has been paid.

18 Q Okay. Tell me about Lynx Asset Services,
19 who is behind Lynx Asset Services, LLC?

20 A I believe Mike McCarty is the manager.
21 I'm not aware of who is the actual ownership makeup
22 of Lynx Asset Services.

23 Q Okay. Is he, is he the head guy?

24 A He is -- my understanding is that he is
25 the investment professional in charge of Lynx Asset

1 Services.

2 Q Okay.

3 A I don't know who specifically is the owner
4 of Lynx Asset Services.

5 Q And where is, do you know where
6 Mr. McCarty resides?

7 A New Jersey.

8 Q Okay. Did you know Mr. McCarty -- let me
9 back up. The All Weather, the Jericho entities,
10 Jericho State Capital and Jericho All Weather
11 Opportunity Fund owned the Peachtree property today,
12 correct?

13 A Correct.

14 Q Okay. There's a big mortgage on the
15 property, correct? I mean, when Jericho came into
16 title of the Peachtree property, that property was
17 subject to a very large mortgage, is that correct?

18 A An \$18.52 million mortgage.

19 Q Right. That's the RE Loans' mortgage,
20 correct?

21 A Yes.

22 Q And that's the same mortgage that was
23 purchased by Lynx Jericho Partners, LLC, correct?

24 A Yes.

25 Q Okay. You all sought out somebody to buy

1 that note because you didn't want somebody else
2 foreclosing that mortgage on the property, is that
3 correct?

4 A That's correct.

5 Q Okay. Who reached out to Mr. McCarty, was
6 it you, was it Glenn?

7 A I don't recall specifically. Mr. McCarty
8 is a long time family friend of the Chwatts.

9 Q Okay. So he's somebody that the Chwatts
10 knew and have done business with before in the past?

11 A Don't know about done business before, but
12 knew previously.

13 Q Did you know who he was prior to this
14 transaction?

15 A Prior to this transaction?

16 Q Yes.

17 A I had met him before, yes, on other
18 opportunities.

19 Q What was your understanding of his ability
20 to get involved in opportunities? That could be a
21 bad question. I mean, what did Mr. McCarty do, I
22 mean, you obviously had some knowledge about
23 Mr. McCarty prior to this transaction, what did you
24 understand that he did?

25 A Mr. McCarty is I would say a coinvestor

1 with the Maslow family and the reason I don't, I
2 mentioned I don't know who specifically owns Lynx
3 Asset Services, because the Nashville family has a
4 myriad of different entities and companies and
5 structures, very well-to-do family and Mike McCarty
6 effectively operates as their investment advisor.

7 Q Do you think he has ownership interest or
8 do you think he's the guy who's running the show for
9 the folks who had the real money?

10 A I believe it's both.

11 Q It's both. He's got a cut in it?

12 A He, I believe he has significant ownership
13 in Lynx Asset Services.

14 Q Okay.

15 A But again, I don't own that entity, nor
16 have specific knowledge.

17 Q Do you know Matthew Mashler?

18 A Yes.

19 Q Who's Matthew?

20 A He is one of the family members that I
21 just mentioned. He's one of the sons.

22 Q And he lives here, right?

23 A Boca Raton, Florida.

24 Q What does he do for a living?

25 A He's an attorney, real estate agent, real

1 estate investor.

2 Q And how about do you know Sheldon Mashler?

3 A That's the father.

4 Q Sheldon's the dad. Okay. Do you know
5 anything of the makeup of Lynx Asset Services; do
6 you know the entities that are involved in that?

7 A I do not.

8 Q Do you know, have you ever heard of
9 Harrison Investors?

10 A I have heard of Harrison Investors.

11 Q Tell me what you know about Harrison
12 Investors.

13 A We had, I had assisted, my SDS Tax Lien
14 Advisors, LLC had assisted Harrison Investors in
15 acquiring some Florida property tax liens.

16 Q You can acquire tax liens in Florida?

17 A Yes.

18 Q Okay. Is that -- so it was some kind
19 of --

20 A It's an auction process once a year.

21 Q Okay. And do you step in the shoes of the
22 government? I'm just curious.

23 A In a simplistic way, yes.

24 Q Simplistic's good. That's all we need.
25 Have you ever heard of Day Tech Online?

1 A I have not.

2 Q Have you ever heard of any of the, any
3 legal troubles with anybody involved in Lynx Asset
4 Services?

5 A No.

6 Q Have you ever heard any problems with
7 trading, SEC violations or anything like that?

8 A No.

9 Q Okay. Did you know who was involved in
10 Harrison Investors or who is involved in Harrison
11 Investors?

12 A I only dealt with Mike McCarty who was the
13 manager of that entity.

14 Q He was the manager of that entity as well?

15 A Yes.

16 Q Okay. So Lynx Asset Services, a member, a
17 Class A member of Lynx Jerico Partners, LLC, put up
18 2.5 million. Your entity, Scott Sversky's entity
19 and Glenn's entity are basically Class B members, is
20 that right?

21 A That is correct.

22 Q Has Lynx Asset Services been paid any of
23 its contribution back?

24 A It received the proceeds of the South
25 Carolina Department of Transportation condemnation

1 trial.

2 Q Okay. You mentioned a waterfall. Can you
3 explain to me how that waterfall works and where the
4 waterfall ends up?

5 A I think I mentioned that they put up the
6 \$2.5 million and they get, they get their principal
7 and the A class holders get their principal which
8 was the \$2.5 million, plus interest, I believe it's
9 a 12 percent interest rate.

10 Q Okay.

11 A And then once that is repaid, they keep a
12 ten percent remainder interest in both properties.

13 Q And when you say both properties, that's
14 the Saucepan property in North Carolina?

15 A Saucepan and Peachtree, correct.

16 Q Okay. So is there, how much is Lynx Asset
17 Services owed at this time? They paid approximately
18 I think 1.9 million, is it, how much, I mean,
19 obviously, math to me is a base of \$600,000, is
20 there, with all this interest and other charges you
21 talk about, how much are they owed?

22 A I don't have an exact figure, but the
23 guess would be 2.5 million plus whatever interest
24 has accrued minus the approximately 1.9 million that
25 was received as the holder of the first mortgage on

1 the property.

2 Q Okay. Did Jericho State Capital have an
3 agreement with RE, an intracreditor agreement with
4 RE Loans?

5 A I believe so, yes.

6 Q Okay. Did that result in -- what type of
7 protections did it provide to Jericho State Capital,
8 to your recollection?

9 A It was essentially notice provisions and
10 cure provisions.

11 Q You guys gave -- excuse me, gave Jericho
12 State Capital the opportunity to cure the RE Loans'
13 mortgage, the mortgage that now Jericho -- Lynx
14 Jericho, LLC owns today, is that right?

15 A Yes.

16 Q At one point in time, I'm not sure which
17 entity it is, but somebody had a first refusal in
18 buying the RE Loans' mortgage, is that right?

19 A Jericho State Capital Corp. of Florida and
20 the Jericho All Weather Opportunity Fund agreed to
21 pay the back property taxes, because the property
22 was in jeopardy and in return for that, providing
23 those monies and that protection to the liquidating
24 trustee in the bankruptcy court, we negotiated the
25 Jericho All Weather Opportunity Fund and Jericho

1 State Capital Corp. of Florida, that is, negotiated
2 a right of first refusal on the Peachtree property.

3 Q Is it the Peachtree property or the paper?

4 A The paper.

5 Q The paper, okay. All right.

6 MR. KOUTRAKOS: I'm showing you what I'm
7 going to mark as Exhibit 2.

8 (Defendant's Exhibit 2 was marked for
9 identification.)

10 BY MR. KOUTRAKOS:

11 Q This is an engagement agreement between
12 the Bellamy Law Firm and it looks like Jericho All
13 Weather and Jericho State Capital and it looks like
14 the trustee of the mortgage fund is MF '08?

15 A Yes.

16 Q Do you recall, did you sign this document?

17 A It appears I signed on behalf of Jericho
18 All Weather Opportunity Fund.

19 Q Paragraph 11 on Page 3, first right of
20 refusal, do you see that?

21 A Yes.

22 Q Is that where that agreement that we just
23 talked about is memorialized, is this fee agreement
24 with the Bellamy Law Firm?

25 A It certainly appears here. I'm not sure

1 if this is the only place that it appears.

2 Q Okay. You believe -- you're not sure
3 whether there's another document that creates this
4 right of refusal?

5 A The Jericho All Weather Opportunity Fund
6 negotiated a first right of refusal. I'm not sure
7 if this was the only document that that was
8 memorializing.

9 Q I want to talk a little bit more about the
10 makeup of link Jericho Partners, LLC.

11 (Defendant's Exhibit 3 was marked for
12 identification.)

13 BY MR. KOUTRAKOS:

14 Q I'm showing you what's been marked as
15 Exhibit 3. Have you seen this document before? I
16 assume you have.

17 A Assuming it's a complete copy, yes.

18 Q It came from your lawyer, so I think I
19 copied every page.

20 A Yes, I've seen this document before.

21 Q Okay. Who drafted this document, do you
22 recall?

23 A I believe it was Lynx Asset Services'
24 attorney.

25 Q Okay. If you look at Page 10, before I

1 ask you about that, when -- and I want to go through
2 documents in a second, but y'all purchased, Jericho
3 Partners, Lynx Jerico Partners, LLC purchased notes
4 from Uecker, the bankruptcy trustee for MF '08, is
5 that right?

6 A Yes.

7 Q It was more than one note, correct?

8 A Yes.

9 Q It included the Peach -- the RE Loans'
10 note and mortgage that secures that note and it
11 included some other loans as well, is that correct?

12 A Yes.

13 Q So the Peachtree loan, is that right?

14 A Yes.

15 Q Okay. The other loan that was purchased
16 was the Saucepan loan?

17 A Yes.

18 Q There were other loans purchased as well,
19 right?

20 A Yes.

21 Q Can you tell me what those loans were or
22 how you identify those loans?

23 A From memory, there was a loan out of
24 Idaho, there was a loan out of California, and there
25 was a loan out of Texas.

1 Q Idaho, California and Texas. The five
2 loans purchased total by Lynx Jericho Partners, LLC?

3 A From recollection, yes.

4 Q And the total purchase price is
5 2.5 million, is that right?

6 A I believe it was it was 1.95 million was
7 the purchase price.

8 Q Okay. That makes sense. Five notes for
9 1.95 million, right?

10 A Yes.

11 Q The Peachtree loan, was there a purchase
12 price allocated to the purchase of that loan?

13 A I seem to recall there was, because of
14 that document, the Exhibit 2, I believe that you
15 just showed with the first right of refusal in
16 there, that other groups made offers for the
17 portfolio of five loans, but because of our first
18 right of refusal, they sort of arbitrarily assigned
19 a percentage based upon the principal amount in
20 relation to the other loans a dollar amount
21 attributable to the Peachtree loan itself.

22 Q Okay.

23 A And the issue with the basket of five was
24 that from the Jericho All Weather Opportunity Fund,
25 Jericho State Capital Corp. of Florida's view of

1 things is Peachtree and Saucepan were
2 cross-collateralized, so that created a certain set
3 of issues as a result of that. The other three
4 notes, Lynx Jerico Partners knew nothing about.

5 Q Is this the Idaho, California and Texas?

6 A Right, other than there was open
7 litigation, there were open funding commitments and
8 there were meaningful liabilities that were being
9 undertaken by purchasing those notes. But as far as
10 the bankruptcy trustee was considered, while the
11 Peachtree note was broken out because of the right
12 of first refusal, in fact, she was only selling them
13 as a basket, so she required us to buy the basket of
14 notes to acquire the Peachtree note.

15 Q Okay. Have you realized anything from
16 the, from the -- do you recall the name of the Idaho
17 loan?

18 A I do not offhand.

19 Q Okay. The Idaho, California and Texas
20 loans that you were required to purchase, have you
21 realized any value from those?

22 A There have been proceeds from those,
23 somewhere in the neighborhood of \$750,000, I
24 believe, but the remaining note which is Texas is
25 subject to liabilities and funding commitments that

1 are far in excess of that amount.

2 Q Which one is the Las Colinas property, do
3 you recall?

4 A I confuse the two of them, that very well
5 may be the -- I'm not sure if that's Texas or
6 California.

7 Q Okay. Southfork?

8 A Southfork would be Idaho.

9 Q And which one did you receive 750 from,
10 the Idaho one?

11 A It would be the California and the Idaho
12 one collectively.

13 Q So you have 750 --

14 A Approximately. I don't recall the
15 specific amount.

16 Q Is there -- have those notes been
17 cancelled and satisfied, the Idaho and California
18 notes?

19 A Yes, they have.

20 Q So there's no chance of the entity
21 receiving any other assets from those two
22 properties, is that correct?

23 A That is correct.

24 Q So what you're left with today is Texas?

25 A Correct.

1 Q Saucepan?

2 A Correct.

3 Q And Peachtree?

4 A Correct.

5 Q Peachtree you've already received the
6 condemnation award, is that right, 1.9 million?

7 A Yes.

8 Q How about the Saucepan company, what's the
9 status of the Saucepan property?

10 A We've spent quite a bit of money, we as in
11 the Jericho All Weather Opportunity Fund, has spent
12 quite a bit of money on land planning to try to move
13 that property forward for development purposes.

14 Q And that's a property in North Carolina,
15 y'all foreclosed and it's your title?

16 A Yes.

17 Q Who was the initial borrower on that one?

18 A It was cross-collateralized with
19 Peachtree, so it's the same. I believe it's a
20 different entity, but the same personal guarantees
21 and borrowers.

22 Q And just to make sure we're talking about
23 the same thing, the Jericho, Lynx Jerico Partners,
24 LLC received \$1,941,737.32 as part of the, as the
25 condemnation award, is that right?

1 A I don't have the specific number in front
2 of me.

3 Q Does that look right to you?

4 A That sounds right.

5 Q Okay. So you got 750, plus a condemnation
6 award, so it's approximately 2.6 -- \$2.7 million of
7 money that has been brought in by Jericho, by Lynx
8 Jerico Partners, LLC, is that right?

9 A Yes.

10 Q Any other money besides that, that you can
11 recall?

12 A Not that I can recall.

13 Q Going back to the companies, Lynx Jericho
14 Partner, LLC's purchase of the Peachtree paper,
15 isn't it correct that the purchase price for that
16 paper was \$950,000?

17 A For?

18 Q For the Peachtree loan.

19 A I don't recall the specific breakdown.
20 The trustee required the purchase of all five notes.

21 (Defendant's Exhibit 4 was marked for
22 identification.)

23 BY MR. KOUTRAKOS:

24 Q I will show you what's been marked as
25 Exhibit 4. Have you seen this order before?

1 A I'm not sure.

2 Q Reading it, does it refresh your
3 recollection as exactly how much was paid for the
4 mortgage that's the subject of this case?

5 A It appears that they allocated \$950,000
6 towards the Peachtree mortgage.

7 Q And with respect to the assets that were
8 brought into your company, and I want to be sure
9 that we're talking -- we talked about a lot of
10 companies, Lynx Jericho, LLC, the company we're
11 imposing theoretically right now, assets brought in
12 related to the Peachtree property is the
13 condemnation award of \$1.94 million, correct?

14 A That is correct.

15 Q So at this point, the note that your
16 company purchased related to this property was
17 \$950,000, you've received double that amount, you've
18 doubled your investment with respect to this piece
19 of property, would you agree with me?

20 A No, because again, the only reason that it
21 was broken out at \$950,000 was the bankruptcy
22 trustee required all five notes to be purchased.
23 They took the Peachtree at \$18.52 million. They
24 added up the Idaho property, the Texas property, the
25 California property, they added up the nominal

1 amounts of the notes, divided that by the percentage
2 that was paid. So the Peachtree was only allocated
3 the \$950,000 amount in this document, because that
4 was the proportionate amount of the nominal amount
5 of the mortgages, it had nothing to do with what the
6 value of that particular mortgage was at the time.
7 And as we all know, the value of the first mortgage
8 was a lot less than \$18.52 million at the time of
9 this.

10 Q Sure. Either way, 1.95 million paid to
11 purchase the portfolio, correct, is that what you
12 call it, the basket of notes?

13 A It was collective 2.5 million, because
14 there were legal fees.

15 Q I was going to ask you that.

16 A Liability -- property tax liabilities that
17 were past due. There were contractors that had done
18 work on the property with past due balances, so the
19 collective amount was 2.5 million.

20 Q Okay. That's why -- okay. That's why
21 Lynx Asset Services, LLC's contribution was 2.5
22 instead of 1.95?

23 A Correct. There were additional
24 liabilities associated with purchasing these
25 mortgages.

1 Q Going back to Exhibit Number 3, Page 4,
2 subparagraph E on the bottom of Page 4, can you take
3 a look at that for a second? I'm going to ask you a
4 couple of questions about that, that provision.

5 A Okay.

6 Q In your own words, can you explain to me
7 what Paragraph E, what the agreement was between the
8 members of Lynx Jerico Partners, LLC?

9 A The purpose for the Jericho All Weather
10 Opportunity Fund and Jericho State Capital Corp. of
11 Florida was to not have a potentially adversarial
12 party acquire the two notes and lose them in a
13 foreclosure, so the purpose of bringing Lynx Asset
14 Services to assist in the purchase through the Lynx
15 Jerico Partners, LLC, was to ensure as much as
16 possible that Jericho All Weather Opportunity Fund
17 and Jericho State Capital Corp. were not foreclosed
18 out. So as part of the agreement, there was a
19 three-year time window to monetize those two assets
20 to attempt to pay back the Class A shareholders.

21 Q And you don't know exactly what is owed to
22 the Class A -- is there an amount -- let me back up
23 here. I'm taking the deposition of Lynx Jerico
24 Partners, LLC, the Class A member of which is Lynx
25 Asset Services, correct?

1 A Yes.

2 Q Would you agree with me that Lynx Asset
3 Services, your Class A member of the entity I'm
4 deposing today, that there is a conflict, I don't
5 know if it's a conflict of interest is a strong
6 word, but there is an issue between Lynx Asset
7 Services and your entity and Glenn's entity, SK --
8 SRKD-SAM Advisors, LLC, would you agree with me?

9 MR. MASEL: I'll object to the form.

10 MR. KOUTRAKOS: You can answer.

11 THE WITNESS: I don't know why there would
12 be, why you consider them to be a conflict of
13 interest.

14 BY MR. KOUTRAKOS:

15 Q It seems like there's a three-year
16 standstill period, is that what that paragraph says,
17 that no action can be taken on the mortgage in a
18 three-year period?

19 A Yeah, and there's provisions or
20 contemplations of extensions of that time period.

21 Q Tell me what those provisions say or what
22 your recollection of those provisions are.

23 A That it can be extended for another two
24 years upon payment of an extension fee.

25 Q And what's the extension fee?

1 A I believe it's one percent of the
2 outstanding balance.

3 Q Okay. Do you know -- you do not know what
4 the outstanding balance is today?

5 A No, I don't have the calculation in front
6 of me. It's 2.5 million plus 12 percent interest
7 until it received one million nine -- 1.94 million
8 from the condemnation which reduced that amount and
9 that new amount accrued at 12 percent interest which
10 would get us to where we are today.

11 Q So ballpark, can you give me a ballpark,
12 what you believe it to be?

13 A A million-and-a-half dollars, a
14 million-and-a-quarter, a million-and-a-half.

15 Q Okay. And the extension fee would be one
16 percent, a percentage of that?

17 A A percentage of the outstanding balance.

18 Q Of the approximate 1.5?

19 A Yes. Well, whatever the number, the
20 percentage of that number.

21 Q Okay.

22 A I don't recall if it's one percent or two
23 percent for the extension amount.

24 Q Fair enough. And three years from --
25 well, I could tell you what the extension amount is.

1 This two percent, according to Annex 1-3, which is
2 30 of 30 -- 30 of 101 on the bottom is the best way
3 to find it.

4 A Right.

5 Q So I'm not sure if that, the definition of
6 extension, I'm going to use exactly what you said it
7 means, but it's two percent of some number, but you
8 believe it to be the outstanding amount due to Lynx
9 Asset Services, is that right?

10 A Yes.

11 Q Okay. Well, that three-year anniversary,
12 we're pretty close to it, aren't we?

13 A I believe it's April.

14 Q April. Okay. Have you -- okay. And in
15 order to extend that agreement, it is a
16 self-executing matter, you just pay or your entity
17 and Glenn's entity, I assume, pays Lynx Asset
18 Services that two percent fee and it will be
19 extended, is that right?

20 A That is my understanding, yes.

21 Q Okay. All right. If we can go to -- how
22 does -- Jericho State Capital Corporation of Florida
23 had filed a title claim with my client, Chicago
24 Title Insurance Company, is that correct?

25 A On the second mortgage, correct.

1 Q On the second mortgage. Subsequently,
2 after Lynx Jerico Partners, LLC acquired the partner
3 and became the owner of what used to be the RE
4 Loans' first mortgage, RE Loans filed a claim with
5 Chicago Title as well, is that correct? Excuse me,
6 Lynx Jerico Partners, LLC filed a claim with Chicago
7 Title, is that correct?

8 A That is correct.

9 Q Two lawsuits have been filed, the first
10 one by Jericho State Capital, the second one is what
11 we're here about today?

12 A Yes.

13 Q Is there any agreement between Lynx Jerico
14 Partners, LLC, Jericho State Capital of Florida, the
15 All Weather Opportunity Fund or Lynx Asset Services
16 as to the outcome of those two lawsuits or those two
17 claims?

18 A I don't follow the question.

19 Q Okay. If we go to trial and, I'm not
20 saying it's going to happen, it's a way for me to
21 get an answer to this question, Lynx Jerico Partners
22 gets a judgment against Chicago Title for, you know,
23 say ten dollars, how much of it does -- who keeps
24 what?

25 A The claims request would be delineated in

1 a damages ruling and/or we would sign an agreement
2 between Jericho Lynx Partners and Jericho State
3 Capital Corporation of Florida for an equitable
4 distribution of whatever proceeds are, so I don't
5 know that that has been addressed or determined as
6 of this point.

7 Q Okay. As to Lynx Jericho Partners, LLC,
8 what agreement is there among the members, the two
9 general partners, as to how any money obtained from
10 the lawsuit and/or the title claim would be
11 distributed?

12 A They're not general partners, they're
13 members.

14 Q I'm sorry, members.

15 A And I believe it is a 90/10 split, that
16 the Class A shareholders need to be retired, their
17 principal commitment and interest received or the
18 interest that has accrued needs to be repaid first.

19 Q Okay.

20 A And it's a 90/10 split.

21 Q After that?

22 A Thereafter.

23 Q Ninety percent --

24 A Well, it's the same ten percent remainder
25 interest that I referred to earlier.

1 Q Right. So your entity and Glenn's entity
2 gets 90?

3 A Correct.

4 Q Lynx Asset Services gets ten percent?

5 A After it's been repaid --

6 Q Its full principal and interest and
7 whatever it's due?

8 A And fees expended.

9 Q Okay. There was no chance that Lynx
10 Jericho Partners, LLC will ever receive the amount
11 actually due under that note, correct?

12 A With the Peachtree note.

13 Q The amount that's really due under that
14 note.

15 A That particular note with accrued default
16 interest is probably close to \$50 million. So
17 there's no way that that property is worth close to
18 what the mortgage amount is.

19 Q Right. Has there ever been, as far as you
20 know, a threat by the holder of the RE Loans'
21 mortgage, which is Lynx Jericho Partners today, to
22 foreclose on that mortgage?

23 A Not as of yet, because we have, as we just
24 discussed, the three-year forbearance clause within
25 the LLC agreement.

1 Q Have you had any discussions with Mike
2 McCarty about, after the three years ends, possibly
3 foreclosing?

4 A Assuming that we are in compliance with
5 the agreement, our intention, the Jericho All
6 Weather Opportunity Fund, the SRKD-SAM Advisors,
7 everyone involved, the intention is to pay the two
8 percent extension fee.

9 Q Your intention as you -- you're here as a
10 representative today of Lynx Jericho Partners, LLC,
11 that's the hat you're wearing today, would you agree
12 with me that's the hat you're wearing today?

13 A Yes.

14 Q But the other hat that you have on which
15 is for your entity and for Glenn's entity, you don't
16 want Lynx Jericho Partner, LLC to ever foreclose,
17 correct?

18 A That's not necessarily the case. I mean,
19 essentially, if they foreclosed and the gross
20 proceeds, the net proceeds were greater than their
21 loan amount, the two-and-a-half million dollars plus
22 interest minus the amount received, whatever
23 proceeds are received, would be distributed after
24 they've received their principal and interest would
25 be distributed 90/10.

1 MR. KOUTRAKOS: Okay. Fair enough. Let's
2 take about a five-minute break if y'all don't
3 mind?

4 THE WITNESS: Sure.

5 (Brief recess.)

6 BY MR. KOUTRAKOS:

7 Q At the time Lynx Jericho Partners, LLC
8 purchased the RE Loans for its mortgage, it
9 technically was a Defendant in the condemnation
10 action that was filed by the Carolina Department of
11 Transportation, is that correct?

12 A Yes.

13 Q There was a mediation in that condemnation
14 action, is that right?

15 A I don't recall.

16 Q Okay. All right. Did you have counsel
17 representing you, you being Lynx Jericho Partners,
18 LLC, in that condemnation action?

19 A I don't -- I don't recall.

20 Q Okay.

21 A Obviously, subsequent to the acquisition
22 of the notes, the South Carolina Department of
23 Transportation added Lynx Jericho Partners, LLC as a
24 Defendant as the first mortgage holder.

25 Q Did Skeets Bellamy and the Bellamy Law

1 Firm, do they represent Jericho Lynx Partners, LLC?

2 A If there was representation, he would have
3 been the group representing.

4 Q Okay.

5 A He represented all of the members that
6 were Defendants in this condemnation.

7 Q If the case had settled prior to going to
8 trial, your entity, Lynx Jericho Partners, LLC,
9 would have had to be a party to that settlement,
10 would you agree with me?

11 A Lynx Jericho Partners owning the mortgage
12 would have received the proceeds, as a legal matter,
13 I don't know that they would have had to have been
14 part of the process.

15 Q Can you tell me today whether or not Lynx
16 Jericho Partners, LLC had an interest in the
17 condemnation action?

18 A I don't know.

19 Q Okay. It received 1.9 plus million
20 dollars from the condemnation action, correct?

21 A Yes. Well, there was a judgment awarded
22 to the entities involved in the lawsuit with the
23 South Carolina Department of Transportation.
24 Proceeds went to the Skeets Bellamy Law Firm. His
25 fees were deducted. As the holder of the first

1 mortgage, Lynx Jericho Partners had those proceeds
2 wired directly to Lynx Asset Services as the Class A
3 member receiving those funds, entitled to receive
4 those funds.

5 Q At the time the trial took place, Lynx
6 Jericho, LLC was the owner of the RE Loans'
7 mortgage, correct?

8 A At the time of trial, yes.

9 Q Okay. Do you recall at trial, what
10 testimony that Jericho or Lynx Jericho Partners, LLC
11 put up as to what they thought or it thought the
12 value of the property was?

13 A I don't recall that they did.

14 Q You don't recall the figure, you don't
15 recall they put up any value?

16 A Jericho -- Lynx Jericho Partners, LLC, I
17 don't believe put, as a, as that entity by itself,
18 put up a valuation.

19 Q Okay.

20 A I believe that Skeets Bellamy on behalf
21 of --

22 Q Jericho.

23 A -- all of the Defendants put on a case
24 which included expert witness testimony, which --

25 Q Were you at trial?

1 A I was not.

2 Q Okay. And what, do you recall the figure,
3 what were the damages Jericho was seeking from the
4 Department of Transportation?

5 A I do not recall.

6 Q Do you recall the amount of the jury
7 awarded?

8 A Yes.

9 Q What was it?

10 A I believe it was \$2.1 million.

11 Q And then interest was added to that?

12 A Yes.

13 Q And made it approximately 2.9 million?

14 A Approximately.

15 Q Are you familiar with this document, the
16 disbursement schedule?

17 A Yes, I've seen it.

18 MR. KOUTRAKOS: Let's go ahead and mark
19 this as an exhibit.

20 (Defendant's Exhibit 5 was marked for
21 identification.)

22 BY MR. KOUTRAKOS:

23 Q Exhibit Number 5. Exhibit Number 5 shows
24 a total award plus interest of 2.92 million, pretty
25 much?

1 A Yes.

2 Q Okay. And it shows the amount paid to
3 Jericho -- well, it's signed by Jericho State
4 Capital Corporation of Florida, do you see that?

5 A Yes.

6 Q By Glenn Chwatt?

7 A Yes.

8 Q But that, that amount, that balance of
9 1.94 was paid, that was wired directly to Lynx Asset
10 Services, correct?

11 A Yes.

12 Q And that's what the remaining
13 documentation of Exhibit 1 shows?

14 A Yes.

15 Q Not Exhibit 1, what exhibit is that?

16 A 5.

17 Q Exhibit 5. So you can't, you don't recall
18 the damages that, that any of the entities you're
19 involved with were seeking in that condemnation
20 action?

21 A No, I don't recall.

22 Q Do you have any involvement with the
23 administration of that lawsuit?

24 A Yes.

25 Q Okay. Did you review any appraisals that

1 had been obtained by the Bellamy Law Firm?

2 A Yes.

3 Q Okay. You don't recall what amounts were
4 reflected in those appraisals?

5 A No, not specifics, no.

6 Q Okay. The jury awarded 2.1 million, do
7 you believe that Jericho was asking for more than
8 2.1 million?

9 A Yes.

10 Q Okay. But you don't recall what that
11 amount was?

12 A I do not, no.

13 Q Do you know what the, what figure the
14 Department of Transportation was saying the injury
15 to the property was?

16 A I recall their first iteration of an
17 appraisal, which showed no damage, which was the
18 first that was sent to us, but I don't recall the
19 results of the report they actually utilized.

20 Q Okay. So you can't tell me what evidence
21 was put up at trial, what testimony was given by
22 those experts or anything like that?

23 A No.

24 Q Okay. What is the current value of the
25 property, in your opinion? Let me back up, does

1 Lynx Jericho Partners, LLC have its own opinion as
2 to what the property is worth today?

3 A In my capacity with the Jericho All
4 Weather Opportunity Fund, I have been approached a
5 number of times by national home builders through
6 our engineers that approximate the price they would
7 pay at \$25,000 per lot. There are approximately 200
8 lots which are buildable on the property. And that
9 is in a five-year takedown strategy, so if you do a
10 discounted cash flow modeling, the number is
11 probably somewhere between two-and-a-half and three
12 million dollars would be the current value, based
13 upon the inquiries that I've received in my Jericho
14 All Weather Opportunity Fund capacity.

15 Q In your capacity as a representative of
16 Lynx Jericho Partners, LLC, could you tell me what
17 that entity believes the value of that property to
18 be?

19 A Similar to what I just mentioned.

20 Q 2.5 or \$3 million?

21 A That would be a realistic valuation at
22 this time.

23 Q Okay. Do you have any idea what the
24 current tax assessed values are of the property?

25 A I just saw that invoice, but I don't

1 recall what it is.

2 Q Okay.

3 A The tax amount is about \$30,000, so --

4 Q Okay. In your hat as being involved in
5 the All Weather Opportunity Fund, when you made the
6 loan, the second mortgage, how much did you all
7 think that property was worth? And mind you, I'm
8 talking about the property, I'm talking about the
9 131.4-acres prior to condemnation.

10 A Well, we had seen two appraisals on the
11 property, one for I believe just under \$40 million
12 and one for just over \$40 million, and our analysis
13 using comparable homes in the marketplace led us to
14 believe that the value was somewhere between 35 and
15 \$40 million at the time of the loan.

16 Q And the time of the loan was 2006?

17 A Yes.

18 Q So 40 million to 2.5 million, is that
19 correct?

20 A Yes. Obviously, the condemnation proceeds
21 are, would be added up on that and, you know, there
22 certainly has, certainly was a portion of that as a
23 market decline, but my opinion is a significant
24 amount is as a result of a six-lane bridge going
25 through the middle of the property.

1 Q How much do you think that property would
2 be worth today if there was no six-lane bridge,
3 40 million?

4 A Not even.

5 Q 20 million?

6 A It would be hard to assess, because the,
7 the number of buildable lots would be quite
8 different if the bridge were not intersecting the
9 property. The bridge effectively cuts the property
10 in two. Not only does it make it less desirable,
11 but it also cuts off access to both, so you need to
12 have two entrances, two road systems, two sewer
13 systems. You need two of everything as a result of
14 that, so it increases the development cost quite
15 dramatically as a result. So, you know, I quite
16 frankly wouldn't have an opinion of it at this
17 juncture without doing further analysis if there
18 were no bridge. I could tell you that with the
19 bridge, as I said, the offers we've received are in
20 the \$25,000 per lot range and that is in a takedown
21 scenario, so obviously, not all up front and it's a
22 certain number of lots per year for five years.

23 Q The jury determined that the effect of the
24 bridge, the effect of the taking of the condemnation
25 was \$2.1 million, correct?

1 A Yes.

2 Q That was how -- that was how the value of
3 the property was impacted, it was impacted to the
4 extent of \$2.1 million?

5 A Very different calculation from our
6 calculation in that the jury was, their job was to
7 determine the value, the loss value from the
8 condemnation date, which had already seen the market
9 decline. We made the loan in 2006 with no bridge in
10 a different market environment. So, you know,
11 they're two completely different sets of
12 circumstances between when we made the loan and what
13 the jury was asked to -- charged with determining
14 valuation on.

15 Q Well, thank you for telling me that, but
16 the jury's job was to determine the value of the
17 property on the date of the taking, correct?
18 December 15th, 2009.

19 A Yes.

20 Q Do you accept the jury's verdict in that
21 regard?

22 A I was unhappy with the jury's verdict.

23 Q You all had your day in court and a jury
24 came back and determined the loss and value as of
25 December 15th, 2009, was \$2.1 million?

1 A Yes.

2 Q That issue has been litigated already,
3 hasn't it?

4 A Yes.

5 Q Explain to me -- let me back up a little
6 bit. When Lynx Jericho Partners, LLC purchased the
7 note and the mortgage, its principals already knew
8 about the condemnation, correct?

9 A Yes.

10 Q They knew that there was an alleged title
11 issue on the property, correct?

12 A They didn't know there was a title issue,
13 because they, Jericho, Lynx Jericho Partners, LLC,
14 prior to acquiring the note, had never seen the
15 title policy from the bankruptcy trustee or RE
16 Loans. The RE Loans' loan, first mortgage actually
17 closed, I want to say a week to ten days prior to
18 the second mortgage closing. It was not a
19 simultaneous closing. So Lynx Jericho Partners was
20 not privy to whatever title policy RE Loans had
21 prior to acquiring it and getting a copy of it after
22 the fact.

23 Q At the time you purchased, Lynx Jericho
24 Partners purchased the RE Loans' paper, if you will,
25 you did not know whether there was a title insurance

1 policy?

2 A We knew that there was, Lynx Jericho
3 Partners knew there was a title policy, but they had
4 not seen the title policy, is my recollection.

5 Q At the time y'all purchased the RE Loans'
6 note on and mortgage on the Peachtree property, the
7 principals of Lynx Jericho Partners, LLC, knew that
8 there was an issue with the South Carolina
9 Department of Transportation condemning a portion of
10 the property, correct?

11 A Condemnation action, yes.

12 Q When did the -- do you recall when the
13 South Carolina Department of Transportation
14 officially took title of the property?

15 A I do not.

16 Q Was it the date they filed the
17 condemnation action?

18 A My understanding is the day that they
19 filed the action, they officially take the property
20 and then it becomes a situation of compensation for
21 that take.

22 Q Okay. You were involved personally in the
23 activity related to Jericho State Capital
24 Corporation of Florida providing a second mortgage;
25 you were involved in that process, correct?

1 A I was not involved with Jericho State
2 Capital Corp. of Florida, I was involved with
3 Jericho All Weather Opportunity Fund, which
4 participated in the loan as a minority pari passu
5 participant.

6 Q You were copied on e-mails during that
7 transaction, correct?

8 A I'm sure that I was copied on some
9 e-mails.

10 Q Okay. Did you have knowledge, personally,
11 prior to the closing, that there was going to be,
12 there was mention of a bridge between you, Jeff
13 Shoup, the principal of the borrower, and the
14 closing attorney?

15 A Jeff Shoup mentioned that there was a
16 bridge that was going to be a mile, mile-and-a-half
17 down the road and presented that as a positive for
18 the property and that it would provide easy ingress
19 and egress to go east to Myrtle Beach.

20 Q Okay.

21 A I never had any specific dealings with the
22 closing attorney that I think you just mentioned,
23 that I can recall.

24 (Defendant's Exhibit 6 was marked for
25 identification.)

1 BY MR. KOUTRAKOS:

2 Q I'm showing you what I've marked as
3 Exhibit Number 6. It's an e-mail dated July 27th,
4 2006 from Margaret Glenn to Ed Bullard Shoup at an
5 e-mail address Shoup at another e-mail address,
6 Glenn Chwatt, Scott Svirsky, Dave Levinton and
7 Zinelle, do you see that?

8 A Yes.

9 Q Have you seen this e-mail before?

10 A I don't recall this e-mail.

11 Q Okay. Is that your e-mail address, Scott
12 Sverski@gmail.com?

13 A One of, yes.

14 Q Would that have been your e-mail in 2006?

15 A One of.

16 Q Do you see where -- do you know Robert
17 Gwin?

18 A I do.

19 Q He would have been the closing attorney
20 for the first mortgage and the second mortgage,
21 correct, and the purchase of the property?

22 A I don't know about the first mortgage, but
23 the second mortgage, yes.

24 Q Okay. Do you see where the lawyer who
25 closed the transaction is asking to remove from the

1 commitment a requirement that requires a
2 satisfactory resolution of a determination by
3 municipality not to build a bridge, do you see that?

4 A I see that referenced, yes.

5 Q Okay. Who -- now, commitment letter,
6 would that have been the loan commitment?

7 A It could be the title commitment letter, I
8 don't know.

9 Q Let's back up. That was a bad question.
10 If you look at what's attached to this e-mail is a
11 preliminary closing checklist, do you see that?

12 A Yes.

13 Q Do you see where it says WBEM&S,
14 Westerman, Ball, Ederer & Sharfstein, LLP, do you
15 see that?

16 A Yes.

17 Q That would have been the lawyers for
18 Jericho, for the Jericho All Weather Opportunity
19 Fund, is that right?

20 A Yes.

21 Q And do you see on Page 2 of this
22 checklist, it says: Title and survey, satisfactory
23 resolution of the determination by the municipality
24 not to build a bridge. Do you see that?

25 A Yes.

1 Q And do you see where it says responsible
2 party, BC?

3 A Yes.

4 Q Do you know what BC stands for?

5 A Borrower's counsel, probably.

6 Q Correct. Do you recall receiving a copy
7 of this checklist?

8 A I do not recall.

9 Q If you look at the bottom of page, of the
10 same page you're looking at, do you see where it
11 say: See documents and settings?

12 A Uh-huh.

13 Q And then there's a slash and then where it
14 says: Scott Sverski/local settings/temporary
15 internet files and then it keeps on going on and on,
16 it says: Closing checklist, version one, do you see
17 that?

18 A Uh-huh. Yes.

19 Q Would this refresh your recollection if
20 this printed out from your computer?

21 A Probably did, but I don't recall this
22 document.

23 Q Were you concerned when you heard that
24 there was some kind of, that the closing attorney
25 wanted to remove a satisfaction that would have

1 provided you comfort there would be no bridge on the
2 property?

3 MR. MASEL: Object to the form.

4 THE WITNESS: I believe I stated I don't
5 recall seeing this document whatsoever. And
6 the only mention of a bridge had ever occurred
7 during due diligence was, as I said, was an
8 explanation that the bridge was going to be a
9 mile down the road and a benefit to the
10 property, not six lanes going through the
11 middle of the property.

12 BY MR. KOUTRAKOS:

13 Q Have you seen checklists like this before?

14 A Yes.

15 Q Have you seen checklists, other checklists
16 that have a requirement not to build a bridge?

17 A I've seen lots of different things in
18 checklists, so I can't say one way or the other
19 whether I've seen it or not.

20 Q That's not a standard provision in a
21 checklist for a closing, is it?

22 A I can't answer that. You'd have to ask
23 the attorney.

24 Q From your recollection doing real estate
25 transactions, do you think, I mean, I assume on the

1 checklist, somebody procures title insurance and you
2 probably see that on every checklist, right?

3 A Yes.

4 Q You don't see resolution not to build a
5 bridge on every checklist, do you?

6 A I don't follow what your question is.

7 Q Okay. You've dealt with checklists
8 before, correct?

9 A I've seen checklists before.

10 Q Let me back up. Checklists for closings?

11 A I've seen checklists for closings.

12 Q Have you seen more than one?

13 A Yes.

14 Q Okay. Have you seen dozens?

15 A Yes.

16 Q Okay. Is it fair to say that on almost
17 every one, there's, there's an item that somebody
18 has to procure title insurance or procure a
19 commitment, let me finish the question, obtain a
20 title commitment or issue title commitment and
21 that's someone's responsibility, is that fair to say
22 that's probably on each checklist that you've ever
23 seen?

24 A Yes, the attorneys are the ones who deal
25 with the checklist. This is a checklist from one

1 attorney to another and is not part of the due
2 diligence that I would be involved in.

3 Q But your attorney was involved in it,
4 correct, the Westerman Law Firm, Zinelle October was
5 your attorney, your attorney meaning, I'm talking
6 about your hat being the Jericho All Weather
7 Opportunity Fund.

8 A The Jericho All Weather Opportunity Fund
9 was not the lender on this.

10 Q Okay. Jericho State Capital.

11 A Which I'm not a member of.

12 Q Okay. What search have you done to
13 determine, to make sure that you have given your
14 lawyers and your lawyer can give to me all documents
15 related to the note and loan that Lynx Jericho
16 Partners, LLC owns related to the property, the
17 Peachtree loan?

18 A I don't follow the question.

19 Q Okay. Have you done a search of -- what
20 documents have you provided to your attorney related
21 to the Peachtree loan?

22 A Lynx Jericho Partners documents?

23 Q Yes.

24 A I searched e-mails and files to see what
25 documents were there. They were dealing with a

1 bankruptcy trustee. There's very, very, very, very
2 limited amount of information that they provide.

3 Q Did anybody request from the bankruptcy
4 trustee a copy of RE Loans' loan origination file?

5 A We did, but I don't believe that such a
6 file was in existence any longer.

7 Q So you specifically recall requesting that
8 file from the trustee?

9 A There was -- the group that conducted the
10 sale of the RE Loans' notes, of which there were
11 many, put together a website and gave a password
12 with an expiration on that password. And we were
13 able to look at whatever documentation they had and
14 then that password expired and the documentation was
15 gone. We weren't able to print anything, just able
16 to review the documentation. And there were a
17 number of notes which had been sold prior to our
18 involvement even, so the loan package that was
19 provided to us was essentially a handful of
20 documents tops which included the actual note and
21 several of the filings that were done related to how
22 it ended up in bankruptcy and the filings post
23 bankruptcy.

24 Q I get that. So the only loan origination
25 document you have is a copy of the note?

1 A I don't recall specifically what it was.
2 Whatever was provided to you was whatever we had in
3 our files.

4 Q Well, what you did is you provided to me
5 all the documents that Jericho produced in its case,
6 so I'm just asking you what documents related to
7 this loan, the RE Loans, I'm talking about loan
8 origination, I already have the documents in the
9 form of the trust that sold it to you, I get that.
10 I'm talking --

11 A We received zero due diligence documents
12 from the bankruptcy trustee.

13 Q This website that you pulled up, did it
14 have pages or sets, places you can look for each
15 particular loan or were they all documents grouped
16 together?

17 A They were sub categorized.

18 Q Okay.

19 A And they were, the vast majority of the
20 documents, there were no appraisals, there were
21 no -- it was minimal at best.

22 Q Do you recall seeing any -- what documents
23 do you recall seeing related to the Peachtree loan?

24 A Essentially, just legal filings.

25 Q Note, mortgage?

1 A Yeah.

2 Q Does --

3 A The transfer, the chain of transfer and
4 assignments.

5 Q Got it.

6 A From ER Loans to Wells Fargo Foothill,
7 Wells Fargo to RE Loans, RE Loans to MF '08, MF '08
8 to the liquidating trustee. It was essentially that
9 chain of information.

10 Q All of which is on the public record?

11 A Yes.

12 Q You don't recall -- did you see a closing
13 statement on the website for this particular loan?

14 A I do not recall seeing one.

15 Q Do you recall seeing a title policy?

16 A I do not recall seeing a title policy.

17 Q Loan commitment letter?

18 A No.

19 Q Title commitment?

20 A No.

21 Q You specifically recall not seeing those
22 documents we just talked about?

23 A I don't -- you asked do I recall seeing
24 them and I answered no.

25 Q Okay. Okay. What documents do you recall

1 seeing, besides the public records stuff?

2 A Nothing that I recall.

3 Q Okay. Do you believe that's because the
4 entity with your bankruptcy or is it because the lax
5 standards that RE Loans had in underwriting loans?

6 A It was bankruptcy, because they, I'm sure
7 that they had due diligence and documentation. We
8 met with Barney Ng on several occasions. We
9 negotiated an intracreditor agreement. Their issues
10 were likely bankruptcy related and fraud related and
11 the liquidating trustee makes a specific point of
12 providing minimal information because they're not
13 assuming any responsibility for any of the due
14 diligence materials that are out there. That was
15 one of the major issues when we acquired the
16 portfolio of five notes was that we had almost no
17 information on the other notes other than the
18 mortgage documents themselves which showed millions
19 and millions of dollars of unfunded liabilities.

20 Q So you feel confident that there's really
21 not much of anything with regard to the loan
22 origination documents from the RE Loans transaction?

23 A Yes.

24 Q Your entity, Lynx Jericho Partners, LLC
25 has sued my client. Can you tell me why?

1 A Lynx acquired a first mortgage that was
2 originated from RE Loans. RE Loans made an
3 \$18.52 million mortgage, they received title policy
4 similar to the Jericho All Weather Opportunity Fund
5 two years after the fact. It was determined that
6 there was a six-lane bridge going through the middle
7 of the property destroying the value of the
8 property. So just like any other acquisition of a
9 portfolio, Lynx Jericho Partners believes it is
10 entitled to monies from Chicago Title as a result of
11 failure to disclose a meaningful title examination.

12 Q Okay. Explain to me how, when you say
13 exemptions, you are talking about exceptions?

14 A Exceptions, excuse me.

15 Q What would that exception have shown or
16 said?

17 A That there was a bridge going through the
18 middle of the property.

19 Q You believe it's Chicago's responsibility
20 to determine whether there would be a bridge that
21 would go through the property in the future?

22 A There was a recording going back several
23 years before the purchase of the property ever
24 recorded showing that there was going to be a bridge
25 going through the property.

1 Q Okay.

2 A That is the purpose of title insurance.

3 Q When you filed the title insurance claim,
4 Lynx Jericho Partners, LLC filed the title insurance
5 claim, at the time it was submitted, you, it had a
6 pretty good idea the claim was going to be denied,
7 right?

8 A It's standard operating procedure, from my
9 understanding, for title companies to deny claims
10 regardless of merit, so it was not unexpected that
11 the claim was denied.

12 Q And where did you get the standard
13 operating procedure from?

14 A My understanding from speaking to and
15 interviewing attorneys relating to filing the claim
16 was that in most experiences, title company is not
17 overly eager to pay out on a title claim, that they
18 vigorously defend whether there's a legitimate
19 reason to or not.

20 Q And were those discussions connected to a
21 discussion about the bridge on this property and so
22 forth?

23 A It was in relation to this project and
24 interviewing attorneys about other projects that
25 they had been involved with that had title policy

1 issues.

2 Q Okay. You've accused my client of
3 engaging in bad faith, do you understand that?

4 A Yes.

5 Q And can you explain to me how my client
6 engaged in bad faith?

7 A There was title insurance that was paid
8 for. There was a claim that was put forth which
9 seems to me to be pretty clear and straightforward.
10 That claim was denied. And my feeling is that it
11 should not have been denied.

12 Q You're just saying they breached the
13 contract, the insurance contract?

14 MR. MASEL: Object to the form.

15 THE WITNESS: No, I'm saying that this has
16 been going on for, in Lynx Jericho Partners'
17 case, for a couple of years at this juncture,
18 but in my other duty as Jericho All Weather
19 Opportunity Fund, that this is year three,
20 four, five of this particular issue.

21 BY MR. KOUTRAKOS:

22 Q Now, with respect to the time that it's
23 taken, do you know when -- did you have any
24 responsibility individually yourself in filing the
25 claim with Chicago Title? Let me back up, do you

1 know who filed the claim with Chicago Title on
2 behalf of Lynx Jericho Partners?

3 A Lynx Jericho Partners' attorneys.

4 Q And it would have been one of these guys
5 in the room from South Carolina, correct?

6 A Yes.

7 Q Do you know how long it took your
8 attorneys to provide documents to Chicago Title
9 Insurance Company?

10 A I do not.

11 Q You've alleged in the complaint that one
12 of the things that Chicago Title Insurance Company
13 did wrong in your bad faith allegation is they took
14 too long to decide the claim, are you aware of that?

15 A Yes.

16 Q Are you aware that after two months after
17 your lawyers finally provided documents to my
18 clients, a decision was made, are you aware of that?

19 A Yes.

20 Q Okay. And despite that, you still are
21 alleging that my client did not make a timely
22 decision as to coverage?

23 A Timely decision is one of several issues.

24 Q Okay. Have you read the policy yourself?

25 A Yes.

1 Q Okay. Have you read the eminent domain
2 exclusion?

3 A Not recently, but yes.

4 Q Okay. All right. What damages are being
5 claimed by Lynx Jericho Partners, LLC against
6 Chicago Title Insurance Company?

7 A The damages are that the loan never would
8 have been made had Chicago Title done its job and
9 advised RE Loans that there was a bridge coming
10 through the property and therefore, the loan never
11 would have been made.

12 Q Is that your complete answer to what
13 damages Lynx Jericho Partners, LLC is seeking from
14 Chicago Title?

15 A I'm sure there are a number of other
16 damage claims that are involved in this complaint
17 that I haven't read recently, so --

18 Q Well, give me a number. I mean, you're
19 seeking -- you're seeking monetary -- is Lynx
20 Jericho Partners, LLC seeking monetary relief from
21 Chicago Insurance Title Company?

22 A Yes.

23 Q What is the monetary relief and what is
24 the basis of that relief?

25 A It's a number to be determined, but

1 essentially, it is the original title policy amount
2 which was roughly \$17 million, from my recollection,
3 minus the amount that was received from the
4 condemnation action, which was approximately
5 \$2.1 million, minus which a professional would
6 attribute as the market portion of the decline,
7 market value portion of the decline and the net
8 difference is what the damages should be.

9 Q Okay. 17 million minus 2-point -- why are
10 you subtracting 2.1 million?

11 A That was the condemnation proceeds for the
12 roughly 11-acre portion of the property that was
13 received by the first mortgage group.

14 Q Okay. And 17 million minus 2.1 minus the
15 market value part -- I don't understand what you
16 said there, market part of the equation or
17 something?

18 A No, I said the depreciation related to the
19 market value depreciation as determined by, you
20 know, a professional.

21 Q Okay.

22 A In the condemnation case, the professional
23 determined that there was a 40 percent dep you in
24 addition of value as a result of the bridge, so --

25 Q All right. This is the time where you

1 tell me what your damages are. I mean, this is your
2 opportunity right here that Lynx Jericho Partners,
3 LLC, I know it's one of the things on the list if
4 you look at Exhibit Number 1, it's in there, asked
5 you about the damages. And this is not the time to
6 not give me a complete answer. This is the time
7 where I need a complete answer of your damages. And
8 you're telling me you don't have a complete answer
9 for me, is that correct?

10 A I'm stating --

11 Q You're giving me a formula basically.

12 A I'm stating that I believe, according to
13 our professionals, is that at a minimum, we're
14 entitled to the \$17 million amount of the title
15 policy. On top of that, cure payments which were
16 made to the first mortgage group for the year that
17 we foreclosed --

18 Q Can I stop you there for a second?
19 Because you would have been the recipient of those
20 payments. Testifying today as Lynx Jericho
21 Partners, LLC, so the amount of money that somebody
22 else paid --

23 A That's accurate.

24 Q Okay. Do you understand that I'm saying?

25 A Yes, I do.

1 Q Let's start with the beginning a little
2 bit, because I want to segregate that and maybe I
3 should have done a better job, but Lynx Jericho
4 Partners, LLC has a separate complaint against
5 Chicago Title, has a separate title policy and a
6 separate title claim. And today, I've heard numbers
7 in excess of 10 million, so I think I deserve or my
8 clients deserve to know what this huge lawsuit is
9 about and give me a figure in definitive terms,
10 because now is the time to not make broad
11 allegations. I need specific numbers in a specific
12 way that Lynx Jericho Partners, LLC was damaged and
13 the damages it's seeking from my client. We've come
14 down to Florida to take your deposition and that's
15 the primary purpose I'm here today is damages.

16 MR. MASEL: I'm going to object to the
17 form. He's two feet for you. You don't need
18 to be yelling at him.

19 MR. KOUTRAKOS: I'm sorry, I apologize.

20 THE WITNESS: I enjoyed the speech. At a
21 minimum, I believe that is the \$17 million
22 initial policy, minus the \$2.1 million that was
23 received, minus the current value, which is
24 probably somewhere in the neighborhood of
25 two-and-a-half to three million dollars, and I

1 believe that the difference is what are the
2 damages.

3 BY MR. KOUTRAKOS:

4 Q Okay. 17 million, the policy amount which
5 is over 17 million, whatever that policy amount is
6 minus 2.1 million, is that because the jury awarded
7 that or is it 1.9 the amount that was received?

8 A 2.1 because that's what the jury awarded.

9 Q Okay. And minus the current value of the
10 property, two-and-a-half million?

11 A Correct.

12 Q Okay. And the two-and-a-half million
13 comes, you have an appraisal that says
14 two-and-a-half million?

15 A That's the number that I gave you earlier.

16 Q Okay. This is damages that Lynx Jericho
17 Partners, LLC is claiming?

18 A Correct.

19 Q As also being involved in the other case,
20 are those damages separate and apart than what, from
21 what Jericho Partners, excuse me, Jericho State
22 Capital Corporation of Florida is claiming in the
23 other lawsuit in the other title claim?

24 A Any proceeds that go to the second
25 mortgage claim would theoretically reduce the

1 damages in the first mortgage claim.

2 Q Do you think both entities are entitled to
3 separate damages from Chicago Title?

4 A It's one damage amount to be split amongst
5 the two parties.

6 Q So the formula you have before is the
7 damage amount that both would be seeking, but
8 they're not separate amounts?

9 A The -- they're different amounts in that
10 the second mortgage group is entitled to the
11 \$4 million, which was over and above the
12 \$17 million. So if you're combining the two
13 properties, then you have \$22 million of title claim
14 issues, minus the \$2.1 million, minus the 2.5
15 current value which is my opinion, so --

16 Q Okay. Have you, have you ever asked the
17 Westerman Law Firm to put their carrier on notice
18 for any malpractice that they may have committed in
19 regards to representing Jericho?

20 A We have not.

21 Q Have you investigated that?

22 A We have not.

23 Q Have you -- when was the last time you
24 talked to Jeff Shoup?

25 A Me personally?

1 Q Yes, sir.

2 A Very, very long time.

3 Q Okay. How about Tommy Hixs?

4 A Same response.

5 Q How about Bob Gwin?

6 A Same response.

7 Q Any -- what is the property currently
8 zoned?

9 A I don't know the actual number on it,
10 whether it's R1 or B1 or whatever the case may be,
11 but I believe that it is about 205 single family
12 homes and a number of multifamily homes.

13 Q You said that zoning designation has been
14 in place for a number of years, as far as you know?

15 A It is the zoning designation by default,
16 is my understanding.

17 Q All right. When you were involved in the
18 initial transaction, do you recall when you first
19 found out there was a bridge that was actually going
20 to be going through the property, through the middle
21 of the property?

22 A Yes.

23 Q Do you know when that was?

24 A That was after we had started the
25 foreclosure, completed the foreclosure. Well,

1 you're asking me as Jericho?

2 Q Yes, sir.

3 A Okay.

4 Q I'm asking you personally, in your
5 individual capacity.

6 A Yes. It was after the Jericho All Weather
7 Opportunity Fund and Jericho State Capital Corp. of
8 Florida filed foreclosure actions on Peachtree and
9 Saucepan because they were cross-collateralized.
10 The Peachtree property, I believe was a foreclosure
11 was completed at the end of 2007 sometime, fall,
12 fall/winter 2007 and we hired a local group that
13 we've done business with in the past called Skymark
14 Real Estate Consulting. They're residential real
15 estate developers up and down the East Coast. So
16 they -- we paid for them. They went to inspect the
17 property to try to resolve the zoning issue and
18 essentially, in their investigation, they came about
19 this recording for the Carolina-based Parkway to go
20 through the middle of the property. They then
21 interviewed a number of attorneys to determine what
22 the issue was and that's how we came to Skeets
23 Bellamy. So the answer is sometime in spring,
24 summer of 2008 is when, from my recollection, when I
25 first learned of the eminent building of the bridge.

1 Q The foreclosure sale was in December of
2 2007.

3 A Right.

4 Q So you would have learned before that?

5 A No, I said 2008.

6 Q I got that. But you said during the
7 pendency of the foreclosure action is when you
8 learned that.

9 A No, that's not what I said.

10 Q I'm sorry.

11 A I think what I said was, or at least
12 certainly what I should have said was that we
13 started the foreclosure in let's say spring/summer
14 of 2007, the foreclosure was completed sometime, as
15 you're referring to, November or December of 2007.
16 Then we hired Skymark Realty --

17 Q After you were --

18 A -- after we foreclosed.

19 Q Got you.

20 A And then sometime in 2008 is when they
21 alerted us to the fact that there was this eminent
22 bridge issue.

23 Q Have you, during that time period, did
24 anybody ever pick up the phone and say, Jeff, what's
25 the deal with this, this highway that you never told

1 us about? Anything like that? Any conversations
2 with your former borrower saying, what's the deal?

3 A No, our conversations with them was, we're
4 not paying the first mortgage, what's the deal?

5 Q Did you contact Bob Gwin and ask him?

6 A No, I would never contact --

7 Q The borrower's attorney?

8 A The borrower's counsel.

9 Q Did you contact your counsel, is it
10 Westerman Ball?

11 A I -- nothing related to the bridge. We --
12 I'm sure that they provided notification to Bob Gwin
13 of their, his client's failure to make payments to
14 the first mortgagee as required.

15 Q When you all loan money on property, do
16 you ask for like a zoning letter from a zoning
17 administrator saying, hey, this property is zoned X
18 or something to that effect?

19 A I am certainly not an expert on the legal
20 side of things, but I believe that we typically have
21 an opinion letter from someone about what is built
22 on the property.

23 Q Okay.

24 A I'm not sure whether we do that on raw
25 land.

1 Q I recall seeing a zoning letter from Gwin,
2 do you recall looking at this by any chance?

3 A I don't recall.

4 Q Okay. You bought property yourself
5 individually?

6 A I have bought a house, yes.

7 Q Okay. The entities that you're involved
8 in, do they just loan property as opposed to buy
9 property; loan money instead of buying property?

10 A Typically lenders, yes.

11 Q Is the property currently being listed for
12 sale?

13 A It is not.

14 Q Any plans for any of the Jericho entities
15 to actually develop the property?

16 A Possibly.

17 Q Have you hired any engineers or any land
18 planners in an attempt to do that?

19 A We have hired land planners and engineers
20 to attempt to make the best of the site plan
21 considering the bridge going through the middle.
22 What I mean by that is that we have hired them to
23 attempt to reconfigure the site plan because the
24 site plan that was developed previously never really
25 contemplated the size of the bridge.

1 Q Who's doing that work for you?

2 A I want to say it's Culpepper & Terpening,
3 but I can't recall for certainty.

4 Q Is it a South Carolina firm?

5 A Yes.

6 Q Horry County, Myrtle Beach?

7 A Likely, yes.

8 Q Okay. Any other professionals that you've
9 hired recently in regards to the property besides
10 land planner?

11 A Not that I can recall.

12 Q And these folks are being paid by which
13 entity, is it the All Weather Opportunity Fund?

14 A It's actually being paid by Lynx Jericho
15 Partners.

16 Q Lynx Jericho Partners.

17 MR. KOUTRAKOS: I might be close to being
18 done, so if you all give me five, ten minutes
19 to look at my list, talk to my client, and we
20 might be out of here.

21 (Brief recess.)

22 BY MR. KOUTRAKOS:

23 Q We talked about the jury's award. Is it
24 your understanding that the jury award is not only
25 for the damages of the loss of the value of that

1 acreage that was taken up by that bridge, but is
2 also the value to the remainder of the property that
3 remained in Jericho's name?

4 A I believe there was some component of
5 damages and some component of the actual 11-acre
6 portion.

7 Q Okay. So you -- okay. When you were
8 going through your calculation before, it's probably
9 my fault, but you gave me the formula and then you
10 restated the formula. The first time you gave the
11 formula, you said 17 million, minus the 2.1, which
12 would have been the jury's award. And then you said
13 the market value of the -- the value that the
14 property has gone down because of the market value,
15 excuse me, the number that the property has declined
16 in value and that's what you put in your formula.
17 And then when you gave me your formula the second
18 time, you didn't include that in there.

19 A You asked me for specific damages. I
20 can't represent what may or may not be market value
21 decline, if that even, I don't even know if that
22 comes into consideration in this.

23 Q Okay. Do you believe that my client has a
24 responsibility to compensate your entity for the
25 decline in the property due to market forces?

1 A No.

2 Q Title insurance insures title, it doesn't
3 insure the deal, correct?

4 A It doesn't insure against market loss, but
5 it insures against the original value of the deal.

6 MR. KOUTRAKOS: That's all the questions I
7 have. I appreciate your time.

8 MR. MASEL: Let me follow up on just one
9 thing on what Jim was just asking you about.
10 And it kind of relates back to what you had
11 said earlier in your deposition when you were
12 sort of making a distinction between how you
13 would calculate damages when solely looking at
14 the first mortgage as compared to looking at
15 both the first and second mortgage. And I
16 don't think I took good notes on how you
17 distinguished between the two, two ways to look
18 at the damages.

19 THE WITNESS: Well, I think with my Lynx
20 Jericho Partners' hat, it's the 17 million
21 whatever odd number, you know, minus the take
22 amount, minus the current value amount. And
23 that's the real number that we should be
24 discussing as the amount that should be paid
25 out as damages. With my Jericho All Weather

1 Opportunity hat, it's the amount from the
2 17 million to the roughly 22 million plus plus,
3 which is the 4,263,888 actual title claim, but
4 then there are several million dollars of cure
5 payments that were made that would have never
6 been made had we never made the loan, which is
7 essentially what this about, which is we never
8 would have made the loan had there been
9 notification from Chicago Title that there was
10 a bridge going through the property. So the
11 second mortgage damages are not only the
12 4,263,888, but it's the cure payments, it's all
13 of the legal fees that we had to accrue in
14 doing it and it's hiring of Skymark, the real
15 estate professionals to find this information
16 out, so it's a much larger number, more like
17 seven-and-a-half million, plus plus.

18 MR. MASEL: Okay. That's the only
19 question I have. Thank you.

20 MR. KOUTRAKOS: That's it. Thank you.

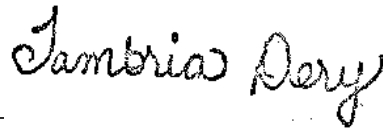
21 (Deposition concluded at approximately
22 2:45 o'clock p.m.)
23
24
25

CERTIFICATE OF OATH

STATE OF FLORIDA)
 :SS
COUNTY OF BROWARD)

I, the undersigned authority, certify that
SCOTT SVIRSKY, personally appeared before me and was
duly sworn.

WITNESS my hand and official seal this
18th day of March, 2016.



TAMBRIA LEE DERY

COHEN. NORRIS. SCHERER WEINBERGER & WOLMER

ATTORNEYS AT LAW

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*Of Counsel

**Board Certified Real Estate

***Board Certified Business Litigation

February 26, 2009

Trine
56
T322937

Via Certified Mail; Return Receipt Requested; 7007 1490 0001 0281 9720

Via Federal Express 97077 Bonneval Road, #605, Jacksonville, FL, 32216

CHICAGO TITLE INSURANCE COMPANY

P. O. Box 45023

Jacksonville, Florida 32232-5023

Attn: Claims Department

Re: Jericho State Capital Corp. of Florida ("Insured") Purchase from Peachtree Properties of
North Myrtle Beach, LLC
Chicago Title Insurance Company Loan Policy #7210740-72338570

Dear Sir/Madam:

Our firm represents Jericho State Capital Corp. of Florida, its successors and/or assigns as their interest may appear with regards to the above-referenced Loan Policy (a copy of which is enclosed).

At the present time, due to the taking/condemnation of the Property in question pursuant to, amongst other documentation, the Ordinance recorded in Book 2497, Page 0986 (copy which is enclosed for your review) which Ordinance was not reflected as a title exception in the Loan Policy, my client has experienced loss and damage in excess of the policy limits.

Accordingly, demand is hereby made for the full policy limits to be paid by my clients pursuant to this claim.

This letter is not intended to waive any other rights or remedies of my clients.

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

712 U.S. HIGHWAY ONE • SUITE 400 • P.O. BOX 13146 • NORTH PALM BEACH, FLORIDA 33408-7146
TELEPHONE: (561) 844-3600 • FACSIMILE: (561) 842-4104

R. 1106

CHICAGO TITLE INSURANCE COMPANY

February 20, 2009

Page Two

I look forward to your prompt response.

Very Truly Yours,


Gregory R. Cohen

GRC/jbp
Enclosures

CHICAGO TITLE INSURANCE COMPANY

16969 VON KARMAN AVENUE, SUITE 150, IRVINE, CA 92606 (949) 263-6800 FAX (949) 263-0571



December 3, 2009

Nicole S. Dunn, Esq.
Assistant Vice President
Claims Counsel

Via U.S. Mail and Email (grc@fcohenlaw.com)

Gregory R. Cohen
Cohen, Norris, Scherer, Weinberger & Wolmer
712 U.S. Highway One Suite 400
P.O. Box 13146
N. Palm Beach, Florida 33408-7146

RE: Chicago Title Insurance Company Claim Number 322537
Chicago Title Insurance Company Claim Name: Jericho State Capital Corp.
Chicago Title Insurance Company Policy Number: 7210740-72338570
Property Address: Unknown

Dear Mr. Cohen:

Chicago Title Insurance Company ("the Company") is in receipt of the claim tendered pursuant to the terms and conditions of the Loan Policy of Title Insurance issued by the Company on July 25, 2006 with a policy limit of \$ 4,263,888.00 insuring a mortgage in favor of Jericho State Capital Corp. of Florida from Peachtree Properties of North Myrtle Beach, LLC recorded on July 25, 2006 in Deed Book 4629, Page 277 in the Land Records of Horry County, South Carolina.

You on behalf of your client, Jericho State Capital Corp. of Florida ("Jericho"), demanded that full policy limits be paid to Jericho due to a taking/condemnation of the Property in question pursuant to the Ordinance recorded in Book 2497, Page 0986 which Ordinance was not reflected as a title exception in the Loan Policy. If my understanding of this claim is incorrect, please contact me immediately.

The Company has had an opportunity to investigate this claim and has reached the following coverage analysis. The investigation included a review of the recorded mortgage, survey, Ordinance, as well as the above-referenced title policy issued.

The alleged defect on title (i.e. taking/condemnation of the Property in question pursuant to an Ordinance) relates to a matter that is an exception in the policy. The ALTA Loan Policy Exclusions From Coverage expressly states:

CTIC_03070

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, cost, attorneys' fees or expenses which arise by reason of: . . .

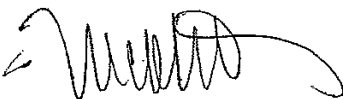
1. (a) any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or change in the dimensions or area of the land or any parcel of which the land is or was a part of; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

Based on the foregoing, the Company denies any duty to defend or indemnify under the policy. There is no evidence in the public records of a notice of the enforcement of the ordinance or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. Further, you have not provided any information requested relative to proof of loss. However, if you are aware of any facts or legal theories that might alter the Company's conclusion, please provide me with that information at your earliest convenience.

Although the reasons set forth above are sufficient to deny your claim, they are not intended to be exclusive. The Company reserves the right to establish additional grounds should further review of the matter become necessary.

Sincerely,

CHICAGO TITLE INSURANCE COMPANY



Nicole S. Dunn
Assistant Vice President
Claims Attorney

NEWBY, SARTIP, MASEL & CASPER, LLC
ATTORNEYS AT LAW

FRED R. NEWBY
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†ALSO ADMITTED IN N.C.
‡ALSO ADMITTED IN W. VA.
◊ALSO ADMITTED IN IN.
◊ALSO ADMITTED IN GA.
◊ALSO ADMITTED IN FL.

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TELEPHONE (843) 449-9417
FACSIMILE (843) 449-9419
REAL ESTATE FACSIMILE (843) 449-1362
E-mail: npel@newbylaw.com

June 21, 2013

Chicago Title Insurance Company
P.O. Box 45023
Jacksonville, Florida 32232-5023
Attn: Claims Department

Re: Lynx Jericho Partners, LLC, successor assignee of Mortgage from
Peachtree Properties of North Myrtle Beach, LLC to R.E. Loans, LLC
Chicago Title Insurance Company Loan Policy No. 7210740-73317401
(the "Policy")

Dear Sir or Madam,

Our firm represents Lynx Jericho Partners, LLC, the current owner of the mortgage referred to above, and the Chicago Title Insurance Company Loan Policy referenced. I have attached copies of the Mortgage and the Policy for your reference.

The Property insured by the Policy lies in Horry County, South Carolina. The original owner of the Property, Peachtree Properties of North Myrtle Beach, LLC, acquired the Property with financing from R.E. Loans, LLC, secured by the insured Mortgage which was recorded in Mortgage Book 4629 at page 255, records of Horry County.

Prior to the issuance of the Policy, Horry County adopted an Ordinance and recorded both the Ordinance and a map, which showed the path of a proposed road through the insured property. This encumbrance was not excepted in the policy, and was unknown to the original lender. The Mortgage has subsequently been acquired by our clients. The road, which will run through the middle of the Property will cause a considerable monetary loss to the value of the land and to our clients.

Please consider this letter as a demand by the current owner of the Mortgage, and Policy, for the full policy limits under the Policy. This letter shall not be deemed to waive any other rights or remedies which my client may have.

Please feel free to call if you have any questions.

Very truly yours,

NEWBY, SARTIP, MASEL & CASPER, LLC

A handwritten signature in cursive script, reading "Fred B. Newby" with a small "sm" at the end.

Fred B. Newby

FBN/mld
Enclosures

JERICO

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November 14, 2014

Charles S. McCall
CHICAGO TITLE INSURANCE COMPANY
601 Riverside Avenue, Building 5G
Jacksonville, Florida 32204
Via Priority Delivery

Re: Claim No: 465003
Lynx Jericho Partners, LLC, successor assignee of Mortgage from Peachtree Properties
of North Myrtle Beach, LLC to R.E. Loans, LLC, Chicago Title Insurance Company
Loan Policy No. 7210740-73317401

Dear Mr. McCall,

Please find attached a disc containing additional information and documents
supplementing our claim in the above matter and in response to your previous letter. These
documents include the following:

1. Applicable Mortgage as assigned, including assignment to Lynx Jericho on 5/22/13.
2. Applicable Policy.
3. Appraisal of 4/16/14
4. Bankruptcy Court filings related to the prior mortgagee.
5. Deposition transcript of David Turner and all exhibits thereto.
6. Discovery documents exchanged in *Jericho State v. Chicago Title*, 2011-CP-26-6449
(Claim No: 332537), which should contain the balance of documentation you seek.

Our client's claim of damages is for an amount equal to the face amount of the mortgage.
As you will see from the bankruptcy documents, the borrower defaulted before payment and the
full amount is due and payable. Please feel free to call if you have any questions.

Very truly yours,

NEWBY, SARTIP, MASEL & CASPER, LLC

C. Scott Masel

Enclosures

CHICAGO TITLE INSURANCE COMPANY



January 30, 2015

Fred B. Newby, Esquire
Newby, Sartip, Masel & Casper, L.L.C.
4593 Oleander Drive
Myrtle Beach, SC 29577

Re: Claim No. 465003
Lynx Jericho Partners, L.L.C., successor assignee of mortgage from Peachtree
Properties of North Myrtle Beach, L.L.C. to RE Loans, L.L.C. (the "Insured")
CTIC Loan Policy No. 7210740-73317401 (the "Policy")

Dear Mr. Newby:

On July 18, 2013, in response to the claim you submitted on behalf of the Insured, I wrote to you requesting that the Insured submit certain documents to me to assist me in completing my investigation of the claim. Among the documents I requested were the loan file, a copy of the loan payment history, an itemized calculation of the alleged loss (including an explanation of how it was calculated), a copy of the pleadings from the foreclosure of the property at issue, a copy of the pleadings from any eminent domain proceeding regarding all or a part of the property at issue, and any document related to any claim filed with mortgage insurance. I also asked for documentation regarding the assignment of the loan to the Insured.

In December of last year, you submitted to me a disc containing copies of documents produced in the lawsuit brought by Jericho State Capital Corp. (a sister company that originated a second mortgage on the same property) against Chicago Title Insurance Company ("CTIC" or the "Company"), as well as certain loan documents from the Insured's loan file and certain bankruptcy pleadings from the Insured's predecessor's bankruptcy. You all included copies of the assignment of the loan into the Insured.

Although the documents produced in the Jericho State Capital Corp. lawsuit against CTIC contain a few of the documents that might be found in the Insured's loan file, they do not constitute the entirety of the Insured's loan file. In addition, you have provided no documents indicating that the Insured has completed a foreclosure of its mortgage on the subject property or any pleadings from any eminent domain proceedings. You have also not included an itemization and explanation of the Insured's alleged loss under the Policy or a loan payment history for the Insured's loan. Finally, you have not included any information regarding a claim against any mortgage insurance policy. You have provided no explanation as to why these documents were

not submitted to the Company (or why it took a year and a half to provide a substantially incomplete document production to the Company).

Accordingly, based on the Insured's failure to provide the documents I had requested in connection with my investigation of the claim, my investigation is limited to only those documents that the Insured has submitted to the Company in support of its claim.

Factual Background

In your claim letter, you assert that prior to issuance of the Policy, Horry County adopted an ordinance which showed the route of a proposed road through the property encumbered by the Insured's mortgage. Although the ordinance was recorded in the public records of Horry County, South Carolina, it was not excepted from the Policy. You assert in your claim letter that the road will cause a "considerable monetary loss" to your client, the Insured (although the extent of that loss is not detailed in your letter and the request for documents regarding the calculation of that loss, as noted above, were not provided by the Insured).

The Insured acquired the RE Mortgage loan on April 17, 2013. At the time of the acquisition, the suit by its affiliate, Jericho State Capital Corp., against the Company had already begun (the claim by Jericho State Capital Corp. under its title insurance policy having been made on February 26, 2009). Thus, the Insured had actual knowledge through its principals (who were also principals of Jericho State Capital Corp.) of the alleged title defect at the time it acquired the insured mortgage.

Importantly, the ordinance in question set forth the proposed route of the Carolina Bays Parkway, but did not purport to condemn any property for the Parkway. At the time that the Policy was issued, the title to the land subject to the Insured's mortgage was exactly as detailed in the Policy. Condemnation proceedings were not begun until several years after the Insured's mortgage was made.

Although you have not provided, as requested, copies of the condemnation proceedings, I understand that a jury in the condemnation proceedings awarded the Insured \$2,100,000 as compensation for the taking of the land for the road.

The Policy

The Policy was written on the 1992 ALTA Loan Policy form and contains the following provisions:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS

FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1.
 - (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
 - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

- (c) resulting in no loss or damage to the insured claimant;
- (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) “insured”: the insured named in Schedule A. The term “insured” also includes
 - (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
 - (f) “public records”: records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, “public records” shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect

in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions

and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

Analysis

The Policy insures against any defect or lien or encumbrance on the title. The ordinance is not, by its own terms, a defect, lien or encumbrance on title. The ordinance merely sets forth the proposed route (as envisioned in 2002) of an extension for the Carolina Bays Parkway. Horry County was not purporting through the ordinance to assert ownership of (or any claim of ownership of) the property along the proposed route, nor was it asserting a lien upon such property. A title insurer has no duty to disclose matters which do not, in its judgment, constitute liens or encumbrances to title. See, e.g., *Luboff v. Security Title & Guaranty Co.*, 260 N.Y.S.2d 279 (Sup.Ct. 1965); *Sala v. Security Title Ins. & Guarantee Co.*, 81 P.2d 578 (Calif. 1938); *Peterson v. Title & Trust Co. of Fla.*, 431 So.2d 311 (Fla.App. 1983).

Moreover, as the ordinance is not indexed to the property owner or the property itself, it is not designed or intended to give constructive notice. Therefore, it is not a public record as that term is defined in the Policy (Condition 1(f)). The recording of the ordinance therefore does not fall within the exception to Exclusion 2.

At most, the ordinance is notice that the county may, in the future, bring a condemnation action. Such condemnation actions are excluded from coverage under Exclusion 2 of the Policy. The condemnation action in the instant case (which was commenced after issuance of the Policy, and thus is also excluded as a post-Policy event under Exclusion 3(d)) has already resulted in a payment to the Insured of the amount determined to be the fair market value of the taking. Therefore, the Insured has already been compensated for the diminution in value of the property through the condemnation process. Thus, even if Exclusion 2 were not applicable, the Insured has already obtained the diminution in value of the property and is owed nothing further under Condition 7(a)(iii) of the Policy.

To the extent that the document production by the Insured is intended to represent the contents of Insured's loan file, the document production contains a copy of a version of the purchase and sale agreement that clearly lists the ordinance in a schedule thereto. Since the ordinance does not constitute a public record, Exclusion 3(b) would operate to exclude the claim.

Fred B. Newby, Esquire
January 30, 2015
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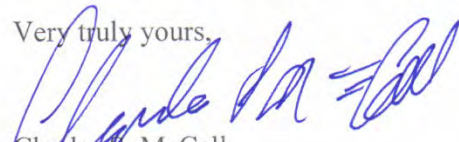
To the extent that the document production by the Insured is intended to represent the contents of Insured's loan file, the document production contains a copy of a version of a closing checklist dated July 21, 2006 that omits a previous checklist item regarding the Carolina Bays Parkway. Again, this supports the application of Exclusion 3(b) to exclude the claim.

As the Insured had knowledge of the claim at the time it purchased the mortgage, such claim is subject to exclusion 3(a) as created, suffered, assumed, or agreed to by the Insured. In such event, coverage is likewise excluded for the claim.

Conclusion

For the foregoing reasons and based on the documents produced by the Insured to the Company to date, CTIC denies the claims referenced above based on the information currently available to CTIC. If you have additional information that you believe CTIC should consider in connection with this matter that you have not previously provided, please submit that information to me. If I do not hear from you within 30 days, CTIC will close this claim file.

Nothing contained in this letter is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of CTIC's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Very truly yours,

Charles S. McCall
National Major Claims Counsel