

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA,
TALLAHASSEE DIVISION

CASE NO. 99 CV 317-RH10:36

THEODORA BRYANT, MARY L.
WALKER and ERNEST JACK WELCH,
BARBARA GENE SLOCUM, individually
and on behalf of all others
similarly situated,

Plaintiffs,

vs.

LAW OFFICES OF DAVID J. STERN,
P.A., and DAVID J. STERN,
individually,

Defendants.

x

Plantation, Florida
Wednesday, 10:30 a.m.
January 19, 2000

DEPOSITION OF DAVID STERN, ESQ.

Taken on behalf of the Plaintiffs before
BARBARA KRASNE, Registered Professional Reporter, Court
Reporter and Notary Public in and for the State of
Florida at Large, pursuant to a Notice of Taking
Deposition filed in the above cause.

<p>1 APPEARANCES:</p> <p>2 HUEY GUILDAY & TUCKER, P.A., by 3 Thomas J. Guilday, Esq., and 4 Claude R. Walker, Esq., 5 appearing for the Plaintiffs.</p> <p>6 RUDEN MCCLOSKEY, P.A., by 7 W. Wyndham Geyer, Jr., Esq., and 8 Steven R. Braten, Esq., 9 appearing for the Defendants.</p> <p>10 *** INDEX ***</p> <p>11 WITNESS EXAMINATION BY PAGE</p> <p>12</p> <p>13 David Stern Direct Mr. Guilday 3</p> <p>14</p> <p>15 EXHIBITS</p> <p>16 Plaintiff's No. 118 - 5 17 Plaintiff's No. 119 - 78 18 Plaintiff's No. 120 - 172 19 Plaintiff's No. 121 - 177 20 Plaintiff's No. 122 - 194 21 Plaintiff's No. 123 - 211 22 Plaintiff's No. 124 - 213 23 Plaintiff's No. 125 - 219 24 Plaintiff's No. 126 - 225 25 Plaintiff's No. 127 - 226 Plaintiff's No. 128 - 228 Plaintiff's No. 129 - 230 Plaintiff's No. 130 - 231 Plaintiff's No. 131 - 237 Plaintiff's No. 132 - 254</p>	<p>Page 2</p> <p>Page 4</p> <p>1 consistent with the defendant's objection to the 2 plaintiff's punitive class definition in their fifth 3 request for production. And those are the documents 4 that were produced this morning.</p> <p>5 Consistent with our objection to plaintiff's 6 fifth request for production punitive class definition, 7 that breakdown of foreclosure files is consistent with 8 that objection to reflect program, Fannie Mae program 9 loans, Mellon Mortgage non-program, Colonial Fannie Mae 10 non-program loans and Northwest FHA loans which is 11 consistent with the plaintiff's that have been named in 12 the suit. I'm assuming you otherwise can certify a 13 class.</p> <p>14 MR. GUILDAY: What prepared that? Was that 15 somebody in Mr. Stern's office or was that by the 16 attorneys?</p> <p>17 MR. BRATEN: My understanding is somebody in 18 Mr. Stern's office prepared this.</p> <p>19 BY MR. GUILDAY:</p> <p>20 Q All right. Mr. Stern, my name is Tom Guilday 21 and I represent the plaintiffs along with Mr. Walker. 22 I think we have met.</p> <p>23 A Yes, sir; we have. We met at the hearing 24 before Judge Watson.</p> <p>25 Q I don't think we were introduced but, in any</p>
<p>Page 3</p> <p>1 Thereupon:</p> <p>2 DAVID STERN, ESQ.</p> <p>3 was called as a witness and, having been first duly 4 sworn, responding "I do," was examined and testified as 5 follows:</p> <p>6 MR. BRATEN: I'm going to indicate on the 7 record, this morning we have produced to the 8 plaintiff's counsel in response to prior request letter 9 dated April 17th, 1996, from Vanessa Chernick and 10 Sheila Teimourian, Fannie Mae; letter dated April 18th, 11 '96, to Vanessa Chernick from David Stern; letter dated 12 May 22nd, 1996, from A. D. Kelly of Fannie Mae to David 13 Stern; letter dated November 17th, '95, from Mr. Tom 14 Johnson to Susan E. Reid of Fannie Mae; fax cover sheet 15 dated 11/20/95 from Tom Johnson of Northwest Mortgage 16 to Mr. Stern; and letter dated March 3rd, 1999, from 17 David Stern to Sheila Teimourian of Fannie Mae with 18 attachments; invoice dated February 24th, '99; invoice 19 dated February 12th, 1999. Those invoices were from 20 the Law Offices of David J. Stern, P.A. Invoice from 21 Provest, Inc. to the Offices of David Stern dated 22 February 23rd, 1999; and some additional fax cover 23 sheets dated 3/3/99, four fax cover sheets dated 24 3/3/99, as well as a document that reflects a breakdown 25 of foreclosure refers to the Law Offices of David Stern</p>	<p>Page 5</p> <p>1 event, we are taking the deposition today.</p> <p>2 A We exchanged handshakes.</p> <p>3 MR. GUILDAY: I want to mark this for an 4 exhibit in this deposition and I forget the number that 5 we are at.</p> <p>6 MR. BRATEN: I think I have got it here.</p> <p>7 MR. GUILDAY: It is like 110 or 111.</p> <p>8 MR. BRATEN: I think we are up to 118.</p> <p>9 MR. GUILDAY: Let's mark as a Composite 10 Exhibit 118 the documents that Mr. Braten described 11 that were being produced this morning.</p> <p>12 MR. GEYER: With the exception --</p> <p>13 MR. GUILDAY: We will get to this in a 14 separate exhibit.</p> <p>15 (Thereupon, Plaintiff's Exhibit No. 118 was 16 marked.)</p> <p>17 BY MR. GUILDAY:</p> <p>18 Q Mr. Stern, let me ask you about this document 19 that has been produced as Plaintiff's Exhibit 118 with 20 a collective of documents. Are these documents that 21 have been in your possession?</p> <p>22 A Let me just look at the documents, please.</p> <p>23 Yes, yes.</p> <p>24 Q Can you tell me why these documents haven't 25 been produced prior to today?</p>

Page 10

1 April 18th, 1996, letter from the Law Offices of Mr.
2 Stern to Vanessa Chernick, assistant general counsel
3 Fannie Mae, you didn't maintain a copy of this document
4 in your Fannie Mae file and, therefore, you didn't
5 locate it when we asked you to produce these
6 documents?
7 MR. GEYER: Object to the form.
8 A Repeat the question, please.
9 (Thereupon, the portion was read by the
10 reporter.)
11 A At the time I was asked to produce the
12 documents, it was not in the file.
13 BY MR. GUILDAY:
14 Q Where did you find this document?
15 A In a Fannie Mae file.
16 Q Whose Fannie Mae file?
17 A I'm not sure.
18 Q When did you find this document?
19 A I'm not sure.
20 Q Within the last few days, last few months,
21 when?
22 A I did not actually locate that letter. That
23 letter was located by one of my other staff members.
24 When, I don't know. And to whom or by whom, I do not
25 know.

Page 11

1 Q Who located the document?
2 A I'm sorry. I just said I do not know.
3 Q How did this document come into your
4 possession?
5 A My attorneys made me aware of it.
6 Q Now, the document that I have just referred
7 to, this April 18th, '96, letter to Ms. Chernick, this
8 does pertain to how the Stern firm conducts its
9 business on Fannie Mae loans; doesn't it?
10 A Can you repeat the question, please?
11 (Whereupon, the requested portion
12 of the transcript was read by the court reporter.)
13 A In part.
14 BY MR. GUILDAY:
15 Q Okay. You would need to have that document
16 to be sure you were complying with the various Fannie
17 Mae guidelines; would you not?
18 A No, sir. I don't need a letter to tell me
19 how I provide or I perform. I know my procedures.
20 Q Now, if I understand these two documents, the
21 April 17th, 1996, letter is a letter to you saying you
22 have been selected as a party participant in the Fannie
23 Mae single family attorney network and it makes
24 reference to an engagement letter.
25 A Yes, sir.

Page 12

1 Q Okay. Is the engagement letter what we have
2 previously marked as Exhibit Number 46 in this case?
3 A Yes.
4 Q Now, in connection with this letter of April
5 17th, 1996, from Ms. Chernick to yourself that was
6 produced here this morning, it makes reference, it
7 says, "In addition, if you use the services of any
8 affiliated business entity as defined in the engagement
9 letter, please disclose such relationships in writing
10 when you return the executed engagement letter to us."
11 Okay?
12 A Yes, sir.
13 Q You see that sentence?
14 A Yes, sir.
15 Q In 1996 did you have an affiliated business
16 that you utilized in performing Fannie Mae
17 foreclosures?
18 A Yes, sir; I did.
19 Q What was that business?
20 A It was Professional Title & Abstract Company
21 of Florida.
22 Q Did you disclose to Fannie Mae that you had
23 that affiliated business?
24 A Yes, sir; I did.
25 Q How did you do that? In writing or

Page 13

1 otherwise?
2 A In writing as well as verbal.
3 Q Is there a letter in the documents you
4 produced to us in which you have discussed with Fannie
5 Mae that you had this affiliated business?
6 A I would have to review the entire package of
7 documents.
8 Q Okay. In the documents you produced for us
9 this morning, is there such a letter?
10 A There is a letter.
11 Q Okay. Do you have it in front of you?
12 A Yes, sir; I do.
13 Q Which letter is that?
14 A It is a letter dated April 18th, 1996.
15 Q And it is to Fannie Mae?
16 A Yes, sir.
17 Q Ms. Chernick?
18 A That is correct.
19 Q Let me see that letter. In this letter I
20 think you say that, quoting this letter --
21 MR. GUILDAY: And I don't mind if you all
22 want this subject to confidentiality.
23 MR. GEYER: Thank you. We would.
24 BY MR. GUILDAY:
25 Q It says, "In addition, complying with the

Page 58	Page 60
<p>1 Teimourian, send you anything in writing in terms of 2 telling you what she wanted you to respond to? 3 A No, sir; she did not. 4 Q So she just called you; correct? 5 A That's correct. 6 Q That generated this letter? 7 A Yes, sir. 8 Q In your second paragraph here it says, "In 9 quoting fees in connection with reinstatement payoffs 10 and the subsequent, please note that we use the 11 reasonable and customary standard which is consistent 12 with Florida law." Tell me what the reasonable and 13 customary standard is that you are referring to? 14 A The reasonable and customary standard is the 15 charge that attorneys, an hourly rate that attorneys 16 charge in the community where the services are being 17 rendered based for the type of service that is being 18 rendered. 19 Q And consistent with Florida law is what law 20 are you referring to? 21 MR. GEYER: Objection to the form. 22 A Consistent with Florida law to the way that I 23 understand Florida law I am entitled to charge a 24 reasonable and customary rate for the work performed. 25 BY MR. GUILDAY:</p>	<p>1 A One more time, please. 2 Q Did you understand that the amount which you 3 could charge for attorney's fees was limited by the 4 agreement that you had with your client as to what they 5 would pay you? 6 A Limited by the agreement? Yes, sir; I did. 7 Q Now, when you quote attorney's fees on a 8 reinstatement, you have a whole department set up to do 9 that; do you not? 10 A Yes, sir; I do. 11 Q And you have prepared procedures that you 12 have given to that department, correct, as to how they 13 are to do it? 14 A No, sir. 15 Q Are there any procedures that have been 16 provided to the reinstatement department for 17 determining attorney's fees? 18 A Yes, sir. 19 Q You didn't prepare those? 20 A I have to see which ones you are speaking 21 about. 22 Q I'm going to pull them out in a minute. Do 23 you have an attorney that supervises the reinstatement 24 department? 25 A Yes, sir; I do.</p>
Page 59	Page 61
<p>1 Q And is there a case law or anything that you 2 would site in support of that proposition? 3 A I have to defer to my attorneys. 4 Q Well, this is describing a practice that you 5 have been engaging in since 1994; isn't it? 6 A Consistent with the other foreclosure 7 attorneys; yes, sir. 8 Q Right. So your attorneys here, you didn't 9 employ them until you got involved in this lawsuit; did 10 you? 11 A Relative to this lawsuit or other matters? 12 Q Well, relative to attorney's fees that you 13 could charge under Florida law. 14 A No, sir; I did not. 15 Q So what is your understanding then at the 16 time you wrote this letter as to what you could charge 17 an attorney's fees under law? 18 A Under law my understanding was that I would 19 be entitled to charge a reasonable rate based on the 20 customary amount awarded by judges based on what 21 attorneys do in terms of like or similar work. 22 Q Did you understand that the amount that you 23 could charge in attorney's fees was limited by the 24 agreement that you had with the client that employed 25 you?</p>	<p>1 Q Who is that? 2 A It is a combination of attorneys. 3 Q Who? Who are they? 4 A Laura Tapia, Naha Baum, Michelle Ross and 5 Miriam Mindiata. 6 Q Does an attorney review each reinstatement 7 letter that goes out for purposes of the amount of 8 attorney's fees that are to be charged? 9 A They are supposed to. 10 Q Whether they do or not, you don't know? 11 A I don't know. 12 Q Should an attorney review the attorney's fees 13 that are quoted in a reinstatement letter before it 14 goes out? 15 MR. SCHULTZ: Object to the form, overly 16 broad. 17 A Not necessarily. 18 BY MR. GUILDAY: 19 Q Who prepares the reinstatement letters? 20 A Paralegals. 21 Q Is it your testimony that it is not necessary 22 for an attorney to review the attorney fee 23 determination before it goes out in a reinstatement 24 letter? 25 MR. GEYER: Object to the form.</p>

Page 66

Page 68

1 Q Well, if I understand the way this schedule
2 works is that at the point that you charge \$500, the
3 case is through the process of a complaint, is sent to
4 the clerk I presume for filing.

5 A Yes, sir.

6 Q That means you prepared the complaint and
7 sent it up there.

8 A Correct.

9 Q How much time is involved on that?

10 A Well, from the time the file was set up to
11 the time the complaint was filed, probably another hour
12 an a half. From the time the file was received, from
13 the beginning to the time the complaint was sent for
14 filing, approximately three, three and a half, four
15 hours on an average file. But it could be as many as
16 five or six hours depending upon the thickness of the
17 case, if it has previously been in foreclosure, if it
18 has previously been litigated. There is a whole host
19 of factors.

20 Q It could be less, too; couldn't it?

21 A I don't think it could be much less because
22 if it has never been around, you still have to make a
23 thorough review of the loan documents, you still have
24 to make a thorough review of the acceleration, have to
25 make a thorough review of the client notes and often

1 A It depends if -- It depends upon who the
2 client is and the terms of the agreement.

3 Q Okay. So it wouldn't be subject then to
4 either of these schedules necessarily on a VA loan, is
5 that accurate?

6 A That's correct.

7 Q What about FHA?

8 A It depends upon who the client is and what
9 the terms of the agreement of engagement are.

10 Q So, again, it wouldn't be subject to either
11 of these schedules; is that correct?

12 A It is going to be subject to - could be
13 subject to one or the other or none.

14 Q Okay. Do the paralegals have a schedule on
15 the VA and FHA loans that are not subject to either of
16 these schedules that they can use to determine the
17 amount of attorney's fees that will be charged on a
18 reinstatement?

19 A I'm sorry. Which paralegals?

20 Q The reinstatement.

21 A The reinstatement paralegals? They do have a
22 chart or they have knowledge of what can be charged.
23 They are sharp people with general knowledge. If they
24 don't know, I am readily accessible and they can ask.

25 Q Mr. Stern, here on the next schedule of fees

Page 67

Page 69

1 times the payment history and the communications.

2 Q Now, your firm does not not keep actual time
3 records for how much time is spent on files; do you?

4 A That is incorrect.

5 Q For purposes of doing an other than a
6 contested litigation matter, do you keep time records
7 as to the amount of time that an attorney spends on a
8 foreclosure matter?

9 A No, sir; we do not.

10 MR. GEYER: Object to the form.

11 BY MR. GUILDAY:

12 Q Now, this is Fannie Mae and Freddie Mac, I
13 understand, if I understand correctly. Does the other
14 schedule apply to standards in non-Fannie Mae, Freddie
15 Mac?

16 MR. GEYER: Object to the form.

17 BY MR. GUILDAY:

18 Q You have got another schedule right here next
19 to it.

20 A It applies to loans that are other than
21 Fannie Mae or Freddie Mac depending upon what the term
22 of the agreement is with the client.

23 Q Okay. What about VA loans, for instance?

24 A Okay.

25 Q Which schedule would they fall under, if any?

1 you have got the title update of \$75.

2 A Yes, sir.

3 Q Would this mean that you stopped charging the
4 \$75 after the date of this letter?

5 A No, sir. We stopped prior to the date of
6 that letter. Those are just generic costs as to what
7 might be Freddie Mac or what might be VA or what might
8 be FHA.

9 Q Let me see if I understand this correctly.

10 In terms of attorney's fees that can be charged on a
11 Fannie Mac or Freddie Mac mortgage, is it your
12 understanding that the maximum amount is \$1,000?

13 A That is not my understanding.

14 Q What is your understanding?

15 A A lot of variables. Is it a program loan?
16 Is it a non-program loan? What point in time? Is it a
17 Freddie Mac loan? There are a ton of variables.

18 Q We are talking about Freddie Mac. Let's talk
19 about what program loans can you charge more than
20 \$1,000 on attorney's fees?

21 A I can charge more than \$1,000 attorney's fees
22 on all Freddie Mac loans as long as I have prorated
23 them out.

24 Q Is there a maximum amount that you can charge
25 on Freddie Mac loans?

Page 74

1 engagement or the agreement with my client.
2 Q When the agreement with your client, the
3 lender, references the Fannie Mae guidelines, we will
4 talk about non-program loan, what guidelines are
5 referred to?
6 MR. GEYER: Object to the form.
7 A I'm sorry. Can you repeat the question?
8 BY MR. GUILDAY:
9 Q Yes. When you have got a non-program Fannie
10 Mae loan and you have an agreement with your client and
11 it makes reference to a Fannie Mae guideline, what
12 guidelines are referred to or do you understand that
13 are referred to?
14 A I guess the FHA guidelines and I'll help you
15 out a little bit. The Fannie Mae guidelines prohibit
16 the payment of out-sourcing \$125 or \$150 packaging fee
17 so you can't adhere to Fannie Mae guidelines in one
18 breath and pay a \$125 packaging fee.
19 Q So then it would be subject to the FHA
20 guidelines is what you are saying?
21 A Generally speaking, yes. Because FHA doesn't
22 have a prohibition on paying a packaging fee.
23 Q Is the packaging fee what is charged by the
24 servicing entity?
25 A Or its agent; yes, sir.

Page 75

1 Q For instance, are you familiar with the four
2 cases that are involved in this lawsuit?
3 A Walker, Weller, Woody and Slocum?
4 Q Right.
5 A Yes, sir; I am.
6 Q The agreement with Northwest Legal Services,
7 Inc., is that where the packaging fee would originate
8 from?
9 A No, sir.
10 Q Where would the packaging fee originate from?
11 A In the Colonial and Mellon files, those are
12 non-program loans. The Mellon file, which I believe is
13 the Slocum file, cannot be processed through the Fannie
14 Mae program because there are out-sourcers, package
15 referrals involved.
16 Q What about Bryant? Is it a program or
17 non-program loan?
18 A I'm sorry. Is Bryant the Countrywide file?
19 Q No. Welch is the Countrywide.
20 A Who was the plaintiff in Bryant?
21 Q Ms. Woody.
22 A No. I'm sorry. Who was the plaintiff?
23 Q It was somebody versus Bryant.
24 A So it was the Northwest file. It was the
25 Northwest file. What was your question?

Page 76

1 Q Was that a program or non-program?
2 A It is a non-program loan. It is not a Fannie
3 Mae loan.
4 Q And Welch and Countrywide, is that a program
5 or non-program loan?
6 A That was a program loan.
7 Q Program being Fannie Mae?
8 A Yes, sir.
9 Q Is there anything that you indicate in your
10 file when you opened it that indicates whether it is a
11 program or non-program loan and if so how is it
12 designated?
13 A The requirements under the Fannie Mae program
14 for it to be program in nature would require as the
15 terms of the engagement dictate that the servicer
16 clearly mark it as Fannie Mae program. There are times
17 that that is, of course, accepted out. We set up our
18 files by color.
19 Q Which colors are the Fannie Mae programs?
20 A They are green fluorescent green labels.
21 Q And what are non-programs? What color are
22 they?
23 A Non-program Fannie? They are yellow.
24 Q So would I be correct in assuming that the
25 Colonial, Mellon and the Northwest loans involved with

Page 77

1 three of the plaintiffs here then would be yellow
2 files?
3 A No, sir.
4 Q So there are various colors within the
5 non-program loans; right?
6 A No, sir.
7 Q I thought you told me the Colonial loan was a
8 non-program loan.
9 A I did.
10 Q What color is that?
11 A Yellow.
12 Q Mellon is a non-program loan. What color is
13 that?
14 A Yellow.
15 Q And the Bryant was non-program loan. What
16 color is that?
17 A It is not a non-program loan. It is not a
18 Fannie Mae loan. It is an FHA-insured loan so it is
19 white in a green folder.
20 Q It is white in a green folder?
21 A Yes, sir. White label, green folder.
22 MR. GUILDAY: You want to take a break?
23 (Thereupon, a brief recess was had.)
24 BY MR. GUILDAY:
25 Q Let me give you what we have marked as the

Page 82

1 retention and the terms of your firm's engagement,
2 something that you prepared say from this phone call?
3 A I am not certain. Relative to my agreement
4 with Mellon just in general? No, sir. I have
5 nothing.
6 Q Let me ask you this: Let's just go down this
7 right here. Paragraph number 4 says, "For the
8 professional services to be rendered you will be paid
9 the sum of \$1,000 as the agreed fee for all services
10 necessary in connection with this matter regardless of
11 the time expended on the client's behalf." You see
12 that paragraph?
13 A I do.
14 Q Is it your testimony that there is a
15 different fee agreement than that in place on the
16 Slocum mortgage?
17 A Yes, sir.
18 Q And what is that agreement?
19 A That agreement would be two-fold. If there
20 is litigated time, I will be compensated an hourly
21 rate.
22 Q At what rate?
23 A It varies. It is between \$125 and \$150. The
24 formula is cash versus property. The agreement with
25 the client simply rests on that formula for a

Page 83

1 non-program loan at the time of Slocum.
2 Q Are we talking about in July of 1998?
3 A In July of 1998. We are talking about an
4 agreement for fees dependent on cash versus property.
5 Q Is the agreement different now?
6 A It is different now on non-program Fannie Mae
7 loans.
8 Q What is the agreement now on non-program
9 Fannie Mae loans?
10 A It will be -- The fee will be consistent with
11 the Fannie Mae guideline.
12 Q What is the Fannie Mae guideline at present?
13 A The Fannie Mae guideline at present for an
14 uncontested foreclosure? \$1,000.
15 Q Before we go any further, let's clear up what
16 we mean by uncontested foreclosure. When you say that,
17 what do you mean?
18 A What I mean is as long as there is no
19 responsive pleading filed that requires us to go beyond
20 the normal motion for summary judgment, then it is a
21 normal foreclosure. If there are pleadings interposed
22 in the proceedings, motion to dismiss, affirmative
23 defense requiring additional stages or additional
24 steps, then the matter becomes contested at which time
25 we would be entitled to receive an hourly rate because

Page 84

1 it is out of the norm of the plain manila foreclosure.
2 Q These would be defenses raised by the
3 borrower?
4 A Not necessarily.
5 Q Who else -- Well, I guess maybe you could
6 have another mortgage holder.
7 A You could have a junior mortgage holder, lien
8 holder.
9 Q In that situation where it is outside of the
10 uncontested foreclosure, are you required to obtain
11 written approval of your client before you incur these
12 additional fees?
13 A I'm sorry. One more time.
14 Q Where you have a situation where, and we are
15 talking about currently, where you have an uncontested
16 foreclosure and you are going to be incurring
17 additional attorney's fees, are you required to obtain
18 written approval from your client before you're
19 entitled to recover those fees?
20 A When you say incur additional attorney's
21 fees?
22 Q Above the \$1,000.
23 A Under my agreement? I am not required to
24 obtain written approval to exceed \$1,000 today as we
25 stand if it is a Fannie Mae or a Freddie Mac loan --

Page 85

1 I'm sorry. If it is a Fannie Mae program or
2 non-program loan, I have to obtain written
3 authorization to exceed \$1,000. If it is not today a
4 Fannie Mae program or program loan, it depends upon the
5 client and the agreement that I entered into with the
6 client.
7 Q Since we are talking about Melon --
8 A Yes, sir.
9 Q -- are you required to obtain written
10 approval from Melon before you incur more than \$1,000
11 in legal fees, attorney's fees?
12 MR. GEYER: Today?
13 BY MR. GUILDAY:
14 Q Under today's agreement.
15 A It depends.
16 Q On what?
17 A If it is a Fannie or non-Fannie.
18 Q Now, did this new agreement with Melon come
19 into effect at any time --
20 A This is not a new agreement. This is not a
21 new agreement with Melon.
22 Q I thought you said there was a new fee
23 agreement with Melon.
24 A There is a new fee agreement with Fannie Mae
25 where I could not exceed the \$1,000 on non-program

Page 90

1 considered to be reasonable and customary for
2 attorney's fees for an uncontested foreclosure?
3 A No, sir.
4 Q So what you are saying basically is that
5 there was no cap on what could be collected in
6 attorney's fees by Melon Mortgage; is that accurate?
7 MR. GEYER: Objection to the form.
8 A No, sir.
9 BY MR. GUILDAY:
10 Q What was the cap?
11 A The cap was what they placed on it to be that
12 of what is reasonable and customary.
13 Q They gave you no guidance as to what
14 reasonable and customary was as I understand your
15 testimony; is that correct?
16 A They can't give us a cap of what is
17 reasonable and customary. That's dependent and
18 determined by the community.
19 Q So then if I understand what you are saying,
20 you determined what was reasonable and customary; is
21 that accurate?
22 MR. GEYER: Object to the form.
23 A Based on what the community has established;
24 that is correct.
25 BY MR. GUILDAY:

Page 91

1 Q Did you review with Melon Mortgage, for
2 instance, before you would send a reinstatement letter
3 out on a non-program mortgage what you had determined
4 to be reasonable and customary attorney's fees?
5 MR. GEYER: Object to the form.
6 A Sometimes.
7 BY MR. GUILDAY:
8 Q When?
9 A When the client called us to ask us our fees
10 and costs and they provided the reinstatement figure.
11 Q Now, as I understand the way reinstatement
12 worked is the client lender would provide you the
13 principle and interest, escrow, those amounts that you
14 would need to pay to reinstate and that your law firm
15 would determine the amount of attorney's fees,
16 abstracting costs, title update search, postage cost,
17 service of process fees and that you would handle that
18 portion of it. Do I understand it correctly or do I
19 understand it incorrectly?
20 MR. GEYER: Object to the form.
21 A You understand it incorrectly.
22 BY MR. GUILDAY:
23 Q Tell me how then it worked in terms of
24 determining the reinstatement amount.
25 A In determining the reinstatement amount?

Page 92

1 Q Yes, sir.
2 A Well, in determining the reinstatement
3 amount, you take what the lender is owed plus the
4 attorney's fees and costs incurred at the foreclosure
5 and that will determine the reinstatement amount.
6 Q So we are talking about the attorney's fees
7 and costs that your law firm had incurred?
8 A Yes, sir.
9 Q What I want to know is before you sent the
10 reinstatement letter out, did you send to Melon
11 Mortgage a statement saying we have incurred this much
12 in attorney's fees and they are reasonable and
13 customary?
14 A Sometimes.
15 Q Was there a demarcation of when you would and
16 when you wouldn't?
17 A Yes, sir.
18 Q What was that demarcation?
19 A There are times that the client would take it
20 upon themselves through a particular department to send
21 it out themselves, at which time they would call us and
22 ask us for our fees and costs, examine them or type
23 them up and send them out.
24 Q They would send them out?
25 A Yes.

Page 93

1 Q There were other occasions where you would
2 send them out?
3 A To a good client.
4 Q In those cases in which the Law Firm of David
5 Stern would send out the reinstatement amount, would
6 you review with your client, Melon Mortgage, what you
7 would determine to be reasonable and customary
8 attorney's fees?
9 A No, sir; we would not.
10 Q How would the mortgage company know what you
11 had decided to charge as a reasonable and customary
12 attorney's fee?
13 A It depends if the loan reinstated or paid off
14 or did nothing.
15 Q Let's talk about -- You have said this is
16 basically a two-fold agreement. One is you get cash
17 out of the borrower, the junior lien holder or the sale
18 and the other is I presume you don't get cash and the
19 property goes to sale and nobody buys it. And if the
20 lender gets it back?
21 A The lender buys it back, yes, sir.
22 Q What was your fee agreement where the lender
23 has to buy the property back at sale?
24 A My fee agreement with the client where the
25 lender buys the property back will be consistent with

Page 98

Page 100

1 between the borrower and the lender in order to
2 determine what amount you are entitled to be paid as an
3 attorney's fee?

4 A That depends if the lender wants to take a
5 loss or not. I would have to see it. Because the
6 lender retains me. The lender is going to go ahead and
7 pay me. The ability of the lender to recoup it from
8 the borrower is going to be dependent upon statute or
9 it is going to be dependent upon what the agreement
10 sets out in the note and mortgage. So I have to see
11 the note and mortgage.

12 Q Is there any maximum amount that you are
13 entitled to charge Melon Mortgage or you were entitled
14 to charge Melon on a non-program loan on attorney's
15 fees on an uncontested foreclosure?

16 MR. GEYER: Objection, asked and answered.

17 A Yes, sir.

18 BY MR. GUILDAY:

19 Q What was the maximum amount?

20 A The maximum would stop at whatever is
21 reasonable and customary.

22 Q Okay. Let's just cover reasonable and
23 customary and then we will take a break. All right?

24 A Okay.

25 Q You used the term reasonable and customary.

Page 99

1 What do you refer to, reasonable and customary?

2 MR. GEYER: Objection, asked and answered.

3 A Sorry. Reasonable and customary is what rate
4 an attorney charges in a community doing the like or
5 similar work on like or similar matters.

6 BY MR. GUILDAY:

7 Q What is the rate that was charged by your
8 firm doing uncontested mortgage foreclosures?

9 A In which file?

10 Q Slocum.

11 A I would have to look at the file.

12 Q Does it vary between files?

13 A It depends upon the time. It is possible it
14 could.

15 Q Are you talking about whether it is '97 or
16 '98 or '99 or are you talking about when you use time
17 some other time?

18 A No, sir. Time in terms of years.

19 Q The experience of the attorney then is what
20 you are talking about?

21 A No, sir. I'm talking about -- At one point
22 in time we were billing \$125 an hour and the clients
23 agreed to pay us \$150 an hour at later times.

24 Q All right. Was the rate controlled by what
25 your clients would agree to pay you or what could be

1 charged in the community?

2 A It depends if it was cash or property.

3 Q We are talking about cash, Melon Mortgage.

4 What was the rate they agreed to pay you?

5 A \$150. I have to look at the file. But it is
6 going to be \$125 or \$150. I have to look at the file
7 to clearly answer that question.

8 Q What would you look at in the file?

9 A What we billed.

10 Q Well, I mean, what would tell you in the file
11 whether it is \$125 or \$150?

12 A There would be a worksheet that would tell us
13 if it was billed at \$150 or \$125.

14 Q So you are not referring to something that
15 would have come from Melon Mortgage telling you how
16 much you could bill?

17 A No, sir.

18 Q That, again, is verbal; right?

19 A That is verbal; yes, sir. That is verbal and
20 that is implied by conduct.

21 Q And what is the other part of reasonable and
22 customary that you are referring to, if anything?

23 A Reasonable and customary. That's it. It is
24 based on the reasonable rate, number one, and the type
25 of work done in the community, number two.

Page 101

1 Q In terms of the type of work done in the
2 community, are you talking about legal work in
3 foreclosure cases?

4 A Yes, sir.

5 Q Well, is there anyone that you have talked to
6 or anyone that you reviewed their work or anyone that
7 you would point to as doing similar work in the
8 community that you would rely upon as to what is
9 reasonable and customary?

10 A Sure.

11 Q Who?

12 A Florida Bar, Fast Track Books, Fast Track To
13 Foreclosures, \$150. I think the biggest thing I point
14 to is courts routinely award us \$150 and I have to add
15 over objection of my attorneys that courts many times
16 say that is ridiculous and beyond reasonable.

17 Q What about -- Well, that's the rate. What
18 about hours or total amount that's awarded for the
19 work? What do you rely on in terms of what is
20 reasonable and customary?

21 A Fast Track Book, what other attorneys do,
22 what the court awards us. Courts have not on
23 uncontested matters criticized the amount of hours that
24 we are requesting based on the amount of work
25 performed.

Page 106	Page 108
<p>1 MR. GUILDAY: Again, you are instructing him 2 not to answer the question as to whether any client has 3 asserted the attorney-client privilege? 4 MR. BRATEN: I don't believe that was the 5 answer to his question. 6 MR. GUILDAY: That was the question that you 7 objected to so I just want to make it clear. 8 MR. BRATEN: I object. I'm stating on the 9 record that we are objecting to him disclosing the 10 contents of his agreements with other clients that are 11 not the subject matter of this lawsuit because, first 12 of all, he hasn't been given an opportunity to ask 13 those clients whether or not they intend to assert an 14 objection because he had no reason to up until this 15 moment. 16 MR. SCHULTZ: Excuse me. This is David 17 Schultz. 18 MR. BRATEN: Go ahead, David. 19 MR. SCHULTZ: Was the question the identity 20 of the clients with whom he has this type of 21 agreement? 22 MR. BRATEN: No. The question that elicited 23 the objection as I understood it was whether any 24 attorney has asserted the attorney-client privilege. 25 MR. GUILDAY: Any client has asserted the</p>	<p>1 Q Has any client asserted the attorney-client 2 privilege as far as you know with regard to disclosure 3 of the cash versus property fee arrangement? 4 A Yes, sir. 5 Q Okay. Which clients have asserted that 6 privilege? 7 A I have to look at my agreements to see which 8 ones have asserted that privilege in writing. 9 Q So what you are saying then is the assertion 10 of the privilege would be in the agreement itself? 11 A That's correct. 12 Q Now, I want to go to -- Let's just talk 13 briefly about Mr. Welch's case and the lender that is 14 involved with Mr. Welch, I believe Countrywide. 15 A Yes, sir. 16 Q You have indicated that is a Fannie Mae 17 program loan previously? 18 A If Welch is the -- If Welch is the 19 Countrywide loan, than that is correct, it is a Fannie 20 Mae program loan. 21 Q From what I understand based upon your prior 22 testimony, then, your fee agreement is subject to the 23 Fannie Mae guidelines; is that correct? 24 A It is subject to the Fannie Mae guidelines, 25 that is correct. But please remember what those</p>
Page 107	Page 109
<p>1 attorney-client privilege with regard to the cash 2 versus property fee agreement. 3 MR. SCHULTZ: All right. 4 MR. GUILDAY: And what's your answer to that? 5 MR. SCHULTZ: And the response was that the 6 client has not been contacted to elicit that but I 7 think as the attorney he can assert it on behalf of 8 that client. It is certainly the client's privilege 9 but that's not to preclude the attorney from stating 10 that there is a privilege there. 11 MR. GUILDAY: I have stated my question. Are 12 you guys going to instruct your client not to answer 13 the question? 14 MR. SCHULTZ: I think the answer is what I 15 just said. The clients have never been contacted about 16 this. 17 MR. GUILDAY: Listen -- 18 MR. SCHULTZ: Other clients besides those 19 that have been involved in this case have not been 20 contacted about it. 21 MR. GUILDAY: Dave, instruct your client not 22 to answer the question or not. I mean, let's move on. 23 MR. SCHULTZ: Why don't you ask him the 24 question again. 25 BY MR. GUILDAY:</p>	<p>1 guidelines are. 2 Q Well, with regard to attorney's fees, there 3 are a maximum of \$1,000; aren't they? 4 A No, sir. 5 Q Is there any Fannie Mae guideline that 6 authorizes your firm to charge more than \$1,000 in 7 attorney's fees? 8 A Yes, sir; there is. 9 Q Which guideline is that? 10 A It is an oral understanding with Sheila 11 Teimourian. 12 Q When was that reached? 13 A At the inception of the program. 14 Q Can you tell me basically what the discussion 15 was with Ms. Teimourian? 16 A Yes, sir. 17 Q Go ahead and tell me what it was. 18 A I advised Ms. Teimourian that we request a 19 reasonable fee based on the amount of work performed in 20 a foreclosure and that the courts routinely award us 21 reasonable fees. I advised Sheila Teimourian that we 22 understood the guidelines would preclude us from 23 collecting more than \$1,000 from the borrower but it 24 was also distinguished that if a reasonable fee is 25 awarded and should the property be sold to a third</p>

Page 114

1 this is a non-program loan and that you are not limited
2 to \$1,000, you are entitled to reasonable and customary
3 fees?
4 MR. BRATEN: Objection, asked and answered.
5 BY MR. GUILDAY:
6 Q Okay. You with me?
7 A I'm with you.
8 Q In the event that Ms. Slocum doesn't come in
9 and pay off the mortgage, doesn't reinstate the
10 mortgage, how much are you entitled to be paid as
11 attorney's fees by the lender?
12 A It depends.
13 Q Under the Melon Mortgage agreement, how much
14 would you be entitled to be paid?
15 A It depends.
16 Q It depends on what?
17 A It depends upon the circumstances of the
18 foreclosure. The fact that Mrs. Slocum -- I'll help
19 you out. The fact that Ms. Slocum doesn't reinstate or
20 pay off doesn't mean that the party won't be sold to a
21 third party at foreclosure sale. It does not matter or
22 does not take into account that a subordinate mortgagee
23 may come in or a lien holder may come in.
24 Q Let's say none of those events occur, nobody
25 comes in and reinstates the mortgage or pays off the

Page 115

1 mortgage. How much are you entitled to be paid by
2 Melon Mortgage?
3 MR. BRATEN: Objection, asked and answered.
4 A The terms of my agreement with Fannie Mae
5 would be \$1,000.
6 BY MR. GUILDAY:
7 Q So then in essence, if I understand what you
8 are saying, is that the only time that you are entitled
9 to be paid more than \$1,000 is when the borrower or
10 some third party comes in and pays off the mortgage?
11 MR. GEYER: Objection, form. Asked and
12 answered.
13 BY MR. GUILDAY:
14 Q That's in essence correct, isn't it?
15 A No, it is not.
16 MR. BRATEN: Objection to the form.
17 BY MR. GUILDAY:
18 Q The lender under your agreement with Melon
19 Mortgage Company is not required to pay you more than
20 \$1,000 out of its pockets under any circumstance, are
21 they?
22 MR. BRATEN: Objection to form.
23 A That's incorrect.
24 BY MR. GUILDAY:
25 Q Under what circumstances could Melon Mortgage

Page 116

1 be required to pay you more than \$1,000 in attorney's
2 fees out of its own pockets?
3 A Melon Mortgage Company collects the
4 attorney's fees and costs that are incurred in the
5 foreclosure. Once they collect it, they pay it out of
6 their pocket to me for foreclosure fees and costs,
7 services rendered. So, therefore, the answer to your
8 question is no.
9 Q But if Melon Mortgage doesn't collect it from
10 the borrower, their maximum exposure is \$1,000; is that
11 not correct?
12 MR. BRATEN: Objection, asked and answered.
13 A If Melon Mortgage Company does not collect
14 the fees and costs from any party and obligated upon
15 getting the property back, then they will pay me in the
16 event of a Fannie Mae loan \$1,000 plus costs.
17 BY MR. GUILDAY:
18 Q Let's talk about costs a minute. The letter
19 of -- We have marked as Exhibit 119 --
20 A Can we talk about the Melon file now?
21 Q Yes, the Melon file says in paragraph 5,
22 says, "Postage, stationery, photocopy, telephone,
23 routine travel expenses and other items customarily
24 incurred to transact business are included within the
25 fee structure." Okay. You see that?

Page 117

1 A I do see that.
2 Q Is it your testimony that the way that these
3 costs are handled is the same way that attorney's fees
4 are handled or is it something different?
5 MR. BRATEN: Object to the form.
6 A As to what type of loan?
7 BY MR. GUILDAY:
8 Q Let's talk about a Fannie Mae loan program.
9 A Well, this particular sheet that you are
10 talking about --
11 MR. BRATEN: I just want to note my objection
12 to the form of the question. Go ahead.
13 A This particular form that you are talking
14 about does not pertain to a Fannie Mae program loan.
15 BY MR. GUILDAY:
16 Q Well, let's assume for purposes of my
17 question that the Fannie Mae program loan on the face
18 of this particular exhibit means what it says and it is
19 a Fannie Mae program loan. Okay?
20 A Okay.
21 Q Just assume that. I understand you dispute
22 that. But assume it is a Fannie Mae program loan.
23 What amount of postage, stationery, photocopying, et
24 cetera can you charge?
25 A Under a Fannie Mae program loan, we do not

Page 122	Page 124
<p>1 A That is correct.</p> <p>2 Q You would agree, would you not, Mr. Stern,</p> <p>3 that it is certainly possible in the Sloan file that at</p> <p>4 the time this reinstatement letter was sent out that</p> <p>5 your firm had not incurred \$60 in postage, copies and</p> <p>6 faxes, would you not?</p> <p>7 MR. BRATEN: Objection to the form.</p> <p>8 A I'm sorry. I don't know any file in the name</p> <p>9 of Sloan.</p> <p>10 BY MR. GUILDAY:</p> <p>11 Q Slocum.</p> <p>12 A Would you repeat your question, please?</p> <p>13 Q Would you agree, Mr. Stern, that it is</p> <p>14 entirely likely that the amount of \$60 in postage,</p> <p>15 copies and faxes had not been incurred on the Slocum</p> <p>16 file when this letter of reinstatement went out on July</p> <p>17 15th, 1998?</p> <p>18 MR. BRATEN: Objection to form.</p> <p>19 A I would have to review the file.</p> <p>20 BY MR. GUILDAY:</p> <p>21 Q What would you need to look at?</p> <p>22 A I have to look at the file to see how many</p> <p>23 defendants we had. I would have to look at the file to</p> <p>24 see if it was contested, have to look to see if there</p> <p>25 was any status conference, have to look at the file to</p>	<p>1 July 27th?</p> <p>2 A Yes, sir.</p> <p>3 Q What happens if the borrower calls up, says I</p> <p>4 want to reinstate and I'll send you my check?</p> <p>5 A Then we quote exactly what it will be and</p> <p>6 tell them the amount and he needs to bring it in.</p> <p>7 Q How do you determine exactly what it will be</p> <p>8 as with regard to postage, copies and faxes?</p> <p>9 A The paralegal will look at the file and make</p> <p>10 a determination.</p> <p>11 Q She will count up the numbers of copies and</p> <p>12 pages?</p> <p>13 A No. It is, again, she will make a</p> <p>14 determination based on the number of defendants that</p> <p>15 are involved, certain amounts of correspondence that</p> <p>16 have been sent out. She will make a determination</p> <p>17 based if the proceeds are coming here or directly to</p> <p>18 the client. She will make a determination if we have</p> <p>19 the original documents or if the original documents</p> <p>20 have already been filed with the court. All that</p> <p>21 encompasses FedEx.</p> <p>22 Q What about telephone charges? Are they</p> <p>23 included in this postage, copies and faxes?</p> <p>24 A Yes, they are.</p> <p>25 Q And so if you had telephone calls, they would</p>
Page 123	Page 125
<p>1 see what kind of updates the client required. I would</p> <p>2 have to look at the file to see if the client requested</p> <p>3 any correspondence or any work product, have to look at</p> <p>4 the file to make a determination if there was an M.I.</p> <p>5 company involved involved that required copies of the</p> <p>6 files. I would have to make a determination if the</p> <p>7 investor for whatever reason requested copies of the</p> <p>8 file. I would have to review the file to see if any</p> <p>9 third parties who would be entitled to the information</p> <p>10 would have received the information.</p> <p>11 Q And so to undertake this effort all we would</p> <p>12 have to do is look at your file from the date that it</p> <p>13 was sent to your office up until July 15th, 1998, see</p> <p>14 how much you had incurred in terms of postage, copies</p> <p>15 and faxes; correct?</p> <p>16 A No, sir.</p> <p>17 Q What else would you have to look at?</p> <p>18 A You would have to look at the date that the</p> <p>19 reinstatement letter was quoted to because the</p> <p>20 reinstatement letter quotes to a certain date.</p> <p>21 Q Okay. What date does this reinstatement</p> <p>22 letter quote through?</p> <p>23 A July 27th, two weeks later.</p> <p>24 Q So then are you telling me that this is</p> <p>25 really an estimate as to how much will be incurred by</p>	<p>1 be noted in the file; correct?</p> <p>2 A Not necessarily.</p> <p>3 Q If they are local, you wouldn't have any</p> <p>4 charges; would you?</p> <p>5 A No, sir.</p> <p>6 Q If they are long distance, would you have</p> <p>7 charges?</p> <p>8 A Yes, sir.</p> <p>9 Q Do you try to keep track of long distance</p> <p>10 charges in your files?</p> <p>11 A No, sir. Volume practice. We don't do it.</p> <p>12 Q Now, as a matter of course in reviewing these</p> <p>13 four files, I note that when you file a motion for</p> <p>14 summary judgment and you file an affidavit of cost with</p> <p>15 the court you do not include postage, copies and</p> <p>16 faxes. Why not?</p> <p>17 A Even though we are allowed to do so under ABA</p> <p>18 rules and under the rules of taxation of costs, the</p> <p>19 judges early on gave us a hard time about it and as</p> <p>20 such to not fight the fight with the judges, we elected</p> <p>21 not to charge it or not to request it in our affidavit</p> <p>22 of cost, albeit that we are truly entitled to do it.</p> <p>23 Q Okay. So let me see if I have your</p> <p>24 explanation down. Since you have attempted to recover</p> <p>25 those costs in front of numerous judges throughout the</p>

Page 130

1 MR. GEYER: We can stipulate for the record
2 that they have.
3 MR. GUILDAY: That's not -- Let me ask the
4 question. You can state whatever objections you need
5 to state. I don't think a stipulation will resolve
6 what I have got.
7 BY MR. GUILDAY:
8 Q When did Countrywide assert an
9 attorney-client privilege as far as you know with
10 regard to your agreement with them?
11 A At the beginning of the relationship.
12 Q Okay. So it pre-dated this lawsuit?
13 A That is correct.
14 Q And so we are clear on what I'm talking
15 about, we are talking about the agreement that you had
16 with Countrywide Mortgage under which you would charge
17 for attorney's fees, costs, title work, title update?
18 Is that what you understand an attorney-client
19 privilege was asserted by Countrywide to?
20 A In part.
21 Q When you say in part, it is other things as
22 well?
23 A That is correct.
24 Q Now, let me ask you a question. Did you
25 instruct attorneys who handled the Welch foreclosure

Page 131

1 when they went to court to seek an award of fees and
2 costs that they were not at liberty to divulge to the
3 court what the arrangement was between David Stern and
4 Countrywide Mortgage because of an attorney-client
5 privilege?
6 A No, I did not.
7 Q Was it disclosed to the court or were
8 attorneys that were representing with your office
9 handling the Welch foreclosure action, were they at
10 liberty to disclose to the court what the terms of the
11 arrangement between Countrywide and David Stern was
12 with regard to the matters I have just described?
13 A You have to ask them.
14 Q Did the attorneys who -- Do you remember
15 which attorney handled this one? Malay Gay. Do you
16 know if she knew what the terms of the agreement
17 between Countrywide Mortgage and the Law Offices of
18 David Stern was at the time that she handled the Welch
19 foreclosure?
20 A I do not.
21 Q Should she have known what the terms of the
22 agreement were?
23 MR. GEYER: Object to the form of the
24 question.
25 A No.

Page 132

1 BY MR. GUILDAY:
2 Q If she didn't know what the terms of the
3 agreement between your office and its client was, how
4 could she possibly seek an award of attorney's fees and
5 costs consistent with the agreement that you had with
6 your client?
7 A Because the terms of the note and mortgage
8 provide for what we can reasonably recover.
9 Q Well, let me just ask you this: Do you know
10 what the terms of the note and mortgage are in the
11 Welch case?
12 A I would have to review it.
13 Q Well, then, how do you know they provide what
14 you can recover if you haven't reviewed it?
15 A Because if there was a problem, then she
16 would have not gotten judgment entered or she would
17 have come to see me and said, David, there is some
18 problem, there is some prohibition or I need some
19 clarification on the matter.
20 My attorneys generally know what they need to
21 know. If there are greater specifics that they
22 require, I am readily available and they will come ask
23 me, at which time I will disclose what they need to
24 know.
25 Q Well, you have indicated that the Welch case

Page 133

1 was a Fannie Mae program loan; correct?
2 A That is correct.
3 Q All right. So the maximum attorney's fee
4 which Ms. Gay could have sought under any circumstances
5 was \$1,000 unless it was a litigated matter; correct?
6 A That is -- That is undetermined because there
7 may perhaps be certain agreements inside of our
8 relationship with Countrywide that would allow us to do
9 different things which they have the right to do. A
10 lender can do whatever they want to do on any type of
11 loan.
12 Q Are you telling me that on a Fannie Mae
13 program loan the lender has the right to change the
14 attorney's fee agreement other than a maximum of
15 \$1,000?
16 A I'm telling you on any loan a lender can do
17 whatever they choose to do. That doesn't make it
18 right. That doesn't make it wrong. That doesn't mean
19 that it violates the terms of the note or the mortgage
20 or the statute. But I'm telling you that Countrywide
21 has clearly invoked their attorney-client privilege and
22 as such I cannot comment on it.
23 Q Let's just go to -- Let me ask you just a
24 couple questions to follow up on that. You ever gone
25 into court and asked for an award of fees and costs and

<p style="text-align: right;">Page 138</p> <p>1 questions up to the point that they actually involve 2 disclosing communications themselves. I think you can 3 answer this question. 4 MR. SCHULTZ: Okay. 5 A I would not ask for an amount that would have 6 violated my agreement with the client. 7 BY MR. GUILDAY: 8 Q So if it is \$1,200, that is more than was 9 permitted under the Fannie Mae guidelines so then it 10 would be pursuant to some other arrangement? 11 MR. GEYER: Object to the form. 12 A That is not more than is allowed under the 13 Fannie Mae guidelines. And I'll help you. It is not 14 more than is allowed under the Fannie Mae guidelines 15 because we have established that if the property goes 16 to a third party then I am entitled under Fannie Mae 17 guidelines to recoup those reasonable fees which had 18 been awarded by the court. 19 BY MR. GUILDAY: 20 Q Okay. Which guideline says that, Mr. Stern? 21 A You have already asked it. I have already 22 answered it. This was at the time of the inception of 23 the program that we sought clarification from Sheila 24 Teimourian on. 25 Q So it is not then contained in any written</p>	<p style="text-align: right;">Page 140</p> <p>1 BY MR. GUILDAY: 2 Q Okay. In instances in which your firm sought 3 and obtained a summary judgment of foreclosure in an 4 uncontested foreclosure and the borrower attempted to 5 reinstate or pay off the mortgage subsequent to that 6 judgment, was it a standard practice of your firm to 7 make the \$75 charge for the title update, the GAP 8 search? 9 MR. GEYER: Object to the form. Objection, 10 asked and answered. 11 A The practice would be that if it was, if the 12 client -- Excuse me. If the borrower was paying off 13 pursuant to the judgment, then that \$75 would not be 14 collected because it was not awarded. You would have 15 to look at the terms of each and every mortgage. So 16 specifically I can't answer. Generally speaking in 17 terms of a reinstatement, generally the right to 18 reinstate perhaps is extinguished with the entry of the 19 judgment. Therefore, there is no longer a right to 20 reinstate and there is a grant to reinstate. And if 21 the client grants that privilege, then we will charge 22 the \$75. In most instances that \$75 I don't believe 23 would be charged. Clearly when it comes to a payoff, 24 it wouldn't. 25 Q Okay. Let's just look at one. Let's look at</p>
<p style="text-align: right;">Page 139</p> <p>1 guideline that you have ever seen that's been issued by 2 Fannie Mae? 3 A You have already asked that and my answer to 4 that was, no. It was through clarification at the 5 inception of the program that we sought with Fannie Mae 6 and you can ask them tomorrow. 7 MR. GEYER: Don't editorialize. 8 BY MR. GUILDAY: 9 Q On the title search -- Excuse me. On the 10 title update, the GAP search \$75 charge -- 11 A Yes, sir. 12 Q -- I noted in reviewing the four foreclosure 13 files that we have here in front of us that when your 14 firm sought and filed a motion for summary judgment 15 that in your affidavit of cost the title update GAP 16 search charge of \$75 was never included. Was that a 17 general practice of your firm? 18 MR. GEYER: Object to the form. 19 A It was. It was actually a general oversight. 20 BY MR. GUILDAY: 21 Q Why did you not seek the \$75 charge when you 22 filed an affidavit of cost with the court? 23 MR. GEYER: Objection, asked and answered 24 prior question. 25 A It was an oversight.</p>	<p style="text-align: right;">Page 141</p> <p>1 Mr. Welch's case. We have a summary final judgment in 2 a foreclosure sale. Okay? 3 A Yes, sir. 4 Q Do you see under cost any charge for title 5 update GAP search? 6 A As previously answered, due to oversight it 7 was not included. 8 Q Oversight. Oversight means you forgot to put 9 it in there basically? 10 A That is procedurally it just was not put in 11 the pleadings. 12 Q And then so the judgment was entered -- By 13 the way, did anybody bring to your attention that in 14 the Welch case that the judge apparently said client 15 fee only per judge -- 16 A No, sir. 17 Q -- and awarded only \$1,000? 18 A Nobody brought that to my attention. 19 Q Did that happen frequently, that judges would 20 refuse to grant attorney's fees greater than what your 21 agreement with your client was? 22 A In which file? 23 MR. GEYER: Objection. 24 BY MR. GUILDAY: 25 Q Just generally.</p>

Page 146

1 this pursuant to some agreement with Countrywide that
2 you can't discuss with us today?
3 MR. GEYER: I object to the form. Objection,
4 asked and answered and object to lack of foundation.
5 But to the extent you can answer it without divulging
6 attorney-client privileged information, answer it.
7 A We provided an attorney fee of \$1,000 on
8 April 20th. That figure was good through May 12th,
9 three weeks later. I do have an agreement with my
10 client in terms of fees and how they are assessed.
11 BY MR. GUILDAY:
12 Q How they are prorated if somebody reinstates?
13 A That is correct.
14 Q So if I were to ask you how you came up with
15 the proration here of attorney's fees of \$1,000, you
16 are going to take the attorney-client privilege? Let
17 me just ask you. Tell me on what basis the proration
18 of attorney's fees was made in this particular case on
19 Mr. Welch?
20 A We take from the beginning of the file and
21 start listing activities. If you look at one of our
22 affidavits, we will say, Mr. Welch, you are looking for
23 figures good through May 15th, May 12th. Therefore, we
24 have a 5/12 date. We will then look and the paralegals
25 will analyze and say where will we be on 5/12 in the

Page 147

1 best case scenario or from his standpoint the worst
2 case scenario? Then the paralegal will go through and
3 say as of today I have already done the complaint and
4 under the standard affidavit file review, title review,
5 case summary review, complaint review, return of review
6 of service, everything that's set out in our
7 affidavits, 0.5, .5, 1.5, 1.2. That turns out to be
8 six hours. So where we will be in the best case
9 scenario on May 12th will be six hours. Six hours
10 times \$150 equals and depending upon what my agreement
11 is with my client, that will dictate where I have to
12 stop or what I can put.
13 Q The agreement with the client will control
14 only the rate then under that scenario?
15 A The agreement with the client will control
16 only the rate? The agreement with the client will --
17 MR. GEYER: You are very close. That's what
18 I'm thinking.
19 A I'm sorry. I can't answer that. That is
20 protected by the attorney-client work privilege that
21 Countrywide has instructed and has invoked.
22 BY MR. GUILDAY:
23 Q The Fannie Mae guidelines have a provision
24 that provide that on reinstatement you may charge only
25 the actual amount of attorney's fees incurred as of the

Page 148

1 reinstatement; don't they?
2 MR. GEYER: Object to the form of the
3 question.
4 A Can you repeat the question, please?
5 BY MR. GUILDAY:
6 Q Don't the Fannie Mae guidelines provide that
7 on a reinstatement you are entitled to be paid only the
8 amount of attorney's fees which you have actually
9 incurred?
10 MR. GEYER: Same objection.
11 A That is correct.
12 MR. SCHULTZ: I have to take a break. I'll
13 call back, though.
14 BY MR. GUILDAY:
15 Q The amount of attorney's fees that you have
16 actually incurred on a file such as Welch, it it done
17 pursuant to the schedule or is it done pursuant to some
18 other arrangement?
19 A You are talking about Fannie Mae in general?
20 Fannie Mae as you indicated tells us what we can charge
21 and, Tom, when we know what we can charge, we start
22 chiseling away at that charge based on the number of
23 hours. So if I am limited to \$1,000 on a given Fannie
24 Mae loan and I have done my file review and loan
25 documents and payment history, that's minus 5 out of

Page 149

1 that \$1,000. And then if I have filed my complaint, my
2 lis pendens, my summons, whatever, that's another .5.
3 So that's three hours out of the way at \$150 an hour.
4 So that \$1,000 is now down to \$700. And if I have got
5 my service back, so that - that on the Fannie Mae is a
6 plateau and I will start chiseling away at it as I
7 render services to the file.
8 Q Okay. So on this case then your paralegal is
9 supposed to count up the number of hours that have been
10 spent and will be spent on that file to the
11 reimbursement date and determine what rate would apply
12 and that's how you come up with this \$1,000?
13 MR. GEYER: Object to the form. Objection,
14 asked and answered. Asked and answered, asked and
15 answered.
16 A I can't answer that. That's protected by the
17 attorney-client privilege. The client has instructed
18 it to be invoked.
19 MR. GEYER: I think the question was with
20 respect to Fannie Mae.
21 THE WITNESS: No. He is talking about this
22 file. He said this file.
23 MR. GEYER: I'm lost. Sorry.
24 BY MR. GUILDAY:
25 Q We had produced here within the last week or

Page 154

1 Q If the information existed, on what type of
2 piece of paper would you get or information would you
3 get that would reflect that?
4 A Tom, it could be one of several things.
5 Depending upon time and depending upon client, we would
6 get a separate invoice. We would get a bulk of
7 invoices. We may have gotten a pass from the fee based
8 on a relationship with the out-sourcer. We could have
9 deducted the \$100 from our first invoice where we
10 assess half of a fee. If that half of a fee is \$500
11 bucks, we may have only charged \$400 and then the extra
12 \$100 would have already showed it as attorney fee and
13 Melon may have paid it to co-counsel. There is five or
14 six different scenarios.
15 Q Okay. We will come back to that. Looking at
16 this particular document we are looking at, it says,
17 "These clients do not allow us to charge over \$1,000 on
18 any loan. Please use the following fee schedule. And
19 then it says this does not apply to third-party
20 transactions." You have got FHA loans, Fannie Mae,
21 Colonial Mortgage.
22 A Yes.
23 Q Is that the lenders that particular provision
24 applies to?
25 MR. GEYER: Objection, lack of foundation.

Page 155

1 A I'm not sure I understand your question. I'm
2 trying to read what it says but I'm not understanding.
3 I'm sorry.
4 BY MR. GUILDAY:
5 Q Let me ask you something. What clients would
6 you use this fee schedule on, if any?
7 A At what point in time?
8 Q At any point through the present.
9 A The ones that are party to this action that
10 have not invoked the privilege. I can say on Fannie
11 Mae loans. I can say as of early 1999 Fannie Mae
12 program and non-program loans. I cannot say as to
13 other clients because the other clients have not waived
14 the attorney-client privilege. Colonial is one of our
15 files. Colonial on the Fannie Mae if they are in the
16 program, I can't charge over \$1,000. If they are out
17 of the program, if it is prior to early 1999, then it
18 is cash or pay rule.
19 Q Okay. This schedule, breakdown as to amounts
20 which would be paid based upon where the file is if it
21 is reinstated --
22 A Yes, sir.
23 Q -- what lenders or loans does this apply as
24 utilized in your office?
25 MR. GEYER: To the extent it doesn't call for

Page 156

1 an attorney-client privileged communication, answer it.
2 A This applies to Fannie Mae loans that are in
3 the program. This applies to Fannie Mae loans that are
4 outside of the program after early 1999.
5 BY MR. GUILDAY:
6 Q So prior to early 1999 outside the program
7 your paralegals would not use this schedule if they
8 were determining attorney's fees in a reinstatement
9 letter? Have I got that right?
10 MR. GEYER: Objection to the form.
11 A Prior to early 1999 on Fannie Mae non-program
12 loans my staff would not use this fee schedule in
13 assessing reinstatements, correct.
14 BY MR. GUILDAY:
15 Q Take a look at page ST00144.
16 A Okay.
17 Q What loans does this schedule apply to?
18 A It appears that this schedule would apply to
19 Northwest.
20 Q How have you determined that?
21 A Because Northwest is very restrictive on
22 their pro-rata fees and will hold us to \$1,000 only if
23 the property has gone to sale.
24 Q Northwest, are you referring when you say
25 Northwest to there is a law firm or legal group that

Page 157

1 retains you to handle various mortgage foreclosures?
2 A Yes, sir.
3 Q That is Northwest Companies known as
4 Northwest Legal Services, P.A.?
5 A A Minnesota corporation, a Minnesota law
6 firm.
7 Q So then this schedule here at ST00144 is a
8 schedule that Northwest provided to you for handling
9 mortgage foreclosures on loans that they had referred
10 to your firm?
11 A That's what I recognize this schedule to be.
12 Q It says FHA conventional CONB up there. Do
13 you know what that means?
14 A Actually, I do. These are prorated out as
15 percentages on a Northwest file. Northwest doesn't
16 come in and say I'll pay you \$300, I'll pay you \$100,
17 I'll pay you \$700. What Northwest comes in and does is
18 on a nationwide basis in their judicial states, they
19 say I'll pay you 10 percent, I'll pay you 30 percent,
20 I'll pay you 70 percent.
21 So if only on an FHA or conventional which
22 pretty much encompasses Fannie, Freddie, everything but
23 VA, these would be the fees that we could charge. On a
24 VA-insured loan where the fee depending upon the
25 agreement with the client could perhaps be limited to

Page 162	Page 164
<p>1 affidavit filed?</p> <p>2 MR. GEYER: Object to the form of the</p> <p>3 question.</p> <p>4 A I'm sorry. I lost you. I'm sorry.</p> <p>5 BY MR. GUILDAY:</p> <p>6 Q Let me just assume that -- I won't ask you to</p> <p>7 assume but in this particular case the amount of</p> <p>8 attorney's fees which were sought were \$150 per hour in</p> <p>9 a motion for summary judgment.</p> <p>10 A Okay.</p> <p>11 Q If you divided \$150 into \$850, you get</p> <p>12 slightly, what would you get, five and three quarters</p> <p>13 hours; correct?</p> <p>14 A I don't know. I need a calculator.</p> <p>15 Q Somewhat less than six hours. Would you then</p> <p>16 expect the attorney's fee affidavit that was filed to</p> <p>17 reflect that there was actually six hours worth of</p> <p>18 attorney's work that had been expended when this</p> <p>19 reinstatement letter went out on July 15th, 1998?</p> <p>20 MR. GEYER: Object to the form of the</p> <p>21 question.</p> <p>22 A The affidavit will reflect -- How should I</p> <p>23 say this? The affidavit will reflect those hours or</p> <p>24 greater hours.</p> <p>25 Q So you wouldn't expect to find a situation in</p>	<p>1 Slocum, Bryant, Walker file closely to determine</p> <p>2 whether there are any inconsistencies between the</p> <p>3 attorney's fees affidavits which have been filed in</p> <p>4 support of motions for summary judgment and the amount</p> <p>5 sought on various reinstatement letters?</p> <p>6 MR. GEYER: Object to the form of the</p> <p>7 question.</p> <p>8 A No, sir; I have not.</p> <p>9 BY MR. GUILDAY:</p> <p>10 Q If I understand the affidavit that we have</p> <p>11 got here that Ms. Gay filed in this particular case,</p> <p>12 she is signing an affidavit saying that she has</p> <p>13 reviewed the loan documents and case file in</p> <p>14 preparation of filing a foreclosure complaint, she</p> <p>15 spent an hour and a half.</p> <p>16 A Okay.</p> <p>17 Q And then she has prepared a complaint, notice</p> <p>18 of --</p> <p>19 A Lis pendens.</p> <p>20 Q -- lis pendens and she is charging an hour</p> <p>21 and a half for that.</p> <p>22 MR. GEYER: Object to the form of the</p> <p>23 question.</p> <p>24 BY MR. GUILDAY:</p> <p>25 Q She has reflected an hour and a half of time</p>
Page 163	Page 165
<p>1 which the attorney's fee affidavit that was filed by</p> <p>2 the lawyer employed by your firm reflected that only</p> <p>3 one or two hours worth of work had been expended at the</p> <p>4 time that the reinstatement letter went out if a fee of</p> <p>5 \$850 was included in the reinstatement letter; would</p> <p>6 you?</p> <p>7 MR. GEYER: Object to the form of the</p> <p>8 question.</p> <p>9 A It is going to be -- The affidavit is going</p> <p>10 to be equal to those numbers.</p> <p>11 Q Or greater?</p> <p>12 A Greater.</p> <p>13 Q Because otherwise you would be seeking from</p> <p>14 borrowers attorney's fees that you actually hadn't</p> <p>15 incurred; wouldn't you?</p> <p>16 MR. GEYER: Object to the form.</p> <p>17 A There are instances where I need to reduce my</p> <p>18 hours or discount my hours in a reinstatement to stay</p> <p>19 within the agreement that I might have with a client.</p> <p>20 So there may be a below hour count in the reinstatement</p> <p>21 but the attorney affidavit may be higher to also be</p> <p>22 consistent with what my client allows me to do in the</p> <p>23 event that a third party comes in.</p> <p>24 BY MR. GUILDAY:</p> <p>25 Q Have you looked at these files, the Welch,</p>	<p>1 for that; correct?</p> <p>2 A Yes, sir.</p> <p>3 MR. GEYER: Object to the form.</p> <p>4 BY MR. GUILDAY:</p> <p>5 Q If a letter of reinstatement went out at this</p> <p>6 point in time corresponding with these particular</p> <p>7 activities, would you expect it to reflect no more than</p> <p>8 an amount of attorney's fees equal to three hours worth</p> <p>9 of work?</p> <p>10 A That would be incorrect.</p> <p>11 MR. GEYER: Object to the form.</p> <p>12 BY MR. GUILDAY:</p> <p>13 Q It would be incorrect. What should it</p> <p>14 reflect?</p> <p>15 A It would reflect the amount of attorney's</p> <p>16 fees that are anticipated or estimated to be rendered</p> <p>17 through the date in which the reinstatement figure has</p> <p>18 been given.</p> <p>19 Q So you could look to the reinstatement figure</p> <p>20 and determine that date, then you could go through your</p> <p>21 file and see what activities were completed by that</p> <p>22 date and the two should match up; should they not?</p> <p>23 MR. GEYER: Object to the form.</p> <p>24 A Not necessarily. If this just occurred</p> <p>25 today, we know that this is earned. But if they</p>

Page 170

1 A You said the GAP was done, too. There is no
2 GAP in these first three categories. I'm sorry, sir.
3 Q Maybe she included it in the time that she
4 reflected.
5 MR. GEYER: Object to the form of the
6 question.
7 A I'm just reading what you put in front of
8 me. I'm sorry.
9 BY MR. GUILDAY:
10 Q Well, you would agree that the three hours
11 roughly covered the services that we just discussed?
12 MR. GEYER: Object to the form of the
13 question.
14 A I would have to review the file. I would
15 have to know how many defendants are involved. I would
16 have to look at the circumstances. You really have to
17 ask her and judging by her affidavit, she -- That's
18 apparently what she put. But I can't say because I
19 haven't reviewed the file. I would have to review the
20 file, the circumstances, the history, everything.
21 BY MR. GUILDAY:
22 Q All right. Well, asking you to assume that
23 what she put down was accurate, and, furthermore, that
24 she swore that it was true and accurate when she filed
25 this affidavit, can you tell me how three hours of

Page 171

1 attorney's time can justify an attorney's fee
2 allocation in a reinstatement letter of \$1,000?
3 MR. GEYER: Objection to the question. Lack
4 of foundation. Object to the form of the question.
5 A Figures were good through May 12th. You have
6 to go down and take into account a lot more activity.
7 At the date of the letter that may have been done but
8 we are forecasting where we will be on this file three
9 weeks later. Therefore, you need to add in a whole
10 bunch of additional categories.
11 BY MR. GUILDAY:
12 Q Having reviewed this letter in this file, do
13 you know whether the reinstatement paralegal that
14 prepared this reinstatement letter used one of the
15 schedules that we referred to in the reinstatement
16 guidelines or some other type of mechanism to calculate
17 the \$1,000?
18 MR. GEYER: Objection, lack of foundation.
19 A I don't know what she used.
20 BY MR. GUILDAY:
21 Q What should she have used in this particular
22 case? This is a Countrywide Mortgage, Mr. Welch.
23 A She would have had to use the Countrywide
24 agreement that is protected by attorney-client
25 privilege and cannot be disclosed under instructions of

Page 172

1 Countrywide's counsel.
2 MR. GUILDAY: Let's mark the reinstatement
3 procedures as the next exhibit.
4 (Thereupon, Plaintiff's Exhibit No. 120 was
5 marked.)
6 BY MR. GUILDAY:
7 Q Next could you identify for me what has been
8 produced here within the last week or so as exhibit it
9 is ST00136. We have marked it at a previous deposition
10 as Exhibit 100.
11 A This appears to be billing fees for those
12 clients that allow us to assess half of the insurer
13 investor fee at the beginning plus out-of-pocket costs.
14 Q Who are those clients? Are they identified
15 on this document?
16 A No, they are not.
17 Q It appears to me there is information deleted
18 from this document.
19 MR. GEYER: Is that a question?
20 BY MR. GUILDAY:
21 Q I'm just telling you. If you look at it, it
22 says special instructions in certain clients are as
23 follows. There is nothing that follows.
24 A Well, if they pertain to other --
25 MR. GEYER: Let him ask a question.

Page 173

1 BY MR. GUILDAY:
2 Q Okay. Has there been information deleted
3 from this document?
4 MR. GEYER: Objection, lack of foundation.
5 A It looks like things have been redacted.
6 BY MR. GUILDAY:
7 Q What information is being redacted?
8 A I don't know.
9 MR. GEYER: Objection, lack of foundation.
10 A I don't know.
11 BY MR. GUILDAY:
12 Q Tell me what this document is used for in
13 your organization.
14 A This document will be used for initial bills
15 for those clients that will allow us to bill them
16 initially through two invoices, one at the beginning of
17 the foreclosure action after the complaint has been
18 filed.
19 Q Okay. And now you indicated this was
20 out-of-pocket cost. What are you referring to there?
21 MR. GEYER: Object to the form.
22 BY MR. GUILDAY:
23 Q It is also included where you are entitled to
24 bill for out-of-pocket costs?
25 MR. GEYER: Object to the form.

<p style="text-align: right;">Page 178</p> <p>1 BY MR. GUILDAY:</p> <p>2 Q Could you identify this document for us?</p> <p>3 A This is a referral from Colonial Mortgage</p> <p>4 Company.</p> <p>5 Q It refers to the Walker mortgage, one of the</p> <p>6 plaintiffs in this particular case?</p> <p>7 A That is correct.</p> <p>8 Q Is this the agreement between your law firm</p> <p>9 and Colonial Mortgage for handling this particular loan</p> <p>10 foreclosure?</p> <p>11 A It is in part.</p> <p>12 Q Okay. What part is?</p> <p>13 A The fact that it is the referral, the fact</p> <p>14 that it is the default information.</p> <p>15 Q Okay. The first paragraph says, the third</p> <p>16 sentence says, "The attorney's fee will be \$1,000.</p> <p>17 This fee includes all costs for postage, travel and</p> <p>18 telephone calls." Is that the terms of the agreement</p> <p>19 between Colonial Mortgage Company and your law firm for</p> <p>20 handling this mortgage?</p> <p>21 A No, it is not.</p> <p>22 Q And let me guess. There is a verbal</p> <p>23 agreement between you and the mortgage company for some</p> <p>24 other fee agreement; is that an accurate statement?</p> <p>25 MR. GEYER: Object to the form of the question</p>	<p style="text-align: right;">Page 180</p> <p>1 A Five, six years.</p> <p>2 Q Going all the way back to that point?</p> <p>3 A I would think so, yes.</p> <p>4 Q Did you memorialize this agreement with any</p> <p>5 type of written memorandum or anything like that?</p> <p>6 A It has only been memorialized by conduct of</p> <p>7 the client.</p> <p>8 Q Is there any written communication between</p> <p>9 you and Colonial Mortgage Company or from Colonial</p> <p>10 Mortgage Company to you that confirms this different</p> <p>11 special agreement as to what you will be paid?</p> <p>12 A No, there is not.</p> <p>13 Q What is the verbal agreement in terms of</p> <p>14 payment of attorney's fees and costs?</p> <p>15 A The agreement is that in terms of costs, they</p> <p>16 will adhere to Fannie Mae guidelines proposed</p> <p>17 adjustment 1999. It also --</p> <p>18 Q That means from early 1999 costs will be</p> <p>19 controlled by the Fannie Mae guidelines?</p> <p>20 A Correct.</p> <p>21 Q Prior to the change that occurred earlier</p> <p>22 this year, what was the agreement as to costs?</p> <p>23 A Prior they would pay the costs dictated by</p> <p>24 Fannie Mae, prior to 1998, and Ms. Sheila Teimourian's</p> <p>25 instruction not to charge the \$75 and the postage. Our</p>
<p style="text-align: right;">Page 179</p> <p>1 and the characterizations made.</p> <p>2 A That is correct.</p> <p>3 BY MR. GUILDAY:</p> <p>4 Q When was this verbal agreement entered into</p> <p>5 that is different than this written document?</p> <p>6 A At the inception of the relationship with</p> <p>7 Colonial Mortgage Company.</p> <p>8 Q So it would be before this letter, this</p> <p>9 referral letter, was sent to you on September 3rd,</p> <p>10 1997?</p> <p>11 A That is correct. This would be applicable if</p> <p>12 there was a Fannie Mae program loan, which it is not.</p> <p>13 It is a non-program loan.</p> <p>14 Q What would be applicable?</p> <p>15 A The \$1,000 and the postage and copying. But</p> <p>16 it is not a program loan.</p> <p>17 Q All right. So this verbal agreement on this</p> <p>18 loan, who was it with?</p> <p>19 A Heidi McCollough. It is also admitted by</p> <p>20 conduct, modified by conduct.</p> <p>21 Q Do you recall when this oral agreement or</p> <p>22 this oral conversation took place?</p> <p>23 A I'm sorry. I do not.</p> <p>24 Q How long have you been representing Colonial</p> <p>25 Mortgage Company?</p>	<p style="text-align: right;">Page 181</p> <p>1 agreement with the fee was cash versus property.</p> <p>2 Q Would it be then the same that you have</p> <p>3 testified to as to Melon Mortgage Company, the same</p> <p>4 agreement cash versus property?</p> <p>5 A Yes.</p> <p>6 Q Would that be true as to costs as well?</p> <p>7 A Yes.</p> <p>8 Q In terms of Colonial Mortgage, were you given</p> <p>9 any guidelines, directions as to what was a customary</p> <p>10 and reasonable fee?</p> <p>11 A No.</p> <p>12 Q And the same with costs, no guidelines or</p> <p>13 directions from Colonial Mortgage as to what costs?</p> <p>14 A As long as the costs were within the Fannie</p> <p>15 Mae guidelines, they were fine with them.</p> <p>16 Q That's where I'm a little confused. I</p> <p>17 thought you said that the costs were controlled by the</p> <p>18 Fannie Mae guidelines after the change in 1999.</p> <p>19 A No. What I'm saying is we were allowed to</p> <p>20 accept the guidelines for title update up until that</p> <p>21 was cut off by Ms. Teimourian in 1998. After that we</p> <p>22 were not allowed to charge the \$75.</p> <p>23 Q What about as to postage, copies, that kind</p> <p>24 of thing?</p> <p>25 MR. GEYER: We are asking about Melon right</p>

Page 186	Page 188
<p>1 paid it. The \$75 is within the guidelines. It is 2 recoverable and Fannie Mae has always reimbursed the 3 servicers for it. It wasn't until July 1998 that 4 Sheila said don't do it and had I done it, it probably 5 would have been rejected as a non-reimbursable cost 6 because Sheila told the payment people do not reimburse 7 servicers this \$75. 8 BY MR. GUILDAY: 9 Q That's what I want to understand. Based upon 10 your testimony we have had today, when you get a 11 judgment in foreclosure, the standard practice of your 12 office is not to seek the \$75 title update and GAP 13 search and the judgment amount. So are you telling me 14 then that the Colonial Mortgage reimburses you the \$75 15 in addition to the judgment? 16 MR. GEYER: Object to the form of the 17 question. Objection asked and answered. 18 A Irregardless, they do assuming they get the 19 property back. If they don't get the property back and 20 it is cash, if I did not collect it on their behalf, 21 they will not pay me. 22 BY MR. GUILDAY: 23 Q Maybe I misunderstood you. That's what I 24 thought we were getting to. When the property goes to 25 foreclosure judgment and sale and they have to take the</p>	<p>1 question. 2 A What was your question? 3 MR. GEYER: He did. 4 BY MR. GUILDAY: 5 Q On the costs. You were trying to answer and 6 I think you were interrupted by the objection. 7 MR. GEYER: No. I was making an objection to 8 precede his answer. 9 A Please. 10 MR. GEYER: Which is the appropriate order to 11 do things in. 12 MR. GUILDAY: Well, you interrupted the answer 13 so let's give you an opportunity to answer the 14 question. 15 MR. GEYER: Again, I stand by my position. 16 Could you read the question back, please? 17 BY MR. GUILDAY: 18 Q Let me phrase the question quicker. On those 19 situations in which your firm charges \$60 for copies, 20 postage, facsimiles, FedEx and the property goes to 21 judgment foreclosure sale and Colonial takes it back, 22 do you charge Colonial the \$60 fee for those items? 23 MR. GEYER: Objection, asked and answered, 24 asked and answered, asked and answered. 25 A No.</p>
Page 187	Page 189
<p>1 property back, do they pay you the \$75 for your title 2 update and GAP search? 3 MR. GEYER: Before it was prohibited? 4 MR. GUILDAY: Yes. 5 A Before it was -- 6 MR. GEYER: Objection, asked and answered, 7 object to the form. 8 A Before it was stopped, yes, they did. 9 BY MR. GUILDAY: 10 Q Okay. And did Colonial Mortgage Company pay 11 you the \$60 fee you imposed for copies, faxes, 12 telephone and other charges in instances where the 13 property went to judgment and foreclosure sale? 14 A And back to the lender? 15 Q And back to the lender. 16 MR. GEYER: Objection to the form. Objection, 17 asked and answered. Slow down, David, please. We are 18 replowing territory five, six, seven times. 19 MR. GUILDAY: I disagree with you. 20 MR. GEYER: Well, I disagree with you. 21 MR. GUILDAY: Okay. So that's where we are. 22 A You know what, I go at this eighteen hours a 23 day so I'm ready. 24 BY MR. GUILDAY: 25 Q Me, too. So go ahead and answer the</p>	<p>1 BY MR. GUILDAY: 2 Q Is there anyone that you are familiar with in 3 Colonial Mortgage that is aware of this verbal 4 agreement that you have with them other than Heidi 5 McCollough? 6 MR. GEYER: Objection to the form of the 7 question. 8 A I'm not aware who Heidi McCollough advised, 9 cleared. Certainly people are aware of it because they 10 continue to adhere to the modification by conduct. 11 Q Is Heidi McCollough still with Colonial 12 Mortgage, do you know? 13 A She is not in foreclosures. I don't know if 14 she is there or not. 15 Q Have you had occasion to discuss this matter 16 with her at any time recently? 17 A No, sir. 18 Q Have you discussed with anyone with Colonial 19 Mortgage any time within the last six months the 20 subject of this verbal agreement? 21 A No, sir. 22 Q Have you had any discussions with anyone at 23 Colonial Mortgage regarding the lawsuit that you are 24 involved in? 25 A Yes, sir.</p>

Page 194	Page 196
<p>1 MR. GEYER: Thanks.</p> <p>2 A Actually I think they are aware of it because</p> <p>3 I believe that one of my attorneys have sought</p> <p>4 clarification from in-house counsel as to their waiver</p> <p>5 of attorney-client privilege. So I would have to say</p> <p>6 that they are aware of it based on that waiver.</p> <p>7 MR. GUILDAY: Can you mark that?</p> <p>8 A Can we take a ten-minute break since we are</p> <p>9 in between?</p> <p>10 MR. GUILDAY: Sure.</p> <p>11 (Thereupon, Plaintiff's Exhibit No. 122 was</p> <p>12 marked.)</p> <p>13 BY MR. GUILDAY:</p> <p>14 Q Back on the record. We identified Exhibit</p> <p>15 122 which is an agreement between your law firm and the</p> <p>16 Northwest Companies, also known as Northwest Legal</p> <p>17 Services, P.A. Could you identify that?</p> <p>18 A This is an agreement that indeed we, the Law</p> <p>19 Offices of David J. Stern, entered into with Northwest</p> <p>20 Mortgage, Northwest Companies known as Northwest Legal</p> <p>21 Services, P.A., a Minnesota law firm.</p> <p>22 Q This has to do with the Woody claim; correct?</p> <p>23 A Is this the First Nationwide versus Woody?</p> <p>24 Q Yes.</p> <p>25 A That would be correct; yes, sir.</p>	<p>1 prosecute foreclosures and I prosecute foreclosures.</p> <p>2 Q Do you represent First Nationwide Lending on</p> <p>3 a direct basis?</p> <p>4 A Yes, sir; I do.</p> <p>5 Q For residential loans?</p> <p>6 A Yes, sir; I do.</p> <p>7 Q Did you at the time of this agreement?</p> <p>8 That's back in 1996.</p> <p>9 A No, sir; I did not.</p> <p>10 Q In terms of the Woody foreclosure, is the</p> <p>11 agreement we have marked as Exhibit 122 the agreement</p> <p>12 that you proceeded under or is there some other</p> <p>13 arrangement?</p> <p>14 A The agreement has been modified through oral</p> <p>15 modifications, express modifications and modified by</p> <p>16 conduct.</p> <p>17 Q Okay. Are we talking about the same oral</p> <p>18 modifications that we have discussed in the Welch and</p> <p>19 the Slocum files with regard to fees and costs?</p> <p>20 A Yes.</p> <p>21 Q The oral agreements modifications that you</p> <p>22 have indicated occurred, did they occur with</p> <p>23 representatives of Northwest Legal Services, P.A. or</p> <p>24 First Nationwide?</p> <p>25 A Northwest Legal Services.</p>
Page 195	Page 197
<p>1 Q In connection with this document that we have</p> <p>2 identified, is there a separate agreement that you have</p> <p>3 with First Nationwide?</p> <p>4 A No, there is not.</p> <p>5 Q Do you know whether the law firm, Northwest</p> <p>6 Legal Services, P.A., has an agreement with First</p> <p>7 Nationwide?</p> <p>8 A I know that an agreement exists, yes.</p> <p>9 Q Have you ever seen it?</p> <p>10 A No, sir; I have not.</p> <p>11 Q Is it standard where you are retained by a</p> <p>12 law firm such as Northwest Legal Services, P.A. that</p> <p>13 you would not see the underlying agreement between that</p> <p>14 law firm and the lender?</p> <p>15 MR. GEYER: Object to the form.</p> <p>16 A Is that standard? Is that what you asked?</p> <p>17 BY MR. GUILDAY:</p> <p>18 Q Yes.</p> <p>19 A It is standard that I would not see that.</p> <p>20 Q So then you have to assume that the agreement</p> <p>21 that you enter into with the law firm contains all of</p> <p>22 the agreements between that law firm and the lender; do</p> <p>23 you not?</p> <p>24 A I don't assume anything other -- I assume</p> <p>25 nothing. I know that the law firm has retained me to</p>	<p>1 Q Who with Northwest Legal Services did those</p> <p>2 agreements occur with?</p> <p>3 A Laura McEntire.</p> <p>4 Q What is she, an attorney with that firm?</p> <p>5 A She is -- I don't believe she is an</p> <p>6 attorney. I'm not sure. She is my contact.</p> <p>7 Q Do you know what position she has in that law</p> <p>8 firm?</p> <p>9 A No, I don't.</p> <p>10 Q Do you know what role she plays?</p> <p>11 A She is a manager. She oversees a tremendous</p> <p>12 amount of the operation. She is a person of authority.</p> <p>13 Q When did the oral modifications occur?</p> <p>14 A On or about the time that we entered into</p> <p>15 this agreement.</p> <p>16 Q Do you know whether anyone at First</p> <p>17 Nationwide -- Which was the lender in this particular</p> <p>18 case; was it not?</p> <p>19 A I'm not sure if it was the lender or the</p> <p>20 servicer or the insured. I would have to look at the</p> <p>21 file.</p> <p>22 Q Do you know whether First Nationwide ever</p> <p>23 agreed to these oral modifications?</p> <p>24 A I do not.</p> <p>25 Q I take it there is no written document of any</p>

<p style="text-align: right;">Page 202</p> <p>1 me. Because when the file comes in under our 2 guidelines, generally title is ordered within an hour. 3 Northwest referrals come via electronic and we have a 4 special team that handles those. So it is going to be 5 very unlikely that there is going to be an in between 6 charge. Either the client is going to call and say the 7 file is on its way don't open it for which there will 8 be no charge, or the client is going to call the next 9 day and say, hey, put the file on hold, what do we owe 10 you? At that point in time if title has already been 11 ordered and the file has been reviewed, then they will 12 owe the amount consistent with the agreement that we 13 have with the client. 14 Q Have you ever indicated to the reinstatement 15 paralegals that they are to charge the minimum amount 16 from the moment the file is opened? 17 MR. GEYER: Object to the form. 18 BY MR. GUILDAY: 19 Q Let me rephrase it. I can do a little better 20 job. 21 Have you ever indicated to your reinstatement 22 paralegals that they are to charge a minimum fee of 23 \$300 from the moment the file was opened? 24 A No. 25 Q That would be improper to do that, wouldn't</p>	<p style="text-align: right;">Page 204</p> <p>1 Mae, then I am to adhere to Fannie Mae guidelines. If 2 it is a Ginnie Mae which it says is a contradiction of 3 terms, then I'm to adhere to Ginnie Mae guidelines. 4 And if it is a conventional loan with a private 5 mortgage insurer, then I am to adhere to the guidelines 6 of the relative MI company. 7 Q Is there a set of schedule of costs that you 8 have been provided in connection with your agreement 9 with Northwest Legal Services, P.A.? 10 A No, sir; there is not. I have -- Actually, I 11 take that back. I have actually been provided with a 12 copy of a letter from Fannie Mae to Northwest advising 13 Northwest that it is okay for me to charge \$175 for a 14 title search and \$150 for a title exam. I have been 15 provided with those cost guidelines by virtue of a cc. 16 from Fannie Mae to Northwest as well as a copy of that 17 letter from Northwest to me. 18 Q Paragraph 11 talks about non-reimbursable 19 expenses. It says, "Absent prior written authorization 20 from Northwest we will not be paid for and invoices 21 shall not include expenses for travel time, expenses, 22 meals, telephone calls, document preparation, 23 secretarial time, notary service, postage and mailing 24 costs, facsimile costs, shipping costs, photocopying 25 charges, charges on West Law, et cetera." Is there</p>
<p style="text-align: right;">Page 203</p> <p>1 it? 2 MR. GEYER: Object to the form. 3 A It would be improper to charge a minimum fee 4 on a file that had just been opened and nothing else 5 done unless that minimum fee was such that it would be 6 proper. So you have to tell me what minimum fee. 7 BY MR. GUILDAY: 8 Q Looking at this agreement under paragraph 10, 9 it says billing issues, procedures. It says, 10 "Adherence to fee and cost regulation guidelines and 11 fee caps established by all government-sponsored 12 entities." 13 MR. GEYER: What paragraph? 14 MR. GUILDAY: Paragraph 10, page 2. 15 A Okay. 16 MR. GEYER: Question? 17 BY MR. GUILDAY: 18 Q Okay. Does that mean the Fannie Mae 19 guidelines as you understand it? 20 A No, sir. 21 Q What all does it mean? 22 A It means that if it is an FHA guideline I am 23 to adhere FHA guidelines. If it is a VA, I have to 24 adhere to VA guidelines. If it is a Freddie Mac, I am 25 to adhere to Freddie Mac guidelines. If it is Fannie</p>	<p style="text-align: right;">Page 205</p> <p>1 some arrangement that modifies that provision? 2 A There is an oral representation modifying 3 that. 4 Q And that's the same one we have talked about 5 with Melon and the other? 6 A That is correct. 7 Q Paragraph 13 indicates that, "In the event 8 that Stern seeks fees in addition to those provided 9 under the agreement, you have to make a specific 10 request for approval of those fees." 11 A That has been modified in part. 12 Q How? 13 A That has been modified by conduct as well as 14 oral. 15 Q Okay. When you say modified by conduct in 16 the context of this agreement, are you talking about 17 the actions of Northwest Legal Services, P.A. or the 18 First Nationwide? 19 A Well, this contract pertains to other than 20 First Nationwide. I am talking about Northwest Legal 21 Services. 22 Q So when you submit your invoice, it goes to 23 Northwest Legal Services, P.A. and not to First 24 Nationwide? 25 A That is correct.</p>

Page 210

1 and mortgage that pertains to this specific instance.
2 Q Okay. Let's talk about VA mortgage
3 guidelines briefly.
4 A Yes, sir.
5 Q We have had some documents produced to us.
6 Would you tell me if this is what you understand
7 controls handling of VA mortgage foreclosures?
8 MR. GEYER: Off the record.
9 (Thereupon, a discussion off the record was
10 had.)
11 A Okay. I'm sorry. What was your question?
12 BY MR. GUILDAY:
13 Q That's off of West Law. But is that
14 generally the rules and regulations that control with
15 regard to VA mortgage foreclosures?
16 MR. GEYER: Objection, lack of foundation.
17 A I don't know what this is. 38 CFR 36 is what
18 controls the basic guidelines of a VA foreclosure and
19 then under VA guidelines you defer to your chief loan
20 guarantee officer in each regional office to make other
21 determinations.
22 Q Is there a handbook that you utilize in
23 handling VA foreclosures?
24 A There is a handbook. I have not seen it.
25 Our scope of handling VA loans, I would consider it to

Page 211

1 be limited. Others would consider it not to be
2 limited. But having done it for so many years, it is
3 somewhat limited and we know how to handle VA loans.
4 Q Do you have the handbook in your offices? Do
5 you refer to it?
6 A I don't refer to it. I cannot state that my
7 staff refers to it at present. At one time I referred
8 to it but at present I have no need to refer to it or I
9 have not had a need to refer to it and I cannot speak
10 for my employees, if they had to consult the book.
11 Generally it is easier to pick up the phone and perhaps
12 call somebody.
13 Q Are there servicing guidelines that pertain
14 to the VA mortgage program?
15 A There are servicing guidelines, yes.
16 Q Do you have those?
17 A I do not.
18 Q Any reason why not?
19 A I'm an attorney. I'm not a servicer.
20 Q Are there attorney guidelines that are
21 provided for handling VA mortgages?
22 A Not that I'm aware of.
23 MR. GUILDAY: Let's mark this as Exhibit 123.
24 (Thereupon, Plaintiff's Exhibit No. 123 was
25 marked.)

Page 212

1 BY MR. GUILDAY:
2 Q Take a look at the document produced ST00145
3 through 146. Tell me what that is.
4 A Yes, sir.
5 Q And what is that?
6 A This is a Freddie Mac update.
7 Q Is that an excerpt of a Freddie Mac update
8 with certain information redacted or removed from it?
9 A Yes, sir; it is.
10 Q What information has been removed? Do you
11 know?
12 A I do not.
13 Q Do you know why any information would have
14 been removed from this?
15 A Probably because it doesn't pertain to the
16 lawsuit I guess. I have not a clue.
17 Q You can't think of any privilege that would
18 pertain, can you?
19 A There may very well be. If I saw what was
20 redacted, I can answer it. And since I can't see and I
21 can't presume and I won't presume, I can't tell you.
22 Q What information would Freddie Mac issue to
23 you in the form of a bulletin that would be privileged?
24 A I don't know. But I do see that this is
25 marked confidential and if it comes from Freddie Mac

Page 213

1 marked confidential, then it is confidential. You
2 probably have to ask Freddie Mac.
3 Q Are you aware of any legal privilege that
4 exists with regard to a guideline from Freddie Mac?
5 A I'm not sure that this was a guideline.
6 There may have been something above it.
7 Q It says, "Subject Freddie Mac bulletin 98-2."
8 A That says it on the front page but I don't
9 know what it says on the second page. I don't know if
10 in-house counsel wrote me a note. I have not a clue.
11 It is redacted so I cannot tell you.
12 MR. GUILDAY: Let's mark that as the next
13 exhibit.
14 (Thereupon, Plaintiff's Exhibit No. 124 was
15 marked.)
16 BY MR. GUILDAY:
17 Q Do you know what the date of this particular
18 memo was?
19 A Well, it's dated Wednesday, April 1st, 1998,
20 at 1:54 p.m. That appears to be the date.
21 Q Looking over to page 4 which is what the next
22 page is --
23 A Yes, sir.
24 Q -- and assuming it goes with the front page,
25 it says, "Title Expenses" and it says, "We have

<p style="text-align: right;">Page 218</p> <p>1 not reimburse you."</p> <p>2 A Okay. So what's your question?</p> <p>3 Q The question to you is do you understand that</p> <p>4 to mean that Freddie Mac is telling you that they will</p> <p>5 not reimburse for a title exam because it is already</p> <p>6 included in your attorney's fee?</p> <p>7 A No, sir. Additional expenses for attorney</p> <p>8 trustees to review. They are going to review -- They</p> <p>9 are going to pay me my \$150 for my initial review but</p> <p>10 don't come back and ask for anything else.</p> <p>11 MR. GUILDAY: Let's go ahead and mark this</p> <p>12 one. This is marked I think.</p> <p>13 BY MR. GUILDAY:</p> <p>14 Q Do you get the announcements that come from</p> <p>15 Fannie Mae?</p> <p>16 A In most instances, yes, sir.</p> <p>17 Q Were there some additional guidelines that</p> <p>18 were announced by Fannie Mae particularly in connection</p> <p>19 with 98-06?</p> <p>20 A Yes, sir; there were.</p> <p>21 Q You are familiar with those; correct?</p> <p>22 A I am familiar with the bulletins. I have to</p> <p>23 read this to refresh my memory as to what applicability</p> <p>24 it has, if any, for the State of Florida.</p> <p>25 MR. GUILDAY: Let me mark it. Mark that as</p>	<p style="text-align: right;">Page 220</p> <p>1 attorney's fees?</p> <p>2 A I don't believe it made any revisions in the</p> <p>3 State of Florida.</p> <p>4 Q Take a look over to the back of that</p> <p>5 document.</p> <p>6 A Okay.</p> <p>7 Q As a matter of fact, we have it is page 014</p> <p>8 looks like facsimile David J. Stern.</p> <p>9 A Okay.</p> <p>10 Q Does that contain information regarding</p> <p>11 foreclosures in the State of Florida?</p> <p>12 A It does. It discusses the allowable time</p> <p>13 frames between referral of foreclosures to foreclosure</p> <p>14 sale date.</p> <p>15 Q Does the next date contain information as to</p> <p>16 the maximum allowable fees in the State of Florida?</p> <p>17 A It does. Those seem to be consistent. Those</p> <p>18 seem or rather at initial glance to be consistent with</p> <p>19 previous guidelines.</p> <p>20 Q \$1,000; correct?</p> <p>21 A That is correct.</p> <p>22 Q And then there are two footnote, footnote 4</p> <p>23 and footnote 11? Footnote 4 says, "The fee covers</p> <p>24 combined attorney's and notary's fees."</p> <p>25 A Okay.</p>
<p style="text-align: right;">Page 219</p> <p>1 the next exhibit.</p> <p>2 (Thereupon, Plaintiff's Exhibit No. 125 was</p> <p>3 marked.)</p> <p>4 BY MR. GUILDAY:</p> <p>5 Q Is it your understanding, Mr. Stern, that the</p> <p>6 document we marked as 125 are Fannie Mae guidelines</p> <p>7 that supersede guidelines which were earlier in place?</p> <p>8 MR. GEYER: Object to the form.</p> <p>9 A I'm not so certain they exceed or supersede.</p> <p>10 I would have to review them and see. Lots of times</p> <p>11 bulletins or announcements are generic in form and</p> <p>12 clarification is necessary. So I would have to review</p> <p>13 specific item by item that you are referring to to make</p> <p>14 a determination if it indeed supersedes.</p> <p>15 BY MR. GUILDAY:</p> <p>16 Q What is the date of this announcement?</p> <p>17 A April 14th, 1998.</p> <p>18 Q Looking at the bottom of the first page, it</p> <p>19 says, "Attorney/trustee fees." It says, "Party Chapter</p> <p>20 11 Exhibit 5 of the servicing guidelines provides a</p> <p>21 schedule of maximum allowable attorney/trustee fees</p> <p>22 that we will pay for foreclosure," and then it goes on.</p> <p>23 A Okay.</p> <p>24 Q. Is it your understanding that this bulletin</p> <p>25 did provide some revisions to the maximum allowable</p>	<p style="text-align: right;">Page 221</p> <p>1 Q Do you understand what that pertains to?</p> <p>2 A That means when I notarize something, I'm not</p> <p>3 going to get additional charges or additional fees for</p> <p>4 notary service.</p> <p>5 Q Okay. Paragraph 11, it says, "The fee</p> <p>6 includes reimbursement of any fee for the attorney's</p> <p>7 certificate of title." What does that pertain to?</p> <p>8 A Fannie Mae often will reimburse, especially</p> <p>9 in trustee states, the trustee for preparation of a</p> <p>10 trustee's deed. They are telling us here that we are</p> <p>11 not going to pay you any additional fee for your</p> <p>12 preparation of the clerk's certificate of title.</p> <p>13 Q In terms of determining allowable fees where</p> <p>14 the Fannie Mae guidelines control, would this be the</p> <p>15 document that you would look to on or after August</p> <p>16 14th, 1998?</p> <p>17 A It depends if it was a program or a</p> <p>18 non-program loan. This controls program loans so my</p> <p>19 answer would be depends if it is program or</p> <p>20 non-program.</p> <p>21 Q After February of '99, does this document</p> <p>22 control non-program loans as well?</p> <p>23 A I have to review the entire document. When</p> <p>24 you are in a program, the guidelines vary from general</p> <p>25 bulletins. So Fannie Mae and Freddie Mac have from</p>

Page 226	Page 228
<p>1 Q Then the next sentence says, "In the interim, 2 mortgagee shall continue to follow the March 1st, 1993, 3 Fannie Mae schedule with the subsequent 4 clarification." 5 Does that mean that you were to follow the 6 Fannie Mae fee schedule for foreclosures handled prior 7 to December 1st of 1998? 8 A That is correct. Fannie Mae fee schedule 9 being \$1,000. 10 Q To your knowledge, has this mortgagee's 11 letter been subsequently modified by HUD in connection 12 with attorney's fees that can be charged? 13 A Yes, sir; it has. 14 Q And in what way? 15 A HUD mortgagee letter 99-8. 16 Q Okay. Let me give you a document which is 17 ST0199 through 201 which means you produced that to us. 18 A 99-8. 19 MR. GUILDAY: Let's mark this. 20 (Thereupon, Plaintiff's Exhibit No. 127 was 21 marked.) 22 BY MR. GUILDAY: 23 Q 99-8 modifies the fee arrangement with HUD in 24 what way? 25 A 98-26 was incorrect. 98-26 said that Fannie</p>	<p>1 the joint tax return as stated on the front of David 2 and Jeanine Stern. 3 Q Fair enough. Subject to that qualification, 4 it is a joint tax return for you and your wife for 5 those two years? 6 A Yes, sir. 7 Q Do those tax returns reflect any income in 8 connection with Professional Title & Abstract, Inc.? 9 MR. GUILDAY: Let me mark that while you're 10 thinking. 11 A I have to think this through before I can 12 answer it. I'm sorry. No, sir, they do not. 13 BY MR. GUILDAY: 14 Q Is there a separate return prepared and filed 15 on behalf of Professional Title & Abstract, Inc.? 16 A Yes, sir; there is. 17 Q You are the sole owner of those entities? 18 A Yes, sir; I am. 19 MR. GUILDAY: Why don't you mark the 20 individual returns as the next exhibit. 21 (Thereupon, Plaintiff's Exhibit No. 128 was 22 marked.) 23 BY MR. GUILDAY: 24 Q Take a look at documents which have been 25 produced ST0073 through ST00133. It appears to be the</p>
Page 227	Page 229
<p>1 Mac - excuse me - said that HUD essentially followed 2 Fannie Mae's bulletin of 1993. That is incorrect. HUD 3 had adopted in part if not in whole Fannie Mae's '96 4 guidelines and what was happening, attorneys were 5 submitting invoices on FHA-insured loans that were 6 inconsistent with Fannie '93 guidelines versus '96 7 guidelines and a lot of servicers, insured and 8 attorneys began to complain and say, wait a minute, '93 9 isn't what governs, you have told many attorneys out 10 there that Fannie Mae's '96 announcement is what 11 controls and attorney's fees which is actually a really 12 big thing in terms of bankruptcies more so than 13 anything else. 14 Q In terms of the attorney's fees and costs 15 that we have talked about here, does 99-8 modify in any 16 way fees and costs which can be collected? 17 A No, sir. 18 Q Okay. We have had produced to us certain 19 financial information by your firm. I understand it 20 has been redacted and I just want to go ahead and get 21 you to identify it. First, this is your individual tax 22 return for 1998 and 1997; correct? 23 A No, sir. 24 Q This is a duplicate copy of your tax return? 25 A It is not my individual tax return. It is</p>	<p>1 tax returns for Professional Title & Abstract. 2 A Correct. 3 Q What business did Professional Title & 4 Abstract have in 1997 and 1998? 5 A Professional Title & Abstract performed 6 closings on behalf of the law firm and as a result of 7 that derived income. 8 Q So in 1997 it did closings and had gross 9 receipts of \$657,000; is that correct? 10 A That is correct. 11 Q In connection with the '97 return, there is 12 an outside management fee shown I believe as an expense 13 of \$586,000. 14 A Yes, sir. 15 Q What was that for? 16 A Back in '97 and '98, we had not had an 17 opportunity to put into place formally the staff for 18 Professional Title & Abstract. So the law firm lent 19 employees to Professional Title & Abstract because it 20 really did exist. At the end of the year Professional 21 Title & Abstract had to reimburse the law firm for the 22 services of the facility, for the employees, for the 23 items incurred in rendering closing services; hence, 24 that is what the management fee was for. 25 Q So is what you are telling me is the</p>

Page 234

1 A It means that we own them jointly.
2 BY MR. GUILDAY:
3 Q You have got equity in the firm of David J.
4 Stern, is that \$13,500,000?
5 A That is correct.
6 Q What is that based upon?
7 A I think Howard took what the firm made over
8 the last - since its beginning and said this is what it
9 is going to be worth five years, over five years. I
10 don't know. You have to ask Howard. I'm not sure how
11 he arrived at that.
12 Q Well, the firm doesn't have as far as you
13 know thirteen million dollars in assets sitting in the
14 bank; does it?
15 A No. He is putting a value on the firm over a
16 period of time. But, no, we do not have thirteen
17 million dollars sitting in the bank.
18 Q The capitalization of earnings?
19 A Over a period of time, I would suspect; yes.
20 Q And I think you provided the firm's earnings
21 for 1998. Have you completed your tax return or do you
22 know what the earnings were for 1999?
23 A No, sir; I don't. We have not completed it.
24 Q Do you know whether they are better or worse
25 than they were in '98?

Page 235

1 A I don't know.
2 Q Did the firm have greater revenue in '98 than
3 '99?
4 A I'm not sure. I'm not sure yet.
5 Q You had I think it is twenty-one million
6 dollars in revenue in 1998. Is that accurate?
7 A Yes. Again, I am not sure where we are right
8 now. I'm accounting department is behind on my
9 reports.
10 Q As far as you know, any worse in '99 than it
11 was in '98?
12 A I don't know.
13 Q As to the liabilities that are listed, there
14 is the mortgage payable. I assume that's jointly with
15 your wife?
16 A That is correct, absolutely.
17 Q And I assume then that means there are no
18 other liabilities, no other notes or other amounts that
19 you owe?
20 A That is correct.
21 Q Now, did this particular report have comments
22 in the accounts report? I see it down here. It says,
23 "Unaudited see comments in the accountant's report."
24 A It did.
25 Q Do you know what was in those comments?

Page 236

1 A Essentially said that this is an unaudited
2 report.
3 Q Any other comments?
4 A Not that I recall.
5 Q So, in any event, this is a partial part of
6 the document that you used to submit to a financial
7 institution; correct?
8 A That is correct.
9 Q And the document you submitted was completed
10 when you submitted it to the financial institution?
11 A That is correct.
12 Q Lawyers have produced here today this morning
13 a document that has some categories of some various
14 loans I believe.
15 A Okay.
16 Q Did you prepare that?
17 A I did not.
18 Q Do you know who did?
19 A I do not.
20 Q Who in your office would be capable of
21 summarizing this information?
22 A One of my computer programmers based on
23 someone's instructions and a formula.
24 MR. GUILDAY: Let's mark this as the next
25 exhibit.

Page 237

1 (Thereupon, Plaintiff's Exhibit No. 131 was
2 marked.)
3 BY MR. GUILDAY:
4 Q Did you provide any instructions to anyone in
5 your office to prepare this document?
6 A I did not.
7 Q Do you know who did?
8 A My attorneys probably.
9 Q Do you know what this document purports to
10 represent?
11 A The number of sales held relative to the
12 plaintiffs in this particular case is what it appears
13 to be.
14 Q It says here at the top, it says, "Other
15 Fannie Mae program loans" and it has a listing of a
16 certain number of loans. What do you understand that
17 to be?
18 A Other Fannie Mae program loans? I would
19 venture that to be --
20 Q Are you guessing or do you know?
21 A I don't know. I didn't give them the formula
22 so I don't know.
23 Q And you don't know who did?
24 A I don't.
25 Q Does your computer department have the

<p style="text-align: right;">Page 242</p> <p>1 Q What percentage of those foreclosures would 2 be residential foreclosures? And you don't have to be 3 exact. 4 A 98 percent. 5 Q Do you keep any type of listing or log or 6 document from which you could determine of those 7 foreclosures that you opened which are Fannie Mae 8 program, Fannie Mae non-program or other types of 9 lender foreclosures? 10 A I'm sorry. Will you repeat the question? 11 BY MR. GUILDAY: 12 Q Do you keep any type of summary document in 13 any form which contains the number of foreclosures that 14 you open on a monthly basis broken out by Fannie Mae 15 program, non-program or the other types of categories 16 that we have discussed here today? 17 A How do you define summary document? 18 Q Well, it could take many forms. It could be 19 a handwritten log that somebody prepares when the 20 referral comes in the door. It could be a 21 computer-generated printout that someone generates for 22 your review during the course of the month or quarterly 23 or actively or anything in between. That's how I would 24 define summary judgment document. 25 A Yes, sir; we do.</p>	<p style="text-align: right;">Page 244</p> <p>1 statement? 2 A No, sir. 3 Q How would you know how many program or 4 non-program loans you would have from the volume 5 report? 6 A I would not be able to tell that from the 7 volume report. 8 Q Would you be able to determine that by taking 9 some other steps? 10 A Yes, sir. 11 Q What steps were those? 12 A I would ask them to run a report that breaks 13 out specifically loans that are Fannie program, Fannie 14 non-program. 15 Q Et cetera? 16 A Et cetera. 17 Q And do you run those types of reports from 18 time to time? 19 A I do not. 20 Q Have you run them at any time? 21 A I have not. 22 Q Has anyone to your knowledge? 23 A Yes. 24 Q Who is that? 25 A Vince runs them for Cheryl.</p>
<p style="text-align: right;">Page 243</p> <p>1 Q What is that document called? 2 A We have the capability of generating it off a 3 computer. It is not really called anything. If I want 4 to find out who sent me files and loan types, I 5 essentially ask for a volume report. 6 Q Is this the type of report that you review 7 from time to time to see, you know, what type of work 8 you are doing, how much work you are doing? 9 A Yes. 10 Q How frequently do you obtain and review this 11 type of report? 12 A Once a month at minimum. 13 Q Do you have these volume reports going back 14 for a period of two or three years? 15 A Yes. 16 Q Do the volume reports identify the loan, type 17 of loan and lender that's involved? Does it categorize 18 it in that file? 19 A No, it does not. 20 Q What are the categorizations that you have on 21 the volume report? 22 A Client and case type. 23 Q And so you would be able to determine whether 24 it was a program or non-program loan based upon your 25 knowledge of your operations? Is that a fair</p>	<p style="text-align: right;">Page 245</p> <p>1 Q On a regular basis? 2 A Yes. 3 Q So that would be monthly? 4 A Weekly. 5 Q Do you know for how long those programs have 6 been run? 7 A About a year. 8 Q What are they called? 9 A I don't know what Cheryl calls them. I guess 10 a volume report by investor program loan type. If I 11 was asking for it, that's what I would get. 12 Q Do you have knowledge during the period say 13 1998 what percentage of the loans that you were 14 handling of foreclosure were program, non-program, et 15 cetera? Do you have do you have that information? 16 A No, sir; I don't. 17 Q Have you ever attempted to determine that? 18 A No, sir. 19 Q We have had some other documents produced to 20 us. I wanted to ask you about some of these 21 documents. This is ST0047 through 53. This is in 22 response to the fourth request for production of 23 documents. It is a general ledger. Do you know what 24 that document is? 25 A It appears to be a ledger setting out payment</p>

<p style="text-align: right;">Page 250</p> <p>1 guideline. It was determined after institution of this 2 lawsuit that they failed to charge us the \$75 update 3 and when this was brought to their attention, they 4 recognized it as an oversight and as an affiliate or as 5 a vendor/vendee relationship, they asked if we would go 6 ahead and pay and we indicated since we had already 7 sought reimbursement, that certainly is a proper 8 request. They sent me the formula on the files and we 9 wrote them a check for \$27,900.</p> <p>10 Q Let me see if I understand this a little 11 bit. The relationship with LandSafe was set up when? 12 A I don't recall.</p> <p>13 Q Years prior to that? 14 A Not years; no, sir. 15 Q More than one year prior to that? 16 A I would say around a year based on 372 loans, 17 based on the number of files that we get from 18 Countrywide. I would say close to a year.</p> <p>19 Q The relationship that was set up with 20 Countrywide, was it negotiated between you and Ms. 21 Schwartz or someone else? 22 A I'm sorry. 23 Q Why can't you discuss the relationship? 24 A It is attorney-client privilege. 25 Q Who is asserting the privilege in this case?</p>	<p style="text-align: right;">Page 252</p> <p>1 Countrywide. But in connection with what you were 2 doing with, I'm talking about the law firm, with 3 Countrywide -- Strike that. Let me start over. It is 4 so convoluted.</p> <p>5 On title searches and examinations that were 6 provided to you by LandSafe -- Okay? 7 A Yes, sir. 8 Q -- is it my understanding that you were 9 paying LandSafe 325 for the title search and exam up 10 until basically you got this letter? 11 MR. GEYER: The question? 12 A I'm sorry. I'm lost. You lost me.</p> <p>13 BY MR. GUILDAY: 14 Q On the 372 files that you say this memo 15 relates to, is it my understanding of what you are 16 saying is that LandSafe provided you a title search 17 exam and update and you paid them \$325? 18 A That is correct. They failed to bill me the 19 additional \$75 and once they saw that oversight, they 20 came in one lump sum and said you owe me \$27,900.</p> <p>21 Q That's this letter dated April 23rd, 1999; 22 right? 23 A That is correct. 24 Q Now, on those 372 foreclosure files that you 25 handled, did you charge or seek to recover the \$75</p>
<p style="text-align: right;">Page 251</p> <p>1 Is it LandSafe or somebody else? 2 A Countrywide. 3 Q Okay.</p> <p>4 MR. BRATEN: Can we have a moment? We need 5 to have a moment. 6 MR. GUILDAY: I'm not going to really -- I'm 7 just trying to finish. 8 MR. BRATEN: I'm just concerned because Bill 9 Heller who represents LandSafe has filed a motion for 10 protective order relative to certain documents. I 11 mean, he has clearly asserted certain things. He is 12 not here today and for Mr. Stern to, you know, 13 inadvertently disclose something that he has already 14 asserted some type of privilege as to LandSafe's 15 internal operations. I mean, that just creates a 16 problem for us.</p> <p>17 MR. GUILDAY: This has been produced to us in 18 this lawsuit. So unless you are going to tell him not 19 to answer, I'm going to keep going. State what you 20 want to state. 21 A I will watch it. Go ahead.</p> <p>22 BY MR. GUILDAY: 23 Q All right, sir. You had an arrangement one 24 year prior. I understand we can't go into that because 25 of the attorney-client privilege being asserted by</p>	<p style="text-align: right;">Page 253</p> <p>1 title update? 2 A If the guidelines so allowed it, I certainly 3 did.</p> <p>4 Q So you sought that amount even though 5 LandSafe had not invoiced you for that amount at the 6 time that you prepared the foreclosure; is that 7 correct? 8 A That is incorrect. No one knew that we were 9 not reimbursing the \$75. When the relationship was 10 established, it was established that the \$75 would be 11 charged where the guidelines so allowed and that 12 Countrywide would invoice us for the \$325 and the \$150 13 and the \$75. So when we charged or assessed for the 14 \$75, it was under the belief that LandSafe had assessed 15 it to us because they had provided a GAP search.</p> <p>16 Q Okay. Now, you have got me confused a little 17 bit because you said that Countrywide invoiced these 18 amounts but -- 19 A I'm sorry. LandSafe. 20 Q So you were referring to LandSafe there? 21 A That is correct. 22 Q So when LandSafe invoiced you, what you are 23 saying is that they forgot to invoice you the \$75 for 24 the GAP search; is that correct? 25 A That is correct. At the time the GAP search</p>

Page 258

Page 260

1 privilege issues that have been raised and assuming the
2 judge allows us to inquire into those areas, we
3 obviously are going to have to be coming back to ask
4 him questions.

5 MR. GEYER: Obviously we are going to comply
6 with any court orders in that regard. We would have
7 hoped that you wouldn't have taken Mr. Stern's
8 deposition until after those issues that we know
9 sitting here today were outstanding or resolved but
10 let's cross that bridge when we get to it.

11 MR. GUILDAY: You know, you can't address some
12 of the attorney-client privilege issues until you
13 understand who asserted them and when under what
14 circumstances.

15 MR. GEYER: The information was readily
16 available to you before the depo.

17 MR. GUILDAY: I beg to differ with you.

18 MR. GEYER: If anybody asked us, we would have
19 been happy to tell them.

20 MR. GUILDAY: Enough already. This is the end
21 of the depo.

22 MR. GEYER: Except for one thing. We will
23 take a copy. We want to read. ASCI and mini.

24 (Thereupon, the witness did not waive the
25 reading and signing of the deposition and the taking of

1 EXCEPT FOR THE CORRECTIONS MADE
2 HEREIN BY ME, IF ANY, I CERTIFY
3 THIS IS A TRUE AND ACCURATE
4 TRANSCRIPT.

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9 DEPONENT

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11 Sworn and subscribed to before me
12 This ---- day of -----, 2000.

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16 -----
17 Notary Public in and for the
18 State of Florida at Large

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22 My Commission Expires:
23 October 2, 2001

Page 259

Page 261

1 the deposition was concluded at 6:10 o'clock p.m.)
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1
2 ERRATA SHEET

3 In Re: THEODORA BRYANT VS. DAVID STERN
4 Case No. 99 CV 317-RH10:36

5 DO NOT WRITE ON TRANSCRIPT -- ENTER CHANGES HERE:

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20 Under penalties of perjury, I declare that I
21 have read my deposition and that it is true and
22 correct subject to any changes in form or substance
enter here.

23 Date DAVID STERN

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218:9 223:14 253:12</div> <div>\$175 [19] 19:18,22 20:21 24:21 25:2,5 29:16,25 30:9,18,19 31:14 51:5 174:21 204:13 215:25 216:20 217:9 223:14</div> <div>\$235 [2] 46:23 47:13</div> <div>\$250 [2] 215:25 216:15</div> <div>\$27,900 [3] 250:9 252:20 254:9</div> <div>\$300 [5] 62:16 63:16 157:16 158:7 202:23</div> <div>\$325 [7] 20:2 56:4,5 215:7 246:8 252:17 253:12</div> <div>\$400 [16] 30:21 31:2 154:11 215:2,11,23 246:10,11,14 247:5,10,16 247:22 248:13 249:1,5</div> <div>\$425 [1] 158:11</div> <div>\$45 [2] 20:20 25:7</div> <div>\$500 [7] 62:16 63:17</div>	<div>65:20 66:2 154:10 158:10 159:14</div> <div>\$55 [1] 249:10</div> <div>\$586,000 [1] 229:13</div> <div>\$60 [16] 120:7,10,14,21 121:6 122:5,14 126:7,14 127:3 183:24 184:22 185:5 187:11 188:19,22</div> <div>\$657,000 [1] 229:9</div> <div>\$70 [8] 20:20 21:1,14 24:25 25:6,18 29:10 30:2</div> <div>\$700 [4] 62:16 63:17 149:4 157:17</div> <div>\$75 [56] 31:16,22 32:8,13 32:19,22 33:13,20 43:13 44:1,9,14 48:25 49:3,20 50:4,11,24 51:14,18 52:13 69:1,4 139:10,16,21 140:7 140:13,22,22 180:25 181:22 185:5,10,18 186:1 186:7,12,14 187:1 215:8 215:25 216:19 217:10 250:2 252:19,25 253:9,10 253:13,14,23 254:2,3,14 254:18</div> <div>\$85 [1] 30:2</div> <div>\$850 [7] 158:1,3,9,11 161:22 162:11 163:5</div> <div>\$900 [2] 62:17 63:17</div> <div>-\$-</div> <div>& [26] 2:2,7 12:20 14:4,17 14:22 15:6,16,18,24 16:7 18:18 228:8,15 229:1,3,5 229:18,19,21 230:8 249:2 249:3 265:1 266:1,5</div> <div>-'-</div> <div>'93 [2] 227:6,8</div> <div>'95 [1] 3:13</div> <div>'96 [12] 3:11 11:7 28:13 29:4 63:11 64:17 102:15 200:11,23 227:3,6,10</div> <div>'96' [1] 102:7</div> <div>'97 [12] 14:16 29:5,6,7 31:11 63:11 64:17 81:22 99:15 104:14 229:11,16</div> <div>'98 [18] 14:16 29:5,6,8 31:11 34:19,20 99:16 102:16 104:14 143:8 168:8 200:23 229:16 230:12 234:25 235:2,11</div> <div>'99 [9] 3:18 6:5 31:10,13 34:18 99:16 221:21 235:3 235:10</div> <div>-'-</div> <div>.5 [2] 147:7 149:2</div> <div>-/-</div> <div>/ [39] 261:6,6,6,7,7,7,8,8,8 261:9,9,9,10,10,10,11,11 261:11,12,12,12,13,13,13 261:14,14,14,15,15,15,16</div>	<div>261:16,16,17,17,17,18,18 261:18</div> <div>-0-</div> <div>0.5 [1] 147:7</div> <div>014 [1] 220:7</div> <div>-1-</div> <div>1 [1] 78:2</div> <div>1.2 [1] 147:7</div> <div>1.5 [1] 147:7</div> <div>10 [3] 157:19 203:8,14</div> <div>100 [1] 172:10</div> <div>1000 [4] 241:13 265:2,13 266:1</div> <div>106 [1] 266:6</div> <div>10:30 [2] 1:14 256:20</div> <div>10th [1] 168:10</div> <div>11 [5] 204:18 219:20 220:23 221:5 265:4</div> <div>11/20/95 [2] 3:15 55:19</div> <div>110 [1] 5:7</div> <div>111 [1] 5:7</div> <div>118 [8] 2:16 5:8,10,15,19 19:12,14,21</div> <div>119 [5] 2:16 78:4,11 113:20 116:19</div> <div>112 [6] 20:3 24:10 44:4 45:15 48:21 215:16</div> <div>120 [2] 2:17 172:4</div> <div>121 [3] 2:17 177:24 183:10</div> <div>122 [4] 2:18 194:11,15 196:11</div> <div>123 [3] 2:18 211:23,24</div> <div>124 [2] 2:19 213:14</div> <div>125 [3] 2:19 219:2,6</div> <div>126 [2] 2:20 225:4</div> <div>127 [2] 2:20 226:20</div> <div>128 [2] 2:21 228:21</div> <div>129 [2] 2:21 230:21</div> <div>12th [6] 3:19 146:8,23 147:9 166:19 171:5</div> <div>13 [1] 205:7</div> <div>130 [3] 2:22 231:3 232:4</div> <div>131 [3] 2:22 237:1 240:18</div> <div>132 [2] 2:23 254:22</div> <div>13th [4] 143:8 168:11,12 215:17</div> <div>143 [1] 152:9</div> <div>144 [1] 152:9</div> <div>146 [1] 212:3</div> <div>14th [3] 219:17 221:16 223:19</div> <div>150 [4] 104:20,21,25 105:1</div> <div>15th [7] 119:25 122:17 123:13 146:23 161:20 162:19 168:13</div> <div>17 [1] 16:18</div>	<div>172 [1] 2:17</div> <div>177 [1] 2:17</div> <div>1794 [1] 266:7</div> <div>17th [14] 3:9,13 8:5 11:21 12:5 17:10 19:20 20:9,12 22:6 44:22 48:20 72:21 72:25</div> <div>18th [4] 3:10 10:1 11:7 13:14</div> <div>19 [6] 1:15 265:1,8,13 266:2,9</div> <div>194 [1] 2:18</div> <div>199 [1] 47:10</div> <div>1993 [2] 226:2 227:2</div> <div>1994 [1] 59:5</div> <div>1995 [5] 19:20 20:6 22:5 24:3 44:22</div> <div>1996 [26] 3:9,12 8:5 10:1 11:21 12:5,15 13:14 14:13 14:16 16:18 17:10,11,13 20:9,12 22:6 28:14 47:10 55:4 72:22,25 73:20 104:14 196:8 215:17</div> <div>1997 [7] 25:17 47:10 177:22 179:10 227:22 229:4,8</div> <div>1998 [36] 22:14 25:17 43:12 78:2 83:2,3 86:8 119:25 122:17 123:13 142:6 145:22,23 161:20 162:19 168:7,10,13,14 180:24 181:21 186:3 213:19 219:17 221:16 223:19 225:18,22 226:7 227:22 229:4 234:21 235:6 241:12 245:13 254:14</div> <div>1999 [43] 3:16,19,22 15:20,22,23 16:6 31:19 31:20,22 32:9,15,18,22 40:11 56:12 72:10,11,15 86:10 89:19,20 118:22,23 127:20 155:11,17 156:4,6 156:11 180:17,18 181:18 182:4,12 199:23,25 200:5 231:6,6 234:22 249:18 252:21</div> <div>19th [1] 166:19</div> <div>1:54 [1] 213:20</div> <div>1st [7] 213:19 224:23,24 225:18,22 226:2,7</div> <div>-2-</div> <div>2 [2] 203:14 260:23</div> <div>20 [2] 145:22 168:14</div> <div>2000 [11] 1:15 34:19 260:12 264:7,20 265:4,8 265:9 266:4,9,10</div> <div>2001 [1] 260:23</div> <div>20016 [1] 55:11</div> <div>201 [1] 226:17</div> <div>20th [2] 146:8 254:13</div> <div>211 [1] 2:18</div> <div>213 [1] 2:19</div>	<div>219 [1] 2:19</div> <div>22 [1] 17:10</div> <div>225 [1] 2:20</div> <div>226 [1] 2:20</div> <div>228 [1] 2:21</div> <div>22nd [3] 3:12 17:13 55:4</div> <div>23 [1] 249:18</div> <div>230 [1] 2:21</div> <div>231 [1] 2:22</div> <div>237 [1] 2:22</div> <div>23rd [2] 3:22 252:21</div> <div>24th [1] 3:18</div> <div>25 [1] 166:1</div> <div>254 [1] 2:23</div> <div>26 [3] 265:9 266:4,10</div> <div>263 [2] 265:9 266:10</div> <div>26th [2] 264:6,20</div> <div>27th [2] 123:23 124:1</div> <div>-3-</div> <div>3 [1] 2:13</div> <div>3/3/99 [2] 3:23,24</div> <div>30 [2] 157:19 231:6</div> <div>305 [1] 265:3</div> <div>31 [2] 20:5 22:5</div> <div>317-RH10:36 [3] 1:3 261:3 265:7</div> <div>32302 [1] 266:7</div> <div>325 [1] 252:9</div> <div>33131-1500 [2] 265:2 266:2</div> <div>33301 [1] 265:6</div> <div>36 [1] 210:17</div> <div>371-1884 [1] 265:3</div> <div>372 [3] 250:16 252:14,24</div> <div>38 [1] 210:17</div> <div>3900 [1] 55:10</div> <div>3rd [5] 3:16 56:11 142:6 177:21 179:9</div> <div>-4-</div> <div>4 [4] 82:7 213:21 220:22 220:23</div> <div>46 [4] 12:2 16:19 44:25 206:12</div> <div>4:00 [1] 265:14</div> <div>-5-</div> <div>5 [4] 2:16 116:21 148:25 219:20</div> <div>5/12 [2] 146:24,25</div> <div>53 [1] 245:21</div> <div>-6-</div> <div>6:10 [1] 259:1</div> <div>-7-</div> <div>70 [1] 157:20</div>
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177:12 216:23 222:4 appreciate [1] 137:16 appreciated [1] 265:19 approached [1] 128:22 appropriate [4] 80:16 174:14 188:10 254:4 approval [7] 62:24 63:1 84:11,18,24 85:10 205:10 approve [3] 126:1,7 151:4 approved [3] 47:21 62:24 152:5 April [32] 3:9,10 8:5 10:1 11:7,21 12:4 13:14 16:18 17:10 20:9,12 22:6 72:21 72:25 73:20 145:22,22 146:8 168:7,8,9,10,11,12 168:13,14 213:19 219:17 249:18 252:21 254:13 area [1] 232:9 areas [4] 46:20 143:25 144:4 258:2 argue [5] 135:14,16 136:13 144:9,17 argument [1] 134:9 arise [1] 96:17 arrange [1] 265:13 arrangement [14] 86:9 105:7 108:3 118:8 131:3 131:11 137:22 138:10 148:18 184:12 196:13 205:1 226:23 251:23 arrangements [1] 94:25 arrived [1] 234:11 art [1] 233:7 ascertain [1] 190:10 ASCI [1] 258:23 aside [1] 32:2 Askel [1] 249:2 assert [3] 106:13 107:7 130:8 asserted [16] 105:14 106:3,24,25 108:1,5,8 129:17,21 130:19 145:8 191:6 251:11,14,25 258:13 asserting [1] 250:25 assertion [2] 108:9 136:5 assess [4] 154:10 161:3 172:12 182:6 assessed [5] 146:10 207:6 253:13,14 254:4 assessing [2] 57:4 156:13 assessment [1] 241:15 assets [10] 232:8,15,18 232:25 233:11,18,23,24 233:24 234:13 assigned [2] 72:18,24 assignments [1] 65:4 assistant [1] 10:2 ASSOCIATES [2] 265:1 266:1	assume [19] 7:15 29:9 94:17 113:21 117:16,21 117:22 162:6,7 168:7 169:3,17,20 170:22 195:20,24,24 235:14,17 assuming [8] 4:12 29:12 76:24 166:6 186:18 199:11 213:24 258:1 asterisk [2] 46:14,17 astute [1] 38:4 AT&T [1] 21:19 ATID [2] 25:24 29:1 ATTACH [1] 266:16 attached [5] 45:17 152:8 201:3 225:23 266:15 attachments [1] 3:18 attempt [2] 8:19 143:11 attempted [3] 125:24 140:4 245:17 attention [6] 141:13,18 224:13 250:3 254:8 265:19 Attn [1] 266:5 attorney [43] 11:23 37:23 54:21 60:23 61:6,12,22 61:22 64:24 65:2 67:7 71:7 99:4,19 102:23 106:24 107:7,9 110:13 113:21 118:20 128:17 129:20 131:15 146:7 154:12 159:8 161:24 163:21 192:22 197:4,6 207:15,17 208:2,5 211:19 211:20 217:15,18 218:7 264:18,19 attorney's [119] 22:23 24:24 25:7,19,25 26:22 27:2,10,18 29:3,15 30:1 38:11 45:9,24 49:6,19 50:3,6,8 51:22 52:5,8 56:16,18 57:3 59:12,17 59:23 60:3,7,17 61:8,12 62:4 65:16,21 68:17 69:10 69:20,21 84:17,20 85:11 87:19 90:2,6 91:4,15 92:4 92:6,12 93:8,12 97:21 98:3,14 109:2,7 110:21 111:15 114:11 116:1,4 117:3 119:15 128:3 130:17 132:4 133:3,14 141:20 145:24 146:15,18 147:25 148:8,15 152:12 152:23,24 156:8 160:10 160:13,14 161:21 162:8 162:16,18 163:1,14 164:3 165:8,15 166:11 167:14 171:1,1 175:21 178:16 180:14 200:1 208:19 216:13 217:19,22 218:6 220:1,24 221:6 223:5 225:15,19,24 226:12 227:11,14 249:4,11 attorney-client [34] 38:19 72:17 105:10,11,15 106:3,24 107:1 108:1 128:19,24 129:6,18,22 130:9,18 131:4 133:21 134:3 137:14 145:8 146:6	146:16 147:20 149:17 155:14 156:1 171:24 176:2 191:5 194:5 250:24 251:25 258:12 attorney/trustee [2] 219:19,21 attorneys [44] 4:16 7:5 11:5 18:17 20:17,19 21:1 21:15 36:7 40:25,25 58:15 58:15 59:3,7,8,21 61:2 63:22,23 64:5,21 101:15 101:21 102:1,10 111:1 130:25 131:8,14 132:20 159:19 167:1 190:22,25 192:6 193:17 194:3 207:13 222:5 227:4,8,9 237:8 attributed [2] 167:16 169:24 auditor [1] 56:19 August [5] 15:20,22 16:6 221:15 223:19 authority [2] 197:12 264:4 authorization [3] 85:3 204:19 223:10 authorize [1] 128:8 authorized [5] 44:9,14 119:4 215:11 264:15 authorizes [3] 45:23 109:6 175:4 automatic [1] 121:6 Automobiles [1] 233:4 available [3] 6:7 132:22 258:16 Avenue [2] 55:11 266:6 average [3] 53:16 66:15 249:11 awaiting [1] 265:11 award [11] 101:14 109:20 110:2,21 131:1 132:4 133:25 134:23 143:13,14 143:16 awarded [10] 59:20 101:18 102:20 109:25 134:15 138:18 140:14 141:17 198:21,22 awards [3] 101:22 111:20 112:1 aware [15] 11:5 44:11 45:23 189:3,8,9 193:19 194:2,6 206:10 211:22 213:3 224:9,12 240:11 away [2] 148:22 149:6 awfully [1] 38:18	bankruptcies [5] 78:25 79:2 96:17 224:23 227:12 banks [1] 232:13 Bar [1] 101:12 Barbara [10] 1:5,21 57:15 57:17 64:11 119:25 264:9 264:14,24 266:22 base [2] 144:20 216:3 based [35] 48:17 58:17 59:19,20 62:6,9 63:22 87:6 88:16 90:23 100:24 101:24 108:21 109:19 121:10 124:14,17 126:3 129:4 134:12 148:22 154:7 155:20 168:20 186:9 194:6 214:2,7 231:9 234:6 236:22 243:24 246:3 250:16,17 basic [1] 210:18 basis [12] 119:2 128:18 137:10,15 146:17 157:18 191:14,15,16 196:3 242:14 245:1 Baum [1] 61:4 Beach [1] 46:23 bear [4] 26:15 36:16 142:1 239:18 beaten [1] 223:12 became [3] 96:12,13,15 become [5] 96:9 118:17 222:7 225:16,20 becomes [1] 83:24 beg [1] 258:17 began [2] 15:5 227:8 beginning [11] 32:18 65:24 66:13 89:19 130:11 146:20 172:13 173:16 175:13 176:22 234:8 behalf [10] 1:6,20 14:23 82:11 107:7 186:20 193:16 207:8 228:15 229:6 behind [2] 27:14 235:8 belief [1] 253:14 BellSouth [2] 18:17 21:19 below [2] 163:20 215:20 benefit [1] 38:4 benefits [1] 48:11 best [6] 38:7,10 103:11 103:13 147:1,8 better [2] 202:19 234:24 between [30] 35:4 38:19 73:4,7 82:23 95:11,16 98:1 99:12 105:13 131:3 131:11,17 132:3 136:15 164:2 178:8,19,23 180:8 190:24 194:9,15 195:13 195:22 202:5 206:8 220:13 242:23 250:20 beyond [4] 83:19 101:16 246:21 257:8 bidder [4] 87:15 88:2 110:20 198:19	big [1] 227:12 biggest [1] 101:13 bill [11] 100:16 173:15,24 174:5 177:4,7,16,17 206:16 251:8 252:18 billed [6] 15:17 100:9,13 177:1 183:1 215:5 billing [8] 99:22 172:11 174:4 176:20 177:2,10 203:9 254:5 bills [7] 173:14 175:13 175:20 217:8,9 223:25 224:1 bit [6] 26:16 74:15 87:8 110:3 250:11 253:17 blanked [1] 232:9 board [1] 64:5 bonds [2] 232:9,13 book [3] 46:16 101:21 211:10 Books [1] 101:12 borrow [1] 231:17 borrower [54] 84:3 87:11 87:22,25 88:4 93:17 94:8 97:2,4,10 98:1,8 109:23 112:2,12,25 113:6,12 115:9 116:10 120:14 124:3 126:13,25 140:4,12 143:12 144:22 159:25 160:16 161:4,7,8 166:9 184:14,23 185:7 198:17 199:8 200:2,6 206:24 207:1,3,17,24 208:3,4,13 208:18 209:8,11,19 254:12 borrowers [3] 42:19 163:14 185:1 bottom [4] 29:24 55:6 137:2 219:18 bought [1] 199:6 Box [1] 266:7 Braten [33] 2:5 3:6 4:17 5:6,8,10 40:11 96:24 104:6 105:24 106:4,8,18 106:22 110:9 111:7 114:4 115:3,16,22 116:12 117:5 117:11 119:11 121:7 122:7,18 143:8 176:7 193:3 251:4,8 256:14 break [8] 43:21 77:22 98:23 104:2,5 148:12 158:23 194:8 breakdown [4] 3:24 4:7 155:19 215:19 breaks [1] 244:12 breath [1] 74:18 bridge [1] 258:10 brief [3] 43:23 77:23 255:16 briefly [3] 108:13 168:4 210:3 bring [4] 50:22 124:6 141:13 224:13 brings [1] 41:2 broad [1] 61:16
--	--	---	---	---

<p>217:3,4,5 commitments [2] 214:11,12 communication [20] 22:16 37:24 38:15 39:2,6 39:10,18 43:11 44:8,13 44:16,17,18 45:22 63:9 86:4 145:11,13 156:1 180:8 communications [16] 19:7,10 29:14 35:4,18,24 36:10,19 37:6,11,15,20 38:2,19 67:1 138:2 community [9] 58:16 63:22 90:18,23 99:4 100:1 100:25 101:2,8 companies [7] 157:3 194:16,20 246:1,14 247:18 248:7 company [44] 12:20 14:5 14:17 15:6,16 16:7 18:22 18:22,22,23 21:20,20,21 51:15 78:3,14 80:5,9,21 81:12 93:10 104:12 115:19 116:3,13 123:5 178:4,19,23 179:7,25 180:9,10 181:3 184:13,20 185:3,4 187:10 191:1 193:8,16 204:6 246:22 compelled [4] 208:18 209:8,11,19 compensate [2] 230:1,7 compensated [1] 82:20 complain [1] 227:8 complaint [27] 28:7,8 49:15 54:4 65:19,23,25 66:3,6,11,13 120:2,16,22 145:22 147:3,5 149:1 159:13 160:6 164:14,17 168:7,18,24 169:9 173:17 complete [4] 28:11,12 214:17 266:17 completed [12] 54:9 134:10 165:21 166:12 206:21 234:21,23 236:9 241:20 255:9 265:11,16 completing [1] 256:15 complicated [1] 239:19 complied [1] 249:24 comply [1] 258:5 complying [2] 11:16 13:25 components [1] 28:5 composite [3] 5:9 45:16 230:20 computer [16] 18:21 21:20 51:3,10 53:1 152:3 236:22 237:25 238:5,9,11 238:12 240:1,2,8 243:3 computer-generated [1] 242:21 computers [3] 21:21 51:11 241:5 CONB [1] 157:12 concern [1] 42:17</p>	<p>concerned [3] 27:6 57:4 251:8 conclude [2] 169:2 265:17 concluded [2] 255:3 259:1 conclusion [1] 247:1 concluded [1] 79:11 conduct [20] 17:2 100:20 110:18 144:6 179:20,20 180:6 182:21 183:4,8,19 183:21 184:2,9 189:10 196:16 198:3 205:13,15 206:1 conducts [1] 11:8 confer [1] 129:20 conference [5] 122:25 190:22,24 192:14 193:7 Confessed [1] 70:22 confidential [3] 212:25 213:1,1 confidentiality [4] 13:22 38:3,12,14 confirm [4] 63:13 80:19 166:17 222:19 confirms [4] 19:21 20:12 86:24 180:10 confused [2] 181:16 253:16 connected [1] 264:19 connection [15] 12:4 24:2,20 58:9 82:10 145:23 160:11 195:1 204:8 218:18 226:11 228:8 229:11 231:25 252:1 consecutive [1] 256:20 consent [5] 87:2,2,3,4,5 consents [2] 19:17 20:1 consider [4] 48:15 103:17 210:25 211:1 considered [1] 90:1 consistent [26] 4:1,5,7 4:11 19:2 27:5 30:10 58:11,19,22 59:6 63:21 80:15 83:10 93:25 132:5 160:14 163:22 166:4 177:6 185:13 202:12 216:6 220:17,18 249:25 consistently [1] 248:17 constitutes [1] 28:4 constraints [1] 256:16 consult [1] 211:10 contact [1] 197:6 contacted [4] 107:6,15 107:20 222:19 contain [3] 176:9 220:10 220:15 contained [8] 6:21 14:1 45:10 119:7 138:25 215:3 215:4 232:4 contains [2] 195:21 242:13 contemporaneous [1] 86:3</p>	<p>contend [4] 110:24 232:19 233:10 247:4 contending [1] 137:14 content [3] 36:10 145:11 145:13 contention [2] 79:18 128:19 contents [2] 105:19 106:10 contested [8] 67:6 70:23 83:24 89:4 94:1 113:10 122:24 159:10 context [3] 54:25 205:16 225:11 continuation [1] 42:18 continue [9] 33:19 136:24 144:16 189:10 223:24,25 226:2 254:25 257:10 contract [1] 205:19 contradiction [1] 204:2 contrary [1] 71:23 control [8] 16:20 147:13 147:15 209:18 210:14 221:14,22 224:4 controlled [4] 73:23 99:24 180:19 181:17 controlling [1] 89:22 controls [6] 81:6 210:7 210:18 216:5 221:18 227:11 conventional [4] 157:12 157:21 177:14 204:4 conventional/FHA [1] 177:9 conversation [14] 24:18 24:19,20 25:5 38:6,10 43:3 63:4,5,12 179:22 190:21 191:10 192:21 conversations [2] 36:24 198:5 convoluted [1] 252:4 COOK [2] 265:1 266:1 cooperate [1] 137:1 copies [31] 7:13 8:2,10 118:15,18 119:3 120:8,14 120:15,20 121:20,21 122:5,15 123:5,7,14 124:8 124:11,23 125:15 126:7 126:24 127:2 128:3,9 181:23 182:8 183:25 187:11 188:19 copy [13] 7:11 8:8,9 9:23 10:3 111:14 119:21 204:12,16 227:24 258:23 266:15,16 copying [4] 118:1,24 119:20 179:15 corporate [1] 190:10 corporation [2] 14:5 157:5 correct [185] 6:3,4 7:23 7:25 8:25 9:6,8 13:18 14:11,12 15:8,9 18:6,7,9 18:10,15 20:6,7,9,10 21:3</p>	<p>21:4,15 28:18,19 31:17 34:6,7 35:10 39:1,13 41:17 43:7,17 45:11,19 48:10,13,18 50:16 52:4 54:14 58:4,5 60:12 62:1 62:13,17,18 63:15 66:8 68:6,11 71:25 73:8,25 76:24 79:24,25 80:2,3 88:6,23 90:15,24 94:5 103:19 108:11,19,23,25 110:25 111:9 112:18 113:3,22 115:14 116:11 118:4,6,25 119:5,12 120:12 122:1 123:15 125:1 126:8,10,21,22 127:9,11,16,22 128:7,20 129:19 130:13,23 133:1,2 133:5 134:20,25 136:1,2 142:19 146:13 148:11 153:21 156:13 162:13 165:1 166:12 167:17,18 174:7 176:10,12 177:13 178:7 179:2,11 180:20 182:11 184:15 185:16 191:3 194:22,25 199:11 200:21 201:7 205:6,25 207:20 214:22 215:8,9,18 215:21 217:7 218:21 220:20,21 225:18,22,24 225:25 226:8 227:22 229:2,9,10 232:5,6,10,11 233:2,3,5,9 234:5 235:16 235:20 236:7,8,11 239:7 239:8 240:18 247:6,7 252:18,23 253:7,21,24,25 254:15,16 261:21 264:17 corrections [2] 260:1 266:16 correctly [5] 67:13 69:9 72:23 91:18 151:11 correspond [1] 161:23 correspondence [3] 33:6 123:3 124:15 corresponding [1] 165:6 cost [43] 17:20,22,22 18:6 18:9,14,16 19:2 20:13,16 20:25 21:13,22 22:23 30:10 46:18 47:18,21 48:1 48:16 51:1 52:14 53:7 62:8 91:16 125:14,22 139:15,22 141:4 142:9,11 142:15,17 143:14,16 173:20 186:5 203:10 204:15 217:20 222:9,10 costs [70] 17:14 21:17,25 21:25 22:19 45:9,21,24 57:21 69:6 80:16 91:10 91:16 92:4,7,22 116:4,6 116:14,16,18 117:3 119:3 121:17 125:18,25 126:1 130:17 131:2 132:5 133:25 134:4 143:13 145:5 172:13 173:24 174:6,8,24 175:4,13,21 177:3,5 178:17 180:14,15 180:18,22,23 181:6,12,13 181:14,17 183:23 188:5 196:19 204:7,24,24,24 207:6 209:7 223:5,15</p>	<p>224:7,11 227:14,16 counsel [38] 3:8 10:2 38:1,4,20 40:17,18,20,21 41:15 55:10 64:6 71:5,6 71:20,21,25 79:1,2 80:20 95:14,15 172:1 176:1 190:12,12,15 191:13 192:13,17,24 194:4 213:10 222:2,3,7 264:18 264:19 count [5] 124:11 149:9 159:1 163:20 238:16 counted [1] 238:8 counties [1] 51:21 counting [1] 53:19 Countrywide [33] 75:18 75:19 76:4 108:14,19 129:1,7,17 130:8,16,19 131:4,11,17 133:8,20 137:11,12 144:23,24 146:1 147:21 171:22,23 246:7 250:18,20 251:2 252:1,3 253:12,17 254:12 Countrywide's [1] 172:1 county [16] 25:23 27:19 27:19,20,21,23 28:20,21 29:1 46:24 174:12 248:6 264:3,13 265:2 266:2 couple [2] 126:2 133:24 course [7] 76:17 96:17 125:12 168:23 242:22 256:24 257:16 court [30] 1:1,21 11:12 41:10 101:22 103:22 110:2,21 121:13 124:20 125:15 126:7 131:1,3,7 131:10 133:25 134:25 135:1,1 136:3 138:18 139:22 142:22 143:13 169:23 198:21,22 257:25 258:6 courthouse [1] 51:25 courts [4] 101:14,15,22 109:20 cover [7] 3:14,22,23 30:19 98:22 169:7 200:24 covered [3] 51:17 144:10 170:11 covers [3] 200:8,9 220:23 crack [1] 256:22 crazy [1] 135:11 created [4] 150:19,22 209:22,23 creates [1] 251:15 credit [1] 231:17 criticized [1] 101:23 cross [1] 258:10 CULBERTSON [1] 2:7 current [2] 126:6 232:8 customarily [1] 116:23 customary [35] 14:7 58:11,13,14,24 59:20 88:17 90:1,12,14,17,20</p>
--	---	--	---	--

<p>employed [5] 16:11 48:9 53:15 59:24 163:2</p> <p>employee [3] 41:13 264:18,18</p> <p>employees [10] 16:2,9 18:18 51:9,10 211:10 229:19,22 230:2,10</p> <p>enclosed [1] 266:12</p> <p>encompasses [2] 124:21 157:22</p> <p>encumbering [1] 15:25</p> <p>end [4] 144:3 206:21 229:20 258:20</p> <p>engagement [16] 11:24 12:1,8,10 14:1 16:19 17:1 20:8 22:7 44:24 68:9 72:22 73:24 74:1 76:15 82:1</p> <p>engaging [1] 59:5</p> <p>enter [5] 40:13 41:25 195:21 261:4,21</p> <p>entered [12] 42:8 53:2 81:11,13 85:5 132:16 141:12 179:4 194:19 197:14 200:11 206:8</p> <p>entire [8] 6:2 13:6 19:11 23:9 30:20 143:25 207:5 221:23</p> <p>entirely [1] 122:14</p> <p>entirety [6] 232:17,23 233:2,15,17 240:13</p> <p>entities [3] 203:12 228:17 248:7</p> <p>entitled [30] 58:23 59:19 83:25 84:19 94:9 97:21 98:2,13,13 110:1 111:22 111:24 112:3,10 113:2,7 114:2,10,14 115:1,8 123:9 125:22 134:4 136:12 138:16 148:7 150:3 173:23 206:20</p> <p>entity [4] 12:8 14:3 74:24 231:16</p> <p>entries [2] 169:7,13</p> <p>entry [2] 140:18 143:16</p> <p>equal [2] 163:10 165:8</p> <p>equals [2] 147:10 215:25</p> <p>equity [1] 234:3</p> <p>ERNEST [1] 1:5</p> <p>error [5] 78:19,21,24 79:8 79:14</p> <p>escrow [1] 91:13</p> <p>especially [1] 221:8</p> <p>Esq [8] 1:17 2:2,3,5,7 3:2 266:5</p> <p>essence [8] 54:14 95:5 95:15 110:19 115:7,14 158:6 182:14</p> <p>essentially [8] 56:6 192:13 223:12,13 224:19 227:1 236:1 243:5</p> <p>establish [1] 225:1</p> <p>established [11] 15:24 72:16 90:23 136:10</p>	<p>138:15 203:11 214:24 215:1 249:15 253:10,10</p> <p>estimate [2] 123:25 166:4</p> <p>estimated [2] 62:6 165:16</p> <p>et [12] 117:23 118:15,18 118:25 119:20 177:13 204:25 208:2 233:7 244:15,16 245:14</p> <p>ethical [1] 136:20</p> <p>event [7] 5:1 111:19 114:8 116:16 163:23 205:7 236:5</p> <p>events [1] 114:24</p> <p>exact [2] 35:21 242:3</p> <p>exactly [3] 124:5,7 207:4</p> <p>exam [27] 19:19 24:16 26:4 28:6 45:4 174:13,16 183:25 204:14 215:7,25 216:20 217:5,22 218:5 223:8,14 246:8,9,15,21 247:6,16,23 249:6 252:9 252:17</p> <p>examination [25] 2:11 16:8 18:13 19:23 20:2 26:5 31:3,15 44:5 46:6,19 47:12,14,17,25 48:6,8 54:17 55:20 56:1 216:16 217:10 246:18 247:19,20</p> <p>examinations [2] 15:17 252:5</p> <p>examine [2] 92:22 249:13</p> <p>examined [9] 3:4 26:22 27:1,4,6,9,17,23 28:21</p> <p>examiner [5] 53:23 54:13,21,23,23</p> <p>examiners [2] 16:10 48:7</p> <p>exams [2] 27:24 248:8</p> <p>exceed [4] 84:24 85:3,25 219:9</p> <p>except [4] 177:15 256:18 258:22 260:1</p> <p>exception [5] 5:12 6:5 158:3 246:19 255:4</p> <p>exceptions [1] 144:1</p> <p>excerpt [1] 212:7</p> <p>excess [2] 128:3 206:20</p> <p>exchanged [1] 5:2</p> <p>excuse [7] 51:5 106:16 139:9 140:12 161:16 183:1 227:1</p> <p>executed [2] 12:10 97:3</p> <p>exhibit [54] 5:4,10,14,15 5:19 12:2 16:18 19:12,21 20:3 24:10 44:4,25 45:15 48:20 78:1,4,11 113:20 116:19 117:18 150:5 172:3,4,8,10 177:24 194:11,14 196:11 206:12 211:23,24 213:13,14 215:16,22 219:1,2,20 225:4 226:20 228:20,21</p>	<p>230:20,21 231:2,3 232:4 236:25 237:1 240:18 254:21,22</p> <p>exhibits [3] 2:15 19:25 201:8</p> <p>exist [4] 126:19 224:11 229:20 247:2</p> <p>existed [4] 16:4 73:4 136:11 154:1</p> <p>existence [3] 16:20 35:15 86:25</p> <p>exists [7] 35:22 46:4 105:12 110:24 195:8 213:4 240:11</p> <p>expanded [1] 160:13</p> <p>expect [4] 161:22 162:16 162:25 165:7</p> <p>expediency [1] 248:11</p> <p>expend [1] 51:4</p> <p>expended [9] 17:22 82:11 159:2,13,23 161:11 161:24 162:18 163:3</p> <p>expending [2] 51:1,3</p> <p>expense [7] 30:20 46:20 208:19 209:21 214:2,25 229:12</p> <p>expenses [14] 20:17 116:23 174:16 204:19,21 204:21 206:22 207:25 213:25 216:12 217:12,15 217:18 218:7</p> <p>experience [4] 99:19 102:18 208:18 247:9</p> <p>expert [2] 102:23 103:2</p> <p>expire [1] 49:11</p> <p>Expires [1] 260:22</p> <p>explained [1] 201:7</p> <p>explanation [1] 125:24</p> <p>explore [1] 110:3</p> <p>explored [3] 143:24 144:1,5</p> <p>exposure [2] 116:10 193:4</p> <p>express [2] 118:1 196:15</p> <p>expressed [2] 110:17 198:6</p> <p>expressly [5] 183:6 184:6,8 198:2,4</p> <p>extent [4] 144:11 145:12 146:5 155:25</p> <p>extinguished [1] 140:18</p> <p>extra [1] 154:11</p>	<p>178:13,13 183:3 193:1,1 220:7 255:4</p> <p>factor [2] 89:22 95:23</p> <p>factors [3] 53:25,25 66:19</p> <p>factual [1] 23:9</p> <p>failed [2] 250:2 252:18</p> <p>fair [12] 7:20 21:24 30:22 43:6 50:19 95:5 126:15 200:16 228:3 241:24 243:25 256:17</p> <p>fairly [1] 208:17</p> <p>fall [3] 67:25 151:8 241:14</p> <p>falls [2] 158:4 161:13</p> <p>familiar [7] 17:17 75:1 189:2 218:21,22 224:15 224:17</p> <p>family [1] 11:23</p> <p>Fannie [235] 3:10,12,14 3:17 4:8,9 6:20 7:6,13,17 8:18 9:3,4,5,10 10:3,4,15 10:16 11:9,16,22 12:16 12:22 13:4,15 15:3 16:19 16:21 17:5,6,9 18:25 19:16,17,21 20:1 23:18 24:22 29:24 30:11 31:2 31:25 32:2,3,16,19,23 43:4 44:9,13,24 45:10,17 45:20,23,25 46:9,13 47:21 48:17 55:10,21 56:5,8,15 56:17,22 57:14 62:15,20 62:23 63:7 67:12,21 69:11 71:2,3,4,13,15,16 72:1,3 72:8,9,12 73:16,20 74:3,9 74:11,15,17 75:13 76:2,7 76:13,16,19,23 77:18 80:12 81:1,2,3 83:6,9,11 83:12,13 84:25 85:1,4,17 85:24 88:19,21 89:3,7,14 89:20 94:4,19,19,21,23 95:8,9,10,16 96:4,9 108:16,19,23,24 109:5 110:7,19,24 112:8 113:7 113:13 115:4 116:16 117:8,14,17,19,22,25 118:5 127:10 128:1 133:1 133:12 138:9,13,14,16 139:2,5 144:23 147:23 148:6,19,20,23 149:5,20 154:20 155:10,11,15 156:2,3,11 157:22 174:13 174:19 177:12 179:12 180:16,19,24 181:14,18 182:5,7,12 186:2 199:4 199:12,12,18,21 200:4,7 200:17,20 203:18,25 204:1,12,16 218:15,18 219:6 221:8,14,25 222:19 223:13,19 224:4,10,12,20 226:3,6,8,25 227:2,3,6,10 237:15,18 242:7,8,14 244:13,13 248:18</p> <p>Fannie's [1] 225:1</p> <p>far [12] 27:6 29:14 40:13 86:15 108:2 130:9 144:14 193:11 206:8 234:12 235:10 256:22</p>	<p>fashion [2] 222:9 223:21</p> <p>Fast [3] 101:12,12,21</p> <p>fault [1] 248:5</p> <p>fax [3] 3:14,22,23</p> <p>faxes [15] 120:8,20 121:25 122:6,15 123:15 124:8,23 125:16 126:7,25 127:2 128:4,9 187:11</p> <p>February [13] 3:18,19 3:22 72:10,11,15 89:19 166:19 182:4 221:21 265:9 266:4,10</p> <p>Federal [2] 41:10 118:1</p> <p>FedEx [3] 118:1 182:9 188:20</p> <p>FedExs [1] 124:21</p> <p>fee [123] 18:5,5 45:10,18 45:20,25 46:14 61:22 62:10 74:16,18,22,23 75:7 75:10 78:23 82:9,15 83:10 85:22,24 86:12,24 87:6 89:7 93:12,22,24 94:1,20 96:14 97:12,20 98:3 102:4 102:21 103:3,18,21 104:11 105:7 107:2 108:3 108:22 109:19,24 110:2 111:2,4,15 113:21 116:25 118:3 133:3,14 134:9,15 134:23 137:6 141:15 146:7 153:4,6,17,23 154:7 154:10,10,12,18 155:6 156:12 157:24 158:7 160:10,13 161:10,16,17 161:25 162:16 163:1,4 171:1 172:13 174:10,14 176:20 177:5,10 178:16 178:17,24 181:1,10 184:22 187:11 188:22 198:15,20 199:22 201:14 201:21 202:22 203:3,5,6 203:10,11 217:22 218:6 220:23 221:5,6,11 225:1 225:2 226:6,8,23 229:12 229:24 230:1</p> <p>fees [139] 14:8 22:23 45:9 45:20,24 56:16,18 57:3,5 57:21 58:9 59:12,17,23 60:3,7,17 61:8,12 62:4,6 62:6,8 64:9 68:17,25 69:10,20,21 80:16 83:4 84:12,17,19,21 85:11,11 87:19 90:2,6 91:4,9,15,17 92:4,6,12,22 93:8 96:14 97:21 98:15 109:2,7,21 110:21 114:3,11 116:2,4 116:6,14 117:3 118:21 119:15 128:3,17 130:17 131:1 132:4 133:25 134:4 138:17 141:20 145:4,24 145:25 146:10,15,18 147:25 148:8,15 152:12 152:23,24 156:8,22 157:23 160:15 161:22 162:8 163:14 164:3 165:8 165:16 166:11 167:14 172:11 174:6 175:21 177:3 180:14 196:19 198:15 199:3,7 200:1 205:8,10 206:17 207:6,21</p>
--	---	---	---	--

89:9 90:7,22 91:5,20 94:11 95:3,18,22 96:11 97:14,22 98:16 99:2 102:22 104:6 105:16 112:7,22 115:11 126:9,17 127:4,23 129:9 130:1 131:23 134:17 135:6,19 136:12 137:16,23,25 138:11 139:7,18,23 140:9 141:23 142:14,25 143:3 143:15,19 144:18 145:2,9 146:3 147:17 148:2,10 149:13,19,23 150:17 151:12,22 152:16 153:2 154:25 155:25 156:10 159:4 160:1,17 162:2,20 163:7,16 164:6,22 165:3 165:11,23 166:13 167:4 167:11,24 168:20 170:5 170:12 171:3,18 172:19 172:25 173:4,9,21,25 174:17 175:1,7 176:5,11 176:17 178:25 181:25 182:16 183:9,15 184:4,16 185:20,23 186:16 187:3,6 187:16,20 188:3,7,10,15 188:23 189:6 190:18 191:6 193:22 194:1 195:15 199:9 202:17 203:2,13,16 208:8,22 209:9 210:8,16 216:21 219:8 222:17,22,24 223:6 223:22 230:3 231:12 232:21 233:12,19,25 241:18 247:13 249:7 252:11 255:2,11,14,17 256:18 257:14,16,23 258:5,15,18,22	green [11] 76:20,20 77:19 77:20,21 158:18 175:12 175:16,17,20 201:9 gross [1] 229:8 group [1] 156:25 grudge [1] 191:20 guarantee [1] 210:20 guaranteed [1] 27:9 guess [7] 25:7 74:14 81:23 84:5 178:22 212:16 245:9 guessing [1] 237:20 guidance [2] 89:25 90:13 guideline [20] 45:5,10 70:12 74:11 83:11,12,13 94:1 109:5,9 138:20 139:1 201:3 203:22 213:4,5 222:8 248:18 249:15 250:1 guidelines [91] 11:17 14:9 24:14 27:8 30:11 43:4 47:22 56:8 62:9,13 72:3,8,9,12,14,16 73:16 74:3,4,12,14,15,17,20 78:25 81:3 94:4 108:23 108:24 109:1,22 110:7,11 110:13,16,17,18 112:8 138:9,13,14,17 147:23 148:6 171:16 174:21 175:3 180:16,19 181:9,12 181:15,18,20 185:10,14 185:25 186:1 200:4 202:2 203:10,19,23,24,25 204:1 204:3,5,15 210:3,18,19 211:13,15,20 218:17 219:6,7,20 220:19 221:14 221:24 224:3,21 227:4,6 227:7 248:3 249:23 253:2 253:11 Guilday [293] 2:2,2,13 4:14,19,20 5:3,7,9,13,17 8:11 10:13 11:14 13:21 13:24 23:6 24:8 25:12,16 27:12 29:22 30:15,25 31:6 32:4,7 33:25 34:13,24 35:6,9,13 36:8,20,25 37:1 37:11,18 38:22 39:16 40:12 42:10,13,15 43:22 43:24 45:14 47:6,23 48:4 52:12,20 53:6,13 54:12 54:22 58:25 61:18 62:2 67:11,17 71:16,24 73:12 73:22 74:8 77:22,24 78:8 78:9 79:17,23 80:17 81:4 81:24 85:13 88:9,20 89:1 89:11,16 90:9,25 91:7,22 94:14 95:4,20,24 97:1,17 97:24 98:18 99:6 102:9 102:25 104:1,4,8 105:22 106:1,6,25 107:4,11,17 107:21,25 110:12 111:10 112:11,24 114:5 115:6,13 115:17,24 116:17 117:7 117:15 119:13 121:9,15 122:10,20 126:11,20 127:6,24 129:11,16,24 130:3,7 132:1 134:21 135:7,11,16 136:9,23 137:21 138:7,19 139:8,20	140:1 141:24 142:16 143:5,10 144:8,19 145:3 145:17 146:11 147:22 148:5,14 149:24 150:21 151:15 152:1,17 153:5,16 155:4 156:5,14 159:15 160:9,20 162:5 163:24 164:9,24 165:4,12 166:8 167:6,12 168:1,5,21,25 170:9,21 171:11,20 172:2 172:6,20 173:1,6,11,22 174:2,23 175:8 176:8,13 176:19 177:23 178:1 179:3 182:2,18 183:11,20 184:10,19 186:8,22 187:4 187:9,19,21,24 188:4,12 188:17 189:1 190:20 191:7,9 194:7,10,13 195:17 199:14 202:18 203:7,14,17 208:9,24 209:17 210:12 211:23 212:1 213:12,16 216:25 218:11,13,25 219:4,15 222:18 223:1 224:2 225:6 226:19,22 228:9,13,19,23 230:4,19,23 231:1,5,14 232:24 233:22 234:2 236:24 237:3 241:21 242:11 247:14 251:6,17 251:22 252:13 254:21,24 255:8,12 256:3 257:9,15 257:18,24 258:11,17,20 265:22 266:5,5,11 Guy [1] 192:5 guys [2] 107:12 254:9	222:14 258:19 harbors [1] 71:8 hard [1] 125:19 head [1] 7:4 heard [3] 191:6 238:25 247:8 hearing [1] 4:23 Heidi [6] 179:19 189:4,8 189:11 249:19,22 held [6] 232:22 233:14,16 237:11 265:9 266:10 Heller [1] 251:9 help [7] 28:17 36:20 37:2 37:12 74:14 114:18 138:13 helps [1] 36:25 hence [2] 183:7 229:23 hereby [1] 264:14 HEREIN [1] 260:2 hey [3] 166:18 202:9 254:9 higher [3] 27:1 55:15 163:21 Highpoint [1] 266:6 HINSHAW [1] 2:7 history [4] 67:1 148:25 170:20 238:9 hold [5] 145:9 156:22 202:9 232:17,23 holder [9] 84:6,7,8 87:14 87:23,25 88:1 93:17 114:23 hope [1] 127:23 hoped [1] 258:7 Hosh [2] 247:25 248:21 host [3] 6:18 64:5 66:18 hour [13] 65:11,12 66:11 99:22,23 137:8 149:3 162:8 163:20 164:15,20 164:25 202:2 hourly [4] 58:15 82:20 83:25 161:12 hours [42] 65:6,11,13,13 65:14,16 66:15,16 101:18 101:23 137:8 147:8,9,9 148:23 149:3,9 159:1,8 159:14,23 160:8,12 161:11,12,23 162:13,15 162:17,23,24 163:3,18,18 165:8 166:25 169:1,24 170:10,25 187:22 265:14 Howard [3] 231:8 234:7 234:10 HUD [11] 224:14,20,25 225:15,19,23 226:11,15 226:23 227:1,2 HUEY [2] 2:2 266:5 hundreds [3] 217:8,8,10 HVAC [2] 18:23 21:22 Hyatt [1] 249:3 hypothetical [3] 168:20 209:22,23	-I- i.e [1] 198:6 idea [2] 27:4 254:6 identified [3] 172:14 194:14 195:2 identify [9] 78:13 128:14 150:6 172:7 178:2 194:17 227:21 243:16 247:22 identifying [1] 239:16 identity [1] 106:19 imagine [2] 65:6 152:3 implied [1] 100:20 imposed [3] 14:9 50:17 187:11 imposes [2] 30:3 52:13 improper [2] 202:25 203:3 in-house [4] 18:12 150:19 194:4 213:10 inaccurate [1] 247:12 inadvertently [2] 251:13 255:21 Inc [3] 3:21 75:7 266:1 Inc. [2] 228:8,15 incentives [1] 222:4 inception [4] 109:13 138:22 139:5 179:6 include [9] 20:20,25 21:2 54:16 125:15 126:24 182:8 204:21 216:16 included [14] 19:20,24 22:19 116:24 118:3 124:23 139:16 141:7 163:5 170:3 173:23 216:20 217:22 218:6 includes [4] 25:6 178:17 217:20 221:6 including [3] 183:24 208:1 216:12 income [2] 228:7 229:7 inconsistencies [1] 164:2 inconsistent [2] 110:6 227:6 incorrect [14] 39:21 45:13 67:4 113:4,5 115:23 127:17 165:10,13 184:18 226:25 227:2 240:19 253:8 incorrectly [2] 91:19,21 increased [1] 199:7 incur [4] 84:11,20 85:10 208:11 incurred [24] 50:20 51:1 52:16 92:4,7,11 116:4,24 120:21 122:5,15 123:14 123:25 147:25 148:9,16 153:24 163:15 177:5 207:25 208:14,21 209:21 229:23 incurring [1] 84:16 indeed [5] 9:18 46:22
---	---	--	--	--

length [1] 265:15	litigated [5] 66:18 70:1 82:20 121:14 133:5	220:4 221:15 224:15 225:7,8 228:24	199:12,12,15,15,18,19,21 200:4,7,17,17,20,21	106:11 113:10 114:21 120:3 125:12 126:12
lent [1] 229:18	litigation [7] 7:5 42:25 43:1,1 67:6 128:23 129:13	looked [5] 6:11 9:1 151:23 163:25 168:3	203:18 204:1,1,2,3,12,16 218:15,18 219:6 221:8,14	127:3 132:19 133:5 135:5 159:10 168:23 189:15
Leon [6] 27:20,21,23 28:20,21 29:1	loan [135] 31:24 32:10,11 32:13 33:21 43:14 57:23	looking [14] 37:17 40:7 44:3,24 53:1 146:22	221:25 222:19 223:13,20 224:4,10,12,20 226:3,6,8	220:7 240:15 265:19
less [6] 29:16 51:17 66:20 66:21 162:15 249:5	57:24 66:23 68:4 69:15 69:16,17 70:20 71:12,14	151:24 154:15,16 201:17 203:8 213:21 219:18	227:1 237:15,18 242:7,8 242:14 248:19	matters [6] 22:24 59:11 99:5 101:23 128:2 131:12
letter [128] 3:8,10,11,13 3:16 6:5 10:1,22,23 11:7	71:17,17 72:2,15,19,25 73:13,19 74:4,10 75:17	246:3	Mac's [5] 48:17 71:4 227:2,3,10	maximum [16] 69:12,24 94:9 98:12,19,20 109:3
11:18,21,21,24 12:1,4,9 12:10 13:3,9,10,13,14,19	76:2,3,5,6,11 77:7,8,12 77:15,17,18,18 78:17 79:5	looks [4] 46:16 173:5 201:12 220:8	mail [1] 166:10	110:13 116:10 133:3,14
13:19,20 14:2 16:18,20 17:1,13 19:16,19,20,24	79:19,20 80:2,11,12,14 83:1 84:25 85:2,4 88:21	lose [1] 249:10	mailing [2] 6:8 204:23	134:14 160:5 219:21,25
20:1,5,8 22:5,6 24:2,4,10 24:13 44:23,24 46:4 48:17	89:7,15 93:13 94:20,22 94:23 95:10,12 96:3,4,4	loss [1] 98:5	maintain [9] 8:2,4,9,9 9:4,5,20 10:3 239:21	220:16
48:19,20 55:4,18 56:10 56:14 58:6 59:16 61:7,13	96:10,12,13,15,19 98:14 108:17,19,20 113:8,13,15	lost [4] 149:23 162:4 252:12,12	maintained [1] 8:12	may [41] 3:12 9:12,12
61:24 62:12,25 65:3 69:4 69:6 72:22 73:20 78:2	114:1 116:16 117:6,8,14 117:17,19,22,25 118:5,7	lots [3] 40:25 219:10 248:25	maintains [3] 7:24 9:7 9:10	17:10,13 21:4 55:4 110:15
79:6 80:19,19 91:2 92:10 113:19 116:18 119:7,24	126:19,22 127:5,7,10,14 127:20 129:1 133:1,11,13	Lucklara [1] 248:21	majority [1] 105:3	114:23,23 133:7 146:8,23
120:1,7 122:4,16 123:19 123:20,22 126:13 142:5,8	133:16 143:18 144:23 148:24,24 153:19 154:18	lump [1] 252:20	makes [8] 11:23 12:6 25:9 35:4 45:21 74:11	146:23 147:9,24 154:7,11
142:23 145:20 156:9 161:20 162:19 163:4,5	157:24 164:13 178:9 179:12,13,16,18 182:7,7	lunch [2] 96:25 104:3	95:11 209:24	154:13 159:11 161:3,4,11
165:5 166:16 167:22 168:15 171:2,7,12,14	182:12 199:12,15,15,18 199:19,20,21 200:7 204:4	<hr/> -M- <hr/>	Malay [1] 131:15	163:20,21 166:2 168:22
174:20 175:4 179:8,9 201:12,14 204:12,17	207:23 210:19 214:21 221:18 239:10 243:4,16	M [1] 2:7	Mallie [2] 111:16 137:7	171:5,7 192:23 206:23
215:13,17,20 216:2,6,7 216:10 223:10 224:16,19	243:17,24 245:10 249:11 254:3	M.I [1] 123:4	management [4] 151:7 229:12,24 230:1	207:1 209:1 212:19 213:6
226:11,15 249:19,21 252:10,21 254:13 265:11	loans [71] 4:9,10,10 11:9 31:25 55:22,25 56:5,5	Mac [41] 32:16 62:20,23 67:12,15,21 69:7,11,17	manager [4] 7:3,4 190:2 197:11	238:8,8 239:12,13,19
266:15	63:6,7 67:20,23 68:15 69:19,22,25 71:2 73:9	69:18,22,25 70:13,20 71:3 71:3,8 72:1 84:25 168:11	managers [2] 150:20 152:4	255:4
letters [7] 17:4,9 61:19 62:5 159:17 160:25 164:5	75:12 76:25 77:5 81:1 83:7,9 86:1 88:19 89:17	203:24,25 212:6,7,22,25 213:2,4,7 214:20 215:10	mandated [1] 79:1	McClosky [3] 2:4 40:23 265:5
level [1] 151:7	89:21 95:9,9 96:15 118:19 118:21,24 153:1,20	215:13 216:3,4,5,10 217:8 218:4 221:25 246:12,13	mandates [1] 161:14	McCollough [5] 179:19 189:5,8,11 192:3
liabilities [2] 235:13,18	154:20 155:11,12,23 156:2,3,12,17 157:9 196:5	Mac [237] 3:10,12,14,17 4:8,9 6:20 7:6,13,17 8:18	manila [1] 84:1	McEntire [2] 197:3 199:2
liability [1] 27:15	199:12 210:25 211:3 214:22 221:18,22 224:4	9:3,4,5,10 10:3,4,15,16 11:9,17,23 12:16,22 13:5	manner [1] 136:8	meals [1] 204:22
liberty [4] 129:22 131:2 131:10 134:1	224:14 227:5 236:14 237:15,16,18 238:12	13:15 15:3 16:19,21 17:5 17:6,9 18:25 19:16,17,21	Marc [2] 81:14,19	mean [29] 28:4 49:4 56:24
lien [6] 84:7 87:14,23,25 93:17 114:23	239:7,22 240:3,4 244:4 244:13 245:13 246:12,13	20:1 23:18 24:22 29:25 30:11 31:2,25 32:2,3,16	March [5] 3:16 56:11 86:4 215:17 226:2	69:3 71:1 83:16,17,18
lienholders [1] 198:17	250:16	32:16,19,23 43:4 44:9,13 44:25 45:10,17,20,23,25	mark [18] 5:3,9 76:16 172:2 194:7 211:23	100:10 107:22 112:2
lieu [1] 153:15	local [1] 125:3	46:9,13 47:21 55:10,22 55:25 56:3,5,8,16,17,22	213:12 218:11,25,25 225:3 226:19 228:9,19	114:20 133:18 182:25
light [3] 18:18 193:1,1	locate [7] 6:11,14,15 8:20 8:23 10:5,22	57:14 62:15,20,23 63:7 67:12,14,21 69:11 71:2,3	230:19 231:1 236:24 254:21	198:5 203:18,21 206:14
likely [1] 122:14	located [5] 8:6 9:14 10:23 11:1 64:14	71:13,15,16 72:1,3,8,9,12 73:16,20 74:3,10,11,15	marked [37] 5:16 12:2 44:3,25 45:15 46:8 48:20	207:2 218:4 226:5 233:17
limit [4] 27:15 142:4 224:7 257:18	log [9] 238:18,18,23 239:2 239:6,9,21 242:5,19	74:17 75:14 76:3,7,13,16 76:19 77:18 80:12 81:1,2	77:25 78:5,10 113:20 116:19 150:3,5 172:5,9	241:19,20 246:15,15
limited [25] 59:23 60:3,6 88:22 89:2,7 112:6,14,16	logs [2] 238:13,17	81:3 83:6,9,11,12,13 84:25 85:1,4,24 88:19,21	177:23,25 194:12 196:11 206:12 211:25 212:25	251:11,15 257:5
113:9,10,14 114:1 137:4 148:23 157:25 158:3	longer [5] 34:10 128:2 140:19 224:20,25	89:3,7,14,21 94:4,19,20 94:21,23 95:9,9,10,16	213:1,15 218:12 219:3,6 225:5 226:21 228:22	meaning [1] 17:5
161:8,9 199:16 200:16 211:1,2,3 255:24	look [48] 5:22 9:1 19:15 36:16 45:7 78:10 99:11	109:5 110:7,19,24 112:8 113:7,13 115:4 116:16	230:22 231:4 232:4 237:2 240:18 254:23	meaningless [1] 80:22
limits [2] 216:15,20	100:5,6,8 104:17,23 108:7 111:13,15 119:20 122:21	117:8,14,17,19,22,25 118:5 127:10 128:1 133:1	market [1] 248:16	means [20] 66:6 117:18
line [4] 51:22 137:2 166:2 261:5	122:22,23,24,25 123:2,3 123:12,17,18 124:9	133:12 138:9,13,14,16 139:2,5 144:23 147:23	marketability [1] 246:25	141:8 157:13 158:10
lis [5] 149:2 164:19,20 168:8,18	140:15,25,25 146:21,24 156:15 165:19 169:5	148:6,19,20,24 149:5,20 154:20 155:11,11,15	marketplace [1] 247:5	160:5 180:18 183:1 198:4
Lisa [2] 142:7 145:21	170:16 172:21 197:20 201:18 212:2 217:7,12	156:2,3,11 174:13,20 177:12,13 179:12 180:16	Marsha [1] 249:2	203:22 207:3,5,5 217:5
list [3] 62:16 104:17,23		180:19,24 181:15,18 182:5,7,7,12 186:2 199:4	MARY [1] 1:4	217:21 221:2 226:17
listed [3] 235:13 265:11 266:12			master [1] 6:20	233:21 234:1 235:17
Listen [2] 107:17 145:9			match [2] 165:22 167:20	meant [1] 41:2
listing [5] 146:21 237:15 238:6 240:2 242:5			matching [1] 246:5	meantime [1] 104:7
			matter [28] 37:22 41:5,19 67:6,8 79:15 80:22 82:10	mechanism [1] 171:16
			83:24 89:14 94:2 105:18	Medoff [1] 103:7
				meet [2] 222:5 249:9
				Mellon [12] 4:9 75:11,12
				76:25 77:12 78:22,24 79:6
				79:19 80:8,20 82:4
				Melon [61] 78:3,14 79:2
				80:5 81:6,12,22 85:7,10
				85:18,21,23 86:19 87:4
				87:20 88:5,16,17 89:23
				90:6 91:1 92:10 93:6 96:3
				96:13 98:13,14 100:3,15
				104:12 113:16 114:13
				115:2,18,25 116:3,9,13
				116:20,21 119:6 136:17
				136:22 153:3,7,8,20
				154:13 161:19 181:3,25
				182:4,10,15 183:1 193:8
				193:12,16,19 198:11
				205:5

174:17 175:1 176:6,7,17 178:25 184:1,4,16 185:20 186:16 187:7 190:18 195:15 199:9 202:17 203:2 208:22 209:9 216:21 219:8 222:17,22 223:22 231:12 241:18 247:13 255:12 objected [2] 106:7 176:1 objecting [1] 106:9 objection [82] 4:1,5,8 35:3 37:8 38:9 58:21 79:22 80:23,24 88:14 90:7 95:22 96:11 97:14 98:16 99:2 101:15 106:14,23 110:9 111:7 112:7,22 114:4 115:3,11,16,22 116:12 117:11 119:11 121:7 122:7,18 126:9 134:17 135:4 139:23 140:9 141:23 142:14 146:3 148:10 149:13 151:22 152:16 153:2 154:25 156:10 159:4 160:1 167:11,24 171:3,18 173:4,9 176:5,11 182:16 184:5 185:21 186:17 187:6,16,16 188:6,7,23 189:6 199:10 208:8 210:16 223:6,6 230:3 232:21 233:12,19,25 249:7 objections [4] 34:23 130:4 143:15 175:7 objects [1] 233:7 obligated [8] 51:22 96:21,22 116:14 208:3,4 209:6,10 obligation [4] 135:25 136:20 161:15 208:11 obstructive [1] 37:10 obtain [13] 25:25 29:3 84:10,17,24 85:2,9 191:12 199:3 200:1 231:17 243:10 246:14 obtained [4] 38:3 88:5 140:3 247:15 obtaining [2] 190:11 246:25 obviously [4] 23:14 232:3 258:3,5 occasion [3] 23:8 189:15 224:12 occasions [5] 23:7 28:14 93:1 185:12 223:12 occur [9] 23:13 37:22 39:3 111:6 114:24 119:14 196:22 197:2,13 occurred [17] 34:14,16 38:6,7,25 39:7,11,19,22 43:12 165:24 168:16 169:18,20 180:21 196:22 199:2 occurs [1] 52:6 October [4] 20:5 22:5 24:3 260:23 off [22] 53:23 57:9 88:7	93:13 112:13,14 114:9,20 114:25 115:10 127:1 137:2 140:5,12 181:21 199:5 210:8,9,13 238:12 239:7 243:2 offense [1] 214:7 offer [1] 27:7 office [31] 4:15,18 6:8 7:3 7:4 48:12 57:1,18 120:11 123:13 131:8 132:3 145:21,25 150:2,8 151:4 151:18 152:6 155:24 160:3,6 166:17 186:12 210:20 236:20 237:5 241:12 265:13,14 266:7 officer [1] 210:20 offices [17] 1:9 3:20,21 3:25 10:1 14:18,23 16:12 16:14,16 19:25 51:14 55:5 78:15 131:17 194:19 211:4 official [1] 264:6 often [2] 66:25 221:8 old [1] 49:10 on-site [2] 56:22 57:14 once [6] 32:24 54:4 116:5 168:24 243:12 252:19 one [78] 7:18 10:23 17:10 22:17,24 26:21 27:7,16 35:22 36:5 40:10 43:20 46:16 48:24 52:23 53:24 54:20,21 56:15 60:1 68:13 74:17 78:23 84:13 93:16 95:7,13 97:12,23 99:21 100:24 118:11 131:15 136:14 140:25 142:17 144:20 146:21 150:2 153:11,19 154:4 155:14 158:13,21 163:3 171:14 173:16 175:5 178:5 191:6 192:7,7,10,25,25 194:3 200:13,25 201:8 205:4 211:7 214:4 217:11 218:12 225:10 231:23 232:2 236:22 239:4 240:25 250:15 251:23 252:20 253:8 255:4 256:18 258:22 ones [5] 33:10 60:20 108:8 155:9 256:19 open [3] 158:6 202:7 242:14 opened [6] 76:10 202:16 202:23 203:4 241:22 242:7 operate [1] 246:6 operation [2] 64:2 197:12 operations [2] 243:25 251:15 opportunity [8] 106:12 126:13 188:13 229:17 247:18 255:23 256:1 257:3 opposed [2] 111:3 161:6 option [2] 71:5 159:8	oral [33] 17:2 24:18,19 63:4,5 109:10 110:5,6,17 110:23 113:19 119:8,14 179:21,22 183:13,16,18 196:14,17,21 197:13,23 198:1,5,14 199:1 205:2 205:14 222:20,25 223:2,9 orally [3] 198:2,4,6 order [8] 26:21 27:22 96:24 97:19 98:1 103:23 188:10 251:10 ordered [5] 54:3 158:7 201:23 202:2,11 orders [3] 53:24 54:2 258:6 organization [3] 55:15 173:13 240:22 original [11] 8:12 121:12 121:12 124:19,19 152:2 175:22 176:9 265:22 266:12,19 originally [1] 15:24 originate [2] 75:7,10 otherwise [6] 4:12 13:1 160:23 161:2 163:13 206:20 out-of-pocket [10] 172:13 173:20,24 174:6,8 174:16,24 175:3 206:22 223:15 out-sourcer [1] 154:8 out-sourcers [2] 75:14 153:9 out-sources [1] 78:22 out-sourcing [4] 74:16 153:4,17,23 outlined [1] 256:23 outside [10] 18:9 51:15 51:20 84:9 156:4,6 229:12 246:1,18,22 outstanding [1] 258:9 overhead [4] 21:25 22:1 51:6,8 overly [1] 61:15 oversees [1] 197:11 oversight [9] 139:19,25 141:6,8,8 142:21 250:4 252:19 254:20 owe [7] 202:9,12 207:14 207:17 235:19 252:20 254:9 owed [1] 92:3 own [15] 21:3,6,11,12 63:18 88:22 116:2 158:20 224:22 225:2 232:19 233:10,21,23 234:1 owned [1] 52:23 owner [1] 228:17 ownership [1] 233:17	196:23 205:17,23 249:2,2 266:5 P.A. [2] 157:4 204:9 p.m. [3] 213:20 259:1 265:14 package [2] 13:6 75:14 packaged [1] 153:20 packaging [10] 74:16,18 74:22,23 75:7,10 78:23 96:14,14 153:11 packet [1] 19:12 page [19] 2:11 62:13 150:24 156:15 201:3,9 203:14 206:15 213:8,9,21 213:22,24 219:18 220:7 225:7,8,12 261:5 pages [2] 124:12 151:23 paid [49] 15:18 16:14,16 18:1,16 21:17 25:7 29:11 49:3,18 51:19 82:8 87:18 87:20 88:12,15 93:13 94:9 96:14 97:21 98:2 110:14 111:2 114:10,14 115:1,9 148:7 153:6,23 154:13 155:20 180:11 183:7 184:7,11,21 185:4,17 186:1 199:5 204:20 209:2 215:5 217:9 238:12 239:7 239:9 252:17 Palm [1] 46:23 pamphlet [1] 6:21 paper [6] 18:22 21:20 48:14,14 51:12 154:2 paragraph [13] 58:8 82:7 82:12 116:21 178:15 203:8,13,14 204:18 205:7 217:13,23 221:5 paralegal [14] 51:2 53:24 54:2 121:8 124:9 147:2 149:8 158:22,24 159:22 171:13 201:11,23 216:4 paralegals [16] 61:20 62:3,9 68:14,19,21 121:4 146:24 156:7 158:13,15 158:18,22 159:17 202:15 202:22 parentheses [2] 206:17 206:21 part [22] 9:12 11:13 16:23 16:24 21:16,22 28:11 47:5 79:13,14 80:25 100:21 112:19,23 130:20,21 178:11,12 205:11 216:16 227:3 236:5 partial [1] 236:5 participant [1] 11:22 participated [1] 64:8 particular [46] 17:1 41:16 64:2 78:6 79:6 80:5 80:9,10,11 81:7 92:20 117:9,13,18 135:23,24 146:18 152:21 154:16,23 158:19,21 162:7 164:11 165:6 167:15 169:25 171:21 177:10 178:6,9 183:3,17,17 193:2 197:17	198:23 201:2,12 207:12 213:17 216:2 222:21 235:21 237:12 238:16 particularly [1] 218:18 parties [8] 21:13 27:3 28:7 123:9 185:1 198:16 246:23 264:18 parties' [1] 264:18 party [39] 11:22 17:24,25 18:16 21:7,9,10 30:1 42:12 48:5 50:25 54:7,19 62:7 87:21 88:6 105:17 110:1 114:20,21 115:10 116:14 138:16 155:9 158:4,5 161:5,9 163:23 184:15,23,24 185:7 193:2 198:18,18 199:5 219:19 246:18 party's [1] 247:24 pass [1] 154:7 past [2] 34:15 224:21 pay [83] 18:4,8 20:18,19 21:1,2,10 24:24 27:17,21 29:2,12,15 32:19 48:5,11 50:3,6,8,10,25 51:8,9,10 51:14 57:9 60:5 74:18 91:14 96:21,22 97:4,11 98:7 99:23,25 100:4 112:3 112:13,13 114:9,20 115:19 116:1,5,15 127:1 140:5 142:12 155:18 157:16,16,17,19,20 180:23 184:7,20 185:13 186:21 187:1,10 207:9 208:3,4,13,18 209:6,8,10 209:11,20 218:9 219:22 221:11 223:24 230:8 246:8,9,10,14 250:6 payable [1] 235:14 paying [14] 21:6,8 25:18 25:22 26:1,7,8,9 74:22 87:6 88:7 113:13 140:12 252:9 payment [10] 19:18 29:25 67:1 74:16 148:25 158:4 180:14 186:6 224:1 245:25 payoff [6] 57:20 140:23 206:19 238:18,23 254:5 payoffs [4] 58:9 206:15 239:2 240:9 pays [10] 21:12 48:7 112:25 113:1,6 114:25 115:10 161:8 166:9 184:13 PEGGY [2] 265:1 266:1 pen [1] 48:14 penalties [1] 261:20 pendens [5] 149:2 164:19 164:20 168:8,18 pending [7] 6:3 33:14 41:9 42:25 43:1,1 143:20 people [13] 16:11 17:4 29:10 48:9 68:23 103:4 119:17 126:4 153:12 186:6 189:9 192:22 241:8
--	---	---	--	---

-P-
P-e-t-r-o-f-f [1] 241:4
P.A [16] 1:10 2:2,4,7 3:20
78:15 194:17,21 195:6,12

<p>provision [3] 147:23 154:23 205:1</p> <p>Public [3] 1:22 260:17 264:9</p> <p>PUD [1] 65:3</p> <p>pull [1] 60:22</p> <p>pulled [1] 54:9</p> <p>pulling [1] 52:25</p> <p>punitive [2] 4:2,6</p> <p>purchase [2] 28:20 246:7</p> <p>purchased [1] 94:23</p> <p>purchasing [1] 28:24</p> <p>purport [1] 27:7</p> <p>purports [3] 27:2 237:9 240:20</p> <p>purpose [3] 15:25 37:25 255:25</p> <p>purposes [7] 36:15 61:7 67:5 117:16 153:10 190:13 247:23</p> <p>pursuant [9] 1:23 36:14 70:12 137:10 138:10 140:13 146:1 148:17,17</p> <p>put [19] 16:1,2 46:15,16 63:20,25 88:10 89:12 121:11 141:8,10 142:21 142:23 147:12 170:7,18 170:23 202:9 229:17</p> <p>putting [3] 64:8 201:13 234:15</p>	<p>reached [2] 81:20 109:12</p> <p>read [20] 10:9 11:12 23:1 23:3 25:14 79:13 137:18 137:19 155:2 188:16 193:24 206:14 218:23 225:11 240:12 258:23 261:20 265:13 266:14,18</p> <p>readily [3] 68:24 132:22 258:15</p> <p>reading [6] 170:7 258:25 265:12,16,17 266:13</p> <p>ready [3] 136:3 166:20 187:23</p> <p>really [11] 79:20 123:25 170:16 191:23 209:24 227:11 229:20 240:19 243:3 251:6 256:16</p> <p>reason [10] 41:24 42:23 46:25 106:14 123:7 176:3 199:11 207:16 211:18 224:13</p> <p>reasonable [54] 14:8 58:11,12,14,24 59:19 80:16 87:21 88:16 90:1 90:12,14,17,20 91:4 92:12 93:7,11 98:21,22,25 99:1 99:3 100:21,23,24 101:9 101:16,20 102:3,11,12,19 103:18,20,23 109:19,21 109:24 110:2,20,22 114:2 138:17 161:9,16,17 169:2 181:10 198:15,20 208:1 247:4 257:19</p> <p>reasonably [1] 132:8</p> <p>reasoning [1] 86:17</p> <p>reasons [1] 96:13</p> <p>recalls [1] 36:23</p> <p>recap [1] 104:9</p> <p>receipts [1] 229:9</p> <p>receive [4] 64:21 70:15 83:25 113:3</p> <p>received [7] 65:15,24 66:12 70:13 123:10 198:16 254:2</p> <p>receives [1] 198:19</p> <p>receiving [2] 64:25 216:2</p> <p>recently [1] 189:16</p> <p>recess [4] 43:23 77:23 104:3 255:16</p> <p>recites [1] 105:6</p> <p>recognize [1] 157:11</p> <p>recognized [1] 250:4</p> <p>recommend [1] 192:22</p> <p>recommended [1] 62:22</p> <p>record [15] 3:7 40:8 53:2 78:1 104:4 106:9 130:1 135:20,21 183:9 194:14 210:8,9 215:23 264:17</p> <p>records [7] 67:3,6 121:16 121:19 167:2,8,10</p> <p>recoup [3] 98:7 110:1 138:17</p> <p>recover [6] 84:19 125:24 127:2 132:8,14 252:25</p>	<p>recoverable [1] 186:2</p> <p>redacted [9] 151:21,24 173:5,7 176:4 212:8,20 213:11 227:20</p> <p>redemption [1] 143:17</p> <p>redirect [4] 255:5,9,13 255:17</p> <p>reduce [1] 163:17</p> <p>reexplored [1] 144:10</p> <p>reexploring [2] 143:25 144:4</p> <p>refer [9] 17:24 45:1 99:1 102:11 175:3 211:5,6,8,9</p> <p>reference [8] 11:24 12:6 14:10 45:3 73:16 74:11 95:14 175:9</p> <p>referenced [1] 265:17</p> <p>references [5] 45:5,6,18 45:21 74:3</p> <p>referral [11] 78:14 79:6 113:19 153:4,6 178:3,13 179:9 183:17 220:13 242:20</p> <p>referrals [3] 75:15 153:11 202:3</p> <p>referred [12] 11:6 16:19 44:4 74:5,12,13 86:20 95:14 157:9 171:15 183:13 211:7</p> <p>referring [19] 20:3,19,22 48:19 58:13,20 71:5 81:8 100:14,22 103:2 156:24 173:20 183:10,13 215:15 217:1 219:13 253:20</p> <p>refers [3] 3:25 178:5 211:7</p> <p>reflect [17] 4:8 153:23 154:3 162:17,22,23 165:7 165:14,15 206:17 228:7 239:9,11,12,13,14,15</p> <p>reflected [4] 163:2 164:25 169:13 170:4</p> <p>reflects [2] 3:24 167:15</p> <p>refresh [1] 218:23</p> <p>refund [1] 166:23</p> <p>refuse [1] 141:20</p> <p>refused [1] 135:24</p> <p>regard [18] 7:20 52:5 55:24 56:1 104:11 107:1 108:2 109:2 121:24 124:8 129:7 130:10 131:12 196:19 210:15 213:4 224:14 258:6</p> <p>regarding [8] 22:22 35:1 36:12 37:21 189:23 220:10 223:4 224:10</p> <p>regardless [3] 82:10 200:4 223:15</p> <p>regional [1] 210:20</p> <p>Registered [1] 1:21</p> <p>regular [1] 245:1</p> <p>regulation [1] 203:10</p> <p>regulations [1] 210:14</p> <p>Reid [16] 3:14 19:6 22:2</p>	<p>22:22 24:3,10,23 29:14 29:24 30:9 33:2 44:23 46:4,25 55:16 223:10</p> <p>Reid's [2] 55:12,12</p> <p>reimbursable [9] 46:19 177:18 185:10 214:1,7,25 216:12,14,15</p> <p>reimburse [13] 19:22 21:6 186:6 207:25 217:17 218:1,5 221:8 223:14,25 229:21 230:6,7</p> <p>reimbursed [3] 186:2 216:11 249:24</p> <p>reimbursement [5] 17:14 149:11 221:6 249:15 250:7</p> <p>reimburses [1] 186:14</p> <p>reimbursing [1] 253:9</p> <p>reinstate [13] 91:14 94:8 114:9,19 120:16 124:4 126:14 127:1 140:5,18,20 140:20 142:12</p> <p>reinstated [5] 93:13 145:6 155:21 238:2,6</p> <p>reinstatement [85] 57:9 57:20 58:9 60:8,16,23 61:6,13,19,23 62:5,9 68:18,20,21 91:2,10,11 91:24,25 92:2,5,10 93:5 119:24 120:7 122:4,16 123:19,20,21 140:17 142:8,23 143:18 145:20 147:24 148:1,7 150:3,7 151:10,17 156:8 158:25 159:16,21,25 160:16,25 161:7,10,20,22 162:19 163:4,5,18,20 164:5 165:5 165:17,19 166:5,10,16 167:21 168:11,13,15 171:2,13,14,15 172:2 201:3,12,14 202:14,21 206:18 238:18,20 254:5 254:13</p> <p>reinstatements [6] 57:6 156:13 201:6 206:15 239:3 240:9</p> <p>reinstates [3] 114:25 144:22 146:12</p> <p>reinstating [3] 87:21 88:6 144:25</p> <p>rejected [1] 186:5</p> <p>relate [2] 174:4 175:23</p> <p>related [3] 33:7 78:6 230:13</p> <p>relates [2] 48:25 252:15</p> <p>relating [1] 33:8</p> <p>relations [1] 153:10</p> <p>relationship [12] 16:5 16:21 130:11 133:8 154:8 179:6 249:23 250:5,11,19 250:23 253:9</p> <p>relationships [1] 12:9</p> <p>relative [16] 8:18 18:1 33:9 40:24 47:11,12 55:21 59:11,12 82:3 198:15 204:6 237:11 251:10</p>	<p>264:17,18</p> <p>relatively [1] 53:8</p> <p>relevant [2] 97:12 134:23</p> <p>relief [1] 28:8</p> <p>rely [4] 101:8,19 246:17 246:21</p> <p>remainder [1] 177:5</p> <p>remains [1] 222:20</p> <p>remember [4] 108:25 131:14 175:17 200:12</p> <p>remembered [1] 142:23</p> <p>removed [3] 212:8,10,14</p> <p>render [2] 14:18 149:7</p> <p>rendered [6] 58:17,18 82:8 116:7 165:16 209:3</p> <p>rendering [1] 229:23</p> <p>renders [1] 14:6</p> <p>repeat [11] 10:8 11:10 39:14 44:12 74:7 95:7 97:23 122:12 145:15 148:4 242:10</p> <p>rephrase [6] 24:9 25:17 29:21 202:19 208:12,16</p> <p>replowing [1] 187:18</p> <p>report [16] 24:25 174:12 174:15 235:21,22,23 236:2 243:5,6,11,21 244:5 244:7,12 245:10 264:15</p> <p>reporter [8] 1:21,22 10:10 11:12 23:4 137:20 193:25 264:14</p> <p>REPORTER'S [1] 264:11</p> <p>reports [4] 235:9 243:13 243:16 244:17</p> <p>reports/search [1] 216:14</p> <p>represent [3] 4:21 196:2 237:10</p> <p>representation [4] 183:19 191:22 205:2 223:9</p> <p>representations [1] 223:20</p> <p>representative [6] 56:17 57:15,17,19,19 190:10</p> <p>representatives [6] 18:25 27:24 56:16,23 190:25 196:23</p> <p>representing [5] 41:25 131:8 159:14 179:24 208:5</p> <p>represents [1] 251:9</p> <p>repurchase [1] 95:23</p> <p>repurchased [2] 95:25 96:4</p> <p>request [13] 3:8 4:3,6 109:18 125:21 161:6 166:1 168:12,13 169:14 205:10 245:22 250:8</p> <p>requested [9] 11:11 62:25 123:2,7 126:13 161:11 168:23,24 264:16</p>
---	---	--	---	--

-Q-

qualification [1] 228:3

quarterly [1] 242:22

quarters [1] 162:12

questions [10] 133:24
138:1 143:23 145:12
255:5 256:10 257:1,4,22
258:4

quicker [1] 188:18

quickly [1] 34:22

quote [4] 60:7 123:22
124:5 166:4

quoted [6] 61:13 62:5
123:19 166:6,9 167:19

quotes [1] 123:20

quoting [2] 13:20 58:9

-R-

R [4] 2:3,5 261:2,2

raised [2] 84:2 258:1

raising [1] 36:5

range [1] 241:14

rate [16] 58:15,24 59:19
82:21,22 83:25 99:3,7,24
100:4,24 101:17 147:14
147:16 149:11 161:13

rather [1] 220:18

Re [3] 261:3 265:7 266:8

re-join [1] 104:6

re-open [1] 49:12

<p>sign [3] 53:23 265:13 266:18</p> <p>signature [1] 55:5</p> <p>signed [1] 40:10</p> <p>signing [6] 164:12 258:25 265:12,16,17 266:13</p> <p>similar [7] 59:21 63:23 99:5,5 101:7 175:23 193:7</p> <p>similarly [1] 1:6</p> <p>simple [3] 174:19 175:6 208:17</p> <p>simply [3] 82:25 224:11 249:16</p> <p>Sincerely [2] 265:20 266:20</p> <p>single [4] 11:23 64:7 214:24 240:25</p> <p>sit [3] 97:10 240:17 255:24</p> <p>site [4] 56:24,24 57:1 59:2</p> <p>sitting [3] 234:13,17 258:9</p> <p>situated [1] 1:6</p> <p>situation [6] 6:10,13 84:9,14 159:25 162:25</p> <p>situations [1] 188:19</p> <p>six [14] 23:16 51:17 52:6 66:16 147:8,9,9 154:14 162:15,17 166:2 180:1 187:18 189:19</p> <p>size [1] 51:24</p> <p>skills [2] 222:6 246:20</p> <p>slightly [1] 162:12</p> <p>Sloan [2] 122:3,9</p> <p>Slocum [22] 1:5 75:3,13 78:8 82:16 83:1 96:2 97:6 99:10 113:15,20 114:8,18 114:19 119:20,25 120:1 122:11,15 153:18 164:1 196:19</p> <p>Slocum's [1] 161:19</p> <p>Slow [1] 187:17</p> <p>smaller [1] 158:22</p> <p>Smith [11] 142:7 145:21 161:21 168:14 190:4,5 191:25 192:2,9,10 249:3</p> <p>social [1] 230:9</p> <p>sold [2] 109:25 114:20</p> <p>sole [1] 228:17</p> <p>someone [3] 18:1 242:21 250:21</p> <p>sometime [6] 23:14,17 38:15 39:4 43:12 44:22</p> <p>Sometimes [2] 91:6 92:14</p> <p>somewhat [2] 162:15 211:3</p> <p>somewhere [4] 6:7 23:24 23:25 56:25</p> <p>sorry [50] 11:2 23:2 28:3 29:4 32:6 40:1 49:4 52:3 68:19 70:16 73:10 74:7</p>	<p>75:18,22 84:13 85:1 89:9 95:7 97:5,23 99:3 102:8 105:10 113:11 122:8 142:10 143:9 145:7,16 147:19 149:23 152:7 155:3 162:4,4 170:2,8 176:18 179:23 184:25 193:22 210:11 214:4 217:23 225:12 228:12 242:10 250:22 252:12 253:19</p> <p>sorts [1] 6:21</p> <p>sought [15] 133:4 138:23 139:5,14 140:2 144:13 159:24 160:15 162:8 164:5 194:3 250:7 253:4 254:15,17</p> <p>source [3] 87:23 200:13 200:25</p> <p>southern [1] 41:10</p> <p>space [1] 48:12</p> <p>speak [1] 211:9</p> <p>speaking [4] 60:20 74:21 140:16 207:24</p> <p>special [5] 172:22 175:9 175:11 180:11 202:4</p> <p>specific [7] 45:24 49:23 105:19 205:9 209:25 210:1 219:13</p> <p>specifically [7] 71:18 71:19,21 81:13 140:16 209:14 244:13</p> <p>specifics [1] 132:21</p> <p>speedy [1] 57:22</p> <p>spell [1] 23:23</p> <p>spend [1] 144:4</p> <p>spending [1] 144:2</p> <p>spends [1] 67:7</p> <p>spent [4] 67:3 149:10,10 164:15</p> <p>spoken [1] 240:10</p> <p>SS [2] 264:2,13</p> <p>ST00133 [1] 228:25</p> <p>ST00136 [1] 172:9</p> <p>ST00137 [1] 150:4</p> <p>ST00142 [2] 152:9,25</p> <p>ST00144 [3] 150:4 156:15 157:7</p> <p>ST00145 [1] 212:2</p> <p>ST00197 [1] 225:23</p> <p>ST0047 [1] 245:21</p> <p>ST0073 [1] 228:25</p> <p>ST0199 [1] 226:17</p> <p>stack [1] 19:25</p> <p>staff [5] 10:23 120:19 156:12 211:7 229:17</p> <p>stages [1] 83:23</p> <p>stamp [2] 79:5,5</p> <p>stamped [1] 79:19</p> <p>stand [6] 27:14 62:10 84:25 152:21 188:15 255:7</p> <p>standard [23] 27:5 54:2</p>	<p>56:6 58:11,13,14 87:21 120:10 127:3 140:6 147:4 159:7,7,8 160:3,4 182:6 186:11 195:11,16,19 216:11 225:24</p> <p>standards [2] 47:22 67:14</p> <p>standpoint [2] 55:1 147:1</p> <p>start [8] 19:13,14 80:25 146:21 148:21 149:6 252:3 256:19</p> <p>state [22] 1:22 79:3 110:15 126:1 130:4,5 159:10 211:6 214:25 215:12 217:20 218:24 220:3,11,16 251:19,20 256:3 260:18 264:2,9,12</p> <p>statement [16] 30:22 38:17 50:19 92:11 95:5 126:15 144:9 178:24 182:19 208:6,7 230:24 231:7,15 244:1 256:17</p> <p>statements [1] 206:13</p> <p>states [5] 1:1 157:18 215:11 216:23 221:9</p> <p>stating [2] 106:8 107:9</p> <p>stationery [3] 116:22 117:23 118:24</p> <p>status [2] 122:25 169:10</p> <p>statute [2] 98:8 133:20</p> <p>stay [1] 163:18</p> <p>stenographic [1] 264:17</p> <p>stenographically [1] 264:15</p> <p>steps [3] 83:24 244:9,11</p> <p>Stern [61] 1:9,10,17 2:13 3:2,11,13,16,17,20,21,25 4:20 5:18 10:2 11:8 14:18 14:23 16:12,15,17 20:1 37:19 40:13 41:8 49:2 51:14 52:21 68:25 73:14 78:2,15 93:5 104:9 122:2 122:13 131:3,11,18 137:25 138:20 143:11 194:19 205:8 208:10 219:5 220:8 228:2 231:7 234:4 251:12 256:14 261:3,23 264:5,16 265:5 265:7,8 266:8,9</p> <p>Stern's [3] 4:15,18 258:7</p> <p>Steve [1] 40:10</p> <p>Steven [1] 2:5</p> <p>still [14] 16:20,20 33:16 33:23 35:11 64:12 66:22 66:23 72:3 95:10 137:23 189:11 249:12,12</p> <p>stipulate [3] 42:7 130:1 257:10</p> <p>stipulation [1] 130:5</p> <p>stocks [2] 232:9,13</p> <p>stop [5] 71:10 98:20 147:12 185:11 265:13</p> <p>stopped [3] 69:3,5 187:8</p> <p>Street [3] 265:1,13 266:2</p>	<p>strict [1] 14:8</p> <p>strictly [2] 169:15,16</p> <p>Strike [2] 208:11 252:3</p> <p>structure [1] 116:25</p> <p>stuff [3] 16:10 48:12 230:10</p> <p>Suarez [1] 103:15</p> <p>subject [46] 13:22 19:8 22:17,18,22 23:19 30:16 32:25 33:7 34:9 36:1 37:22 39:3 41:19 56:1 68:3,10,12,13,15 72:3,8,9 72:11,15,21,25 73:3,19 73:25 74:19 105:18 106:11 108:22,24 128:22 137:14 144:12 189:20 190:7 191:4 199:22 213:7 228:3 240:15 261:21</p> <p>submission [1] 183:7</p> <p>submit [3] 205:22 231:15 236:6</p> <p>submitted [8] 62:23 113:21 137:7 142:22 231:20 232:2 236:9,10</p> <p>submitting [1] 227:5</p> <p>subordinate [3] 87:25 114:22 198:16</p> <p>subscribed [1] 260:11</p> <p>subsequent [12] 17:10 20:11 22:6 25:4 42:8 58:10 126:25 140:5 223:19 224:5,9 226:3</p> <p>subsequently [4] 15:5 50:14 176:23 226:11</p> <p>substance [1] 261:21</p> <p>substantially [1] 249:5</p> <p>successful [1] 198:19</p> <p>such [19] 12:9 13:9 18:12 21:18 27:5 30:1 38:2 49:19 53:22 57:5 79:3 96:18 113:8 125:20 128:23 133:22 148:16 195:12 203:5</p> <p>sued [5] 39:7 40:16,19,20 40:21</p> <p>sufficient [3] 80:25 111:2 265:15</p> <p>suggested [1] 62:23</p> <p>suit [2] 4:12 41:12</p> <p>Suite [4] 265:2,13 266:1 266:6</p> <p>sum [3] 43:13 82:9 252:20</p> <p>summarizing [1] 236:21</p> <p>summary [19] 28:9 83:20 102:21 103:4 111:4 120:4 125:14 139:14 140:3 141:1 147:5 160:11 161:25 162:9 164:4 191:23 242:12,17,24</p> <p>summons [1] 149:2</p> <p>sums [1] 185:7</p> <p>supersede [2] 219:7,9</p> <p>supersedes [2] 219:14 222:21</p>	<p>supervises [2] 60:23 238:21</p> <p>supervisor [2] 55:13 57:18</p> <p>supervisors [1] 81:14</p> <p>supply [1] 37:13</p> <p>supplying [1] 230:2</p> <p>support [3] 59:2 103:4 164:4</p> <p>supported [1] 102:23</p> <p>supposed [5] 61:9 149:9 201:23 254:1 255:22</p> <p>surcharge [1] 31:14</p> <p>Susan [8] 3:14 19:6 30:18 30:18 33:2 44:23 46:4 223:10</p> <p>suspect [1] 234:19</p> <p>swore [1] 170:24</p> <p>sworn [3] 3:4 260:11 264:5</p> <p>system [2] 25:24 29:1</p>
<p>-T-</p>				
<p>T [2] 261:2,2</p> <p>T-c-i-m-o-u-r-i-a-n [1] 24:1</p> <p>tabbed [1] 256:9</p> <p>table [1] 48:14</p> <p>takes [4] 53:15 65:2 112:9 188:21</p> <p>taking [6] 1:23 5:1 129:5 161:19 244:8 258:25</p> <p>talks [1] 204:18</p> <p>Tallahassee [2] 1:2 266:7</p> <p>Tapia [1] 61:4</p> <p>tax [10] 29:12 227:21,24 227:25 228:1,4,7 229:1 230:12 234:21</p> <p>taxation [1] 125:18</p> <p>taxes [1] 16:3</p> <p>teach [1] 158:21</p> <p>team [1] 202:4</p> <p>teams [2] 158:15,16</p> <p>tear [1] 51:11</p> <p>tedious [1] 238:14</p> <p>Teimourian [21] 3:10 3:17 23:22 33:12,19 44:20 56:11 57:10 58:1 63:8 86:4,11 109:11,15,18,21 127:25 138:24 181:21 185:11 223:4</p> <p>Teimourian's [1] 180:24</p> <p>telephone [9] 2:7 51:10 116:22 118:25 124:22,25 178:18 187:12 204:22</p> <p>telling [20] 8:22 9:25 24:21 30:11,14 58:2 100:15 123:24 133:12,16 133:20 135:7 172:21 185:17 186:13 191:2</p>				

<p>157:12 158:23 159:1 165:22 167:20 177:16 181:20 190:21 211:11 217:17 241:14 246:5 248:16 249:16,22 250:11 250:19 252:9 255:7</p> <p>update [64] 31:17,23 32:8 32:20 33:8,13,20 34:10 35:2 36:12 37:22 39:19 39:24 42:17 43:14,19 44:1 44:6,10,15 45:1,4 49:1,3 49:15 50:4,16,18 51:16 51:17 52:6 53:17 69:1 91:16 130:17 139:10,15 140:7 141:5 142:18 181:20 183:24 184:21 185:5 186:12 187:2 212:6 212:7 215:25 216:19 217:5,10 222:10 223:5 246:9,15 247:6,16,23 249:6 250:2 252:17 253:1 254:14</p> <p>updates [2] 123:1 248:9 updraft [1] 215:8 used [12] 64:9 98:25 152:6 171:14,19,21 173:12,14 174:24 214:9 216:23 236:6</p> <p>uses [2] 158:25 201:13 using [1] 51:3 utilize [1] 210:22 utilized [4] 12:16 143:24 150:8 155:24 utilizing [1] 15:5</p> <hr/> <p>-V-</p> <p>v [2] 265:7 266:8 VA [26] 32:16 55:25 56:3 56:4 67:23 68:4,15 69:7 157:23 158:8 177:15,16 200:17,21 203:23,24 210:2,7,15,18,19,23,25 211:3,14,21 VA-insured [1] 157:24 vague [2] 15:13 28:3 valid [1] 192:25 value [1] 234:15 Vanessa [3] 3:9,11 10:2 variables [4] 53:20,22 69:15,17 variances [1] 118:11 varies [2] 27:19 82:23 various [13] 11:16 17:4 17:6 31:12 51:21 77:4 102:20 157:1 158:14 164:5 183:23 236:13 249:23 vary [3] 65:9 99:12 221:24 vendor [6] 18:9 49:2,5 49:19 51:15,20 vendor/vendee [1] 250:5 venture [1] 237:19 verbal [18] 13:2 44:18</p>	<p>63:12 81:8,20 89:24 100:18,19,19 113:18 178:22 179:4,17 180:13 183:4 189:3,20 192:2 verbally [2] 40:9 184:8 verify [1] 169:10 versus [14] 41:8 71:8 75:23 82:24 83:4 86:21 86:24 105:6 107:2 108:3 181:1,4 194:23 227:6 via [1] 202:3 vice-president [1] 55:9 Vince [2] 241:4 244:25 Viner [2] 81:15,19 violated [1] 138:6 violates [1] 133:19 violation [1] 81:3 virtue [2] 204:15 207:22 Vogle [1] 249:2 volume [12] 28:15,15,16 125:11 159:6 243:5,13,16 243:21 244:4,7 245:10 vs [2] 1:8 261:3</p> <hr/> <p>-W-</p> <p>W [1] 2:5 wait [2] 227:8 249:11 waive [5] 128:23 135:22 135:24 258:24 266:13 waived [3] 136:11 155:13 265:17 waiver [3] 38:20 194:4,6 Walker [7] 1:5 2:3 4:21 75:3 164:1 178:5 191:19 wants [1] 98:4 Washington [1] 55:11 waste [5] 71:11 128:13 249:13,13,14 watch [1] 251:21 Watson [2] 4:24 249:2 wear [1] 51:11 Wednesday [2] 1:14 213:19 week [6] 49:15 53:2 149:25 150:1 172:8 190:6 Weekly [1] 245:4 weeks [3] 123:23 146:9 171:9 Welch [35] 1:5 75:19 76:4 108:14,18,18 111:11,16 113:8 129:1 130:25 131:9 131:18 132:11,25 137:6 141:14 142:6,12 144:21 145:20,21 146:19,22 148:16 163:25 168:2,9,10 168:15,19 169:6 171:22 196:18 254:11 Welch's [5] 108:13 141:1 144:22 167:13 168:6 Weller [1] 75:3 West [6] 55:11 204:25</p>	<p>210:13 265:1,13 266:2 whereby [1] 19:17 wherever [1] 8:9 white [5] 77:19,20,21 158:18 175:17 whole [7] 23:9 26:11 53:12 60:8 66:18 171:9 227:3 wholly-owned [1] 32:17 wife [2] 228:4 235:15 willing [2] 136:3 257:10 Wisconsin [1] 55:10 wish [1] 79:3 wishes [2] 78:24 136:21 withholding [1] 230:9 within [24] 10:20 15:12 21:12 23:16 34:14 49:15 52:6 70:17 77:4 87:21 116:24 118:3 149:25 150:1 161:13 163:19 172:8 181:14 185:25 186:1 189:19 202:2 240:22 241:14 without [6] 136:18,18 145:10,12 146:5 246:5 witness [17] 2:11 3:3 23:1 25:14 35:11 37:14 39:14 135:9,13,18 143:21 149:21 258:24 264:6 266:13,16,18 wondered [1] 191:7 Woody [5] 75:3,21 194:22,23 196:10 words [4] 27:13 88:11 112:12 206:3 worked [2] 91:12,23 works [4] 66:2 94:7 111:19 184:12 worksheet [1] 100:12 world [3] 248:16,17,20 worse [2] 234:24 235:10 worst [1] 147:1 worth [5] 162:17 163:3 165:8 230:25 234:9 write [2] 24:4 261:4 writing [14] 12:9,25 13:2 17:5 20:11,14 24:21 33:7 58:1 63:13 86:23 108:8 120:24 223:18 written [31] 19:7,10 24:17 40:10 45:22 80:13 80:13 81:5,25 84:11,18 84:24 85:2,9 105:5 110:7 110:17,18 119:7 138:25 179:5 180:5,8 197:25 204:19 206:7 215:23 216:8 223:9,16 224:3 wrong [1] 133:18 wrote [6] 24:3,4,10 59:16 213:10 250:9 Wyndham [1] 2:5</p>	<p>-X-</p> <p>x [2] 1:12 2:9 XYZ [2] 159:13 207:15</p> <hr/> <p>-Y-</p> <p>year [13] 15:12 23:16,17 32:14 34:15 70:17 180:22 229:20 245:7 250:15,16 250:18 251:24 years [11] 64:3 99:18 180:1 211:2 223:11 228:5 234:9,9 243:14 250:13,14 yellow [4] 76:23 77:1,11 77:14 yet [4] 103:1 120:3 134:3 235:4 yourself [9] 6:24 9:20 12:5 28:2 38:19 55:19 64:8 249:19 265:15</p>
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