IN THE CIRCUIT COURT OF DEKALB COUNTY ALABAMA

CIVIL ACTION NO.: 08-183

LARRY DAVID WOOD, JR., and
KAREN WILBORN WOOD,
Individuals,

Plaintiffs,

vs.

OPTION ONE MORTGAGE CORPORATION,
WELLS FARGO BANK, N.A.,
FIDELITY NATIONAL FORECLOSURE &
BANKRUPTCY SOLUTIONS,

Defendants.
_____/

VIDEOTAPED DEPOSITION OF BILL NEWLAND

Taken on behalf of the Plaintiffs

DATE TAKEN:	Tuesday, June 16, 2009
TIME:	9:10 a.m. - 5:30 p.m.
PLACE:	Fidelity National 601 Riverside Avenue Jacksonville, Florida
REPORTED BY:	Cindy D. McClary, RPR, CRR

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ALSO PRESENT

SHERYL L. NEWMAN, LPS

ASHLEY HOLT, VIDEOGRAPHER

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(Reporter's note: Plaintiffs' Exhibit No. 15 was withdrawn and retained by Plaintiffs' counsel.)

THE VIDEOGRAPHER: This begins Videotape No. 1 in the deposition of Bill Newland in the matter of Larry David Wood, Jr., and Karen Wilborn Wood versus Option One Mortgage Corporation, et al., Case No. 08-183 in the Court of DeKalb County, Alabama.

We are on the record at 9:10 a.m. on Tuesday, June 16th, 2009. This deposition is taking place at Fidelity National in Jacksonville, Florida.

My name is Ashley Holt, representing Freedom Court Reporting. Will counsel please identify themselves and state whom you represent, and the court reporter please swear in the witness.

MR. WOOTEN: My name is Nick Wooten, and I represent the plaintiffs in this action.

MR. CASH: My name is Mike Cash, and I represent Fidelity National Foreclosure & Bankruptcy Solutions, a defendant in this action currently.

MR. LAWLER: My name is Will Lawler, and I represent Option One Mortgage Corporation, a defendant in this action.

BILL NEWLAND,

having been produced and first duly sworn as a witness, testified as follows:

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. WOOTEN:

Q Mr. Wooten, my -- Mr. Newland, my name is Nick Wooten, I think you heard me introduce myself. I hadn't had the opportunity to meet you prior to today. Have you ever given a deposition before today?

A Yes, I have.

Q Tell me about that. How many times have you been deposed, sir?

A I've been deposed once.

Q What was that in reference to?

A Reference to a case here at Fidelity.

Q Okay. And was that where Fidelity was a defendant in an action?

A Yes, it was.

Q Okay. Did you serve as a 30(b)(6) witness for Fidelity at that time?

A I don't understand the question.

Q Did you testify individually or as a corporate representative of Fidelity?

A Individually.

Q Okay. So you were a fact witness to that specific case?

A Yes.

Q I understand that you've played some role in this case up to this point with respect to answering interrogatories and propounding affidavits; is that correct?

A Yes, it is.

Q So I take it from that that you have personally made yourself familiar with this litigation and the allegations that have been made; is that correct?

A Yes, it is.

Q If you will, sir, please tell me how long you've been an employee of Fidelity National Foreclosure Services.

A Approximately five years.

Q Okay. How long have you been employed as a vice president?

A Approximately four years.

Q The position that you currently hold, exactly what is your title?

A I'm first vice president of operations.

Q What are your responsibilities with that title, please, sir?

A I have primary oversight for the Jacksonville facility and also manage our attorney management area and special assets for our foreclosure department.

Q What is a special asset in the foreclosure department?

A Basically, we handle title resolution, assist in correspondence with title resolution, probates, things of that nature.

Q Have you held any other titles as an employee of Fidelity?

A I held a title primarily when I was hired on here as assistant vice president.

Q Okay.

MR. CASH: Just for the record to be clear, can we make an agreement that when we use the term Fidelity, we're talking about the defendant Fidelity National Foreclosure & Bankruptcy Solutions? Then we just don't have to repeat it every time.

MR. WOOTEN: It'll probably save my tongue, so, frankly, that'll be fine with me.

MR. CASH: Okay.

BY MR. WOOTEN:

Q I think that's what the industry more or

less refers to you guys as anyway, right, Fidelity?
A Not any longer, no.
Q Actually, you're now LPS, right?
A That is correct.
Q And what does that stand for?
A Lender Processing Solutions.
Q And that is an entity which spun off of your parent corporation; is that correct?
A Yes.
Q Okay. And when did that spinoff take place?
A July of '08.
Q And do you have any understanding as to what the motivation was to take LPS out from under the broader umbrella as a separate company?
A No, I do not.
Q Were you involved in that decision at all?
A No, I was not.
Q Prior to coming -- well, let me just make sure I'm clear about this. You've only held two positions with Fidelity, one is a vice president and the other is first vice president of operations?
A I've held three. I was assistant vice president, I was promoted to vice president then promoted to first vice president.
Q So your entry point was as assistant vice

president?
A Yes, it was.
Q And what year was that?
A September of 2004.
Q And when were you promoted to vice president?
A I want to say it was approximately March of '05.
Q Did you have a specific area of responsibility with that description?
A Which description?
Q Vice president.
A Primary responsibility stayed the same.
Q Okay. And that was what you set out earlier?
A Yes.
Q And when were you promoted to first vice president of operations?
A I don't recall off the top of my head.
Q Prior to working for Fidelity, where were you previously employed?
A Option One Mortgage.
Q And did you leave Option One and come directly to Fidelity?
A After 30 days of being nonemployed, yes.

Q How long were you employed by Option One, sir?
A Approximately 18 months.
Q 18 months?
A Uh-huh.
Q And how were you employed by Option One?
A I held the title of assistant vice president.
Q Did you have a specific area that you were assistant vice president to?
A Loss mitigation, foreclosure, and bankruptcy.
Q Was Option One a Fidelity partner at that time?
A We had just become a partner approximately two months prior to me leaving.
Q And what was the term of your employment with Option One?
A 18 months.
Q So from February of 2005, previous 18 months?
A No, I started here in September of 2004.
Q I'm sorry. I was looking at your -- wrong date. I apologize. Looking at your vice president, date you were promoted.

So you would've worked for Option One in 2003 and part of 2004?

A That's correct.

Q And your testimony is, is during that time, you were not a Fidelity partner until approximately 60 days prior to your leaving?

A For the -- that's correct.

Q Prior to Option One, where did you work?

A I worked for Ocwen Federal Bank.

Q How long were you employed by Ocwen?

A Five and a half years.

Q What period of time was that, if you recall, please, sir?

A I want to say it was August of '97 through February of 2003.

Q Do you remember the position you were hired on at at Ocwen?

A That I was hired on at? I was a team leader over loss mitigation department.

Q Because everybody who may eventually hear or see this testimony doesn't understand what we mean when we say loss mitigation, would you, please, explain that for me.

A We provided assistance to the borrowers in attempting to resolve their delinquency through some

type of means of mitigation.

Q So that was where you might work out a forbearance or payment plan or modification, if the circumstance were appropriate, that sort of thing?

A That would be correct.

Q And the goal of loss mitigation generally is to prevent a foreclosure or loss of a home, is that the general goal?

A That's correct.

Q Other than loss mitigation, at the time you were hired, did you do any other -- or perform any other function at Ocwen?

A I also managed front-end collections, which would be your zero to 90-day collections.

Q Would it be fair to say that the front-end collections are those borrowers who are not current but have not been declared to be in default?

A That would be correct.

Q And so, in that regard, sort of more or less a proactive loss mitigation approach to try to keep those people from trying to go into default, right?

A Yes.

Q How long were you in that position with Ocwen?

A Approximately three years.

Q So sometime in 1999 or early 2000 you changed positions with respect to that?

A Yes.

Q Where did you go to from loss mitigation?

A I went back to the -- well, I went from loss mitigation to collections and then went back to loss mitigation as the director.

Q So when -- did you maintain the title of team leader up until the time that you went to collections?

A No.

Q Okay. So what other titles did you hold in loss mitigation?

A I held the title of director of operations.

Q So did you advance directly from team leader to director of operations, or were there intermediate advancements?

A There was -- there were intermediate promotions between that.

Q I'm assuming that you would've gone from team leader to either manager or vice president?

A Yes.

Q Okay. Both or --

A No.

Q -- one?

A No, I went from team lead, then I went to -- as a manager for the collections department, and then to the senior manager of that department. And then I moved to director of operations for loss mitigation.

Q The collections department is a different department than loss mitigation, right?

A Yes, it is.

Q And the collection department at Ocwen, how would that have been defined? What was its function?

A As I stated previously, it was basically to collect on moneys owed that were delinquencies that were zero to 90 days.

Q So it is what you referenced earlier as front-end collections?

A Yes.

Q Okay. I'm sorry, I didn't realize that you were not distinguishing between the two.

So at what point did you move from senior manager of collections to director of operations of loss mitigation?

A It would've been -- I don't recall off the top of my head, but it was about -- it was about a year and a half prior to me leaving --

Q Okay.

A -- Ocwen, so, whatever that date is.

Q So you would've been in collections from sometime in '99 or 2000 until about 2000 -- late 2001, early 2002?

A Collections was -- when I started in front-end collections, it was early 1998.

Q All right.

A And spent two years in early collections. So, approximately, probably, late to mid -- mid 2000 is when I went into loss mitigation.

Q And that's when you became the director of operations --

A Yes.

Q -- there? And you held that title until you left that position?

A That's correct.

Q As part of your work as director of operations in loss mitigation, were you ever deposed as an employee of Ocwen Federal Bank?

A No, I was not.

Q Where was Ocwen Federal Bank? Where was your employment located with them during this period of time?

A Orlando, Florida.

Q Are there any other titles or positions that you held with Ocwen Federal Bank --

A No.

Q -- during this time?

A No.

Q During this period of time, was Ocwen Federal Bank subject to any state or federal investigation with respect to their lending or mortgage service and practices?

A I don't recall.

Q Did you ever give any testimony with respect to any state or federal investigation?

A No, I did not.

Q Is it your testimony today that you never testified as an employee of Ocwen Federal Bank or as a corporate representative in any litigation?

A Not that I'm aware of.

Q As part of your work, did you provide for Ocwen Federal Bank any affidavits or any other type of documents which would've been filed in any federal -- or any lawsuit or litigation involving Ocwen Federal Bank?

A I don't recall.

Q Prior to Ocwen Federal Bank, where were you employed, sir?

A I was employed with a company called -- I'm trying to think of the -- it was Premiere Credit was

the name of the company, but it's now, I believe, Outsourcing Solutions, Incorporated.

Q Is Outsourcing Solutions also commonly known by the acronym OSI?

A I believe so.

Q Is it fair to say that OSI is a debt collection agency?

A Yes, it is.

Q And they purchase delinquent account receivables; is that correct?

A I don't recall what they're purchasing.

Q But you understand their business to be that of debt collection?

A Yes.

Q And how were you employed by OSI?

A I was a manager of a group there.

Q Manager of a collection group?

A Yes.

Q When did your employment with OSI begin and when did it end?

A I don't recall off the top of my head. I know it ended in August of 1997.

Q Why did your employment end with OSI?

A I took an opportunity to go to Ocwen Federal Bank.

Q During your time at OSI, were you ever a witness where you gave either deposition or live testimony in any litigation?

A No, I did not.

Q Did you ever serve as a corporate representative of OSI in any litigation?

A No, I did not.

Q At the time that you were employed with OSI in managing its collections group, did OSI file lawsuits to collect on their accounts receivable?

A I don't recall.

Q So your work there was limited to managing a group of collectors which would call consumers to collect on these account receivables, or write consumers; is that correct?

A That's correct.

Q And is it your testimony that you don't remember even approximately when your employment began at OSI?

A I -- I don't recall the exact date when I started there.

Q Do you have a recollection of how many years you spent there?

A I spent about three years.

Q Did you have any other titles or positions

with OSI?

A No, I did not.

Q Prior to OSI, what was your employment, please, sir?

A Commercial Credit.

Q Let me go back to OSI for just a second. Where was your place of employment with OSI?

A Atlanta, Georgia.

Q Atlanta's a big city. Were you in one of the suburbs or were you in Atlanta proper?

A I was in the Marietta location.

Q Out near the Air Force base?

A No, it was off of Windy Hill Road.

Q Almost to the Air Force base?

A Almost, not quite.

Q You mentioned Commercial Credit. Where was your employment with Commercial Credit located?

A Tucker, Georgia.

Q And do you recall your period of employment with them?

A Approximately four years.

Q Based upon my guesstimation, it appears that you would've been employed there from approximately 1990 or '91 until approximately 1994. Does that sound about right?

A Approximately.

Q And what is the business of Commercial Credit at that time, please, sir, as best you recall?

A Consumer finance.

Q Would this be one of those storefront operations where people walk in off the street and get small loans for consumer goods, that sort of thing?

A Yes.

Q And were you actually in that portion of the business at that time? Were you doing consumer finance or were you in collections also there?

A You basically do consumer finance and collections.

Q So that's, I guess, one of the early models where you had people coming and making their weekly payments of 28 bucks or whatever, and you're making loans to them as they need and qualify for them, and then if they're delinquent, you're picking up the phone and calling people you've made loans to and say, hey, why don't you come make a payment to me, that sort of thing?

A Yes, that's right.

Q And is it safe to say that most of your loans would've been for smaller amounts, under $5,000, that type of thing?

A Primarily.
Q Sure. Did you make mortgage loans from that location at that time?
A Yes, we did.
Q Were those first or second loans?
A Second mortgages.
Q Did not engage in the business of making first mortgages at all?
A No.
Q And how long -- well, you've already told me that, so strike that. You worked there for about four years?
A About four years.
Q Prior to Commercial Credit -- well, let me back up and ask a couple more questions.
I'm assuming -- well, don't let me assume. What position did you enter that business as?
A A manager.
Q Were you the manager in charge of that branch or --
A Yes. Yes, I was.
Q Okay. Is that the first professional job you had out of college?
A No, it was not.
Q Prior to Commercial Credit, where were you

employed?

A A company called Bomar Credit.

Q I'm sorry?

A Bomar, B-O-M-A-R.

Q One I haven't heard of. Were they also in consumer finance?

A No, they were actually a third-party collection company.

Q And where was your principal place of employment with Bomar?

A Atlanta, Georgia. And it is Atlanta, Georgia.

Q Okay. And what was your position with Bomar?

A I was a collector.

Q And what were you primarily collecting at Bomar?

A Small balances.

Q What type of accounts?

A Charged off credit cards.

Q Was Bomar bought out by someone?

A I don't -- I don't recall. I didn't spend much time there.

Q How long were you with them?

A Six months.

Q I'm assuming that you held no position other than collector?
A That's correct.
Q And with Commercial Credit, you held no position other than manager?
A That's correct.
Q Did you have a job prior to Bomar Credit?
A Yes, I did.
Q Where was that?
A Household Finance Corporation.
Q Do you remember the term of your employment?
A Approximately six years.
Q So that would've been mid to late '80s; is that fair?
A Yeah, it was -- I remember, because I started out of college there, it was September of 1984 is when I started there.
Q And worked there till sometime in '89?
A Yes.
Q And that was your first position out of college?
A Yes.
Q And what position were you hired into, please, sir?
A As a branch representative.

Q Can you tell me what that job involved?

A Learning.

Q Trying to find your way to work in the morning?

A Yeah, basically learning how to lend/collect, primarily.

Q So somewhat of an apprenticeship-type position?

A That would be correct.

Q And how long did you serve in that capacity?

A Oh, to be honest with you, I don't recall how long I served in that capacity.

Q Was that, for lack of a better term, a program where they brought you in, you served in that capacity for a period of time, and then they advanced you or said you will never cut it here and let you go?

A They would advance you, or if you weren't doing the job, they would let you go, yes.

Q And so, obviously, you advanced since you were there five years?

A Yeah, to an assistant manager.

Q Okay. At that time, was Household also more or less a storefront type operation?

A Yes, they were.

Q So you would've went to work in an existing

facility with, I'm assuming, an experienced manager?

A Yes.

Q Okay. And where would that employment have been located?

A That was in south DeKalb County, I believe at the -- it was Decatur, Georgia.

Q And how long did you serve as assistant manager, if you recall?

A Between the branch manager and -- or the branch representative and assistant manager, approximately two years.

Q All right. And after your assistant manager position there, I'm assuming you received some other sort of promotion?

A Yes, I was promoted, branch manager.

Q Were you sent to another store, or did you stay in the Decatur, Georgia, area?

A No, I was sent to the Tucker, Georgia, location.

Q Is it fair to say during this period of time this type of business was expanding pretty rapidly, opening new stores, that sort of thing?

A I don't recall.

Q Do you know if the Tucker store was a new store that you took over?

A No, it was not.
Q All right. And how long were you branch manager at Tucker?
A Approximately three and a half years, almost four.
Q So is it fair to say you were there until you left?
A Yes.
Q Okay. And you did mention that that was your first job out of college. Where did you go to college at?
A Valdosta State College.
Q Folks that go to Valdosta State usually only go because they play some sport or they live nearby; what was it for you?
A I went down there to play baseball.
Q All right. Did you grow up in Georgia?
A I grew up all over.
Q Okay. So you were there all four years, I assume?
A Yes.
Q And you have a bachelor's degree?
A No, I do not.
Q Did you complete a degree from Valdosta State?

A Associate's.
Q And what is that degree in?
A Finance.
Q Do you have any other college degrees?
A No, I do not.
Q Where did you graduate from high school from?
A Milton High School, Alpharetta, Georgia.
Q With respect to Option One, where was your employment principally located?
A Jacksonville, Florida.
Q And where in Jacksonville was Option One's building located?
A I -- I don't recall the exact address. I believe it was Touchton Road.
Q You indicated with respect to Option One that you were an assistant vice president for loss mitigation, foreclosure and bankruptcy, correct?
A Yes.
Q Was all that work handled in-house at that time?
A Loss mitigation, foreclosure and bankruptcy, we utilized Fidelity for two states, about half the work, for the last two months that I was there.
Q Is your testimony that Fidelity only had the

foreclosure and bankruptcy business of Option One for the last two months that you were there?

A Yes, it is.

Q Did Option One use the MSP software platform at that time?

A Yes, they did.

Q Did Ocwen use MSP?

A No, they did not.

Q What did they use?

A It was an in-house product.

Q Did you ever work in foreclosure and bankruptcy at Ocwen?

A No, I did not.

Q Do you know anyone or have any relatives by blood or marriage who live in DeKalb County, Alabama?

A No, sir.

Q Do you have any friends or acquaintances in DeKalb County, Alabama?

A No, sir.

Q Have you ever been to DeKalb County, Alabama?

A No, sir.

Q So then we can agree that your entire professional life has been involved in finance or collections?

A That is correct.

(Plaintiffs' Exhibit No. 1 marked for identification.)

Q Let me show you what I've previously marked as Plaintiffs' Exhibit 1. I will represent to you that that is a copy of a Plaintiffs' 30(b)(6) notice for today which was filed with the court system in the State of Alabama for DeKalb County. Ask you to take a look at that document. Excuse me.

Have you reviewed that document prior to coming to this deposition today?

A Yes, I have.

Q Are there any documents that you have available today that are included in that deposition notice that you have not previously produced?

MR. CASH: Yeah, this is Mike Cash, I'm the attorney for Fidelity. There are a number of categories that requested documents which are either documents that don't exist or the definition is inaccurate. What we've done is gone back and pulled all documents associated -- that Fidelity has that are associated with this file, and I'm producing those now to plaintiffs' counsel.

MR. WOOTEN: Now, have these documents been

previously Bates stamped or marked in any way?

MR. CASH: They have not. And what we probably want to do is go ahead and produce them and have the reporter make Bates stamp copies and -- and then we'll get them with copies of the deposition, if that's acceptable.

MR. WOOTEN: Going to be lots of copies with this deposition.

BY MR. WOOTEN:

Q Is it your testimony that these are all of Fidelity's documents with respect to this loan?

MR. CASH: Again, my statement is those are all the documents which would've been responsive to the request with respect to this loan.

MR. WOOTEN: Okay.

BY MR. WOOTEN:

Q Let me see that document, if you will, please, sir. Because I didn't make copies of it. I'm working off of this.

What is a MSP P309 form, Mr. Newland?

A I don't know.

Q Is it fair to say that an MSP P309 form is actually a data archive which shows each time that Fidelity or a user of MSP changes any data with respect to any loan?

A I -- I don't recall.
Q And it's your testimony that you previously reviewed my deposition notice, correct?
A Uh-huh.
Q You are the first vice president of operations of Fidelity, correct?
A That is correct.
Q LPS, I'm sorry. Is it your testimony that you don't know what a P309 form is?
A No, I do not.
Q Do you know what a P309 screen is?
A I've seen the screen, but I don't know what it entails.
(Plaintiffs' Exhibit No. 9 marked for identification.)
Q Okay. Let me show you a document I previously marked as Plaintiffs' Exhibit 9, and I'll represent to you that that is a copy of a web page from LPS's training software with respect to MSP. Does that appear to be a web-based training document from your MSP software, Mr. Newland?
A From LPS software?
Q Uh-huh.
A Looks to be, yes.
Q Okay. And does that indicate a P309 screen?

A Yes, it indicates as far as approximately what a P309 screen is, yes.

Q Okay. Does it explain what a P309 is, what information's available from a P309 --

A Yes, it does.

Q -- screen?

Okay. What information is available according to that document from a P309 screen?

A Are you asking for me to read the -- what's over here on the right side?

Q Well, we can start with that.

A Sure. P309 provides loan activity detail; past activity which equals history; files storing history and equals history of files; history initiated at the loan boarding, new loan setup or acquisition and merger; transactions generate details.

Q I'm going to ask you again, Mr. Newland, does that document indicate that a P309 form will give you the history of all the data transactions and the changes that have been made with respect to your MSP software for any given loan?

MR. CASH: Object to the form of the question and the term "your". We're here for Fidelity, for the defendant in this case, which is Fidelity Foreclosure & Bankruptcy Solutions.

MR. WOOTEN: Okay.

MR. CASH: To the extent it's a different entity, I'm going to -- we're going to have to be a little more specific on the term "your" software.

MR. WOOTEN: Well, Mr. Cash, your defendant runs MSP software.

MR. CASH: Actually, Mr. Wooten --

MR. WOOTEN: It's owned by the parent company.

MR. CASH: -- you're misinformed. You're misinformed. So you -- I'm going to ask that you not testify. If you want to ask him questions, that's fine, but if that's the basis you're asking these questions on, you are misinformed.

MR. WOOTEN: Okay. Well, we're going to ask him these questions, Mr. Cash.

MR. CASH: Feel free. But we're going to have to make it specific.

MR. WOOTEN: Well, that'll be fine --

MR. CASH: So when you say your --

MR. WOOTEN: -- we'll do that.

MR. CASH: We're here as a 30(b)(6) representative of this defendant, not affiliates of this company.

MR. WOOTEN: And I'm going to ask you not to make speaking objections and not to direct him how to testify by your objections.

MR. CASH: I'm not going to do that, but I'm going to -- my objection -- my only objection was: Objection, "your" is not specific. You went into the speaking, and I responded so you can understand what my objection is.

MR. WOOTEN: Sure. And that's fine.

MR. CASH: So, I object to the use of the term "your." That was my objection and it's not a speaking objection.

BY MR. WOOTEN:

Q Well, let me ask you this, Mr. Newland, isn't it a fact, sir, that the client that you are here -- the defendant that you're here as a corporate rep of, Fidelity National Foreclosure Services, or LPS, uses MSP, the software platform, for its work?

A Our client uses this and we do have the ability to access their system, yes.

Q That is correct, you do have the ability to access their system, right?

A That's correct.

Q And, in fact, you had the ability to enter the data fields in their system and make changes,

don't you?

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

Q You are the person in charge of LPS; is that fair to say?

A No, it's not.

Q Okay. Are you in charge of the day-to-day operations?

A I run a portion of the day-to-day operations.

Q Okay. Is it your testimony today, Mr. Newland, that you are unfamiliar with whether or not employees who work for you can enter client data fields and alter that data and make changes to that data through their access through MSP?

A They can make changes to certain portions of the client's system, but specifically, I don't know what portions those are.

Q And isn't it true, Mr. Newland, that a P309 form will indicate all the data changes that have been made on any given loan?

A That's what it states in this screen shot, yes.

Q And isn't it true, Mr. Newland, that you can walk out to any computer that is currently locked out of MSP and use your log-in and access the P309 field

and print all the forms associated with that field with a simple push of a button?

A I don't recall.

Q I would assume with your seniority that you have certain rights to access documents and data commensurate with your seniority; is that correct?

A No, it's not.

Q Oh. So who at LPS would have that information as to who could enter MSP and print off a P309 form?

A I don't recall.

Q So before we get too deep into this, I want to back up just a little bit. Please tell the Court and whoever else might view this testimony exactly what MSP is.

A MSP is a mortgage service platform.

Q It's a software system, isn't it?

A I don't know whether it's a software system or not.

Q With respect to a mortgage transaction, sir, is it true that MSP basically handles a loan file from origination to the termination of the loan either by payoff or foreclosure once it's in the MSP system, assuming that it remains on the system with Fidelity partners?

A I don't know.

Q Okay. With respect to the MSP software, isn't it true, sir, that there are different modules with respect to that software?

A That I don't know either.

Q Tell me what particular portions of the MSP system the employees who work for you at LPS have access to, please, sir.

A I do not know off the top of my head.

Q Who is the person who you either work for or who works for you who would know that information, please, sir?

A That would probably be our securities department.

Q Okay. Your securities department?

A Uh-huh, security department.

Q So that would be your information technology security department?

A Yes.

Q So you're telling me that there are no other employees in your direct supervision line, either above or below you, who can tell me what the various modules of MSP are?

A Not -- well, not in my direct supervision, no.

Q And you cannot tell me what modules of that software your employees who work for you at LPS can access, can you?

A No.

Q So you don't know whether somebody who's an entry level employee who's just received their clearance can go into the MSP software and print off all the P309 forms or not, do you?

A I do not know specifically what screens they're available to go to.

Q Okay. Now, you've had this deposition notice for a period of time, haven't you, sir?

A Yes.

Q It's dated the 4th day of June of 2009, isn't it?

A Yes, it is.

Q And I'm assuming, as you said, you had reviewed this prior to coming here this morning, right?

A Yes.

Q And being that it was the first topic on which examination was requested, I'm assuming that you asked someone what a P309 form was if you didn't know?

A Well, you said P309 forms. I do not know what an MSP P309 form is.

Q Okay. MSP is your software, is it not?
A It's not my software.
Q It's Fidelity's software, is it not?
MR. CASH: Again, objection. Unless we're defining Fidelity as Fidelity National Foreclosure & Bankruptcy Solutions. Given that definition, you can answer.
BY MR. WOOTEN:
Q Let me be clear. I'm going to refer to your entity as LPS from now on, so we can be real distinct about what we're saying. Is it your testimony that LPS does not use MSP in its operations?
A No, LPS does utilize some of MSP, yes.
Q Okay.
A For different clients.
Q And MSP is a loan product of -- or a servicing platform which is owned by LPS's parent company; is it not?
A That would be correct.
Q And we're in the parent company building this morning, right?
A That is correct.
Q And I've shown you Exhibit 9 and you've read what this form says, correct?
A Uh-huh.

Q And is it your testimony that you did not inquire as to what a P309 -- you didn't do any inquiry at all into that?

A That's correct.

Q Okay. So it's your testimony that because it said MSP P309 form, that you did no inquiry whatsoever into that area of examination?

A That's correct.

Q And the next sentence of that line of inquiry said: This should include all history files archived on your system, whether they are delineated as history, past activity or file storing history. Is that correct?

A Yes.

Q And is it your testimony that you cannot go onto any loan on which LPS is active and find the history, the past activity, or the file storing history?

A I don't know. Based off of this information that you provided me, yes, it stipulates in this that we can do that.

Q Okay. And I'm asking you, did you make any inquiry, beyond the first sentence of that area of examination, into whether or not you could provide me the history files on your system with respect to my

client's loan, whether they were delineated as history, past activity, or file storing history?

A No.

Q So you made no inquiry whatsoever?

A No, I did not.

Q Okay. And isn't it a fact, sir, that you or someone under your control could log into their work station and print you off whatever documents are there as history, past activity, or file storing history with a simple push of a button?

A That is correct.

Q And it would take less than ten minutes to do so, wouldn't it?

A I don't know.

Q It would simply be a matter of entering my client's loan information and going to that field and pressing print, wouldn't it?

A I don't know.

Q Would you be surprised if other people testifying about your software system -- or not your software system, but Fidelity's software system, said that any information in any field could be printed with the press of a button?

A I'm sure they may say that.

Q Is your employment principally located in

Jacksonville, Florida?

A Yes, it is.

Q Do you have employees in this very building where we sit who would have access to that information?

A I do not have employees in this building.

Q Do you have employees in this compound?

A Yes, I do.

Q Okay. Because there are about, what -- how many buildings are in the compound?

A Five.

Q Okay. So you have employees who work directly for you who could easily gather this information in a matter of moments, right?

A I don't know whether it's a matter of moments or not.

Q Well, it's 10:00 local time, and I can go ahead and represent to you we're going to be here for a while. Do you want to take a break now and find an employee and ask them if they can access that information?

A No, that's okay.

MR. CASH: No, we're here ready to testify. We'll testify to what we're here with.

BY MR. WOOTEN:

Q The next thing that I asked you for with respect to this deposition are: All correspondence, images, documents, notes or communications, in whatever form and by whatever medium contained in the client services notes of the Fidelity software for the subject loan. As well as, if not previously provided, a definitional code sheet for any codes used to explain or describe this data.

MR. CASH: If we're going to go through these one at a time, we would lodge an objection to this request, that it's overly broad, it's unclear, it's vague. There is no definition as to, quote, Fidelity software. There is no definition as to the term, quote, Fidelity. There is no definition of what client services notes are. Based upon those objections, there are no documents that are responsive to this specific request. However, and in trying to interpret the vague request, we have provided all notes regarding this loan, which are one of the first exhibits.

MR. WOOTEN: Mr. Cash, I just want to clarify something. You have not appeared of counsel in this lawsuit in DeKalb County, Alabama, have you?

MR. CASH: Yes, I have. And I have -- my pro hac vice has been granted.

MR. WOOTEN: And you have local counsel who's also involved in this lawsuit, correct?

MR. CASH: That is correct.

MR. WOOTEN: And that's the firm of Huie Fernambucq in Birmingham, Alabama?

MR. CASH: I believe that's correct.

MR. WOOTEN: Did anyone acting on behalf of your client file any objections to this 30(b)(6) deposition notice?

MR. CASH: We're making our objections on the record as to the specific document requests, which we received within about the past ten days.

MR. WOOTEN: Okay. Today is June the 16th, correct?

MR. CASH: That is correct. This was filed on the 4th. And I received it on about the 6th or the 7th. So within less than ten days. And I'm making my objections on the record.

MR. WOOTEN: I'm aware that you're making your objection on the record. My question is, did anybody make a filed written objection to the areas of inquiry in this 30(b)(6) notice?

MR. CASH: Not as far as I know.

MR. WOOTEN: Did you direct anyone on your behalf or on your client's behalf to file an objection in court with respect to this deposition notice?

MR. CASH: Nick, I'm not the one being deposed here, so I will make my objections on the record.

MR. WOOTEN: Okay. I'm just --

MR. CASH: And the record speaks for itself.

MR. WOOTEN: -- making my record also, Mr. Cash, so I'm just asking you, did you direct anyone --

MR. CASH: And I'm not answering your questions, Nick. I'm not being deposed here. I will state my objections on the record, as I'm entitled to do.

MR. WOOTEN: And I just want to make sure I understand something, because I just want to be real clear about this. Your testimony is --

MR. CASH: It's not my testimony, I'm going to tell you again.

MR. WOOTEN: Your offering is --

MR. CASH: I'm not under oath here and I'm not testifying. I've been clear on the record and I will make my record. So if you have more

questions of the witness, feel free to ask him, and I'll make my objections as we go.

BY MR. WOOTEN:

Q Here's my question. Mr. Newland, take all the time you need and look at those documents, and I want this answer from you. I want you to tell me under oath, sir, that that's all the documents on your client's system with respect to this loan.

MR. CASH: I'm going to object to the form of the question. That's not what was indicated previously. What was indicated previously is it's all documents which were responsive to non-objectionable questions in the 30(b)(6). We will state our objections on the record one by one, if we need to go through them, but these are all of the notes back and forth and these are the documents which are on the Fidelity, as we defined that in the beginning of this, not on any affiliate or parent, on the Fidelity system, which was asked for.

MR. WOOTEN: Okay. You're defining Fidelity as LPS.

MR. CASH: No. I'm defining Fidelity as they are in the lawsuit. Fidelity is, and the 30(b)(6) is too, defendant, Fidelity National

Foreclosure & Bankruptcy Solutions, period. There is no other Fidelity defendant in this case. That is Fidelity for the purposes of this case. And that is all that Fidelity is for the purpose of this case.

BY MR. WOOTEN:

Q Okay. Mr. Newland, Fidelity National Foreclosure & Bankruptcy Solutions is now known as what?

A Lender Processing Solutions.

Q Okay. And when did that name change take place?

A LPS -- well, it's LPS Default Solutions.

Q And when did that take place, sir? When was that name change?

A I want to say it was March or February of this year.

Q Okay. So as Fidelity National Foreclosure & Bankruptcy Solutions is known today, they would not be known as Fidelity, they would be known as LPS or Lender Processing Solutions, right?

A LPS Default Solutions.

Q Okay. So I'm going to ask you, Mr. Newland, this question. Is it your testimony that the documents which your counsel has handed to me today

are all of the documents with respect to my client's loans which are available or may easily be accessed through use of the software known as MSP, which is owned by your parent company, Fidelity, with respect to my client's loan?

MR. CASH: Object to the form of the question. It's beyond the scope of the 30(b)(6). If you know the answer to that, you can answer it.

THE WITNESS: I don't know.

BY MR. WOOTEN:

Q Who's the person who is in your employ who has the most knowledge about what documents, images, notes, and information are available through the MSP software which LPS employs?

A I don't know off the top of my head, sir.

Q Do you have a manager of technology or a vice president of technology?

A Yes, we do.

Q And that's with LPS?

A Yes.

Q And they are in this compound that we're here at today?

A I don't know whether they're in this compound or up in our Minnesota location.

Q And --

THE VIDEOGRAPHER: Excuse me. I'm sorry, can I take a moment to change tape?

MR. WOOTEN: Certainly.

THE VIDEOGRAPHER: Off record at 10:07.

(Off the record discussion.)

THE VIDEOGRAPHER: Going back on record at 10:10, beginning of Videotape No. 2.

BY MR. WOOTEN:

Q The next area of inquiry that we delineated in our 30(b)(6), Mr. Newland, was: Testimony and documents regarding all correspondence, images, documents, notes or communications, in whatever form and by whatever medium contained in the foreclosure notes of the Fidelity software for the subject loan. As well as a definitional code sheet for any codes used to explain or describe this data.

Now, we've established that Fidelity software means MSP. I'm assuming that LPS only uses MSP; is that correct?

A No, that's not correct.

Q What other software platforms does LPS use other than MSP, please, sir?

A We have Fiserv that we utilize for -- I mean, all clients are different as far as different

mortgage services software.

Q Let me stop you, because I hear what you're saying, you're talking about some other issues. I'm talking about with respect to the foreclosure work that LPS does, are there any other software platform that your employees at LPS utilize other than your parent company software, MSP?

A Yes, there other -- there is other platforms that we utilize.

Q Okay. Tell me the names of each of those other platforms, please, sir.

A For different clients, we utilize our updated Fiserv MortgageServ.

Q Let me just -- slow down just a second for me. Fiserv, F-I-S-E-R-V?

A I believe.

Q And what exactly does that software do, please, sir?

A It's known as -- well, it's basically a mortgage servicing platform, if that's what you're asking, if we update other mortgaging servicing platforms, yes, we do.

Q What do you do with Fiserv?

A We just update different screens.

Q You update different screens?

A Uh-huh.
Q Is that a vehicle by which you provide data to your clients?
A Yes.
Q Tell me what screens you are aware of Fiserv updates.
A I do not know.
Q Who in your employ would be the person with the most knowledge about that?
A Probably our securities area.
Q Who is that person?
A I don't know off the top of my head.
Q Would Fiserv also be the vehicle by which your firm delivered bills to its customers?
A No.
Q Is Fiserv the vehicle by which your company would add fee charges to customer accounts?
A We do not add --
MR. CASH: Objection to the form.
Q You can answer if you know.
A We do not add fees.
Q Okay. When LPS provides services to its clients, does it charge fees?
A No.
Q I'm sorry?

A To our clients, no.

Q Okay. Let me ask it another way. When you provide services to the mortgage servicers which hire you to do foreclosure work, do you charge fees for that work?

A No, we don't.

Q Okay. Tell me what you charge, how you get paid for the work that you do, please, sir.

MR. CASH: I'm going to object to that question. That's proprietary, and there's no reason to go into it based upon the allegations set forth in this lawsuit. There's no relevance based upon any claim being made in this lawsuit. Unless, Nick, you can point me to one of the allegations in here that supports that question.

MR. WOOTEN: Well, let's do this, Mr. Cash. We'll come back to that question in a few minutes. I don't want to get too far out of order.

MR. CASH: Okay. The objection will be the same later, but --

MR. WOOTEN: That'll be fine. You'll be welcome to make it.

BY MR. WOOTEN:

Q Make sure I understand this, Mr. Newland.

LPS have contracts with the attorneys who provide services with respect to foreclosures and bankruptcies who are partners of LPS?

A Yes.

Q And do those contracts set forth the fees which those attorneys will charge for standard services?

A No.

Q Do those contracts provide for the payment of a referral fee from those attorneys to LPS?

A No.

Q Does LPS have contracts with those mortgage servicers for which it provides default services?

A Yes.

Q How many mortgage servicers does LPS provide default services for, please, sir?

A Approximately 34.

Q And 34 servicers, what percentage of the mortgage servicers existing in America today is represented by that 34?

MR. CASH: Objection. That's not relevant. You don't have to answer it. Unless you can show me how that's supported in any way by your complaint in this case, Nick.

MR. WOOTEN: Mr. Cash --

MR. CASH: Yes, sir.

MR. WOOTEN: -- are the rules with respect to deposition question objections different in Texas than they are in Alabama?

MR. CASH: Not materially. So, for something to be discoverable, it must be relevant or it must be reasonably likely to lead -- and it must be reasonably likely to lead to discovery of admissible evidence. So the first threshold is relevance. If something is irrelevant --

MR. WOOTEN: So I just want to make sure, you're making a legal ruling --

MR. CASH: I just want to make sure that I get it on the record.

MR. WOOTEN: -- with respect to whether or not your client can answer a deposition question.

MR. CASH: No, sir, I'm not making a legal ruling. What I'm saying is that the question you're asking is not relevant, and I'm not going to let you go on a fishing expedition, because it's harassing and it's not relevant to any issue in this case.

If you will point out to me any way in which it is relevant based upon the complaint on file, I may withdraw or reconsider the objection.

That's what I'm saying.

MR. WOOTEN: So what I want to make clear is, is that we've all traveled to Jacksonville, Florida, to take this deposition.

MR. CASH: Yes, sir, we have.

MR. WOOTEN: And you're making an objection and specifically instructing your witness not to answer the question rather than making your objection and allowing him to answer the question and preserving the issue for the Court.

MR. CASH: What I am saying is, that we are not going to go far afield and do a fishing expedition here. I am more than happy to call the Court, if you want to do that. If you want to call the Court and get guidance ahead of time --

MR. WOOTEN: Sure, why don't you run out there and call the Court, that'll be fine. We'll keep taking the deposition.

MR. CASH: They're your questions. If you would like the Court to get involved, I'm happy to do so.

MR. WOOTEN: No, I just want to make sure we have a record, that you are here and you're telling your client not to answer. That's all I

want to make a record of.

MR. CASH: What I am telling my client to do, and the record is very clear and you don't have to repeat it, I'm telling my client not to answer irrelevant fishing expedition questions. And I'm also at the same time giving you every opportunity to show me anywhere in your complaint that makes that question relevant and I will reconsider that instruction. You have declined to do so.

MR. WOOTEN: I don't have to show you where it's relevant. You have a right to object --

MR. CASH: Then --

MR. WOOTEN: -- he can answer and the Court can rule whether the question is relevant or not when we can go back in front of the Court.

MR. CASH: I also have the right to object. And if I feel that it is harassment and it is far afield, then I have the right to instruct him not to answer under the Alabama rules and the federal rules.

MR. WOOTEN: Well, that'll be fine, but the next time we take this deposition it'll be in DeKalb County, Alabama, it won't be in Jacksonville. Okay?

MR. CASH: I didn't know you had that kind of power.

MR. WOOTEN: Well, you just keep doing this and you'll see.

MR. CASH: Well, I'm trying to -- Nick, if you will ask questions that are supported by this complaint --

MR. WOOTEN: I'm going to ask the questions --

MR. CASH: -- I will absolutely sit here and be quiet.

MR. WOOTEN: -- I want to ask, and you can object to them.

MR. CASH: Well, see, therein lies the problem --

MR. WOOTEN: And if you don't like them --

MR. CASH: -- you don't get to ask anything and everything.

MR. WOOTEN: If you don't like the questions, object to them and the Court can rule.

MR. CASH: I have. And I will tell my --

MR. WOOTEN: But to sit here and tell your client not to answer questions --

MR. CASH: Here's what you don't get to do, Nick, what you don't get to do is to go into this

entire fishing expedition that has nothing to do with this lawsuit and gather all this information and then later have the Court rule, well, all of it was irrelevant, but it really doesn't matter to you, because you've gone ahead and gathered it for your purposes. We're not going to do that here today.

MR. WOOTEN: You know what --

MR. CASH: And you know what, if we have to come to DeKalb County and take the deposition again, so be it, that is an expense that I will incur.

MR. WOOTEN: Well, that'll be fine.

MR. CASH: All right, then. Why don't you quit fussing at me and just ask your questions.

MR. WOOTEN: Well, why don't you quit interfering with my deposition.

MR. CASH: I'm not interfering, I'm just making my objections and making my instructions. I haven't engaged you at all, Nick. I've just made my objections for the record.

MR. WOOTEN: No, but you're instructing your witness not to answer.

MR. CASH: I know what I'm doing, I'm not engaging you, so why don't you --

MR. WOOTEN: That's fine.

MR. CASH: -- just pay attention to your deposition and take it, and I'll do my job, you do yours.

MR. WOOTEN: Okay. If you won't interfere with my deposition, I'll --

MR. CASH: I'm not interfering with it, brother, I'm just making objections to objectionable questions. Stop asking objectionable questions and we will sail along. I didn't say a word for the first hour of this deposition.

MR. WOOTEN: Yeah, well, we were talking about where your client worked --

MR. CASH: Nothing objectionable.

MR. WOOTEN: -- before he got here.

MR. CASH: Nothing objectionable.

MR. WOOTEN: That's right.

MR. CASH: I don't object if it's not objectionable, Nick.

MR. WOOTEN: You know what, I hope you enjoy this veil of secrecy as long as you can, because it ain't going to last.

MR. CASH: It's not a veil of secrecy, I'm happy to tell you things that are relevant to

this lawsuit. But if you want to go fishing, you ought to be in the Gulf, not in this conference room.

BY MR. WOOTEN:

Q Mr. Newland, have you testified or been requested to testify in front of a grand jury with respect to the practices of LPS with regards to its foreclosure and bankruptcy practices?

A No, I have not.

Q Are you aware of a pending federal investigation by the United States Department of Justice or the United States bankruptcy trustee office regarding your business's foreclosure and bankruptcy practices?

A No, I'm not.

Q So your testimony's that you have not received any notification that there is an active federal investigation of your company's practices?

A No.

MR. CASH: Objection to form. Go ahead.

THE WITNESS: No, I have not.

BY MR. WOOTEN:

Q Are you aware that there is an active investigation by the State of Connecticut with regard to similar issues?

A No, I'm not.
Q Have you been asked to testify or produce any documents from your client with respect to these issues?
A No, I have not.
Q And your testimony here today is, is that you cannot tell me the person in your employ who can tell me what exactly the data is that is provided to your clients through the Fiserv software?
A No, I cannot.
Q Tell me each person who is directly answerable to you on a day-to-day basis with respect to management. Do you have vice presidents who work for you?
A Yes, I do.
Q Okay. How many of them?
A I have two vice presidents that work for me.
Q Okay. And who are they, please, sir?
A Charles -- or, I'm sorry, Tara Engle.
Q Can you spell that for me, please, sir?
A T-A-R-A, last name Engle, E-N-G-L-E.
Q What is her title, please, sir?
A Vice president of special assets.
Q And does LPS have a definition of special assets, please, sir?

A I believe I told you that earlier.
Q Okay. This -- what you mentioned earlier, that was not with respect to a different client?
A No.
Q Or different employment?
A No.
Q Who is the other vice president who works for you, please, sir?
A James Richards. Would you like me to spell that?
Q I think I can handle that one, Mr. Newland.
A All right. Okay.
Q And what is his title, please, sir?
A He is vice president of special assets also.
Q And are both of those individuals who are in your employ located here in Jacksonville?
A One is located here in Jacksonville and the other one is located in West Palm Beach, work at home.
Q Okay. Are there any vice presidents who are not directly answerable to you who also work in LPS, either in this facility or in the Mendota Heights facility?
A Are there any other vice presidents in Lender Processing Services?
Q Who answer directly to you --

A No.
Q -- either here or in Mendota Heights, Minnesota?
A No, not vice presidents.
Q Okay. What other persons answer directly to you with respect to day-to-day activities of LPS?
A Can you clarify the question one more time, please.
Q I'm assuming that you have a management team of some sort that answers to you?
A Yes, I do.
Q Okay. On more or less a daily, weekly type basis?
A Yes.
Q Okay. And I'm assuming that Tara Engle and James Richards are not the only members of that management team?
A No, there's two other members.
Q Who else is there?
A Charles Martisek.
Q I can handle, Charles, but will you try Martisek --
A Sure.
Q -- for me?
A M-A-R-T-I-S-E-K.

Q And what is his title, please?
A Assistant vice president, attorney management.
Q And what does his job involve?
A He basically manages our attorney network.
Q Okay.
A Or part of our attorney network.
Q What part does he manage?
A Basically the Court foreclosure steps, which basically means provides a conduit for our clients' communications with the attorneys.
Q Is that accomplished through a particular portion of the software employed by LPS known as MSP?
A No.
Q Is it accomplished through some other software portal which is employed by LPS?
A Yes.
Q And what is the name of that portal, please, sir?
A Process Management.
Q And please tell me everything which Process Management provides to your attorney network.
A Basically it's the communication work flow process, in which we help manage the attorneys as far as it goes, as far as the foreclosure or bankruptcy

action.

Q Is the Process Management system -- is compliance with the Process Management system by your attorney network the measure by which your attorney network receives their APR rating with your company?

A Can you clarify that question again?

Q Sure. I understand that your Process Management system sets forth guidelines or time lines within which your attorneys must complete certain actions; is that correct?

A That is correct.

Q Okay. And those guidelines are set forth by Fidelity to your attorney members; is that correct?

A No, it's not correct.

Q Okay. Tell me how those guidelines are determined please, sir.

A They are guidelines that are determined by the clients.

Q And in this respect, who are the clients, please, sir?

A Servicers.

Q Is it your testimony here today that Fidelity does not set the guidelines within which certain tasks must be accomplished by your attorney network?

A No, we do not.
Q And you have 34 servicers who use your network, correct?
A That is correct.
Q You have 34 --
A Approximately.
Q You have 34 different sets of guidelines?
A Yes, we do.
Q And 34 different sets of time lines, I assume then?
A Not necessarily.
Q The time line aspect of this issue, is it your testimony that Fidelity does not control that?
A That is correct.
Q Excuse me. Let me rephrase that. Is it your testimony that LPS does not control the time line process?
A That is correct.
Q Besides work flow management, what other information is provided to your attorneys through the Process Management?
A In what respect?
Q Work flow management, please explain to me everything you understand the work flow management portion of Process Management to entail.

A Basically what we do is, we provide the mechanism as far as steps that need to be completed by the attorneys in reference to the actions that they're taking. If they need some type of information, we have the ability for the attorneys to open up what is called issues or processes to request those items, and then we will go out and look for those items and/or work with the clients in reference to obtaining that information.

MR. CASH: Nick, for the record, all the Process Management notes are this top group of back and forth that have been produced.

MR. WOOTEN: These were previously produced.

MR. CASH: And those are on this loan on the Process Management.

MR. WOOTEN: This is -- these are the process notes, which is Page 1 of 25.

MR. CASH: Correct.

MR. WOOTEN: And I have those marked in another exhibit.

MR. CASH: Okay.

MR. WOOTEN: I'm going to mark this cumulatively, give me just a second, I'm going to -- I'm not going to try to go back through and pull that apart for us to look at it.

I'm going to mark what you produced today as a cumulative exhibit, Plaintiffs' Exhibit 24. And just again, so that it's on the record with this marking, please tell me again for the record exactly what that represents.

MR. CASH: These are documents that were responsive to the request for documents served with the 30(b)(6). They are the documents that, subject to the objections that we made and will continue to make as specific issues are directed, that we could ascertain were responsive to that request, to those requests.

MR. WOOTEN: Fine. I'm going to leave that sitting right there.

And I apologize, Madam Court Reporter, for marking this stuff out of order. I didn't intend to do it that way.

(Plaintiffs' Exhibit No. 24 marked for identification.)

Q Issues. If an attorney is trying to foreclose on a house and he says, hmm, LPS, these folks say they paid this loan off with the insurance proceeds, that would come up as an issue, right?

A Yes, it would.

Q So your lawyer out in the world, in this

case, Birmingham, if they were told by my client's lawyer or other lawyer that they paid the loan off with insurance proceeds, he would come back and he would create an issue and say, oh, by the way, this loan is supposed to be paid off, tell me what I'm supposed to do, right?

A That is correct.

Q And then who would respond to that issue?

A Somebody based off of the issue would respond accordingly, whatever the issue would be. In this case, probably be an insurance claim issue that would be raised, and which at that time, we would provide that information over to the client.

Q All right. And so, your testimony is, is that LPS would then receive the issue from the attorney and then relay the issue to, in this case, Option One?

A That would be correct.

Q And LPS would not take any initiative to make any decision, they would simply wait on Option One to tell them what to tell the attorney?

A That is correct.

Q Other than Process Management, are there any other software or software modules or devices which are used to communicate with your attorney network?

A Not software, no.
Q In what other ways do you communicate with your attorney network?
A Primarily through the Process Management system.
Q Okay. What is NewTrak?
A Process Management.
Q Is that also called FIS Desktop now?
A No, it's not.
Q Is there another term for NewTrak other than NewTrak?
A Process Management.
Q Is it safe to say that what I refer to as NewTrak is basically a sectioned off or separate portion of software that deals strictly with communications between LPS and the attorneys?
A No.
Q Other than the attorneys and the LPS employees, who else accesses Process Management?
A Our clients, servicers.
Q Okay. So whatever information is in the Process Management system is accessed by any user of the servicer, as well as any employee of LPS assigned to work on the loan, as well as the attorney and anybody designated by the attorney to use that

software?
A That would be correct.
Q What is New Image?
A New Image is an imaging platform.
Q Does LPS still refer to New Image by that name?
A Does -- can you clarify the question one more time?
Q Has New Image been renamed as part of the LPS spinoff?
A Yes, it has.
Q What is it now referred to as?
A Document Management.
Q Is there an iteration of Document Management that you're operating out of now?
A Yes.
Q What is that?
A I don't recall what the name is.
Q What is your understanding of Document Management, what does it do?
A Document Management is just part of the system that we go in and review documents that are imaged.
Q I'm sorry, what documents?
A What documents?

Q You said you --

MR. CASH: He didn't hear the end of your sentence.

Q I'm sorry.

A Oh. Just -- it's the platform that we utilize to view documents associated with the loans.

Q Are there any word processing functions within Document Management?

A Not that I know of.

Q Is Document Management also a platform by which documents are provided to both attorneys who are part of your network and clients?

A Yes.

Q And isn't it true that each time a document is uploaded into MSP, there is a record made of what the document's identity is and when it was uploaded?

A I don't know that.

Q If the documents you have produced indicate that, you would not dispute it, would you?

A I don't know.

Q Would Mr. Martisek be a person more knowledgeable about what is involved with Document Management and what its capacities and capabilities are than you, Mr. Newland?

A I don't believe so.

Q So, again, is it your testimony that someone in security would be the person to talk to about that?
A I don't know that answer.
Q Is it possible that someone on the floor interacting with files on a daily basis would know more about what the Document Management capacities and abilities are than you do as you sit here today?
A I don't know.
Q Have you made any inquiry?
A No, I have not.
Q Are you familiar with whether or not there is a section of the software which LPS employs which provides a list of all the images associated with a loan account?
A What software?
Q MSP.
A No, I do not.
Q What about Document Management?
A Yes.
Q And there is a screen which sets forth every document associated with a loan file; is that correct?
A That is correct in Document Management.
Q And it is a matter of simply going in and selecting those documents to view them or to print them, isn't it?

A Yes, we can print those documents.

Q Have you produced those documents with respect to Larry David Wood and Karen Wilborn Wood's loan today as part of your document that I've marked --

A Yes, we have.

Q -- as Plaintiffs' Exhibit 24?

A Yes, we have.

Q Okay. So it's your testimony that every document associated with this loan that is part of the Document Management system has been produced as part of what you brought today?

A Yes, it has.

Q Do you know if every document associated with this loan was produced previously through written discovery?

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

Q If a member of an attorney network requests an assignment of a mortgage for purposes of the foreclosure, is that the type of document which would be uploaded into Document Management and provided to the attorney?

A Yes, it would.

Q If an attorney requests an affidavit in support of a motion for relief from stay, is that the

type of document that would be executed and uploaded into Document Management and provided to the attorney?

A Yes, it would.

Q Is it your understanding that those documents contain information about when they were created and by whom?

A Repeat that question again.

Q Is it your understanding that the origination of that electronic data in the form of a document file would contain the information about when those documents were created or when those documents were uploaded into the system?

A Yes, it would.

Q If an LPS employee executed an affidavit or an assignment and uploaded it into Document Management, that electronic document would contain the information about what employee prepared that document and when they prepared it, would it not?

A The upload would -- would state the time stamp for that, yes.

Q And if that document which was uploaded by the employee of LPS were received from some other entity, it would also indicate that as well, wouldn't it?

A Yes, it should.

Q So if an employee of Fidelity requested an assignment of a mortgage from a servicer and the servicer provided that document to the employee of LPS, the electronic data would show when that took place?

A Yes.

Q And it would show who was responsible for obtaining or providing that mortgage assignment?

A It would basically track when the assignment would go out for signature and when it would come back and then transfer over to the attorney.

Q You said it would track when the document went out for signature.

A Date and time stamp.

Q Okay. Explain that for me, please, sir. You said it would go -- it would track when it went out. Are you indicating that if an assignment was requested, that an employee of LPS might prepare the assignment and then send it to be signed?

A We don't -- we don't prepare the assignments.

Q Okay. When you say it goes out, explain what you mean.

A We funnel that either to the client or the investor for signature.

Q Okay. So it's your testimony that employees of LPS never sign mortgage assignments?

A I did not testify to that.

Q Mortgage assignment is requested by an attorney for foreclosure or bankruptcy purposes. The records in the Process Management notes would indicate when that request was made, would it not?

A Yes, it would.

MR. CASH: Nick, I've already asked a lot of these questions. Is there an allegation about mortgage assignments in this case?

MR. WOOTEN: There is an issue with respect to that, yes.

MR. CASH: Okay. I thought there was, I just wanted to make sure, because I hadn't seen it in the allegations.

BY MR. WOOTEN:

Q With respect to the request for the document which would've been made by the attorney or the client, there would be a concomitant entry in the LPS system indicating that that request had been received, right?

A That's correct.

Q And then there would be entries regarding what action was taken to procure that document?

A That would be correct.

Q And then that document would then -- you said it would be sent out for execution?

A Well, it depends -- depends on if we have power of attorney from, or corporate resolution from the client based off of the entity involved.

Q That's interesting that you mention that. Your employees at LPS and part of your process is that you seek to obtain these powers of attorney from your various clients for just such an occasion as this, correct, preparing documents for their foreclosure and work?

A We don't -- we don't prepare the documents.

Q Or executing documents?

A If we have corporate resolution or power of attorney, we can exercise the document.

Q And that would be based off of a form provided by the client?

A That's correct.

Q Okay. It would not be based off of the data provided to your LPS employees by the client?

A What do you mean by the data provided by the client? I don't understand that question.

Q Okay. Let's say that in this particular case that a particular securitized trust was supposed

to be the owner of this particular mortgage. Okay?

A Uh-huh.

Q And I think your position in this case is, is Option One asked Mr. Humphrey to foreclose on this property, correct?

MR. LAWLER: Objection. I don't want to get into any kind of conversations between Mr. Humphrey and Fidelity or Option One.

BY MR. WOOTEN:

Q Someone at some point requested Mr. Humphrey foreclose on the Wood property, right?

A That would be correct.

Q And so if the mortgage were not assigned to the specific securitized trust at that time, it would have been necessary to obtain an assignment allowing that securitized trust to foreclose, correct?

MR. CASH: Object to the extent it calls for a legal conclusion. But if you know, you can answer.

A I don't know.

Q Is it -- is it safe to say that your understanding is that the only person who can foreclose is the owner of the debt secured by the mortgage?

A I don't know.

Q You've been in collection and finance your whole professional career?

A That's correct.

Q And you are in charge of a company whose business is to foreclose and manage bankruptcy and foreclosure processes?

A That is correct.

Q And your testimony is, is that you do not know generally who is entitled to foreclose?

A No.

Q Just wanted to be sure. Have you ever asked anyone that kind of question?

A Yes.

Q And did they provide you any information?

A Different states have different...

Q Right. Like a deed -- a deed of trust state, the trustee of the deed of trust has the right to foreclose, right?

A I don't know.

Q So what you learned from your inquiry was that different states have different rules?

A Yes.

Q Other than the Process Management and the Document Management, how do you refer to those things internally, do you call them platforms, modules? I

mean, how do y'all talk about those things? Do you talk about them by name, what do you do?

A I'm not sure I understand your question.

Q Well, you say you had this Document Management system and you've got this Process Management system.

A Uh-huh.

Q Do you have names for those internally or do you simply refer to it as Process Management, Document Management?

A We refer to them as Process Management and Document Management systems.

Q Then they're not considered to be products or services offered by LPS to its clients in any way?

A No, it is offered to the clients.

Q Are there any other services or processes that LPS provides, other than Document Management and Process Management?

A We offer invoice management.

Q And what is the name of your invoice management software?

A Invoice Management.

Q Simple enough.

MR. CASH: We're not creative. We don't have any cool names.

MR. WOOTEN: Corporations generally aren't.

BY MR. WOOTEN:

Q With respect to Invoice Management, there is also a screen within your software where you can go to and review every invoice associated with any particular loan file; is that correct?

A That's associated with that file, yes.

Q And so if a foreclosure attorney has submitted a bill for fees, that would be available through Invoice Management?

A If the client utilizes Invoice Management, yes.

Q It's your testimony that some do and some do not?

A Yes.

Q Okay. Invoice Management, does your company, LPS, charge any fee for that service?

A To who?

Q To anyone who utilizes that service, be it the servicer or the attorney network?

A Yes, there is a fee that is assessed to the attorney network.

Q Tell me about that fee.

A I don't know what the fee is.

Q So if the foreclosing attorney provides a

bill through Invoice Management for $500, Fidelity then turns around and bills the attorney for using the Invoice Management system; is that what happens?

A You'd have to ask somebody with our Invoice Management department.

Q Okay. Who is that?

A Off the top of my head, I don't know.

Q Does LPS not have a person involved with Invoice Management?

A Yes, we do.

Q Do you have a manager of that department?

A Yes, but I don't know who it is off the top of my head.

MR. WOOTEN: Mike, can you find that out for me, please.

MR. CASH: I'll find that out.

MR. WOOTEN: And I'm going to ask this, and I know you're going to say you don't know, but what I'm interested in is the person who is most knowledgeable about how that system works with respect to your -- both your attorney network and your servicer clients. So if y'all will check on that and let me know, I'd appreciate it.

BY MR. WOOTEN:

Q Is it your understanding that the servicers

do not pay any fees for use of Invoice Management?

A I don't know. I don't know that question.

Q If they utilize Invoice Management, would it be part of their monthly billing rather than separately billed?

A I don't understand. Monthly billed to who?

Q Do your servicers not pay a monthly fee for the use of your services with respect to LPS?

A Which part of LPS?

Q Foreclosure or bankruptcy.

A I don't know.

Q What other part of LPS is there other than foreclosure and bankruptcy?

A There is no other part for LPS Default Solutions.

Q Okay. So you asked me what part of LPS I was referring to, but you don't know with respect to either one of them if the servicers pay a fee to use that service?

A That's correct.

Q Do you have a contract with each of the servicers who use your service?

A Yes, we do.

Q Is it safe to say that if they pay for your services, that contract would set forth what and how

they pay you?
A I don't know.
Q Have you --
A I don't know whether it's in the contract or not. I have not reviewed the contract.
Q So you wouldn't know if your contract said pay it in Swiss cheese, you've just never seen one?
A No.
Q Let me ask this question. Who do you answer to directly from your position?
A I answer to Scott Barnes.
Q And what is his title?
A President, Default -- LPS Default Solutions.
Q I just want to take a second to go back and look at my notes. I just want to make sure I understand.
You said you're the first vice president of operations, right?
A That's correct.
Q And your responsibility is the day-to-day operations of LPS?
A That's correct.
Q Is there anyone in LPS who holds a higher title or position than Scott Barnes?
A For Default Solutions, no.

Q What other departments are there of LPS than Default Solutions?

A There are a few other departments underneath the LPS umbrella.

Q Do you know what those are?

A We have REO.

Q What else?

A Field Services.

Q And what else?

A We have a default title company.

Q What's the name of that company or is it --

A I don't know off the top of my head.

Q Any other --

A That's it.

Q So is there a first vice president for each of these divisions?

A I don't know.

Q Is there -- does Scott Barnes have a person that he answers to every day who is employed by LPS?

A Yes.

Q And who is that?

MR. CASH: Again, just object to the form of the question. Which LPS?

MR. WOOTEN: Default Solutions.

MR. CASH: Okay.

THE WITNESS: No.

BY MR. WOOTEN:

Q Okay. So whomever he answers to is in charge of the entire spinoff?

A Not the entire spinoff, no.

Q Well, tell me who he answers to. Or who's his boss?

A Clay Cornett.

Q And what is Clay's title?

A I don't -- I don't know his title off the top of my head.

Q Would it be available from LPS's website or information that's publicly available?

A I believe so.

Q Is LPS publicly traded?

A Yes.

Q What is its symbol?

A LPS.

Q And a glaring question of the obvious, right?

Do you know if Clay Cornett has a boss in LPS?

A Yes, he does.

Q And who is that?

MR. CASH: Again, and I hate to be the

stickler, but there's LPS, Inc., and there's LPS Default Solutions. LPS Default Solutions is what was once the defendant in this case, Fidelity National Foreclosure & Bankruptcy Solutions. So when you say LPS, I just need us to define LPS, whether you're talking about Inc. or the separate entity LPS Default Solutions.

BY MR. WOOTEN:

Q My question is much simpler. I'm just asking if Clay Cornett has a boss. I mean, that's what I'm trying to find out. I mean, if it -- he's already said that Scott Barnes doesn't have a boss in LPS Default Solutions, haven't you?

A Yes.

Q So Clay Cornett is obviously working for Inc.?

A I believe so.

Q Okay. And who does Clay Cornett answer to?

A That would be Eric Swenson.

Q Is he the person who is overall in charge of LPS, Inc.?

A No.

Q Who is over Eric Swenson?

A That would be the CEO, Jeff Carbiener.

(Brief interruption.)

THE WITNESS: Carbiener.

MR. CASH: Why don't you spell that for her, unless you don't know how, and I won't put you on the spot since he's the boss.

THE WITNESS: No.

BY MR. WOOTEN:

Q Is it C-E-R-B-I-N-E-R?

A C-A-R-B-I-N-E-R, I believe, I don't know.

Q Okay. So everything starts at Jeff Carbiener and flows downhill on your side through Eric Swenson, Clay Cornett, Scott Barnes and then to you?

A That would be correct.

Q And then you have your management team that we talked about earlier, and we talked about three of the four people on that team, right?

A That's correct.

Q Other than Invoice Management, Document Management, and Process Management, are there any other things which fall into that general category with respect to your Attorney Management network?

A No, that's it.

Q Who is the fourth member of your team?

A Christine Anderson. She's the peer of Chuck Martisek.

Q Does she spell her name S-O-N or S-E-N?

A S-O-N.
Q And you mentioned she was the peer of Mr. Martisek?
A That's correct.
Q Does she have a separate responsibility than him?
A Primarily the same responsibility.
Q Does she handle a different portion of the country or --
A Yes.
Q And I -- let me double-check, did I ask you what portion of the country Mr. Martisek was responsible for?
A I don't believe so.
Q Okay. And do you know?
A I -- it's broken up differently by each state.
Q So it's not necessarily geographic?
A No. They only channel certain states, 50 states and the other two provinces.
Q With respect to the work that Ms. Anderson and Mr. Martisek do, are there separate divisions in their department where different employees work with different portions of this process?
A No.

Q So every LPS employee who is within the attorney foreclosure referral network is available to do all the same type of work, as far as --

A Not -- not the referral network, no.

Q Okay.

A I don't quite understand your question in reference to referral.

Q Maybe I didn't ask it well. Do you have -- you said these people are in charge of your attorney management network?

A Uh-huh.

Q And that basically included your core foreclosure steps?

A That's correct.

Q Where does your bankruptcy Process Management fall in that?

A Basically the foreclosure process begins from the time that the attorneys receive their referral.

Q Okay. And where does the referral come from?

A It comes from the client.

Q And how does the client make the referral?

A How do they make the referral?

Q Sure.

A I don't know off the top of my head.
Q Do they -- does Option One pick up the phone and call Scott Humphrey in Birmingham and say, I want you to foreclose for us?
A No.
Q Is that not run through LPS?
A The client makes the decision on when to refer the loan for foreclosure, which we get a file from Option One, along with the necessary documents.
Q So your testimony is, is that Option One provides the referral package to LPS?
A That is correct.
Q And that LPS refers the foreclosure to the attorney?
A Electronically, we provide the information to the attorneys.
Q Again, you indicated that Option One would be the entity which chose the attorney?
A That's correct.
Q I mean, are they free to select any attorney or are they only allowed to select Fidelity referring attorneys or --
A They're free to choose any attorney they'd like.
Q Are you aware of whether or not there is a

contractural provision within the agreement between the servicers and LPS which requires them to use attorneys within the attorney network of LPS?

A No, I'm not.

Q And again, you indicated you have not read any of those contracts?

A My understanding is that we do not choose any of the attorneys.

Q Your system is capable of harnessing a lot of information, right?

A That is correct.

Q And you're capable of reporting features about pretty much all that you do as an entity, correct? I mean, as far as how fast you meet your time line goes, what percentage of foreclosures take place within your time lines, you know, what percentage of issues are resolved within the appropriate amount of time, pretty much anything you want to find out that's on your software, your MSP software, you pretty much have a reporting function for, don't you?

A Not MSP, no.

Q What about with respect to Process Management?

A We have the ability to produce reports based

off of Process Management, yes.

Q Sure. Are there any attorneys who are not members of the Fidelity -- or the LPS attorney network who can access your Process Management system?

A Not that I'm aware of.

Q And is it a fact that the only attorneys who are using Process Management are attorneys who have signed a referral agreement with LPS?

A That would be correct.

Q So, while your clients are free to choose whomever as a foreclosing attorney, if they are an MSP user and they are an LPS -- they have an LPS agreement with you for Default Solutions, the only attorneys available on LPS system are attorneys who have signed a contract with LPS?

A That have signed a contract with LPS, yes.

Q So when you say that your servicing clients are free to choose whomever, with respect to referring it through LPS, that is illusory, isn't it?

A I don't understand what you mean by illusory.

Q Well, there are 14,000 lawyers in the state of Alabama approximately.

A Uh-huh.

Q And your testimony is, is that Option One

could've chosen any lawyer to foreclose on this loan if they wanted to, but if they have a contract with LPS to provide default solutions, does that contract not require them to make a referral through LPS?

A Not necessarily.

Q Have you -- well, never mind.

A Clients -- clients can choose to refer any way they'd like.

Q If they want the loan to stay on the MSP and LPS system, don't they have to go through LPS and use an attorney network member?

A The clients? Yes. They need to use our system at their choice.

Q So, again, while you say that they can choose whomever, if they keep the loan on your system, they can only choose attorneys in your network?

A No. They can -- they can choose to use an attorney outside the network and be able to update that information through the client. The client has the ability to be able to update the system just like an attorney. If the attorney chooses not to sign the agreement, then basically the updates can be provided through the client into our LPS system.

Q Well, let me ask you this. Do you have any statistics on whether or not any foreclosures which

were referred to LPS or sent to an attorney who was not a member of LPS's attorney network?

A No, I do not have statistics on that.

Q Is it because the number would be zero?

A No.

Q And there are no reporting functions in your software that will give you that information?

A I don't know.

Q And you've never asked that question?

A No, I have not.

THE VIDEOGRAPHER: Excuse me. May I change videotape?

MR. WOOTEN: Sure.

THE VIDEOGRAPHER: Off record at 11:07.

(Brief recess.)

THE VIDEOGRAPHER: Back on record at 11:19, beginning of Videotape No. 3.

MR. WOOTEN: I need to go ahead and tell y'all, I've got a 2:30 that I'm going to have to take a short break, 2:30 local time. I've got to call in a federal case that I've got to deal with. So --

MR. CASH: Okay, whatever works for you.

MR. WOOTEN: -- we'll try to structure breaks around that, so -- but I wanted to give

y'all a heads-up.

MR. CASH: Okay.

BY MR. WOOTEN:

Q With respect to your operations, is there a separate division within your company that deals solely with bankruptcy issues, or a separate group of people?

MR. CASH: I'm going to object to that question and tell you not to answer about bankruptcy, unless, Nick, you can tell me -- this case isn't even in bankruptcy.

MR. WOOTEN: I'm just trying to clarify the structure of this entity.

MR. CASH: All right. Go ahead and answer the bankrupt -- that one bankruptcy question.

THE WITNESS: Yes.

BY MR. WOOTEN:

Q In our notice of deposition to you, we asked for all the same categories of documents that we asked for from your foreclosure department with respect to your REO department, with respect to the software called MSP employed by LPS. Did you produce any documents, images, notes, communications, with respect to the note fields or the contents of the REO portion of the MSP software?

A No.
Q Would that be the same answer with respect to the area regarding bankruptcy?
A I don't believe there was any bankruptcy notes.
Q Okay.
A But no.
Q Are you familiar with a note field called the Consolidated Note Logs?
A No, I'm not. That would be an MSP, correct?
Q That's correct.
A No, I'm not.
Q Have you had any training whatsoever with respect to the capabilities of the MSP software which your company employs?
A I've had partial training back in 2002.
Q Is that when you --
A With Option One.
Q With Option One?
A Yes.
Q With respect to the ability of the employees who work for LPS to change the information contained in your servicers' files, who are your clients, is it your testimony that your employees at LPS have that capacity?

A We have the ability to change certain screens within the MSP environment.

Q Okay. And are you familiar with whether or not the MSP platform, or MSP, makes any record of those changes and saves it anywhere within the MSP system or any backup of the MSP system?

A I don't know on the MSP system.

Q What about with respect to either Process Management or Document Management?

A Process Management does document the notes in our note screen, time stamped.

Q Does it document the changes?

A Yes.

Q Would there be anything that you are aware of which would be accessible by a user which would indicate what data was changed, who changed it, and when it was changed?

A In which system?

Q In -- let's begin with MSP.

A That, I don't know.

Q With Process Management.

A We do have tracking mechanisms in MS -- or in Process Management that identify and time stamp the changes and/or notes that are inputted into the system, event completions, everything.

Q All right. And with respect to that, would it indicate in Process Management if any data fields were altered in MSP?

A That, I don't know.

Q Do you know who might be the person who might have that information?

A No, I don't.

Q Would that also -- if you were to have to hazard a guess, would it be someone in data security?

A I don't know.

Q Are you familiar with the term a key transaction report?

A No, I'm not.

Q Are you familiar with whether or not that is an MSP report?

A I'm not aware of that report at all.

Q Are you familiar with a training database known as The Learning Center?

A No, I'm not.

Q When you had your initial training with MSP when you were employed by Option One, was that training web based?

A No, it was not.

Q It was done on-site?

A Side by side with one of my associates.

Q When you say associate, what do you mean?
A One of our associates that was in the foreclosure and bankruptcy department back with Option One.
Q So when you say associates, you're not talking about an employee of LPS --
A No.
Q -- or at that time Fidelity?
A No, you asked me when my training was, I told you it was back with Option One back in 2002.
Q And I was just trying to verify --
A Sure.
Q -- because my understanding is, is that -- well, isn't it true that with certain servicers, LPS places employees on-site?
A Yes, we will place employees on-site.
Q And isn't it true that part of what they do is work with that servicer's employees about using LPS's software, MSP --
A Not for LPS Default Solutions, no.
Q So they would use the Process Management software?
A They would use the Process Management software.
Q And they would be there to train those

employees about --

A Not necessarily train those employees. When we place people on-site, it's basically to assist them with whatever needs that the client may need at that time that we cannot do in-house ourselves.

Q What are some examples of the types of things that would require an LPS employee to be on-site?

MR. CASH: I'm going to object to that question unless we've got some evidence or some issue here that -- I have no objection to you answering with regard to this servicer and this loan, but we're not going to just keep fishing on everything.

MR. WOOTEN: Are you instructing him again not to answer the question?

MR. CASH: I'm instructing him to answer any questions regarding this transaction, this servicer, this case, but I am instructing him not to answer generally across the board in this fishing expedition. We're here on the Wood case, and that's all we're here to testify about.

MR. WOOTEN: Do you have any legal authority that says that you have the right to limit my discovery based on your whims?

MR. CASH: It's not my whims, it's the rules of procedure, including the rules of Alabama and the federal rules, require that the first hurdle in making something discoverable is that it must be relevant. That is step one. After relevance, it need not be admissible, but it must lead to the discovery of admissible evidence. But first and foremost it may be relevant.

MR. WOOTEN: Okay. So your testimony or your --

MR. CASH: It's not my testimony.

MR. WOOTEN: Your objection is --

MR. CASH: My objection is it's irrelevant.

MR. WOOTEN: Your objection is to relevance. Let's make sure that we're clear about that.

MR. CASH: It's irrelevant, it's harassing, it's a fishing expedition, it's beyond the scope of this case. And as such, we're not going to go into a fishing expedition on this stuff. That's my objection.

MR. WOOTEN: Okay. And --

MR. CASH: And if the Court disagrees and thinks you have free reign to ask about anything and everything you want regardless of whether it's associated with this case or not, that would

be different than the jurisprudence of every state I've ever practiced in, but so be it and we'll deal with that at that time. But right now, we're not going into this wide ranging fishing expedition. Again, Nick, unless you can tie it somehow to this case; in which case, I will reconsider.

MR. WOOTEN: You know, Mike, the problem is, is that it's not your decision. It's my deposition, it's my discovery.

MR. CASH: But you don't have the right --

MR. WOOTEN: I'm trying to understand the process which LPS employs to provide these services to their clients. And I asked your client to provide me examples of the types of reasons why they would locate an employee on-site with a servicer, as a hypothetical, as the person most knowledgeable about why LPS does everything that they do, which he is supposed to be designated to be.

MR. CASH: But he is not here to testify about everything --

MR. WOOTEN: And so --

MR. CASH: -- LPS does, because this --

MR. WOOTEN: -- please let me finish my

response to your objection.

MR. CASH: Because this is not what this case is about.

MR. WOOTEN: I don't care. The point being --

MR. CASH: I know. And therein lies the point, you don't care.

MR. WOOTEN: The point being that I have a right --

MR. CASH: This isn't a --

MR. WOOTEN: Okay. You know what, you should take up --

MR. CASH: So he's going to answer his questions with regard to this case --

MR. WOOTEN: -- your problems with Mike wherever you want to. That doesn't have anything to do with me. I'm here about this case.

MR. CASH: It has everything to -- okay, then, fine, we will --

MR. WOOTEN: The cases that I have with Option One that involve LPS.

MR. CASH: And other cases. See, we're not here for other cases.

MR. WOOTEN: It doesn't matter.

MR. CASH: We're here for one case, the Wood

case.

MR. WOOTEN: You're sitting here trying to tell me --

MR. CASH: And he will answer each and every question you have about the Wood case --

MR. WOOTEN: Sure.

MR. CASH: -- or that's relevant to the Wood case --

MR. WOOTEN: Okay. Well, let's --

MR. CASH: -- without objection.

MR. WOOTEN: Again, let's make sure we understand each other. I'm trying to ask a question about why your client does what they do, including putting employees on-site, as a general rule, so that I can understand how your client's business operates and where their employees might be who might could sign documents in their name, and you're telling your client not to answer. So I just want to be clear that that's what you're doing, Mike.

MR. CASH: Well, if you want to be clear, then let me make it as clear as I can to you, Nick. You just said it, and I'm glad it's on the record --

MR. WOOTEN: Sure.

MR. CASH: -- you're here because you have this case and other cases --

MR. WOOTEN: You're right, I do.

MR. CASH: -- involving Option One and LPS. This lawsuit is not a vehicle for you to do discovery in other cases. This lawsuit is for this lawsuit. And this witness will answer each and every question you have that has anything to do with this lawsuit. But we will not come here and basically have an exposé on our company because it suits your whim. It is not relevant to any issue in this case. In this case, there is no allegation that any LPS employee was put on-site who did anything with regard to this loan. And that's why we're here.

So unless you have an allegation that supports that or something that supports that, we're not going to talk in generalities, we are here to testify about this case. It is irrelevant, it is harassing, it is overreaching, and I am instructing him not to answer questions that don't deal with this case anymore. And I've given you wide range to do it so far.

MR. WOOTEN: And, again, I'm going to explain to you that the rules of procedure and

evidence and discovery in Alabama don't allow you as the defense counsel to limit my inquiry in a deposition. Everybody involved here, with the exception of Mr. Newland and these court reporters, has made a special trip down here to take this deposition --

MR. CASH: I'm one of them.

MR. WOOTEN: -- and spent a lot of money coming to take this deposition.

MR. CASH: So have I.

MR. WOOTEN: And rather than have an objection which preserves your right to have that limited, you're instructing the client not to answer.

MR. CASH: Yes.

MR. WOOTEN: I just want to be real clear about that.

MR. CASH: We're real clear on that, Nick. And the reason I'm doing that is you don't get to use this case as a vehicle to gather your information, which you couldn't care less whether it's relevant or not, so you can go off and use it in your other cases. And what you would love is for me to allow him to answer, make my objections, which you could care less whether

they're sustained or overruled, because you've gotten what you wanted, which is the information. I am not going to play that game. If the Court disagrees with me, I will put this on the record, and we have to redo any of the questions that I've instructed him not to answer, we will do it in Alabama and I will pay the costs for him to come down, for me to come down, and I'll pay the cost of the court reporter to redo the deposition.

MR. WOOTEN: And you'll pay my time for having to retake it, right?

MR. CASH: No, I'm not going to pay your time, Nick, because I think you're the reason that we're having the problem. But I will do all -- I will make all those other offers.

MR. WOOTEN: Well, wait a minute, you just said that if the Court disagrees with your narrow construction of my right to discovery, that you'll pay everybody else's costs associated with having to redo this but mine.

MR. CASH: If the Court tells me that I have to pay you reasonable attorney's fees to reask the questions I've instructed him not to answer, I think there's four or five so far, for those

four or five questions, you bet. You bet. I will pay your time for that one hour that it takes to ask four or five questions. You got it.

MR. WOOTEN: You know what, again, Mike --

MR. CASH: So there we go.

MR. WOOTEN: -- you're not the person in control of this case.

MR. CASH: No, I'm not.

MR. WOOTEN: The person who is elected by the citizens of DeKalb County to control this case --

MR. CASH: I agree completely, but he's not here.

MR. WOOTEN: You don't have the right to substitute your judgments for his.

MR. CASH: Nor do you have right to run roughshod because he's not here. That's why this is an adversarial process.

MR. WOOTEN: You have the right to object.

MR. CASH: And I will make my objections.

MR. WOOTEN: And you don't have the right to instruct your witness to limit his answers.

MR. CASH: The objection -- well, I disagree with you. I have the right to instruct my witness when the questioning is harassing, which

it becomes when it's completely irrelevant, I do have the right to instruct him not to answer. That's true under the federal rules and --

MR. WOOTEN: If you're telling me --

MR. CASH: -- it's true under my reading of the Alabama rules.

MR. WOOTEN: -- that you interpret harassment as wanting to know why this corporate defendant, who is involved in a vast majority of all the foreclosures in this country, chooses to locate employees with a servicer to support their foreclosure efforts, if you're telling me that that's your basis for saying that my question's not relevant, I just want to be real clear about that. Now with respect to you instructing the person not --

MR. CASH: I mean, you keep saying you need to be real clear. I think I've made it clear.

MR. WOOTEN: If you --

MR. CASH: The record's clear.

MR. WOOTEN: How about letting me finish before you interrupt.

MR. CASH: How about why don't you just ask questions. Because here's what you're not going to do, you're not going to convince me and I am

not going to convince you.

MR. WOOTEN: I'm not trying to convince you. I could care less what you're convinced of.

MR. CASH: Well, then quit preaching to me and ask your questions. I will do what I need to do, which is object and instruct not to answer. The record's clear what I'm saying --

THE REPORTER: The record is not very clear with you guys talking on top of each other, I'm sorry.

MR. WOOTEN: Sure. And I'm trying to hold off. I apologize.

MR. CASH: So I will make my objections and my instructions. You ask your questions, he will give answers.

MR. WOOTEN: Okay. So let's --

MR. CASH: That's where everybody is.

MR. WOOTEN: Let's just go and make this agreement then. If you instruct him not to answer all this stuff you just run through about your right to control my discovery, that'll just be part of that objection and your instruction not to answer, okay?

MR. CASH: I will state my grounds for my objection so it's clear to the Court. And I

don't have any right to control your discovery. The only thing I have the right to do is not have my witness to testify to things that are completely outside the scope of this case. And that's all I'm doing.

MR. WOOTEN: And my only burden is to show that it might lead to discovery of admissible evidence.

MR. CASH: That's where you're wrong. You have two burdens: First, you must show it's relevant, and then you must show that it's reasonably likely to lead to the discovery of admissible evidence; it's a two-prong test.

MR. WOOTEN: So your statement it's not relevant is based upon the fact that you have determined that how your client does business in a national foreclosure mill is not relevant to what happened in a case involving a wrongful foreclosure.

MR. CASH: My objection on this particular question is, there is no evidence, nor is there any allegation that my client had an employee placed at Option One who had anything to do with this particular foreclosure. As such, what our policies are regarding placing employees at any

particular location are not relevant to any issue raised in this lawsuit regarding this loan, which is why we are here. That is my objection, for the third time, and it will not change.

MR. WOOTEN: Okay. And what I am trying to do, Mike, is prevent you from continuing to coach your witness through your objections and prevent you from continuing to instruct your client not to answer, so that when we go to court on these, I'm not sitting here with a situation where every time you do that, you create a situation where I have to respond on the record. So what I'm asking you to do, to preserve time, because we're going to need a lot of it to get through today, is to agree with me that if you instruct your client not to answer during the balance of the time that we're here today, that we'll just agree that what you're agreeing to is if the Court finds that he should've answered, that you'll pay the costs associated with retaking that deposition. So that that's on the record. And when you tell him not to answer, if that's your choice, that'll be fine, and we'll go right up there and we'll deal with it after the fact.

MR. CASH: I've already agreed to that.

MR. WOOTEN: Okay. Well --

MR. CASH: The only part that I don't agree to is I can't pre-agree what the basis of the deposition is until I -- of the objection is until I hear the question, Nick.

MR. WOOTEN: Okay. Well, that wasn't what I understood you to say. So if I misunderstood you, I apologize. If you have a different grounds for objection other than just telling him not to answer it, absolutely, please make it.

MR. CASH: I've never instructed him just not to answer without making an objection first.

MR. WOOTEN: Okay. Well, that will be fine. So whenever you tell him not to answer, rather than us have a ten minute conversation about it, we'll just have this agreement as a standing agreement for the rest of this deposition, okay?

MR. CASH: That is absolutely fine with me.

MR. WOOTEN: That'll be fine.

Now, with respect to -- ma'am, I'm sorry, do we need to take break and let you get caught up? Are you all right? Okay. Is everybody else okay?

BY MR. WOOTEN:

Q With respect to Mr. Newland, we're still looking at the very first thing I marked, which was

the deposition notice. With respect to your Document Management, that is also, as we talked about, called NewTrak, correct?

A No, it's not.

Q New Document Management used to be called NewTrak; is that right?

A No.

Q Okay. What did Document Management used to be called? Is there a previous name for your Document Management software?

A I'm trying to remember what it was. I don't recall off the top of my head.

Q Let me look back at my notes. Imaging Platform?

A That's -- it was referenced as New Image, is what the actual name was.

Q Were there initials for that, something to the effect of NIE?

A Yes.

Q And your testimony is, is that every document with respect to the Woods' loan that we're here about today you produced as part of Exhibit 24 that is contained in the Document Management or imaging platform of the software that your client -- your company employs, LPS?

A Yes.

MR. CASH: Just for the record, we do need to check on the Invoice Management that you had mentioned, and I need to go back and see if there's any Invoice Management documents. And if there are, after lunch, we'll produce those. So there may be invoices that aren't part of the Exhibit 24. But I will verify that.

MR. WOOTEN: Are you also willing to verify whether or not there are any of the P309 documents I referenced in Item No. 1 of this case?

MR. CASH: Here's what I want to explain, Nick, that I don't think is fully understood. MSP is not a default software, it's not one of our softwares. You keep asking about MPS, that's a different Fidelity entity. What we have, and what he's tried to explain, is we have NewTrak, which is Process Management, so that's -- we have all the NewTrak, we have the imaging system, which we talked about, and we have the invoice system. So those are the three systems that are our documents that I can get you. The others are not default -- remember, we narrowly defined what this defendant is, they are not this defendant's

documents, and the information contained in those are the client's information. So the best place to get the MSP screens would be from Option, not from us. They're the ones that have their information in that format. So that's what I was trying to --

MR. WOOTEN: All right.

MR. CASH: That's my explanation, if that helps.

MR. WOOTEN: I hear what you're saying. And all I'm trying to ask the question is, and you can tell me, you're sitting there with your corporate lawyer, are you able as LPS to produce the documents that we marked as Exhibit 1 -- or the first request that we made with respect to the P309 fields, and that is an MSP field?

MS. NEWMAN: Can we go off the record?

MR. CASH: Sure, if it's okay with him, it's Nick's deposition.

MR. WOOTEN: Fine.

THE VIDEOGRAPHER: Off record at 4:41 -- 11:41, sorry.

(Off the record discussion.)

THE VIDEOGRAPHER: Back on record at 11:48.

MR. CASH: Just so it's clear, because I do

want this on the record. I will allow my witness to answer questions which I do not think are relevant today, but it will have to be subject to a confidentiality agreement that this deposition will only be utilized in this case and for eyes only in this case. And, Nick, I understand off the record you were unwilling to do that, but I did want at least the Court to be clear that I'm not just going to instruct him not to answer. I am worried about our confidentiality, and I would be willing to allow him to answer even questions that I think are irrelevant if it's limited to use only in this case and it's kept confidential.

MR. WOOTEN: Sure. And with respect to that, my position is, is that what's implicated by this company and its processes is much too serious to simply agree to wash it away with a confidentiality order. So, I'd rather you just make the objections as you have, and we'll go forward with the agreement. If they're proper, then you'll never have to answer them in this case; if they're not proper, then eventually we will.

MR. CASH: All right. Fair enough. And I obviously take objection to the implication of

it's far too big. This is a $1300 case where we did nothing wrong. But save and except that, go ahead.

MR. WOOTEN: Sure.

BY MR. WOOTEN:

Q And, Mr. Newland, with respect to our request for life of loan transaction history, I understand that would be an MSP document. Is it your testimony that you were or were not able to produce that from -- with respect to what we brought here today?

A I was not able.

Q Did you attempt to produce it?

A I didn't even know what the life of the loan transaction history was.

Q Did you talk with anybody who --

A No, I did not.

Q -- works on the floor and deals with your accounts on a day-to-day basis --

A No.

Q -- about that?

MR. CASH: Let him answer his question, so you get -- the record won't be complete if he's still asking and you're starting your answer.

THE WITNESS: Oh, okay. Got it.

BY MR. WOOTEN:

Q Did you make any inquiry as to whether or not it was available through access to the software programs that LPS uses?

A No, I did not.

Q With respect to Item 12, having to do with corporate advances, were you able to provide that information?

A No.

Q With respect to any property inspections, including the invoices and payment advices, were you able to provide that information?

A I don't believe the invoices are in there at this time.

Q What about property inspections?

A I'm aware of one property inspection, but I do not believe the invoices are in that document. I think that's something we're going to be getting later.

Q Sure. Okay. So that's part of the imaging platform that we talked about --

A Yes, it is.

Q -- or the Invoice Management platform --

A Yes.

Q -- that y'all are going to try to get during

lunch?

A Yes.

MR. CASH: Right.

Q And so same with respect to a broker price opinion with respect to this loan, and I believe the records indicate there were at least one broker price opinion. Will y'all ever produce the information from that?

A Trying to remember if it's in there or not. I don't recall if it's in that agreement. I know we produced all the documents, but I'm not...

Q Sure. And the broker price opinion is a document that would be within the imaging portion or the new document system, right?

A If it was uploaded, yes, depending on the company that was utilized.

Q And -- okay. Well, that's another -- I guess something I want to clarify. Can you tell us exactly what a broker price opinion is?

A Basically, it's just an opinion by a broker, basically does a drive-by assessment of the property.

Q Do they also take pictures and that sort of thing normally?

A Some do, yes.

Q And I say that to draw the distinction

between a broker price opinion and a property inspection, which is a true drive-by, where you're just running by to see if the house is still standing basically, right?

A Yeah. My understanding, the property inspections is basically they'll go by and take a look at the property.

Q Sure. Now, let me ask you this. With respect to property inspections and broker price opinions, are those items, items that are ordered on a recurring basis within your division?

A That's all based off the client.

Q Okay.

A Client makes the determination on when they order those.

Q And so, that would be within the Process Management, if the client said they wanted a property inspection every 30 days, then that would upload in the Process Management?

A That's not in Process Management, that's based off of their client system when they order the property inspections.

Q Now, do they make a request for property inspections to LPS?

A No, they do not. Not through LPS Default

Solutions.

Q Okay. Is it another sub-entity of LPS, Inc.?

A It all depends on the client. Clients can use different companies.

Q What about with respect to broker price opinions, is that the same scenario?

A Same scenario, yes.

Q And so, are there companies which are either related to or owned by LPS who handle broker price opinions?

A Yes.

Q Okay. And what are those companies?

A It would be our Field Asset Services.

Q Is that commonly referred to as FAS?

A I don't -- all I know is Field Asset Services, so...

Q Is Field Asset Services a subsidiary of LPS or otherwise owned by LPS?

A Yes.

MR. CASH: Just for clarity, by LPS you mean LPS, Inc., not LPS Default Solutions.

Q Sure. Let's -- yeah, let me be clear. FAS falls under the LPS, Inc., structure?

A Inc.

Q Which is the same place that LPS Default Solutions falls, right?

A Yes.

Q And Field Asset Services, do they only provide broker price opinions?

A It would be property inspections. You asked about the property inspections, I believe.

Q Okay. I'm sorry. So Field Asset Services deals only with property inspections?

A That's correct.

Q Do not perform broker price opinions at all?

A No. Not to my knowledge.

Q And so, any invoices for property inspections which indicated -- they would indicate who actually was requested to make the inspection and who was paid -- who invoiced it and who was paid for it, right?

A It would be in Invoice Management.

Q Right. Okay. And with respect to broker price opinions, I guess the same question, are there any companies which are within the LPS, Inc., umbrella who perform broker price opinions?

A Yes.

Q Okay. And what are their names?

A LSI.

Q Do you know what LSI stands for?
A No, I don't know.
Q And is that -- just to be clear, that is also a subsidiary of LPS, Inc.?
A That's correct.
Q Do you know if LPS Default Solutions has contracts for the provision of broker price opinions by LSI?
A No, we do not.
Q Would LPS Default Solutions' clients, the mortgage servicers, potentially have contracts for broker price opinions with LSI?
A You would have to ask them.
Q That would not be any information within LPS's purview?
A No.
Q Okay.
A LPS Default Solutions.
Q Right. LPS Default Solutions. With respect to the property inspections or the broker price opinions, does LPS Default Solutions have any discretion as to who they order these services from?
A No.
Q Okay. That is purely a choice of the servicer?

A Yes, it is.
Q And you do not know if there is a contractual provision between LPS Default Solutions and its servicing clients requiring them to use companies which are under the LPS, Inc., umbrella for these services?
A No, I do not.
MR. WOOTEN: Off the record again for a minute.
THE VIDEOGRAPHER: Off record at 11:57.
(Off the record discussion.)
THE VIDEOGRAPHER: Back on record at 11:57.
BY MR. WOOTEN:
Q In preparing for this deposition, Mr. Newland, did you determine whether or not any force placed insurance had been placed upon the Wood loan?
A We don't make a determination on the force placed insurance, that's the client.
Q So that's an Option One decision according --
A Yes, it is.
Q -- to LPS?
A Yes.
Q The contracts that I referred to earlier as

between LPS Default Solutions and either Option One or Scott Humphrey, the other defendants in this case, they would be contracts between these three entities which are defendants. In other words, LPS Default Solutions has a contract with Scott Humphrey, right?

A That's correct.

Q And then LPS Default Solutions has a contract with Option One?

A That is correct.

Q And that contract would set forth the full scope of the agreement for services which LPS Default Solutions would provide to either of those entities?

MR. LAWLER: Again, I just want to object on attorney-client privilege of any communication between -- whether it's contract or verbal communication or otherwise between Scott Humphrey and LPS or Option One.

MR. WOOTEN: Okay. Well, Chris, I don't want to get into a big fight with you about this either -- I'm sorry, Mr. Lawler. But do you have any authority that says that attorney-client privilege is involved when you have three codefendants, one of which happens to be an attorney?

MR. LAWLER: Again, objection's on the

record. Fight it out later.

MR. CASH: I can't let you answer the -- not my instruction, I can't let you answer the question because it's their privilege. I can't let you waive it.

MR. LAWLER: If you're speaking broadly in terms of that there is one or not, then -- then I don't have an issue with speaking broadly in that situation. If we're getting into any specifics of the substance or terms or what is actually in there, then I'm just going to have to object.

MR. WOOTEN: I'm not asking him for hearsay, Mr. Lawler. What I'm asking him for is if the general agreement, which they would provide to any attorney who is part of their network, sets forth all of the parties' relative rights and responsibilities with respect to what services they provide one to the other, what they will be paid, if that is the complete agreement or if there are any other agreements other than the one we discussed.

MR. CASH: I think he can answer that --

MR. LAWLER: Yes, that's fine.

MR. CASH: -- I don't think it's privileged. I mean, to the extent you know, you can answer

that question.

THE WITNESS: Okay.

MR. CASH: Why don't you ask it again.

THE WITNESS: Can you ask it again? Because --

MR. WOOTEN: Sure.

THE WITNESS: -- there's a lot of going back and forth here.

BY MR. WOOTEN:

Q We've mentioned one agreement as between Scott Humphrey, LLC, who handled the foreclosure in this case, and Default Solutions -- or LPS Default Solutions, and we mentioned one agreement as between LPS Default Solutions and Option One. And what I'm asking you is, is that the only agreement existing between LPS Default Solutions and Scott Humphrey? Is there any other agreement other than that agreement?

A Not that I'm aware of.

Q Okay. And same question with respect to Option One, is there simply one agreement which defines all the parties' rights, including who will pay who what and when and everything else?

A Not that I'm aware of any other agreements.

MR. CASH: Wait. I just -- I don't think those two match. I think he said, is there only

one agreement, and I think you said, not that I'm aware of. I think we just want to make -- I just want your record to be clear.

MR. WOOTEN: Sure.

MR. CASH: You're asking is there only the one agreement, right?

BY MR. WOOTEN:

Q My question is, is there -- there's one contract that we have talked about, that I don't have a copy of here today, between LPS Default Solutions and each of the other codefendants, one with Scott Humphrey and one with Option One. And what I'm asking is, is are there any other written agreements, other than those individual agreements we just talked about, with respect to any of the other defendants to this -- to this action?

A Not that I'm aware of.

Q Okay. Have you reviewed the information which you produced to us today in preparing for this deposition with respect to the documents that were produced and marked previously as document -- as Plaintiffs' Exhibit 24?

A Yes.

Q You've gone through each of those documents individually?

A I've looked at them, yes.

Q Okay. Were you able to ascertain from those documents that force placed insurance was actually in place with respect to the Wood loan?

A No, it was not.

Q Okay. Are there any companies which provide force placed insurance who fall within the LPS, Inc., umbrella?

A I don't know.

Q You're not aware of any?

A I don't know.

Q Again, with respect to something that we indicated as the DDCH screen, which I will represent to you is a screen within MSP, did you make any inquiry as to whether or not you could access that screen and obtain copies of any images or correspondence or data contained within that field?

A No, I did not.

Q Did you ask anyone on your behalf to make any inquiry?

A No, I did not.

Q As we sit here today, do you have any idea as to whether or not an employee of LPS Default Solutions could readily access that information from any terminal of LPS Default Solutions?

A I don't know the answer to that question.
Q And you made no inquiry?
A Not at this time.
Q With respect to the information in the field called the Fee 1 screen, which I'll represent to you is also an MSP field, did you make any inquiry as to whether or not you could obtain any images or copies from that field?
A No, I have not.
Q And would your response be the same with respect to the DDCH, that you did not seek to have anyone verify whether or not an LPS Default Solution employee could get to that information?
A No, I did not. I don't know. It would be the same as the P309 screen.
Q Actually, it's a little bit easier to get to than the P309 screen.
A Okay.
Q With respect to the identification of each and every user who input any information into the Fidelity system regarding a client's loan, I think y'all provided a fairly decent number of persons who had been involved in that. Did you make an effort to obtain that information from the software?
A The Fidelity system as being Process

Management?

Q Well, and I guess because --

A Because Process Management, we did, so...

Q Sure. And I guess that's where I need to clarify. What -- are you saying that what you produced is that information with respect to Process Management?

A That is correct.

Q Okay. What about with respect to Document Management?

A No, we did not provide them with Document Management.

MS. NEWMAN: I'm sorry, I wasn't listening.

MR. WOOTEN: Well, what I asked for had to do with respect to the area of inquiry of No. 19, which was information identifying each user who inputted information into the system. And I will just tell the two of you that previous to today, I had never had anybody try to distinguish between the platforms that he's referenced with Process Management, Document Management, invoice billing as not being a part of MSP. So that was the reason that that request was phrased in that way.

MR. CASH: Okay.

MR. WOOTEN: So I'll adjust those requests in the future.

BY MR. WOOTEN:

Q So what you're saying is, is that you provided Process Management --

A That's correct.

Q -- but you did not inquire as to whether there were any different --

A Document Management.

Q -- users in Document Management?

A Right.

Q And with respect to the MSP fields, you did not inquire at all?

A No, I did not.

Q And we talked previously about the actual agreements for these services, and we -- and we don't know where we are with respect to that dispute about whether or not --

MR. CASH: Well, on this -- on this question I can't answer, because it's got three ands instead of ors. It says: Agreements to provide bankruptcy, foreclosure, servicing, data -- sorry, I'll slow down -- data, etc., services of any nature between any defendants or any other vendors who provide any services for a fee with

respect to the borrower's loan and, all caps, who paid a fee for said services and, all caps, those fees were charged to the borrower's loan.

Our response to that would be none, because our fees aren't charged to the borrower's loan. We have no agreements --

THE WITNESS: Correct.

MR. CASH: -- that would indicate the borrower should ever be charged our fees. So we would have no agreements that would fall under that category.

If that last "and" wasn't there, those would be the contracts that we're talking about.

MR. WOOTEN: Sure. But with respect to those contracts, I guess what I'm trying to clarify is, is that at this point, we don't have an agreement about producing those because, obviously, y'all don't want to give those up without being forced to or having a confidentiality agreement.

MR. CASH: Right.

MR. WOOTEN: So, that's what I'm trying to clarify.

MR. CASH: Right. And frankly, Nick, I'll be honest with you, that may not be true. If we

can agree to some redaction of very proprietary stuff, specific fee things that we have with -- you know, so that we're not giving up what our fee structure is to our competitors --

MR. WOOTEN: And I'll --

MR. CASH: -- we may be able to give you the general --

MR. WOOTEN: And I will say that I'm much more concerned about the concept of how those fees are passed along more so than how you structure your fees.

MR. CASH: Okay.

MR. WOOTEN: So there might be a way that we can look at that together and agree.

MR. CASH: Okay. Okay.

MR. WOOTEN: I really don't care how you pay the folks that work for you.

MR. CASH: Right.

MR. WOOTEN: That's y'all's business.

MR. CASH: Okay.

MR. WOOTEN: What I'm concerned about is if things are marked up and added on and then passed on to a consumer.

MR. CASH: Absolutely. I understand that.

MR. WOOTEN: So that's my bigger concern

there. And we're off to Exhibit 2.

(Plaintiffs' Exhibit No. 2 marked for identification.)

BY MR. WOOTEN:

Q I'm going to show you a document, Mr. Newland, I've marked previously as Plaintiffs' Exhibit 2, and ask you if you -- I'll represent to you, I'm sorry, that that is a copy of the Complaint that was filed originally in this action with respect to my clients, the Woods, and I'll ask you if you reviewed that complaint at all prior to coming here today?

A Yes, I have.

Q So you've familiarized yourself with the allegations made in the complaint, correct?

A Uh-huh.

Q All right. That's fine. I just wanted to make sure that you had had a chance to take a look at that.

Now, you indicated at the beginning of your deposition that you were familiar with the litigation and you had actually provided an affidavit as support for a motion that had been filed in the case; is that correct?

A Yes.

Q And that was filed by your Alabama attorneys with Huie Fernambucq? And I'll let you read that, I won't try to spell it for you. I can't even spell it.

I want to go over a couple of things with you --

A Sure.

Q -- from your affidavit, and areas have been highlighted with respect to the situation. If you want to take a moment and look through that, and I'll come back and ask you some questions about it. Or --

A Which portion of it? All of it or which portion?

(Plaintiffs' Exhibit No. 3 marked for identification.)

MR. WOOTEN: Mike, do you have a copy of his affidavit?

MR. CASH: Yeah, I'm looking right now, trying to find it, because I'm pretty sure I do. Yes, I do.

BY MR. WOOTEN:

Q Well, that's fine. If you want to, you can take a look at Mike's copy and just hand me back that one I've highlighted, and I'll ask you questions. That'll make us move a little bit faster.

Beginning at the Paragraph No. 3 -- tell me

when you're there -- with respect to your affidavit now.

A Uh-huh.

Q You indicate that Fidelity, which we've already talked about in this case, talking about LPS --

A LPS Default Solutions.

Q -- manages data and communications within its proprietary technology in foreclosure and bankruptcy cases, enabling servicers and servicers' law firms to efficiently and effectively manage mortgage loans in default.

A That's correct.

Q And then in Paragraph 4, you indicate that the services and technology included monitoring the status of legal actions, tracking action items, and providing reports to Option One, by LPS Default Solutions, in regard to the Woods' loan.

A That's correct.

Q And you indicated that those services did not include selecting a law firm to represent Option One or determining what they should do with respect to that loan?

A That's correct.

Q And then in Paragraph 6, you indicated that

LPS Default Solutions did not select, hire, or retain Scott Humphrey.

A That's correct.

Q You indicated that decision was made by Option One, right?

A That is correct.

Q In Paragraph 7, you indicated from reading our complaint that your Process Management notes do not show any charges or fees from Fidelity.

A That's right.

Q Are there other places within software services that LPS Default Solutions uses which might indicate that there were fees charged from Fidelity, or from LPS Default Solutions?

A No.

Q So nowhere in the MSP software would it indicate that there were fees which were charged which should be ultimately paid to LPS Default Solutions?

A No, we don't charge fees to the customers.

(Brief interruption.)

THE WITNESS: To the customers.

BY MR. WOOTEN:

Q In Paragraph 8, second sentence, you indicated that LPS Default Solutions has not received any moneys from Option One for services performed

regarding plaintiffs' mortgage loan.

A That is correct.

Q Now, are you speaking generally about any payment at all from Option One, are you talking about specifically the services provided regarding this foreclosure that took place?

A Specifically.

Q Okay. So we're dealing with -- your testimony is that for the support and services that you provide regarding a foreclosure, that Option One does not pay you any money?

A That is correct.

Q Now, with respect to Scott Humphrey, he pays you a referral fee for having this loan come to him through the referral network of LPS Default Solutions?

A He does not pay a referral fee, he pays an administrative support fee.

Q Okay. Tell me what the administrative support fee is.

A Basically to help maintain the information within the system of record.

Q Okay. And what is the fee?

A I don't know off the top of my head what the -- you're talking about the exact amount of the fee?

Q Well, how is that fee derived? I mean, is it a percentage or is it a set dollar amount, or how do you arrive at that fee?

A It's a dollar amount that's determined by our executives, I believe.

Q Okay. Is it based on the dollar value of the loan or is it --

A No.

Q -- based on the service to be provided?

A It's -- it's a flat fee.

Q Okay. Do you know if Mr. Humphrey would have added the amount of that support fee to the attorney fees which he billed to Option One?

A I don't know.

Q Do you know if your agreement with Mr. Humphrey's firm required him to perform the foreclosure services for a set fee?

A Yes. I mean, it's all basically relative to the fees that are incurred, that are set forth by the client.

Q All right. And when you say they're set forth by the client, there actually is a fee structure for these types of services. And this is a generalization, Mike, but even with respect to bankruptcies and foreclosures, most of those

guidelines come from either the government sponsored enterprises or some entity like that, right?

A That is my understanding.

(Brief interruption.)

THE WITNESS: That is my understanding.

MR. WOOTEN: Whose phone? Oh.

THE VIDEOGRAPHER: I'm sorry.

MR. WOOTEN: Oh, okay. I was just making sure nobody was getting us.

BY MR. WOOTEN:

Q But in general, the fee for a foreclosure is more or less governed by those entities that had dominated the market for so long, Fannie and Freddie; is that correct?

A That would be my understanding, that the fee structures are set forth based off of those assessments, and then the clients make the determination as to whether they're going to look at those fee structures or not.

Q Do you know if the contract between Scott Humphrey and LPS Default Solutions required him to submit his invoices through your Invoice Management system?

A I don't know. I don't know.

Q So that is something that we cannot

ascertain without looking at the actual agreement?

A That would be my understanding.

Q Okay. All right. Do you know if the contract between Option One and LPS Default Solutions required that they communicate with the foreclosure attorney through the document or the process solutions portion of your business, Process Management?

A Yes, they are required to go through Process Management with their information.

Q Okay.

A As far as the updating events and requesting of certain documents, those things.

Q So is it your understanding that as between the contract between LPS Default Solutions and Option One, and LPS Default Solutions and Scott Humphrey, that between the covenants in those agreements, Scott Humphrey could not go directly to Option One and say, pay my fee?

A I don't know the answer to that question. I -- Scott Humphrey could always go and request, if he wanted to, through Option One, I just don't know.

Q Okay. So without seeing the agreement, you don't know if he was required to submit invoices through LPS Default Solutions and that they were required to pay the invoices that he submitted through

LPS Default Solutions?

A That would be correct.

Q Is not a portion of the benefit of the bargain that your company provides that the servicers, such as Option One, know what they will pay for these services which are provided by the network attorneys?

A Run that by me again.

Q Okay. Part of the benefit that LPS Default Solutions provides to a servicer is that a servicer knows that they can get an LPS network attorney who's going to provide services for a certain fee. Is that part of the benefits you provide?

A They -- they basically choose the attorney, so it's up to them to make that decision.

Q I didn't say that they didn't.

A Okay.

Q What I'm saying is, is that with respect to your network attorneys, you can truthfully state to any servicer, including Option One, that your network attorneys are going to provide services for a certain fee?

A That is correct.

Q And that's because of the agreement you have with the network attorney?

A We have an agreement with the attorneys.

Q Right. Okay.

A But then again, Option One can utilize any attorney that they wish.

Q I understand.

A Okay.

Q I'm just saying that part of the benefit that you're providing is that Option One, who's a California corporation, can hire an attorney who's an LPS Default Solutions network attorney in Alabama to go to DeKalb County and foreclose without having to prequalify them in any way, they know what those costs are going to be?

A That's -- that's strictly up to the client.

Q My question is much more esoteric than that, really. I know -- I understand what you're saying.

A Okay.

Q I'm just saying that when you go out and shop your services to a servicer, like Option One, you're telling them that you provide a national network of attorneys who will perform services for a fixed amount of money, depending on what service they're providing, don't you?

A As far as the service provided, we basically go out and discuss what attorneys we have within our network, but all clients have the ability to choose

any attorney they wish to choose and utilize that they want, period.

Q Sure. Again, I understand that answer.

A Okay.

Q And -- but my question is much more general. What I'm saying to you is, is because Option One has made this contract with LPS Default Solutions, that they know that if they upload a foreclosure and it is sent to a network attorney, that attorney is going to perform those services for a set fee?

A Determined by the client, yes.

Q Okay. And so, you ask them in their agreements to set those fees that they will pay, right?

A Yes, we do.

Q And is it your testimony, again, that fee structure more or less comes straight from Fannie and Freddie and the government sponsored enterprises, right?

A The clients utilize that.

Q And most clients don't deviate from that, do they?

A I don't know.

THE VIDEOGRAPHER: Excuse me. Need to change tape.

MR. WOOTEN: Need another tape? Sure.

THE VIDEOGRAPHER: Off record at 12:23.

(Off the record discussion.)

(Lunch break.)

THE VIDEOGRAPHER: Back on record at 1:05, beginning of Videotape No. 4.

BY MR. WOOTEN:

Q Mr. Newland, when we left off, we were talking about Paragraph No. 8 of your affidavit. You said that Fidelity has not received any moneys from Option One for services performed regarding plaintiffs' mortgage loan. We established that what you were referring to there specifically were the default services which were provided by LPS Default Solutions with respect to the foreclosure case?

A Uh-huh.

Q And you indicated that Fidelity does not pay LPS Default Solutions any money for the work it does with respect to a foreclosure?

A Fidelity does not pay --

Q I'm sorry. Option One does not pay --

A That's correct.

Q -- LPS Default Solutions any money?

A That's correct.

Q You did indicate that LPS Default Solutions

charges an administrative support fee to the attorney who is the network attorney assigned to the foreclosure?

A Yes.

Q What we were trying to establish at the point in time we had to take that break was how is that fee determined, and I think you indicated that it was a flat fee?

A Yes.

Q And that it was -- is it based upon the fee that the attorney charges, or is it --

A No.

Q -- based upon some other factor?

A It's just based on the services we provide with the attorney.

Q Okay. And so is there a fee for separate services which LPS Default Solutions provides?

A No. We're contracted with the attorney.

Q So every fee which LPS Default Solutions charges would be contained in the agreement between LPS and Scott Humphrey?

A That's correct.

Q And every fee or payment due from Option One to LPS Default Solutions would also be contained within the contract that was executed between those

parties?

A There's no fee between Option One and LPS.

Q Never under any circumstances?

A No.

Q With respect to the remaining allegations of that paragraph, it is your testimony that LPS Default Solutions does not provide payoff figures to a plaintiff or to a party who is in foreclosure?

A No, we do not provide the payoff figures to the customers -- or the plaintiff.

Q And that is not just with respect to my clients, the Woods, but with respect to your entire business model?

A That is correct.

Q And if the Woods were to have contacted LPS Default Solutions and requested verification of an amount owed, your testimony is, is that LPS Default Solutions would not have that information?

A No, we would not -- we would not discuss the information with the customer, we would refer the customer back to either the attorney and/or the client, which would be Option One in this case.

Q And your testimony is, is that LPS Default Solutions does not engage in any collection efforts with -- is that generally or with respect only to my

client's loan?

A Generally. We do not discuss anything with any customer.

Q So no one from LPS Default Solutions in either Mankato, Minnesota, or, Jacksonville, Florida, ever calls a mortgage borrower who is in foreclosure about collecting on the amount that's owed with respect to the foreclosure?

A Absolutely not.

Q And it's your testimony that LPS does not provide any information to any credit bureau?

A Absolutely not.

Q If Scott Humphrey uploaded an invoice for services into the document or the -- I'm sorry, Process Management database -- actually, that would go into your invoicing system, wouldn't it?

A That is correct.

Q Would he make an entry with respect to the amounts of the -- those attorney's fees?

A He typically would.

Q And would he provide in addition to the invoice any images which supported those charges?

A In most cases the attorney would.

Q With respect to this loan, did that occur?

A I don't know. I know there was invoices

uploaded, but I do not know if those -- if there was copies of anything behind those.

Q Is it your testimony that LPS Default Solutions does not increase the amount billed to any consumer for any charge or service provided during the time that it manages the foreclosure process?

A That's correct, we do not.

Q Does LPS Default Solutions have any agreement with any provider of services who does charge a fee to a consumer in the foreclosure process whereby that fee is shared with LPS Default Solutions?

A No.

Q And your testimony is that never happens, not with respect to any fee, including any attorney's fee?

A No.

Q Does Fidelity charge to Option One -- I'm sorry.

Does LPS Default Solutions charge to Option One any amount of money at any time for referring a foreclosure file for foreclosure services through the LPS Default Solutions platform?

A No.

Q Does it receive any remuneration of any type from any source for Option One uploading a foreclosure

to LPS Default Solutions?

A No.

Q So I just want to be sure. What you're testifying to is that there is no compensation ever paid by the servicer to LPS Default Solutions for all this work that it does on behalf of the servicer with respect to the foreclosure?

A No.

Q There is compensation or there is not compensation?

A No, there's no compensation.

Q Is it your testimony then that the only fees which LPS Default Solutions collects with respect to the foreclosure of any given loan is the administrative support fee charged to the network attorneys?

A Yes.

Q And the division of LPS Default Solutions which we are here about today and which you are testifying as a 30(b)(6) representative, the only source of income it derives for its work with respect to foreclosure is the administrative support fee?

A That's my understanding.

Q Other than the administrative support fee, does it charge a fee for accessing documents on the

new document system?

A No.

Q So your testimony today is that the only compensation of any type, of any nature, paid to LPS Default Solutions is the administrative support fee, and it funds all of the activities and makes all the profit, pays all the overhead of LPS Default Solutions?

A That's my understanding, for the third time.

Q Paragraph 11 of your affidavit says that LPS Default Solutions has no record of receiving any portion of funds received from any foreclosure of plaintiffs' mortgage?

A That is correct.

Q And is that comment based upon the contents of the Process Management system?

A Yes.

Q And it is your testimony that your employees do have access to MSP as a portion of the work that they do, correct?

A They have access to certain screens within MSP, correct.

Q Would that be the foreclosure screens within MSP?

A It would be access to limited amounts of the

foreclosure workstations.

Q The next sentence of that affidavit says that Fidelity, or LPS Default Solutions, did not initiate foreclosure proceedings regarding the Woods' mortgage.

A That is correct.

Q And that there was no direct contact with the plaintiffs regarding their mortgage account.

A That is correct.

Q I'm going to just pull off these pages, there's 25 pages here, they're Process Management notes that are part of the cumulative Exhibit No. 24 in this case.

A Uh-huh.

Q This is, according to you, Mr. Newland, all of the Process Management notes for this loan; is that correct?

A That is correct.

Q Does this represent every entry of information regarding the Woods' mortgage loan on the LPS Default Solutions Process Management platform?

A That is correct.

Q So this is actually organized in a reverse chronological fashion, correct?

A That's correct.

Q So if we want to start at the beginning, we really should turn over to the last page, which is No. 157, right?

A Uh-huh.

Q And No. 157, that says written by. What does written by mean with respect to that entry?

A That's who entered in the transaction.

Q And who did that in this case?

A It was basically done through an auto process.

Q Whose auto process?

A Our auto process.

Q LPS's, right?

A That's correct.

Q And then entry No. 156 says what?

A It says a foreclosure, NIE ID No. 3550946, was sent to Scott Humphrey at 6 -- on June 1st, 2007 at 9:07:50 a.m. by an automated task.

Q And that was also done by LPS Default Solutions automated process?

A That's correct.

Q And the NIE ID number is, in fact, a New Image ID number which would identify the documents which were sent to Scott Humphrey on June 1st, 2007, correct?

A That is correct.

Q Document No -- or entry No. 154, please tell me to the best of your understanding what that entry indicates.

A Basically it's an entry: Process opened June 1st, 2007, by user Fidelity AutoProc, process is basically to obtain any type of imaged docs that are currently out there.

Q Where would those imaged docs be located?

A Could be possibly located in the imaging system for Option One Mortgage.

Q Okay. And I thought we just talked about the fact that your folks didn't mess with Option One's data. Didn't you testify that --

A Well, this is --

Q -- LPS --

A This actually -- this actually is an event that's worked by the client, not by us.

Q But --

A We just -- the process was just automatically opened, auto opened for the client to basically look into their imaging system to see if any other docs were available for referral.

Q So whenever it says --

A OS.

Q -- written by at the top, whatever the entry is there would tell us --

A Who opened the process.

Q -- who did it and what company, right?

A Yes.

Q Okay. And so, what you're saying is, is that after your company automatically processed a foreclosure and sent it out to Scott Humphrey, that it then went out and sought whatever image documents that Option One might have?

A This is based on the client. Client has set this process up. All we are is the facilitator for the opening of that process for the client.

Q It doesn't say that Option One did this though, does it?

A No, but we're contracted by Option One to facilitate the opening of this process.

Q Sure.

A That's their request.

Q And you agree with me that that is done by your system and your company?

A Yes, it's done by our system.

Q Entry No. 153, later that same day, appears to be the entry where Scott Humphrey received that file?

A That's correct.

Q And then 152 is another automated process by your company indicating -- acknowledging the time which Scott Humphrey picked up these -- this foreclosure and who within his office picked it up, correct?

A Yes.

Q And then entry No. 151 appears to be an Option One Mortgage Company entry; is that right?

A That's correct.

Q And does it indicate what images were provided by Option One in that entry?

A That's correct.

Q And that indicates that there was a note and a HUD and an RSI. Do you know what that is?

A No, I do not. Probably a recorded security instrument, is probably what it stands for.

Q All right.

A Stipulated up in No. 150. If you look up at 150, there you go.

Q All right. Gotcha. And do you know what NOI is?

A Notice -- notice of intent.

Q Is that -- the notice of intent, is that the letter notifying the client of the intention to

foreclose?

A That's my understanding.

Q And then the MB NOI, what -- what does that mean?

A I don't know what the MB -- what that stands for.

Q And then, as we just talked about, the next entry, 150, indicates the actual documents which Option One Mortgage company --

A Identified.

Q -- identified, right?

A Uh-huh.

Q And then Entry 149 indicates that this same user for Option One provided the imaged docs to the attorney that same date?

A Yeah, that's completion of the event.

(Brief interruption.)

THE WITNESS: Completion of the event.

BY MR. WOOTEN:

Q And the Entry No. 147, apparently, at the top of that page is another automated process where your system updates that that has been sent to Scott Humphrey?

A That Scott Humphrey picked up the documents.

Q And the Entries 145 and 144 are again

automated entries by your company --

A Yes.

Q -- is that correct?

A It's basically where the documents were picked up in New Image at that time, which is an imaging platform, and it's also time stamped when they pick them up through that system also back into Process Management, so we basically have dual entries.

Q Have you ever looked at the New Image software from the attorney side? Are you familiar with whether they have to go through authorization or commitment screens or anything like that to pick up these documents?

A No, I have not.

Q So you don't have any idea?

A No. I know they're picked up through the user IDs. We have user IDs for all three systems.

Q Is a user ID the same for all three systems?

A You can have the same log-in for all three systems presently now.

Q I'm sorry, at the present time --

A At the present time.

Q -- they have a different log-in for each system?

A I don't recall --

MR. CASH: I'm going to instruct you not to answer that. We're getting into proprietary --

THE WITNESS: Okay.

MR. CASH: -- security stuff that has nothing to do with this lawsuit. So, objection, relevance. Instruct you not to answer. Also objection, proprietary.

BY MR. WOOTEN:

Q On the entry that begins at the top of Page 23 of those documents, right above 140, but it's actually entry No. 139, which carries over onto Page 22, it indicates that Karen Singleton with Scott Humphrey's office completed the F119 Attorney Fees Owed data form with the following entries, amount outstanding $1300 estimated only. That information would have been provided to Fidelity -- or to LPS Default Solutions at that time?

A Yeah, that was completed by Karen Singleton in Scott Humphrey's office for, in this case, it would've been the bid process, which it was basically stating what they believe the fees would be for the bid.

Q And then at Page 1 -- or Entry 136, you have an issue crop up.

A Uh-huh.

Q And this is 6/18 of 2007. Does that indicate that the house had burned to the ground and there was an insurance claim?

A Yes, that the house had burned.

Q And that the mortgage was supposed to have been paid in full?

A Yes.

Q And does this indicate that the property actually belongs to this gentleman who called in, a Mr. Steele?

A It says that this land is -- that this is the land that Mr. Steele and his sister inherited from their parents.

Q And the last sentence says: But he did want us to inform client that there is nothing that belongs to the mortgagee, because the property actually belongs to him, Mr. Steele?

A That's correct, that's what's stated in it.

Q Who would this -- this issue would have gone back to your company, correct?

A That's correct.

Q And when this issue went back to LPS, it would've been your company's voluntary undertaking to determine what Option One wished to do about this issue, right?

A No, we brought the issue to Option One's attention. As you can see in the note that's just above it, in 134, on June 18th at 5:06 p.m.

Q And it's -- and this involves Brandi Smith, who is a Fidelity employee?

A That's correct.

Q And Ann Russo, who is an Option One Mortgage Company employee, right?

A That's correct.

Q Does Brandi Smith work in Jacksonville or does she work in Mankato?

A Off the top of my head, I don't -- I don't know which location she works at. She may even be one of our work-at-home representatives.

Q Is there any way to tell from her entry --

A Which location she is?

Q -- where her location is?

A No.

Q Now, ultimately asked the question of this lady at Option One as to whether or not her office has any information regarding an insurance claim or action on the property, right?

A I'm sorry, repeat that again.

Q At the bottom, the last sentence of Entry 134, it appears that your employee, Brandi Smith,

asked Ann Russo if her office had any info regarding a possible insurance claim or action on this property?

A That's correct.

Q What is the APR score or ranking with respect to your foreclosure attorneys?

A What is the APR ranking?

Q Or score, attorney performance review or attorney performance ranking, APR?

A Uh-huh.

Q What is that?

A It's a scoring mechanism we utilize to show where the attorneys are performing in relation to the other attorneys within the state.

Q Within the state?

A Yes.

Q Does that extend at all beyond the state to the region or to the country?

A Well, there are service levels that are also in the national.

Q And how is that APR measured?

MR. CASH: I have a better question. How is that relevant to this lawsuit?

MR. WOOTEN: It's relevant to this lawsuit, Mike, because what you will learn about the APR ranking is that it requires the attorneys to

perform certain tasks and certain --

MR. CASH: Trust me, I know all about the APR ranking.

MR. WOOTEN: And the reason it's relevant is, is they are basically put in a position to rush to get through these projects without being concerned about accuracy. So I'd like for the Court to understand what the APR is and why it affects the network attorneys.

MR. CASH: So it's your allegation in this case that the problem was rushed because of the APR? That -- I mean, if that's your allegation, that's fine.

MR. WOOTEN: It is -- my allegation, it is a factor contributing to mistakes that were made.

MR. CASH: Go ahead and answer.

THE WITNESS: Can you repeat the question one more time, please.

BY MR. WOOTEN:

Q Sure. What I'm looking for, Mr. Newland, is an explanation so that the Court may understand what the APR ranking is and how it translates to the business model that your company employs. And you indicated that it is a scoring mechanism that ranks an attorney's performance vis-a-vis the performance of

other attorneys within a state.

So is that to be assumed from that response that a higher APR ranking means that that attorney, by your measure, is doing better than a lower APR ranking?

A They could be performing better, yes.

Q Okay. And how do you determine the APR ranking of a given attorney?

A The APR ranking is based off of the completion of events that are within the APR scoring module. These events are based off the data that's inputted by the attorneys, then it's compared against their peers within that state, based off of days to complete the actions.

Q So, for instance, there is a recommended time frame from delivery of a foreclosure referral to completion of the foreclosure sale, correct?

A There is a time frame, yes.

Q What is that time frame, sir?

A Time frame for the state of Alabama?

Q Uh-huh.

A I believe it's 90 days.

Q And that is from, in this case, June 1st of 2007, which -- when it was opened and sent to Scott Humphrey, until the sale is complete?

A That's correct.

Q And your APR measures how the attorney does in completing these events within those time frames, correct?

A That's correct.

Q And so, that is based entirely upon the data which is entered in the Process Management system, correct?

A Yes.

Q And I'm assuming that there is a reporting function within the Process Management system which tracks these key events for each of these attorneys?

A Yes, there is.

Q Other than the time to complete the foreclosure sale from beginning to end, what other measures does your firm employ with respect to your network attorneys who are engaged in foreclosure practice?

A What other measurements as far as the APR? We also measure service levels.

Q When you indicate service levels, can you explain that for me?

A Sure. How often do they complete their re-projections on time.

Q A re-projection is when a date has to be

refigured?

A When -- yeah, when an event comes due, they need to go in and basically tell us what the reasoning is behind not being able to complete that event and then we will approve off on the re-projection. Then there's also service levels for fees and costs that are incurred for the basically completion of the fees and costs.

Q Is that for the form F119 we mentioned earlier?

A Not necessarily that. There's a fees and costs module within Process Management that is measured by when the attorney -- when we send out a fees and costs request from the clients, how quickly do they complete those fees and costs for the client.

Q And does that require an exact cost or an estimated cost?

A There could be -- it depends on the client, but it could be two different areas. It could be exact cost and/or possibility of future costs, depending on the good through date.

Q With respect to this measure of APR, are there any other factors for an attorney engaging in foreclosure practice as an LPS Default Solutions network attorney which are considered?

A No.

Q So the APR consists of how fast they complete the initial assignment; if the assignment is reprojected, whether they complete it on time; and whether they respond to a request for costs in a timely fashion?

A That is correct.

Q And that is the entire basis of the APR for attorneys in Alabama who are network attorneys?

A Short version.

Q Okay. When you say "short version" --

A Just condensing, I mean.

Q Sure. I'm assuming that -- are there other measures under each of these three main headings?

A No.

Q Is there a financial incentive to be one of the top APR firms in a given state?

A No, there is not.

Q Is it your testimony that your company does not pay bonuses to attorneys who are considered to be the highest performers in a given state?

A Yes, it is my testimony.

Q Is there any other non-monetary incentive to be one of the highest ranking attorneys within the state of Alabama?

A No, there's not.
Q There is not?
A No. Monetary, no.
Q Are there any non-monetary incentives?
A No.
Q Do you award trips or --
A No.
Q -- prizes?
A Absolutely not.
Q Does Process Management import any information regarding a loan account at the beginning of a foreclosure process from MSP or any other source from the servicer?
A We do receive information when we do receive the referral from, in this case, Option One Mortgage, as to the unpaid principal balance, address, name, let's see, last payment date. We do receive that information. And that's from MSP.
Q You said the unpaid principal balance, the address and what else?
A Last payment date, customer's name, address.
Q Is there a name for this batch of information which is received from MSP with respect to a referred --
A I don't know what the batch name is.

Q -- account? I'm sorry, you don't know what the batch --

A You're asking for a batch name?

Q Yeah, do y'all have something you call it when you get this information?

A Just loan information.

Q Does this loan information provide you with the balance of any escrow corporate advance or suspense accounts at the time a case is referred to LPS for foreclosure?

A Not in Process Management, no.

Q Does that information come from some other source?

A It's provided to the attorneys through basically a screen scrape program that we have for the --

Q I'm sorry, you said screen what?

A We have a -- the ability to go out and capture the screen and provide that to the attorney for the information that they need to provide for their financial figures.

Q Did you refer to that as a screen scrape?

A Yeah, basically all you're doing is pulling the information out and basically just sending a snapshot of the screen, which there's screen shots

right there for you in that package.

Q So sort of like this document --

A Yeah.

Q -- I showed you earlier?

A Similar to that, yes.

Q Exhibit 9. That would be a screen scrape, is your term?

A That would be a snapshot.

Q Okay. Entry No. 125, June 19th of 2007?

A Uh-huh.

Q Is Vicki Shelley an LPS Default Solutions employee?

A Yes, she is.

Q And does that indicate that she has submitted a bid to the client for approval and that there is a restricted escrow balance greater than $5,000?

A That's correct.

Q And she is privy to all of the issues and comments prior to this date with respect to the fact that there is an insurance claim on this case, correct?

A She's privy to the information; I don't know whether she went back and checked to see that.

Q There's no indication there that she knows

what the restricted escrow balance is, other than it is greater than $5,000, right?

A That's correct.

Q Do you know, as you sit here today, if that information would have been available to her to indicate that there was $138,000 in a restricted escrow account on that day?

A I don't know.

Q Is it your testimony that LPS Default Solutions does not have the authority to cause funds which are in any escrow or suspense account to be applied to a mortgage loan --

A That is correct.

Q -- during the foreclosure process?

A That is correct, we have no ability to process those funds at all.

Q You are hired by Option One Mortgage Company in this case because your firm provides specialty services with respect to foreclosure, correct?

A Yes.

Q And you market yourself as an entity with particular expertise with respect to foreclosure and default issues, correct?

A Managing foreclosure processes, yes.

Q Sure. And you market yourself as having

particular expertise in that field, correct?

MR. CASH: Which field?

BY MR. WOOTEN:

Q Default solutions, foreclosure, bankruptcy, foreclosure management?

MR. CASH: Object to the question as multivarious.

BY MR. WOOTEN:

Q Your firm, LPS Default Solutions, only provides services with respect to loans that are in bankruptcy or foreclosure, correct?

A That is correct.

Q That is the specialty of your firm, is it not?

A Yes, it is.

Q Would it be reasonable for your firm to inquire as to why there was an escrow balance greater than $5,000 when your firm's notes indicated that an insurance claim had paid this mortgage off?

A Basically -- based on the bid, we sent this over to the client for approval, which has the necessary information that says it is above a certain balance. And with our policies and procedures that have been dictated down to us by the client, we requested this go to the client for this approval for

the bid, which at that time, the responsibility of the client is to review this and provide us with their approval for the bid amount.

Q Okay. So your testimony is that no matter what's in that balance of that escrow account, you're going to just send this bid on to the client and do whatever they tell you to do, right?

A That is correct.

Q Even if the amount in escrow would pay off the principal balance of the mortgage?

A I don't know if that's the payoff or not, sir.

Q Well, we'll come back to that in a minute. But let's assume for a minute that the principal balance of the loan is less than $137,000.

A I'm not going to assume that though.

Q Okay. All right. What I'm doing is asking you to assume, I'll show you the documents in a minute, but if the -- if the principal balance of the loan was less than $137,000 and the restricted escrow contained more than $138,000, would it not have been prudent, as the specialist in this area, to notify this client that there were funds which would have satisfied the principal balance of this mortgage?

A Well, we've already notified the client

previously. If you would've read in the previous note back, I believe it was, like in the 150s, we did notify the client that there was an issue. Second of all, if you notice in this line No. 125, based on the policies and procedures that have been dictated down to us by the client, any restricted escrow balance greater than 5,000 needs to be sent to the client for approval.

So, we followed our direction and provided that to the client. That's what I'm testifying to.

Q Have you provided myself and my co-counsel with all of these guidelines and directives which you have received from Option One with respect to how your firm should conduct foreclosures on behalf of Option One?

MR. CASH: I can speak to that. It's my understanding that we have offered to do so, subject to entry into a confidentiality agreement. And at this point, there's been no agreement to keep those confidential, which clearly, they're Option One's policies and they're policies dictated to us, so we can't give confidential information without a confidentiality agreement.

BY MR. WOOTEN:

Q Well, when you indicate that you have been given instructions and directives from Option One to your firm with respect to how to conduct a foreclosure sale on behalf of Option One or how to manage their process, are you referring to a document generally called a subservicing mortgage agreement?

A That, I don't know.

Q Would you agree with me that the industry standards with respect to how to conduct a foreclosure in the proper process is generally governed by either Fannie or Freddie Mae regulations regarding that activity, to the extent that those guidelines serve as an industry standard?

MR. CASH: Object. That calls for both a legal opinion and an expert opinion, neither of which he's being presented here for today. 30(b)(6) representative.

BY MR. WOOTEN:

Q Would you agree with me that the general principles of mortgage servicing with respect to the industry standards come from the guidelines put forth by Fannie Mae and Freddie Mac?

MR. CASH: Same objection. Additionally, we're not a mortgagor servicer, so it's asking him to opine beyond his areas.

If you know, you can answer.

THE WITNESS: No.

BY MR. WOOTEN:

Q You don't agree or you don't know?

A Repeat the question one more time.

Q Yes, sir. Let me try and do a little bit better job.

A Thank you.

Q With respect to the guidelines which serve as the industry standard regards to mortgage servicing, would you agree that those are generally considered to be those guidelines published by Fannie or Freddie?

MR. CASH: And if you'd just insert the same objection as to the last two questions at this point. I repeat those objections.

THE WITNESS: Generally.

BY MR. WOOTEN:

Q Okay. And, again, I understand that any parties to a contract can modify those terms. I'm just talking about generally the industry accepts those as the standard, and where they deviate, they deviate by agreement generally; is that fair?

A That's fair.

Q Okay. In a -- so a subservicing agreement

with respect to default services is generally an agreement to provide the types of services that your firm is providing with respect to a mortgage loan that has become delinquent and needs to foreclose; is that correct?

A Yes.

Q And is there a subservicing agreement between LPS Default Solutions and Option One Mortgage Company for the provision of the services which you have contracted to provide?

A I don't know if it's a subservicing agreement or not.

Q Okay. Is it in the nature of a subservicing agreement, in that Option One provides to you the guidelines they expect for you to follow?

A I don't know if it's in the subservicing agreement, but we do work with Option One in reference to the guidelines that are provided to us.

Q And is it your interpretation or understanding that those guidelines generally follow the industry standard?

A Generally.

Q So, generally, the industry standard would apply, but there may be deviations as between your specific agreement?

A There could be.
Q But you don't know?
A I don't know.
Q And you haven't reviewed that prior to coming here today?
A No, I have not.
Q The entry at No. 118, dated June the 20th of 2007, indicates that a person by the name of Marques Roberson made this entry?
A Uh-huh.
Q And that he is a Fidelity employee, which would be an LPS employee?
A That's correct.
Q Do you know where Mr. Roberson's employment --
A No.
Q -- is domiciled?
A No, I do not.
Q This indicates that it is a forward intercom. Can you explain the significance of that type of message?
A Sure. Basically what he's doing is he's sending the intercom request to Ann Russo, Karen Singleton, and Robin Smith, just for a general update and based off a payment dispute. Says: Ann, please

also forward the below to the loss mitigation high risk team. Please see under -- file under Attorney Correspondence ASAP.

Do you want me to go through the whole thing?

Q Well, go ahead and read the rest of that entry, please.

A This debtor has an attorney and is getting ready to file suit on this matter. As you will see, the debtor tried to pay the loan in full and apparently was not accepted, check from insurance was but personal check was not. From our understanding on this, there is no house on the property. It burned to the ground on November 2nd, 2006. Please advise.

Q And with respect to this entry, it indicates that there is a file under the heading Attorney Correspondence. Where would that file be located?

A What do you mean, the file under attorney -- basically it's the file, the electronic file.

Q And is that part of the Process Management system?

A Yes. What we do is we upload the -- whatever documents have been received, we'll upload into Document Management for the client or attorney to be able to review. And it would be labeled underneath

Attorney Correspondence.

Q Now, when you indicate Attorney Correspondence, are you referring to --

A That's just a --

Q -- an attorney for the borrower?

A Not necessarily. It's just basically just an upload document type that we utilize.

Q Okay. So this is not some file which segregates your communications between your network attorneys --

A No.

Q -- and your company?

A That's correct.

Q This is simply a file where any document generated by an attorney, whether it be for the borrower or from your network, is uploaded?

A Yes.

Q And under Process Management, is that documents that were produced for this -- during this discovery request and for this deposition?

A Everything in Document Management was produced.

Q So that would include --

A It would include this.

Q -- everything in that category?

A Yes.
Q Is there any other method of communicating between a network attorney and your company that has not been talked about as we sit here today so far?
A No.
Q With respect to Entry 114, it indicates it was written by an employee of Option One Mortgage Company named Eldon Smith?
A That's correct.
Q Do you -- have you ever had any interaction with Mr. Smith?
A Have I personally, no.
Q Do you know what his employment position is with Option One?
A No, I do not.
Q At Entry 73, there's an entry by an Ann Russo with Option One which indicates foreclosure was restarted by Eldon Smith as an active foreclosure. That would've simply been their instructions through your system to continue on with the foreclosure sale?
A Yeah, just basically restart the foreclosure process.
Q Does that involve a new publication?
A I believe so.
Q That entry was made at about 1:55 p.m.,

looks like, on August the 20th of 2007.

There is an entry at No. 67 by a Mary McNamee, who appears to be a Fidelity employee, or an LPS employee; is that right?

A Uh-huh.

Q With a comment about the reason for the restart with the foreclosure. Apparently, she's seeking that information from Option One; is that correct?

A Yes.

Q Is there anywhere in your notes that ever indicates or questions Option One as to the application of these funds that it's holding regarding this foreclosure?

A We don't -- we don't -- we didn't question the client.

Q So whatever they tell you to do, you're going to do, right?

A That is correct.

THE VIDEOGRAPHER: Excuse me. Need to change tape.

MR. WOOTEN: Sure.

THE VIDEOGRAPHER: Off record at 2:03.

(Off the record discussion.)

THE VIDEOGRAPHER: Back on record at 2:04,

beginning Videotape No. 5.

BY MR. WOOTEN:

Q Okay. Moving on through this process with your notes there, Mr. Newland. Ying Hang is an employee of yours?

A Which line are you looking at?

Q It's at 54.

A Yes, she is.

Q She is?

A Yes, she's an employee of Fidelity -- or LPS Default Solutions, sorry.

Q Is she based in Mendota Heights?

A Actually, she is based in Mendota Heights.

Q Is she a member of what is commonly called a document execution team?

A No, she's not.

Q What is her position in your company?

A I believe she's within our referrals department.

Q What is a process FC, dash, RQA?

A I believe that's reviewing of the assignments.

Q That doesn't mean request for assignment, does it?

A It could be. I don't know off the top -- it

could be review or request for assignment. I don't know off the top of my head.

Q Every one of these little processes that are entered in here, have these little codes by them, like the one right below that says process FC, underscore, AL, underscore, other, underscore, other, every one of those processes have some written explanation of what they mean somewhere on your system, don't they?

A Yes, they do.

Q And that is something that you can pull up and print off relatively simply if you have access to the system, isn't it?

A You can pull it up and be able to view it, yes. I don't know about pulling it and -- I'm sure we probably --

Q Is it fair to say that there is somewhere a library which details the meaning --

A Yes, there is.

Q -- of each of those processes?

A Yes, there is.

Q And those are codes for actions on a file, right?

A It -- basically, they're the event processes. So, in other words, the FC_Alabama_Other_Other process is basically the core

foreclosure process.

Q Right. I assumed that FC meant foreclosure, but I wanted to ask.

The next entry by this lady, which is 53, indicates there's an update, and it says that there is an initial review of assignment complete, it completed on 8/21 of 2007; is that correct?

A Yes.

Q If there were a document associated with that review, it would show up in this system somewhere at that time, would it not?

A Yes, it should.

Q So there should be an entry on 8/21 of 2007 regarding that; is that fair?

A There should be.

Q Y'all brought in from lunch this imaging information with respect to all the images that are stored on your system; is that correct?

A Yes.

(Plaintiffs' Exhibit No. 25 marked for identification.)

Q I'm going to mark that as Plaintiffs' Exhibit 25, ask you to take a look at it.

Does it indicate anywhere on there that there's some assignment in the system?

A I don't see it on here.

Q That's a pretty important document, isn't it, Mr. Newland?

A Sure, it is.

Q Is that not the type of document that would ordinarily be within your image records in this type of process?

A It could be, yes. Could've also been sent to the attorney directly. Without looking at it, I don't know.

Q If it were sent to the attorney directly, would it not also have passed through New Image or image processing?

A It should be uploaded, yes.

Q Because, again, we talked about this earlier, but the agreement is, is that your company monitor and make this work flow happen, and Option One hires you to do that, and then you deal with the attorneys. And so you serve as the intermediary for the information and documents that are passing through; is that safe and fair to say?

A Yes.

Q So if -- you agree with me if the assignment is not for the correct entity or is not correct, it would be impossible to foreclose with a bad

assignment, wouldn't it?

MR. CASH: Objection. Calls for a legal conclusion. If you know, you can answer.

A That would be up to the attorney to make that determination.

Q Sure. Part of -- your business, you would not want to be sending out the door assignments that were not correct or accurate, right?

A Run that by me again.

Q As part of your business in the value that you provide to these two other defendants in this case, you would not want to be reviewing assignments and those assignments be in error, right?

A That's correct.

Q So normally, you would've preserved that type of document in some manner, so that you could have reviewed it, so that when you made an entry such as No. 49 where you said that the review was complete, you would have had some information there to show what your employee reviewed, right?

A That's correct.

Q There is a second package of documents sent to Mr. Humphrey's office on 8/21/07 at 11:52 a.m. at Entry No. 44; is that correct?

A That's correct.

Q And that is about five minutes after the QA review of the assignment was completed, correct?

A Yes, it is.

Q Have you provided to myself or my co-counsel the documents contained in this NewTrak image ID No. 4137583?

A Yes.

Q And have you provided by a separate production the documents included in New Image ID No. 3550946?

A Yes.

Q Let me see that 25.

A It would be the June 1st entry and also the August 21st entry.

Q I noticed -- oh, sorry, let me back up just a second. Does the ID number in the left column of Plaintiffs' Exhibit 25 bear any correlation to the NewTrak image ID numbers which are indicated in these notes?

A I don't know.

Q I see that there is a June 1st, 2007, entry involving 17 pages at 8:38 a.m. And it is 1,335,168 bytes in size, it involves 17 pages. And your process notes indicate that ID No. 3550946 was uploaded at 9:17, or approximately 40 minutes later, for

Mr. Humphrey. Does it appear to you that that entry on Plaintiffs' Exhibit 25 would correlate to the entry in No. 156 of your Process Management notes?

A It would seem so.

Q Okay. On 8/21 of '07, there is an entry -- or actually two entries, one at 8:45 a.m. and one at 8:48 a.m., each bearing a different ID number. The first, August 20 -- or September 21st entry at 8:45 a.m. indicates that there are 1,453,112 bytes in 18 pages.

(Brief interruption.)

MR. WOOTEN: There's my alarm for my call. Okay. I need to go take a break and get this call handled.

MR. CASH: Okay.

THE VIDEOGRAPHER: Off record at 2:17.

(Off the record discussion.)

THE VIDEOGRAPHER: Back on record at 2:17.

BY MR. WOOTEN:

Q I'm sorry, we were talking about these entries on August 21st of 2007, the first one, 1,453,112 bytes and 18 pages, and numbered in your imaging documents as 71874430. It says that it is a screen print, dash, FC. Assuming again that FC stands for foreclosure?

A That's correct.

Q And then there is a second entry immediately following, and its ID number is 71874554, and it also says screen prints, dash, FC, is slightly larger at 1,468,858 bytes and 18 pages also and three minutes later.

There is no entry that I have been able to locate in your process notes indicating an assignment was uploaded or identified separately. Have you found any in your review of it?

A No.

Q It appears that the only difference between the June 1st, 2007 entry and the two entries on August 21st is one page; is that correct?

A That's what it seems to be.

Q And with respect to that, is it your belief that the entry numbered 44, which is at 11:52 a.m., whatever time this is on this system, where you have NewTrak image ID No. 4137583, represents the -- one of the two entries that we identified on Plaintiffs' Exhibit 25. Is that correct?

A That would be correct.

Q And then at Entry 37, on August the 22nd of 2007, there is an intercom message from Ann Russo to Karen Singleton on your system, indicating that Scott

Humphrey's office should deduct the $138,482 in insurance proceeds from a total payoff of 149,045.72, leaving a referral balance of $10,563.72. Is that the first indication that your company received of what to do with the funds which were being held in the restricted escrow account?

A We did not receive that. That was a communication between Ann Russo of Option One and Karen Singleton of Scott Humphrey's office. Did not go through an LPS associate.

Q It does not pass through your system at all?

A It passes through the system, but it does not pass to any of my associates.

Q Okay. We've sat here and reviewed these notes together. Have there been any other entry that you've seen in preparing to testify today that indicated prior to August the 22nd of 2007 what should be done with the funds in the restricted escrow account?

A Not prior to that time.

Q Once that message passed from Option One to Karen Singleton, that information would've been available to every user in your company with respect to that, correct?

A They would've been able to view it, yes.

Q With respect to the bidding instructions indicated in Entry No. 25, which is an automated process, that's NewTrak image ID 4368311, does that appear to correlate with either one of the two entries made by Ann Russo, which is in the imaging section, or Plaintiffs' Exhibit 25, on that same date at either 10:54 a.m. or 2:10 p.m.?

A That would be correct.

Q And since --

A Should say bidding instructions on it also.

Q It does.

A Okay.

Q And since it also was at 10:54 a.m., does it appear to correlate to Entry No. 25, which appears to have been entered in your system of 10:55? So the first entry of bidding instructions on that date, your document ID No. 73300397, does it appear to correlate to Entry No. 25?

A Yes.

Q And would Entry No. 24 be apparently the second entry in your document imaging system at 2:10 p.m., No. 73316049, also called bidding instructions, where Mr. Humphrey's office picked up those instructions?

A I don't think that correlates with what's in

the Document Management system. It's just basically Line 24 basically correlates with Scott Humphrey receiving the bidding instructions.

Q Okay. So there is a second set of bidding instructions that go in at Entry 15 at 2:10, which appear to correlate to this entry we previously mentioned --

A Yes.

Q -- 73316049?

MR. CASH: Nick, I have 1:25 (sic).

MR. WOOTEN: Yeah. Let me make this call. Let's go off the record.

THE VIDEOGRAPHER: Off record at 2:26.

(Brief recess.)

THE VIDEOGRAPHER: Back on record at 3:03.

BY MR. WOOTEN:

Q Let's see --

(Brief interruption.)

MR. WOOTEN: Oh, we're off the record.

THE VIDEOGRAPHER: Off the record at 3:03.

(Off the record discussion.)

THE VIDEOGRAPHER: Back on record at 3:12.

(Plaintiffs' Exhibit No. 6 marked for identification.)

BY MR. WOOTEN:

Q Okay. I apologize, Mr. Newland. I don't want to take any more of anybody's time than necessary. I'm going to try to move through some of these documents that I need to identify pretty quickly, just ask you if you can recognize them. This is a document I've marked previously as Plaintiffs' Exhibit 6. I'll represent to you that it is a document received during discovery from your lawyers. Ask you if you recognize that document?

A Yes, I do.

Q And is that a -- does it appear to be a copy of the promissory note executed by my clients?

A Yes.

Q Okay. Are there any attachments to the actual promissory note in the case?

A There is an addendum.

Q Okay. And what does the addendum entail, please, sir?

A For interest only payment period.

Q So that's an interest only rider --

A Yes.

Q -- to a promissory note. Are there any other documents attached to that promissory note?

A The allonge.

Q Okay. And what is an allonge, please, sir?

A It's an assignment of the note.
Q And what allonges appear to be present on that note?
A From H&R Block Mortgage to Option One Mortgage.
Q And is that the only allonge that's present?
A There's another allonge that's attached here in the back.
Q Okay. Would those documents that you produced with respect to the mortgage note be exactly as you received them from your client, Option One?
A Yes.
Q Does it appear to you from reviewing those documents that the allonges to that promissory note are, while with the note, not attached to the note?
A Not attached to the note?
Q Not physically connected to the promissory note itself?
A No.
Q Appear to be separate pages, right?
A That's correct.
Q Are those allonges dated in any way?
A The note doesn't look to be dated.
Q And that would have been the documents which you would've transmitted to Scott Humphrey for the

purpose of conducting a foreclosure on behalf of Option One, correct?

A That's correct.

Q That would have been some of the documents which would have been prepared or which would've been retrieved through the automated processes of your software, your Process Management software, right?

A It would've been retrieved based off of the push from Option One on the documents.

Q So your software would've made the request and they would've responded with their original documents --

A That's right.

Q -- or scans --

A They would push the documents to us.

Q Sure.

A To our imaging system.

(Brief interruption.)

THE WITNESS: To our imaging system.

BY MR. WOOTEN:

Q So those documents would've -- would be part of what was identified, we would be able to look back to your imaging system at the date in the documents and pick that information out, right?

A Yes.

Q It looks like those documents would've been pushed by Arvind Kumar on 6/4/07, at Entry 150 is where they were explained.

You have a corresponding entry numbered 67471979 that says it is the note and says that it consists of eight pages on 6/5/07 at 5:42 a.m., and it says it was uploaded by an automated process. Does that sound right?

A Sounds correct.

Q Are there eight pages in that document?

A Yes, there's eight pages.

(Plaintiffs' Exhibit No. 7 marked for identification.)

Q Okay. With respect to Plaintiffs' Exhibit 7, I'll hand it to you and represent to you it's a copy of a recorded mortgage which was produced by your attorneys during discovery. Ask you if you recognize that document as such?

A Yes.

Q I see two entries with respect to a security instrument numbered sequentially in your imaging software, one is 67471976, it says it is 11 pages, and one is numbered 67471977, and it indicates it is 12 pages. Is that document 12 pages or 11 pages?

A I'd say it's 12. It's 12 pages.

Q All right. 12 pages in that situation, there is a cover page which is proof of recording from the local recording official --

A Yes.

Q -- is that correct?

A That's correct.

Q 11 pages actually make up the security instrument?

A Yes.

Q Does that document have any assignments of mortgage attached to it?

A No, I did not see any assignments attached to it.

Q Are you familiar with The Summit?

A Uh-huh.

(Plaintiffs' Exhibit No. 8 marked for identification.)

Q I show you -- I'm sorry, Madam Court Reporter, I knocked your microphone over again -- a document I marked as Plaintiffs' Exhibit 8. Can you please explain what that document is?

A Sure. It was a newsletter that went out from, at the time, Fidelity National Foreclosure & Bankruptcy Solutions.

Q Pre name change to LPS?

A Yes.
Q Is The Summit still published?
A No, it's not.
Q Do you publish a newsletter of a similar name or type for the industry?
A No. LPS Default Solutions does not.
Q Okay. Is there a company that does that's part of the Fidelity or the LPS, Inc., umbrella?
A Not that I know of.
Q That document has a short summary of the modules or platforms within LPS Default Solutions' protocols; is that right?
A Yes.
Q Highlighted with a pink highlighter?
A Uh-huh.
Q Does that accurately state in the capacities of those platforms and programs with respect to what they are capable of doing?
A Yes, that's correct.
Q Is there anything incorrect in that article?
A In your highlighted portions?
Q In that -- I've only highlighted portions of that, but that's like just a little half page segment there about your platform. In that entire caption there discussing basically your document solution,

your process management and your imaging solution and invoicing, is there anything in that article that is incorrect?

A It's pretty concise.

Q I understand that it's the three points and a poem version of what you do --

A Yes.

Q -- and that that's sort of a glam thing for your industry partners, but I'm just saying, there's nothing inaccurate, is there?

A Not that I see.

Q Okay. That was really all I needed out of that document, please, sir. And we talked about 9.

Did you review your answers to your interrogatories and requests for production prior to coming to the deposition today?

A Yes, I did.

(Plaintiffs' Exhibit No. 10 marked for identification.)

MR. WOOTEN: Do you have that copy of that? Okay. Let him take a look at it.

BY MR. WOOTEN:

Q At any time in this foreclosure process, was Scott Humphrey ever representing LPS?

A No, he was not.

Q In fact, he was a vendor to LPS as part of the attorney network?

A Yes.

Q So he agreed to provide services to clients who were referred to him for a flat fee?

A That's correct.

Q And the agreement to provide those services at that fee was between LPS and Scott Humphrey?

A That's correct.

Q There is no independent contract for employment between Scott Humphrey and Option One, is there?

A No, there's not.

Q I asked a question regarding -- in my interrogatories, regarding any contracts or agreements between you and any other defendant in this case which allows you to pursue collection and/or foreclosure efforts on the plaintiffs' mortgage. That question was objected to, and I'm assuming based on the nature of some of the objections today, that it was objected to because of the clause which said -- or the phrase which said "which allows you to pursue collection and/or foreclosure efforts on the plaintiffs' mortgage," right?

A Yes.

MR. CASH: Well, let me object to him answering as to why it was objected to. Obviously, the objections were legal decisions made by the lawyers, not by the witness.

MR. WOOTEN: Well, I'm just -- in reading from the answer, it says that you don't have a contractual agreement with any of the other defendants which authorizes LPS Default to pursue collection and/or foreclosure proceedings of the plaintiffs' mortgage, so I -- I mean, is that the basis of the objection, was that phrase?

MR. CASH: Yeah.

MR. WOOTEN: Okay. So, with respect to the actual contract, we've agreed that we've got to figure out how to get that document into play, whether it's protective order or whatever, right?

MR. CASH: Yes.

MR. WOOTEN: Or partial redaction, whatever we need to do.

BY MR. WOOTEN:

Q The invoicing system that you guys operate, imaging or the -- what do you call it, the invoicing system?

A Invoice Management.

Q Does that system also record images of the

bills which are submitted as well as the payment advices which are made? In other words, does it not only copy the bill, but does it copy the check?

A I don't know.

Q Does that system indicate within that portion of your system when the invoices submitted were paid and by whom?

A I'm not -- I'm not an expert on Invoice Management. I don't know.

Q But you indicated earlier that you have a manager who deals with that portion of the business, right?

A I have -- not a manager that deals with that portion of the business, but we do have individuals within Invoice Management that probably could answer your questions.

Q Is there like a team leader, supervisor, vice president in charge of that?

A Yes, there is, but I don't know who that is off the top of my head.

Q And that person is not a part of your normal management team --

A No, it's --

Q -- that you meet with regularly?

A No, they are not.

Q Is there any portion of either Process Management, Document Management, or Invoice Management which would contain evidence of payments from your partner or your network attorney back to LPS Default Solutions?

A No.

Q When a foreclosure sale is conducted by a network attorney, if a third-party buyer purchases at the sale the particular parcel being foreclosed upon and your network attorney receives those proceeds, do they distribute those proceeds directly to the servicer or do they distribute those proceeds to LPS Default Solutions?

A Directly to the servicer.

Q Does LPS Default Solutions maintain records with respect to how many sales are -- result in third party sales and how many sales result in investor or servicer repurchases or purchases?

A Yes, we do.

Q Do you know that -- what that percentage is off the top of your head of loans which are repurchased by either the investor or the servicer?

A Not off the top of my head I do not.

Q Is that a normal reporting function --

A Yes, it is.

Q -- that you have? Is there a name for it?
A The name for the --
Q The report.
A Yeah, third-party sale report.
MR. WOOTEN: And, Mike, what I'm interested in there, is not to have a bunch of information about all their data, I'm really looking for the percentage of sales that are conducted that result in a third-party purchase versus a repurchase by the investor or the servicer. If you can get that for me. If I need to make a separate request or whatever, I will.
MR. CASH: I'm probably going to have you make a request, because I'm probably going to object to it. It's not relevant to any issue in this case. But I don't want to fuss with you about it right now.
But while we're talking to each other on the record, just want the record to be clear that after the break, we did produce the P -- 309? The P309 screen for this case and the --
MR. WOOTEN: I'm going to go back and --
MR. CASH: -- Invoice Management documents.
MR. WOOTEN: I'm going to go back through those documents and identify them.

MR. CASH: Okay.

MR. WOOTEN: And we'll talk about that, so...

MR. CASH: Okay.

MR. WOOTEN: Yeah. I mean, I didn't see a P309, but I was in a hurry, so we'll look back at that.

BY MR. WOOTEN:

Q In your responses to interrogatories with respect to Item No. 3, there's a list of LPS employees who were involved in inputting information or interacting with this loan account. Is it your testimony that that is an exhaustive list of LPS employees who were involved with this loan?

A Yes.

(Brief interruption.)

MR. WOOTEN: I'm sorry, I'm just in space. I thought I was having a muscle twitch. I didn't even realize you were touching me. It's been a long night, so... I didn't mean to just be dozing off over here. That's what two hours of sleep will get you.

BY MR. WOOTEN:

Q Other than the loan file number which you identified in your response to No. 4, there is no

other identification mechanism within LPS's system for this particular loan account, is there?

A That's correct.

Q And that is information provided to you by Option One?

A That's correct.

Q With respect to the administrative services fees on your answer to the interrogatory, I believe it's No. 5, it indicates that there were invoices generated by Fidelity for technology and/or administrative services. We talked a little bit earlier about the fee structure with respect to LPS. You indicated that all the fees came from the attorney network; is that right?

A That's correct.

Q Does LPS delineate between administrative services fees and technology fees?

A Yes, they do.

Q Okay. What exactly is a technology fee?

A Utilization of our technology.

Q Okay. And can you tell me how that fee is determined?

A No, I cannot.

Q Is that one of those proprietary items or you just don't know?

A I do not know.

MR. CASH: It would be a proprietary item, but I was pretty sure he didn't know, so I figured I'd save an objection. I figure I've used a bunch already.

MR. WOOTEN: Sure. With respect to that, Mike, that's going to obviously become an issue, at least -- again, I'm not interested in exposing how you structure your fees. What I am interested in doing is identifying what fees were charged, how they were paid and what their life cycle was. So, again, I don't -- I don't care what you're charging, I just need to know how it got -- what happened to it, where it went, that sort of thing.

MR. CASH: How it got paid -- that it didn't get passed on to the borrower, I understand.

MR. WOOTEN: Right. So --

MS. NEWMAN: It's a different company.

MR. CASH: Okay. The other thing is, the technology fee isn't charged by this defendant, it's a different company.

MR. WOOTEN: Okay. So technology apparently will be charged by MSP or another -- it's entirely different?

MR. CASH: A different entity.

MR. WOOTEN: Okay. Well, just so we can clear this up, because that's what I'm trying to do today, is eliminate as many issues as possible. Will we be able to get the information about what constitutes the technology fee or at least what the dollar amount is, that sort of thing, so we can determine, try to follow the trail, or will we be able to get the identity of the entity who's charging that fee so we can subpoena that information?

MR. CASH: Yeah, you can get the identity of the company.

MR. WOOTEN: Sure. And I'm assuming it is another Fidelity entity, right?

MR. CASH: I believe so, yeah. And so if you'll write me a letter, I'll write you a letter back. And then if you want to subpoena it, we'll -- to the extent we think it's irrelevant, we may move to quash the subpoena but, you know, we'll do it, take all the steps.

MR. WOOTEN: Sure.

MR. CASH: But, yeah, I mean, I think we can do that part.

MR. WOOTEN: Can do the dance. I

understand.

BY MR. WOOTEN:

Q As you sit here today, Mr. Newland, being the person that runs LPS, do you know what the schedule is for the total attorney's fees for a foreclosure in the state of Alabama?

A In -- can you clarify the question?

Q Sure. Do you know what your network attorneys in Alabama agree to charge as the total amount of attorney's fees that they will charge for conducting a foreclosure in the state of Alabama?

A We have the information we supplied from the clients as it has been agreed to, yes.

Q So that information with respect to this loan would come from your Option One agreement?

A That's correct.

Q How does a foreclosure get from a servicer to a network attorney? What's the vehicle?

A The servicer will, in this case, Option One, will provide the approval to begin the foreclosure process through their MSP system, which would then trigger the referral in a data tape that comes to us. Then we would process the referral based off of them sending the information to us. And then we would provide the mechanism or the electronic copies of the

documents to the attorney along with the referral.

Q Okay. So is it fair to say that the servicer lets you know that a referral and a foreclosure needs to take place and then your processes create the referral package and send it to the network attorney?

A We don't create the referral package, we merely send the information that's been provided to us from Option One, in this case, to the attorney along with the documents.

Q Is it your testimony that your contractual agreement with your servicers, in this case Option One, does not give you the right to set the parameters for foreclosure with respect to the initiation of the foreclosure and the time lines within which it must take place?

A That is correct.

Q You indicated that a foreclosure deed had been prepared, in your interrogatory Response No. 28, but that you did not have a copy of that deed. Is that because the deed was not submitted for a record in DeKalb County, Alabama?

A That is correct.

Q Are your network attorneys required to provide that type of documentation to you as part of

their contractual obligations?

A They are to provide a contract -- or a copy of the deed, yes, uploaded.

Q With respect to Option One Mortgage Corporation, is it your understanding that American Home Servicing purchased their mortgage servicing rights?

A That is my understanding.

Q Do you know approximately when that took place?

A No, I don't know.

Q Did you sign a new agreement with American Home Servicing at or about the time that took place?

A I do not know.

Q If your servicer clients instruct you to assess to a mortgage account on a regular basis a fee or charge, such as a property inspection or a broker price opinion, while a loan is in the foreclosure process, do you follow those instructions without any deviation?

A We don't have the ability to assess those on the mortgage servicing system. That's up to the client.

Q So within LPS, your testimony is, is that you do not make any changes to any data nor do you

provide a batch file of electronic data which provides those types of charges to be updated to client loans?

A Not those type of charges.

Q Do you provide any data in any format to your servicer clients which result in charges being added to consumer loans?

A No, we do not.

Q Do you provide any data in any format to your servicer clients with respect to the costs or expenses incurred by LPS Default Solutions with regards to any foreclosure process?

A I'm sorry, I'm going to need for you to repeat that, because I could barely hear you when you were talking the other way. I'm sorry.

Q I'm sorry. Do you or does LPS provide any electronic data to any servicing client or, in this case, Option One, which provides them information with regards to any expenses or costs incurred in association with a foreclosure proceeding?

A No, we do not.

(Plaintiffs' Exhibit No. 11 marked for identification.)

Q Show you a document that's been marked as Plaintiffs' Exhibit 11, and ask you if you've seen that document before?

A That's assignment of mortgage.

Q All right. And do you know if that document is a document which is located on the system either imaging or Process Management with respect to this --

A I have not seen it in our imaging system, but then, again, it could've been sent directly to the attorney for processing and have bypassed our system.

Q Is it your testimony that that is the first time you've seen that mortgage assignment?

A Yes, this is the first time I've seen it.

Q Thank you. Do you know what Option One's principal place of business is with respect to its mortgage servicing operation?

A No, I don't.

(Plaintiffs' Exhibit No. 12 marked for identification.)

Q Show you a document that I marked as Plaintiffs' Exhibit 12. Can you please explain what that document is?

A Looks like it's an underwriting request from First American.

Q First American is a company that is not affiliated with your -- with LPS Default Solutions, correct?

A That's correct.

Q In fact, the First American family of companies is a competitor to the Fidelity group of companies; is that right?

A In some cases, yes.

Q And in some cases, they utilize your services for certain things, correct?

A I don't know if they utilize us or not.

Q Would you take a look at the -- I believe it's the second page of that document, please, sir. Does that document indicate that there is a prior recorded first position mortgage lien on that property?

A Yes, sure does.

Q What's the date of that letter please, sir?

A June 6th of 2007.

(Plaintiffs' Exhibit No. 13 marked for identification.)

Q Let me show you this document I've marked as Plaintiffs' Exhibit 13. Is that also an underwriting request?

A Yes, it is.

Q What is the date of that --

A Title search.

Q -- of that request?

A May 30th, 2007.

Q May 30th?
A As the date hereof: May 30th, 2007.
Q Does that document also indicate a prior first position mortgage on this property?
A It shows SunTrust Mortgage.
Q Is that the mortgage dated --
A July 22nd, 2004.
Q Filed in Book 1235, Page 178?
A That's correct.
Q Does that document indicate that there's any problem with the legal description between the mortgage and title report?
A Any indication?
Q Uh-huh.
A Not that I see.
Q Let me refer you back to this June 6th letter and point out this area that's highlighted right here.
THE VIDEOGRAPHER: Excuse me. Can I have a second to change tape.
MR. WOOTEN: Sure. Let's take a break to change the tape for just a second.
THE VIDEOGRAPHER: Off record at 3:49.
(Brief recess.)
THE VIDEOGRAPHER: Back on record at 3:56,

beginning Videotape No. 6.

BY MR. WOOTEN:

Q Okay. Mr. Newland, we were talking about these underwriting letters. Looks like they're marked as, what, 12 and 13? 13 and 14?

A Yes, 12 and 13.

Q 12 and 13. Both of those indicated there was a previous filed first mortgage in the case; is that right?

A That's correct.

Q And neither of those indicate that that was ever satisfied, do they?

A No, not here.

Q Okay. And they also indicate that there's a defect in the title description in the June 6, 2007 letter; is that correct?

A That's correct, by First American.

Q Did you ever ascertain if that error in the description was ever corrected?

A No.

Q Anything in your notes or your system that indicate that those errors were straightened out?

A No.

Q Is there anything that indicates how the issue of the prior first mortgage was ever addressed?

A No, I assume that was addressed through Scott Humphrey.

Q All right. Would he have normally notified your firm, as a network attorney, if there was an issue of a prior recorded mortgage?

A Typically, there -- the attorneys will notify us if there's any problems with chain of title.

Q And that's something that a portion of the fees that they charge to a consumer's account is paid for in a foreclosure setting, right, is to check the title?

A That's something that would be probably through the attorney.

Q Sure. But I'm saying the attorney would normally -- that would be part of their fee, to check the title on what they're about to foreclose on?

A Part of the fee is to review the title.

Q Sure. And basically, what they're doing is, I guess, you know, trying to make sure that there's no prior existing liens and that there's nothing intervening that would affect their ability to foreclose, right?

A That's correct.

Q And they would also verify the legal description, right?

A They should.

Q And nothing in the system indicates that that took place with respect to this case at this point, does it?

A No, it's not identified to us.

(Plaintiffs' Exhibit No. 14 marked for identification.)

Q Sure. Let me just have those two.With respect to Exhibit 14, this is a portion of an evidentiary submission from another case in another part of the world having to do with the contract for services between, I believe it was, Fidelity National Foreclosure Services and Saxon Mortgage. Let me just ask you, and then --

MR. CASH: You're not going to make me object to testimony from other cases involving other servicers.

MR. WOOTEN: Oh, no, it's documents. It's documents. I mean, I'm just -- I'm just trying to establish more or less what the document's like. I mean, I know you probably want to put your objection on the record --

MR. CASH: Probably not going to have him testify about any other documents from any other --

MR. WOOTEN: No, I just want to ask him if he has seen documents that look like this before, reviewed them, familiar with them, that sort of thing. Just general identification. And, Mike, if you want to look at that with him, I mean, I'll represent to you that I think that came out of Judge Baum's court over in your neck of the woods in Texas. So you probably have seen it. And that's front and back copied, to save some trees.

MR. CASH: I'm going to object to these documents and any testimony from these documents, as they're from some cause number or case number 08-0314, apparently from the Southern District of Texas, which -- apparently involving some other servicer which has nothing to do with this case or any issue in this case.

BY MR. WOOTEN:

Q Well, and I hear you and want you to put your objection on the record and make it. And I'll just represent that the purpose of bringing those documents to the deposition today, Mr. Newland, is it appears to contain at least a portion of the contract with the Saxon Mortgage Company, which is a mortgage servicer, right?

A Yes, that's correct.

Q And everybody knows they're a national mortgage servicer that's familiar with this industry, right?

A That's correct.

Q And it looks like that that's at least a portion of the contract which indicates, at least to some extent, a fee schedule that's set forth from that contract with Saxon Mortgage and your company. Does that appear to be right?

MR. CASH: Go ahead, if you know.

BY MR. WOOTEN:

Q And take a minute and look at it. I'm not rushing you in any shape, form, or fashion. I know that you didn't make that production to me, so --

A No, I mean, you know, I'm not -- I was not privy to these documents, so, I don't know.

Q Is there a division --

MR. CASH: Hold on. I'm going to object to these documents in their entirety. These come out of the Harris bankruptcy case. For the record, the referral to the bankruptcy court was withdrawn by United States District Judge Lynn Hughes. And Judge Lynn Hughes imposed a protective order on all of the documents in that

case, which would include the contracts in that case. And the protective order was very specific that all copies of these documents were to be -- were to be destroyed and that these documents were not to be used by any person for any purpose outside the Harris case, subject to sanctions in the United States District Court for the Southern District of Texas. These are from the Harris case, because I see the Harris cause number on here, and we are --

MR. WOOTEN: Sure, and I'll represent that they are, but I'll tell you --

MR. CASH: We are objecting to these and may want to have a separate evidentiary hearing as to the source of these documents, who gave them to plaintiffs' counsel, where they came from, and may have to have further proceedings before Judge Hughes in the Southern District, subject to Judge Hughes's protective order.

MR. WOOTEN: Sure.

MR. CASH: And we're going to give no testimony on these documents. And I'm instructing you not to even talk about these, because these aren't even supposed to be here.

MR. WOOTEN: Okay. And I'll represent to

you, Mike, those came off of the ECF system through use of Pacer, so --

MR. CASH: All I'm saying is, maybe -- I don't know if the bankruptcy clerk didn't take them down, but there is a protective order --

MR. WOOTEN: Sure.

MR. CASH: -- which I will forward to you.

MR. WOOTEN: And I'd be glad to take a look at it, I hadn't seen it. So I pulled them off the system through Pacer. I had no idea they're subject to a protective order. So --

MR. CASH: I'll send it to you. And I'm not fussing at you --

MR. WOOTEN: Right.

MR. CASH: -- I'm not saying -- and for the record, I am not in any way implying that Mr. Wooten did anything wrong or even had knowledge of the protective order. And if the record seemed to imply that, that was not the implication and there was certainly no accusation directed at Mr. Wooten whatsoever.

MR. WOOTEN: Sure. And, again, I pulled these documents from Pacer and been aware of this litigation, more or less knew of it since it started, so, I mean...

MR. CASH: Sure.

MR. WOOTEN: All I knew is that it was ongoing. But I pulled these documents a long time ago.

But anyway, let's just set those to the side, and if they're subject to protective order, I'll shred them and we'll be done with it. It's no big deal with respect to that.

(Plaintiffs' Exhibit No. 15 marked for identification.)

BY MR. WOOTEN:

Q Exhibit 15 is an announcement with respect to Fidelity -- hold on a minute. Fidelity National Financial is a parent company of LPS?

A No, they're not.

Q Separate company. Are you familiar with a company called DOCX LLC?

A Yes, I'm familiar with the company.

Q Do they serve as a vendor to LPS Default Solutions?

A No, not a vendor of us, no.

Q You do not use them for mortgage lien release issues?

A No, I do not.

Q Do not use them for assignment services?

A No, we do not.
Q Don't gain information from them from county recording office requirements or fees?
A No.
Q You are aware they were purchased by Fidelity National Financial, Inc., right?
A No, I was not aware of that.
Q And you're saying that there is no relationship of any type between LPS Default services and DOCX?
A None that I know of.
Q Is there anyone else in your firm who would know if there were any relationship between your entity and this entity?
A Not that I know of.
MR. WOOTEN: Just a second. I'm not going to offer 15, I'm going to pull that, because I looked at the wrong company name. So let me set that off to the side. Is that in your way? That's fine.
BY MR. WOOTEN:
Q Are you familiar with the missing document process for Document Management?
A I'm somewhat familiar with it, yes.
Q What is it -- what is its purpose, what does

it do?

A Basically what it does, the attorneys will request a document that they might not have received, and we will go out and -- basically what the document process does, it opens up a tracking mechanism for our associates, and/or if it's the clients, to try to retrieve those documents and upload them back into Document Management for the attorney.

Q Okay. So is there a separate set of records where the attorney would request a missing document?

A No, it's all Process Management.

Q So in the event that an attorney or servicer requested an affidavit or an assignment or any document like that or a copy of a mortgage or a copy of a note, to the extent they made that request, it would show up in Process Management?

A Yes, it should.

Q And, again, we talked about, typically, if there is a document that is located, there should be a response in the Process Management notes indicating that that document was found and imaged and brought into the system, right?

A That is correct.

Q Or that it was delivered to the person making the request, right?

A That is correct.

Q Does the Document Management system have a word processing function where documents can be altered or amended or changed prior to delivery to the requester?

A Not that I know of.

Q Do you have any specific training with respect to that?

A As far as Document Management, I have basically been trained on the ability to use it, but there are no overriding functions that I know of where you can change any document.

Q And, again, if there were any way to alter that document, there should be an archival system that would create some record that it was changed; is that your testimony?

A I don't know. I don't know if there's anything like that in the system at all.

(Plaintiffs' Exhibit No. 16 marked for identification.)

Q Let me ask you if you've ever seen that document or the contents of that document before?

MR. CASH: Nick, I'm going to let you fish for about 30 more minutes, and if we don't get to the issues in this case, I'm going to shut this

down and we can talk to the Court about it, because we're just wasting time now.

MR. WOOTEN: Well --

MR. CASH: I'm just telling you.

MR. WOOTEN: I'm -- you know, whatever you think you need to do, brother, that's fine.

MR. CASH: All right.

MR. WOOTEN: We are to the issues in this case.

MR. CASH: All right. Well, you tell me what this document you're having him review has to do with our case at all, especially given that it's a November 1st, 2008, document.

MR. WOOTEN: I'm about to show you.

MR. CASH: All right.

THE WITNESS: Yeah, it looks -- it looks like it was possibly an article that went into The Summit back in, I guess, 2008.

BY MR. WOOTEN:

Q Sure. This foreclosure took place in 2007, right?

Remember, we talked a little bit earlier about incentive awards for being an APR winner?

A Yes.

Q And you indicated there are no incentives?

A That's correct.
Q Middle paragraph of that document, what's the title of it?
A Says APR Incentive Winners.
Q Read that to me, please.
A It says: Each quarter FNFS distributes financial incentive awards top ten performing firms in foreclosure and bankruptcy in the form of $20 per billable file, with the next ten firms receiving $10 per billable file. To date, FNFS has distributed over $402,000 to the top performing firms in quarterly incentive payouts.
Q Does that sound like a financial incentive for being a high APR firm?
MR. CASH: And, again, I'm going to ask what is the relevance of that to any issue in this lawsuit? I mean, if you can show that this firm was on that, if you can show that this firm somehow was tied to this, fine; otherwise, it is, again, a wide range fishing expedition which has nothing to do with this case.
BY MR. WOOTEN:
Q You said there were no payments for having a high APR, there are no financial incentives?
A You asked if presently if we were paying out

any incentives, and I said no.

Q When did that end?

A Do not know off the top of my head.

Q And this article in November of 2008 indicates they're still being paid, right?

A That could've been previously.

Q Okay. Well, you don't dispute the date of the article's November 1st, 2008?

A That's what's stated there, I have not seen the actual Summit that was produced, no. You do not have a copy of that.

Q Who did you tell me the vice president was that was in charge of -- you had two of them that were doing your attorney network? One of them -- was Mark Cardenas one of them?

A No, it was not.

Q Why don't you take a look through that, and take a minute and see if you see anything in that report that's inaccurate or appears in any way to be incorrect. If you do --

MR. CASH: No, I'm going to object. We're not going to sit here and opine on that report.

MR. WOOTEN: Well, hold on a minute.

MR. CASH: Nick, you have -- I'm going to instruct him not to answer. Do you have any more

questions about the Wood case?

MR. WOOTEN: Yeah, I do.

MR. CASH: All right, then ask them, because those are the only questions we're answering the rest of the day. I will take my chances that this Judge will require discovery to be relevant to the case in front of him. I'm willing to take that risk.

MR. WOOTEN: Okay. So we're -- you're making your same objection on the same agreement we made earlier today?

MR. CASH: Yeah. Absolutely. If we have to redo this, we can do it on my nickel down there, but I'm not going to --

THE WITNESS: That's wrong. That's wrong.

MR. CASH: -- to have him sit here and generally testify.

He will answer all the questions you have about the Wood case.

(Plaintiffs' Exhibit No. 17 marked for identification.)

BY MR. WOOTEN:

Q That document marked as Plaintiffs' Exhibit 17, does it appear to be the August 2004 mortgage referenced in the earlier letters indicating

that your client's lien was not in first position?

A This looks to be the July 22nd mortgage.

Q Does it appear to be recorded on August the 11th?

A Yes.

Q Is there anything on that mortgage that indicates it's been released?

A I don't see any satisfaction on this mortgage.

(Plaintiffs' Exhibit No. 18 marked for identification.)

Q Now, I'll show you a document, represent to you that that is a copy of documents produced by Option One to myself and my co-counsel in this case, which are the Consolidated Note Logs from the MSP software code.

A Okay.

Q Ask you if you've ever seen those documents prior to today?

A No, I have not.

Q I notice that every entry that says FOR is redacted.

A Okay.

Q Do you know what FOR stands for in the MSP software?

A I believe it stands for the foreclosure notes.

Q Okay. And that would be the part of this process that your company is in charge of, right?

A Yes.

Q And that would be the entries into the MSP software made by the employees of LPS Default Solutions; is that correct?

A That, I don't -- I don't know if these, in fact, are all from that, from our Process Management system sent back to the MSP system.

Q All right. So, if you'll flip through there and just verify for me that all of the entries marked with FOR are redacted?

A They look to be. But this was a document from Option One, correct?

Q It's an MSP document but, yes, it did come from Option One.

A Okay.

MR. CASH: Just so the record's clear, LPS had nothing to do with any of the redactions or the decisions to redact.

MR. WOOTEN: No. And if I inferred that they did, I apologize, Mike, I wasn't doing that at all. I'm just drawing the correlation between

the two settings, okay?

MR. CASH: Uh-huh.

BY MR. WOOTEN:

Q You testified earlier that you are not familiar with the various modules under MSP which report to the software from which these Consolidated Note Logs arrive, are you?

A No, I'm somewhat familiar with the FOR, as that's the foreclosure work screen.

Q Sure.

A From my old days at Option One.

Q So, with respect to what's redacted, there is no way to know, based on these redactions, if those are entries between Mr. Humphrey and his firm and Option One or if these are entries by LPS employees, right?

A I have no idea.

Q Are you aware of whether or not LPS employees may have made entries in the MSP software as a part and parcel of the work that they did for your entity, LPS Default Solutions?

A Not that I'm aware of.

Q Well, that kind of leaves me out in space, Mr. Newland. Do you know if your employees can access MSP and enter notes under the foreclosure fields or

not?

A I do not know whether they can enter those fields or not. I don't know if that's a field that we can actually access and put notes in there.

Q So I would need to talk to someone who is more familiar about what capacities your employees would have with respect to entering information into MSP, right?

A That would be correct.

Q And, again, do you have anyone -- do you know of anyone who might be knowledgeable about that, who could explain that?

A No.

Q And you testified earlier that prior to me presenting you these documents, you had not had any -- you had not made any review or investigation of the information contained in these Consolidated Note Logs?

A No, I have not seen anything in the note logs.

Q And you made no effort during your preparation to testify today with respect to what information might've been available to your business through the MSP platform?

A No, I did not look at it, no.

(Plaintiffs' Exhibit No. 19 marked for

identification.)

Q This document marked as Exhibit 19, I'll represent to you is a document provided to me as part of Option One's discovery, which indicates approximately 80 people had some interaction with the Wood loan and provides identification for those people. You're not familiar with any of those people unless they're an LPS employee, are you?

A No, I'm not familiar with these people.

Q So you would not be familiar with any contractors from India or anything like that?

A No, not at all.

Q Would you be familiar with any of the businesses which provide those contractors?

A No, I'm not.

Q Do you know if Option One is located in Jacksonville, Florida?

A Yes, they are.

Q Within your software services, are they assigned a vendor or client code?

A Within our Process Management services?

Q Right.

A Yes, they are.

Q So if a communication came through Option One to Process Management, there would be an

indication that that came from Option One to Process Management, correct?

A It would be identified by the user ID, yes.

(Plaintiffs' Exhibit No. 21 marked for identification.)

Q Okay. Let me ask you to take a look at Exhibit 21, ask if you recognize that document.

A I don't recognize this document, but it looks like it comes from our LPS Field Services company.

Q Does that document appear to be either property inspection or a broker price opinion?

A It looks -- I don't know, it looks to me to be a property inspection.

Q Okay. What's the date of that, please, sir?

A June 15th, 2007.

Q Do you know if any of your employees with LPS Default Services enter any coding under loss mitigation on the MSP software?

A Not that I know of.

(Plaintiffs' Exhibit No. 22 marked for identification.)

Q Where's that list of employees.

I'd ask you to take a look at Plaintiffs' Exhibit 22, though based on your testimony you may not

recognize those documents, I just want to ask you if you do. I'll represent to you that I believe them to be documents from the MSP software system provided by Option One.

A They look to be just screen shots and then notes and I guess at the top of the page it says Consolidated Notes Log, so, I imagine it's Consolidated Notes Log.

Q Does that all, from what you're able to see, appear to be documents which did come, in fact, from MSP?

A As far as what I can see, yes.

(Plaintiffs' Exhibit No. 20 marked for identification.)

Q Did I show you No. 20? It's a corporate advance sheet.

A No.

Q I'll represent to you the document was also provided to me by Option One Mortgage Company.

A Okay.

Q That document indicates a series of transactions with respect to corporate advances. What is the date that the first corporate advance occurred that's listed there?

A Looks like 3/29 of '07.

Q Okay. And when is the last one?
A 10/10 of '07.
Q Does it appear that all those corporate advances more or less had something to do with the foreclosure process?
A I don't know about the property inspection fees or -- you know, whether those were associated with the foreclosure or not.
Q Sure. And what was the date of the property inspection?
A That states July 5th of '07 and July 24th of '07.
Q Does the document I previously marked as 21, it appears to be dated 6/15/2007 --
A Okay.
Q -- more or less coincide with the dates of those inspections?
A Possibility with the billing on July 5th, or when it was paid, I guess, that's what it looks like to me.
Q Now, is this part of the segregation of services in the -- on the one hand, you're over here at LPS Default Solutions and you're providing foreclosure consultation, or however y'all term it, and you're getting paid by the attorney for the work

that you guys do. But then over here, these costs are being added by the servicer on the MSP software --

A That's correct.

Q -- for those relations?

A That's what it looks like.

Q And I notice in the payee category that you had -- Scott Humphrey occupied one, two, three -- five of those entries; and then FS, it looks like F-I-D-E-L, which I'm assuming is a Fidelity entity, there's one, two, three entries also there; and then there is an entry for a BPO and an AVM valuation. Do you know if the -- you said earlier you couldn't recognize 21 as to whether it was a BPO or property inspection --

A That's correct.

Q -- right? Fair enough. I can't either.

The invoices which were submitted by Scott Humphrey which are dated in here in October and August of 2007, those invoices were a part of what y'all just brought in here while ago after lunch also?

A We brought you in the invoices. I don't know if they're associated exactly with those, I would assume they are, but...

(Plaintiffs' Exhibit No. 23 marked for identification.)

Q Sure. Let me show you a document I previously marked as Plaintiffs' Exhibit 23, ask if you recognize that document.

A Looks to be an assignment of mortgage from, looks like, H&R Block to Option One, dated August 22nd, 2005.

(Plaintiffs' Exhibit No. 4 marked for identification.)

Q Let me show you a document I previously marked as Plaintiffs' Exhibit 4.

A Okay.

Q Down at the bottom of that document it says something about -- the notes appear to say foreclosure request. Are you able to interpret the field note down at the bottom?

A Yeah, I have no idea. This is an Option One entry. I have no idea what that means.

Q So that would've been entries made in the MSP software again?

A That's what -- yeah, looks to be MSP software, and I don't recognize -- we did not get the referral prior to June 1st.

Q Now, I believe this document was in your production.

MR. WOOTEN: Mike, do you want to look at

it? It doesn't have an Option One Bates stamp on it.

MS. NEWMAN: Yeah, I think it was probably out of Document Management.

MR. WOOTEN: Out of what?

MS. NEWMAN: Document Management.

MR. WOOTEN: Well --

MS. NEWMAN: Sorry.

MR. WOOTEN: Sure.

THE WITNESS: It could've been -- could've been part of the screen prints, the screen prints that went out --

MS. NEWMAN: Yeah, I think there's a packet of screen prints in there, it probably was --

MR. CASH: We may want to go off while we're having this little discussion, so she doesn't have to get it all.

MR. WOOTEN: And the reason I said I believe it came from y'all is because it doesn't have an Option One Bates stamp on it.

MR. CASH: Exactly.

MR. WOOTEN: And I -- in going through these documents, I went through your documents first before I turned to the Option One documents.

BY MR. WOOTEN:

Q So, your testimony is, is those documents came from -- that was not part of your Process Management, but would've come from Document Management?

A It's an MSP screen that looks to be basically a screen scrape that we pulled off, possibly part of the referral with the documents that were sent out to the attorneys for them to make the assessment in reference to financial figures.

Q Sure.

MR. CASH: Do we want -- oh, you're back on. Okay. We never went off. Okay. I was going to say could we do all that all again on the record, but we already were.

BY MR. WOOTEN:

Q Sure. And with respect to this document, it's dated 5/25 of '07 and --

A That's the notes that are on there, yes.

Q Right. And there's an MSP code for a KSS, which is identified in Plaintiffs' Exhibit 19 as a Sandeep Sharma with a company called, I guess, Pune, P-U-N-E, and it says borrower assistance team. And it indicates in that code JX050 Jacksonville, I mean, I read that to say request for FCL, or foreclosure. Is that -- do you have any understanding of what that

line means or --

A No.

Q -- is that all guesswork on my part?

A No. KSS, that company, has nothing to do with LPS. My understanding borrower's assistance -- borrower assistance team is a term that is used by now American Home.

Q Okay. And with respect to this, where it says request for foreclosure to JAX, it -- do you have any idea what that means?

A I have -- I have no idea. But that is not an LPS --

Q Sure.

A -- acronym.

(Plaintiffs' Exhibit No. 5 marked for identification.)

Q Show you what I previously marked as Plaintiffs' Exhibit 5. Is that what we would commonly refer to as the foreclosure package that your system would put together and sent to Mr. Humphrey for Option One?

A This looks to be the cover sheet that goes.

Q Sure.

A Now the documents behind it are not.

Q Okay. Explain to me what the documents

behind it are then, please, sir.

A Sure. The -- basically they're bidding information that we send to the attorneys.

Q So is that just bidding instructions?

A Yes.

Q Okay. Is that all that's contained in that?

A Yes.

Q Is there anywhere on that front cover page which indicates how many pages should follow that cover page?

A No, I don't see anything on the front page.

Q And what is the date of that document, if there is one on that front page?

A Sure. June 1st of 2007.

Q So that would've been the -- apparently the cover letter to the original foreclosure package that we talked about --

A Yes.

Q -- earlier today?

A (Nods head.)

Q And with respect to that, who does it indicate that it is to?

A Scott Humphrey.

Q Who does it indicate that it is from?

A Fidelity National Foreclosure & Bankruptcy

Solutions.

Q And that's now LPS, correct?

A LPS Default Solutions, yes.

Q Right. I'm sorry, I should've made that distinction.

A No, that's okay.

Q And so, I'm with you now that we've gone through these documents together, I agree that that -- the documents attached to that, I don't know how they got in order, but they obviously don't belong attached to that.

A No, they do not belong attached to this.

Q So if you want to, snatch the top sheet off, we'll just label No. 5, and the others we just won't mark because they're bidding instructions, and I can just put them back in my stack of things.

MR. CASH: Okay.

MR. WOOTEN: Or if you want me to tear it off --

THE WITNESS: You tear it off.

MR. WOOTEN: Is she worried about tearing up a hundred dollar bill or something?

MS. NEWMAN: No, no, no. Now, does that second document go with it?

MR. WOOTEN: Well --

THE WITNESS: That just --

MR. WOOTEN: The second sheet indicates that it comes from Mendota Heights, and it says Option One foreclosure documents, and it says: The official cover sheet --

THE WITNESS: That's the cover sheet.

MR. WOOTEN: -- and foreclosure documents are forthcoming.

BY MR. WOOTEN:

Q I think it might actually have been in reverse. Maybe it should have been --

A Yeah.

Q -- first and this one should've been second.

A That's correct.

MR. WOOTEN: Let's tear off those two.

And do we have a stapler, Ms. Court Reporter. Clip? If we don't, we'll get one. That'll be fine. Let's just use that.

And we will detach these other documents since they obviously don't belong. We'll just return that to my stack of things.

BY MR. WOOTEN:

Q Y'all ran out at lunchtime, and, of course, this is dated today's date and time and y'all got this stuff pulled down by some employees, and this was with

respect to some of the screens within the MSP fields that we talked about in our notice of deposition?

A That's correct.

Q I think y'all actually were able to determine that you could figure out that you could print those things from an LPS station; is that right?

A Yes, we were able to access them.

(Plaintiffs' Exhibit No. 26 marked for identification.)

Q Okay. And this indicates that it is a corporate advance history screen. Does that indicate -- is that a correct representation of that document?

A Yes at the top, yes.

Which I believe matches up with what you provided me just a little while ago.

Q Sure, I think you're right. I don't think there's anything spooky about those numbers at all.

And then this is a -- called a fee activity ledger or the Fee 1 screen, as the MSP training people refer to it?

(Plaintiffs' Exhibit No. 27 marked for identification.)

A Yes, that's what it looks like. That looks to be tracking fees that are assessed by Option One.

(Plaintiffs' Exhibit No. 28 marked for identification.)

Q Right. We pulled off what is labeled as a P309, which is -- appears to be a life of loan transaction sheet. I'll hand you that, represent to you that what your counsel told me was that that is the P309 form.

A Okay.

Q And you had not seen that prior to printing it off --

A No.

Q -- and bringing it in here, right?

A No, I have not.

Q And that was a document you were able to access through --

A Yes, we were able to access it.

Q -- LPS?

A Associates could access it, they just don't have the ability to change any of the information.

Q Sure.

A And to be honest with you, I don't -- I do not know how to read this.

Q Sure. And I'm not necessarily asking you to, as much as asking you to identify that that is, in fact, what you guys represented to me is the P309

form?

A Yes, it is.

(Plaintiffs' Exhibit No. 29 marked for identification.)

Q Okay. This document, or set of documents labeled 29 appears to be, again, another batch of those images which were pulled off during a lunch break?

A Uh-huh.

Q That appears to be the invoices submitted by the vendors associated with this account; is that right?

A That's correct. That have been submitted through Invoice Management.

Q Okay. Is there any information that was submitted through Invoice Management with respect to remittances to pay those invoices?

A Not that I know of.

Q With respect to this entity that -- LPS, the spinoff that took place about a year ago, you said the name change took place in February of 2009?

A I don't know the exact date. I think it was approximately February.

MR. WOOTEN: If y'all want to take about five minutes and give me a break, I think I may

be where I can stop.

THE VIDEOGRAPHER: Off record at 4:51.

(Brief recess.)

THE VIDEOGRAPHER: Back on record at 5:06, beginning Videotape No. 7.

MR. WOOTEN: We've been at this a long time, Mr. Newland, and appreciate your cooperation in answering my questions today with respect to this. I've looked back at my notes and gone through the other documents I had here that were unmarked, and I think what I'm going to do at this point is shut down my questioning. Your lawyer may have other questions for you.

MR. CASH: Okay. I'm just going to have a few.

CROSS EXAMINATION

BY MR. CASH:

Q This document that we looked at, Document 16, which says editor is The Summit, which is a publication that had been talked about before, do you remember that?

A Yes, I do.

Q Is it possible for that to be an authentic Summit document?

A No, it's not.

Q Why is that?

A We stopped publishing The Summit as of April 2008.

Q And that's dated when?

A November 1st, 2008.

Q Okay. So this would've been after there was no longer a Summit publication?

A That's correct.

Q All right. Let me take you more to kind of what this case is about. We've answered a lot of general questions. I want to focus on some very specific questions with regard to Fidelity National Foreclosure & Bankruptcy Solutions, all right?

A Yes, sir.

Q In the complaint, there's a statement of facts, and I want to talk about those. On Paragraph 9, it says: On November 2nd, 2006, plaintiffs' home burned due to an electrical fire, leaving plaintiffs' home uninhabitable. Upon receiving their notice for a mortgage payment immediately following the fire, plaintiffs advised Option One of the fire and informed Option One the mortgage would be satisfied as soon as the insurance proceeds were paid.

That was notice that went to Option One, not

to Fidelity, correct?

A That's correct.

Q On numerous occasions, plaintiffs contacted Option One requesting a payoff figure, which took several months to obtain.

Plaintiffs never contacted Fidelity for a payoff figure, did they?

A No, they did not.

Q All right. Here it says: On March 23rd, plaintiffs mailed to Option One, two checks, a State Farm check in the amount of 138,482, which plaintiffs had endorsed over to Option One, along with their personal check in the amount of $6,304.04, which represented the figure they were given to pay off the mortgage.

Those checks did not come to Fidelity, did they?

A No, they did not.

Q Of the 6,304.04, Option One asserted 4,000 was a prepayment penalty.

Fidelity doesn't assess or decide what prepayment penalties are, do they?

A No, they do not.

Q That's an Option One decision?

A Yes, it is.

Q Option One initially refused to accept two checks, insisting on a single payment.

Did Fidelity have anything to do with Option One taking one check, two checks, five checks; is that anything that you control?

A No, we have no control of that.

Q Upon learning State Farm would not issue a second check, Option One then deposited the State Farm check, but continued to -- continued to refuse plaintiffs' check on the grounds plaintiffs' check was not a certified check and Option One would not accept personal checks in the sums in excess of $5,000.

Is that a Fidelity policy regarding accepting noncertified checks?

A No, it's not.

Q Did Fidelity have anything to do with whether to accept the payments from the plaintiffs or not accept payments from the plaintiffs?

A No, we did not.

Q Option One refused to apply the payments it received to plaintiffs' mortgage and continued to assess fees and penalties against plaintiffs' mortgage loan.

Did Fidelity assess any fees or any penalties against plaintiffs' mortgage loan?

A No, we did not.

Q Did Fidelity make any decision whether to apply payments or not apply payments to plaintiffs' mortgage loan?

A No, we did not.

MR. WOOTEN: Let me interrupt. I don't mean to interrupt you, I know it's been --

MR. CASH: That's okay.

MR. WOOTEN: -- a long day, but let's just clarify. When you say Fidelity, you're talking about LPS Default Solutions, not any of the other Fidelity companies?

MR. CASH: No, what I'm talking about is -- because I want to be clear and use the same name that's in the complaint. I'm talking what was known as and sued as Fidelity National Foreclosure & Bankruptcy Solutions.

MR. WOOTEN: Which became LPS Default Solutions, which is how we referred to them today, for clarity.

MR. CASH: Right. So for my purposes, I'm going to -- when I refer to Fidelity in my questions, and I want you to understand this, I'm referring to the defendant Fidelity National Foreclosure & Bankruptcy Solutions.

THE WITNESS: It just clarified that up front.

BY MR. CASH:

Q Okay. In April 2007, it said defendants, plural, force placed homeowners' insurance on the plaintiffs' residence, knowing the home had suffered fire damage and was uninhabitable.

Did Fidelity have anything to do with placing forced homeowners' insurance on the plaintiffs' property?

A No, we did not.

Q Is that a decision that would be made in any way by Fidelity?

A No.

Q Paragraph 13: Shortly thereafter, defendants, plural, filed a notice of foreclosure, which was later withdrawn. In August 2007, a second notice of foreclosure was filed with the DeKalb County Probate Court, and notices were placed in the DeKalb Advertiser posting the date the foreclosure would take place. Upon information and belief, the foreclosure sale did take place on September 24th, 2007, but no foreclosure deed has been filed.

Is a decision to foreclose a decision of Fidelity's or is it Option One's decision whether or

not to foreclose?

A It's Option One's decision.

Q Does Fidelity have any input into or power to change the decisions of Option One whether or not they want to foreclose?

A No.

Q Plaintiffs allege that defendants placed upon the subject mortgage charges and fees that were both false and illegal, including placing single premium vendor placed insurance or force placed insurance upon the loan account of the plaintiffs in violation of law. That's Paragraph 14.

Did Fidelity place any type of charge or fee on this loan, including single premium vendor placed insurance?

A No, we did not.

Q Does Fidelity have the authority or ability to place fees and charges on this Option One loan?

A No, we do not.

Q The plaintiffs allege that the foreclosure is improper and illegal for all of the following reasons: A. The defendant accepted moneys from the plaintiff and failed to apply those funds to their account in a timely and appropriate fashion.

Did Fidelity accept any money from the

plaintiff?

A No, we did not.

Q Did Fidelity have any ability to apply those funds to the plaintiffs' account?

A No, we did not.

Q Two: The defendants charged and applied significant fees and expenses to the plaintiffs' account in violation of law and without legal justification.

As to 15 B, does Fidelity have -- does Fidelity place any fees or expenses on the plaintiffs' account in this case?

A No, we did not.

Q C. The defendants failed to post payments to the plaintiffs' account so that defendants could create a default or a false pretense of default.

Does Fidelity have anything to do with posting payments to the plaintiffs' account?

A No, we do not.

Q Does it decide what payments to post or not post?

A No, that's the client's responsibility.

Q D. The defendants failed to engage in loss mitigation as required in its agreement with its investors.

Does Fidelity have any agreement with any investors to engage in loss mitigation?

A No, we do not.

Q Is it Fidelity's role to engage in loss mitigation under any agreement with investors?

A No, it's not.

Q This agreement is called a Pooling and Servicing Agreement, or PSA, and is the document which sets out this defendants' right and responsibilities with respect to managing and curing defaults by a mortgagor.

Are you a party to any pooling or servicing agreement, or PSA?

A No, we're not.

Q And by "you" I mean Fidelity.

A No.

Q The plaintiffs are an intended third-party beneficiary of this agreement because the failure of the defendants to properly manage and cure a default by the mortgagor results in a loss to the trust investors.

Again, are you, Fidelity, a subject to any pooling and services agreement having to do with the Woods' loan?

A No.

Q E. The defendants also, quote, packed, closed quote, its charges against the plaintiffs' account, such as repeatedly paying for drive-by inspections, or no inspections at all, of plaintiffs' home, when they knew the home was destroyed.

Did you add any charges, and by "you" I mean Fidelity, add any charges against the plaintiffs' account --

A No.

Q -- for any such --

A No, we did not.

Q All right. F. The defendants force placed homeowners' insurance on the property and placed such insurance in an amount and cost that is unreasonable, predatory and unconscionable and did so to create a false default with the specific purpose of instituting the foreclosure against the plaintiffs.

Did you, Fidelity, force place any type of homeowners' insurance on the property?

A No, we did not.

Q Did you in any way attempt to create a default?

A No, we did not.

Q Do you have the authority to assess any charges to the loan that would create a default?

A No, we do not.

Q The defendants lacked standing to foreclose at a time in which they allegedly foreclosed under Alabama law and the foreclosure is void ab initio.

Again, did Fidelity actually foreclose on this property or did Option One?

A Option One.

Q Okay. The defendants are engaged in a pattern of conduct with respect to their mortgaging servicing practices whereby the defendants seek to create false or bogus defaults so they can foreclose on property for the purpose of either equity stripping or claiming various insurance coverages that are available for servicers who foreclose on property.

First, is Fidelity a servicer?

A No, we're not.

Q And, in fact, subservicer is mentioned earlier. The services you provide aren't even under -- aren't even subservice, are they?

A No, we're not even subservice, no.

Q Okay. Now, is there any way that you can create false or bogus defaults with the services you provide?

A No, we cannot.

Q And you don't -- if property is foreclosed

upon, you don't get to equity strip it, do you? It doesn't --

A No.

Q You don't make more or less?

A No.

Q And you don't get any insurance coverages as a servicer for foreclosure on a property, do you?

A No, we do not.

Q Paragraph 17: The defendants are engaged in a pattern and practice of conduct which is designed to create or manufacture false defaults for the purpose of churning fees and charges on the client's mortgage account to increase profits to the defendants from fees.

Do you charge any fees to the customer, the borrower, like the Woods, do you charge any fees to their account?

A No, we do not.

Q The defendants' conduct is oppressive, wanton, malicious and intentional, and is designed to profit the defendant at the expense of the mortgagors' home.

Do you have any fees, any activities, which add any cost or fees to the mortgagors' home from which you profit?

A No, we do not.

Q Or to their loan from which you profit?

A No, we do not.

Q Paragraph 20 again talks about practices designed by their very nature to cause plaintiffs' home to be declared in default for the purpose of imposing fees and charges to the account which could then be claimed from the investors or trust holding the mortgage so the defendants could increase their profits.

Does a foreclosure on their home give you any ability to claim any fees from investor or trusts holding the mortgage?

A No.

Q By "you" I mean Fidelity.

A No.

Q Do you charge any fees that would be paid by investors or trusts holding the mortgage?

A No, we do not.

Q This conduct was wanton in that the defendants knew or should've known that by manufacturing a default and imposing bogus or illegal fees against the mortgagors that injury would result to the mortgagors in the form of payment of illegal or unauthorized fees or in the loss of the mortgagors'

home through foreclosure.

Again, imposing bogus or illegal fees, did you impose any fees whatsoever, by "you" I mean Fidelity, the defendant in this case, any fees whatsoever upon the plaintiffs?

A No, we did not.

Q Okay. Under Count II, Negligence, Paragraph 24, it says: The actions of defendants were negligent in that the defendants failed to properly apply and to post payments to the account of plaintiffs when received and in the proper amounts.

Did you receive, you Fidelity, the defendant, receive any fees from plaintiffs?

A No, we did not.

Q Or any payments from plaintiffs?

A No, we did not.

Q Was it your role or did you have the authority to post payments to the account of plaintiffs?

A We have no authority to do that.

Q Do you make any decision when to post them or how much they should be -- in what amount they should be posted?

A No, we do not.

Q The defendants placed payments into suspense

rather than applying the payments to the plaintiffs' account.

Do -- does Fidelity play any role in deciding whether payments are to be placed in suspense or applied to the plaintiffs' account?

A No, we do not.

Q You made no decision in that regard and had no authority to do so?

A Absolutely not.

Q The defendants placed charges onto the account of the plaintiffs that were either wrong, illegal, unauthorized or in a wrong amount and failed or refused to correct the amount.

Did you place, and by you, Fidelity, the defendant in this case, place any charges on the plaintiffs' account?

A No, we did not.

Q Here it says: The plaintiffs and defendants are parties to the contract in the form of a mortgage that exists between them. It's a breach of contract claim.

Do you have any contractual relation whatsoever with Mr. and Mrs. Wood, the plaintiffs in this case?

A No, we do not.

Q Have you ever entered into any mortgage or any other contract with the Woods in this case?

A No, we did not.

Q Count IV, Breach of Contract, the pooling and services agreement. Under Count IV, that basically allege that the pooling and services agreement is a contract and that the defendants in this case were acting as servicer for the subject mortgage which had been securitized.

So let's start with that. Were you acting as a servicer of this loan?

A No.

Q At any time did you enter into a pooling and servicing agreement regarding this loan?

A No, we did not.

Q And if you're not a party to the pooling and servicing agreement, I guess you can't be in breach of it, can you?

A No, you cannot.

Q All right. Unjust enrichment. Again, they allege that the actions of defendants would result in plaintiffs -- in defendants being unjustly enriched, forced to pay charges that were illegal, wrong in character, wrong in amount, unauthorized, or otherwise improper.

Did you receive from the plaintiffs any payment of any fees or charges in this case whatsoever?

A No, we did not.

Q Do you have -- did you have any contact with the plaintiffs in this case whatsoever?

A No, we did not.

Q Here it says: Defendants instituted foreclosure against the plaintiffs.

Did Fidelity foreclose on this loan?

A No, we did not.

Q Who's -- who was the holder of the note that foreclosed?

A Option One.

Q Slander and defamation. Defendants made false, slanderous or defamatory statements about plaintiffs. Defendants have reported negative credit information to credit reporting agencies concerning the plaintiffs with knowledge that said information was incorrect.

Did Fidelity, the defendant in this case, make any reports to any credit agency of any kind regarding any allegations regarding the Woods in any way, shape, or form?

A No, it did not.

MR. CASH: That's it. Pass the witness. Thank you.

REDIRECT EXAMINATION

BY MR. WOOTEN:

Q With respect to the document y'all talked about, Plaintiffs' Exhibit 15, Mr. Newland, this first page talks about desktop Process Management, previously known as NewTrak, and explains that the desktop Process Management system is and is replacing NewTrak. Is that information on that page accurate with respect to the items that it describes?

A That's --

Q Is that correct?

A That's approximately right.

Q The second page, the information contained on the second page on this side, does that relate correct information regarding Fidelity?

A As far as our addresses, yes.

Q Persons involved, that sort of thing? Scott Barnes, president and COO?

A Yes, that's correct.

Q Customer/attorney relations, those people all appear to be Fidelity employees?

A Yes, they're all Fidelity employees, except for Dennis Stemmle's no longer with the company.

Q When did he leave?

A I do not know.

Q With respect to the information on that page, does all that information appear to be correct also?

A Looks to be correct.

Q And again, I hate to be tedious, but take a look at that page. Tell me if there's anything on that page that appears to be incorrect.

A That looks correct.

Q With respect to the page that had the information on it about the APR incentive winners, you indicated when I handed you that document that you no longer pay incentives to the APR winners, right?

A That's correct.

Q When did that process come to a conclusion?

A I do not recall.

Q Has it been since the name change of the company?

A It was prior to the name change of the company.

Q So sometime between today and prior to the name change, you don't remember exactly when, you quit paying incentives?

A That's correct. Well, prior to the name

change.

Q Right. But there was a time when Fidelity paid incentives for their high APR firms?

A There were times that we did pay incentives, yes.

Q The information on the next page, where it talks about -- it says 2007 bankruptcy winners of APR.

A That's the reason why November 1st of 2008 seems strange in reference to the front copy of this document.

Q Sure.

A So --

Q And I'm not saying that that date is absolutely correct, that --

A But that's what you insinuated when you gave it to me --

Q Right.

A -- that date was correct.

Q And I thought that it was.

A Okay.

Q I mean, I -- and apparently, it's not. So I'm not trying to misrepresent anything to you or your lawyers or the Court. I'm just trying to verify that --

A Sure.

Q -- the information in this document is accurate.

A (Nods head.)

Q So this says -- this mentions 2007 bankruptcy winners of APR?

A Uh-huh.

Q Appears to be that that's reflective of the year?

A Yeah, without going back, yes.

Q Right. And then this part talks about your service excellence, honorable mentions?

A Uh-huh.

Q And that's a big long list, says 176 firms. Apparently, again, that's for the year, and that --

A That's correct.

Q -- takes up several pages.

Then it has a spotlight on your referrals department. And is that information all also correct?

A Well, it's -- looks to be.

Q And the information with respect to this referral production, referral issues, referral reports on the next page, does that all also appear to be correct?

A From my -- from what I recall, yes.

Q Sure. And then there's another page there

dealing with your referrals, and looks like folks employed thereby --

A Yes.

Q -- does that seem correct?

And then this talks about your service data on demand, desktop integration services.

A Uh-huh.

Q Does all that appear to be correct?

A Yes.

Q And then this last page, talks about payoff express in default, and it says: FIS MSP, Process Management will provide real-time payoff quotes for loans serviced using the FIS MSP platform.

A Yeah, provide them to our attorneys.

Q Right. And that was the information you're talking about with respect to the prices on the properties that were referred for foreclosure, right?

A Prices --

Q On the loans that were on -- payoffs on the loans that were in foreclosure?

A Yeah, we basically referred the information to the attorneys for the payoffs.

Q Sure.

A Uh-huh.

Q And that -- what that's saying is that

through Process Management coupled with MSP, you can get that information, right?

A That's correct.

Q And then the last couple of pages are dealing with recognition of employees, apparently, some of your document processing level people, right?

A Uh-huh.

Q So it says November 1st, 2008, but looking through the actual documents, it makes reference to the year -- yearly awards for 2007?

A That's correct.

Q So we know that that had to be complete before this information could come out, right?

A Yes.

Q And you're not disputing the accuracy of the information in the document, rather, this date, which appears, obviously, to be wrong.

A Yes.

Q Okay. Is it possible that this could've been a January of 2008 document, since it refers to your 2007 APR winners?

A I don't know.

Q But we know that it came after 2007, right?

A We believe it did, yes.

Q Okay.

A I wouldn't know without seeing the original documents if that was the case.

Q Sure. But with respect to the information contained in there, you don't dispute the accuracy of the document?

A I don't dispute it.

Q With respect -- your lawyer sat there and went through the complaint line by line, and that's fine, but with respect to what your actual obligations are for the services that you've agreed to provide, we don't have that information until we review the contracts that govern your relationship both with Mr. Humphrey's firm and Option One, right?

A It's your determination.

Q I understand that. What I'm saying is, is that you can sit here today and say that you don't have any rights or duties that implicate the mortgage or the contract or a pooling and servicing agreement, but without the actual contracts for what you agreed to do for Option One, we really don't know what your company agreed to do, do we?

A I don't know. It's up to your determination.

Q Sure. So, I mean, I understand that you're saying that your company does not assess fees to the

account, but if the contracts that you've signed with Option One state that you manage the foreclosure process for them, then it would be your company's decision as to how those things were done, right?

A No, not necessarily.

Q Okay. Well, I guess we'll try to work through that when we actually get our hands on those contracts, okay?

A It's up to you.

Q Sure.

MR. WOOTEN: All right. I don't have anything else.

MR. CASH: No, I think --

MR. LAWLER: Nothing.

MR. CASH: I think our next step is to get a summary judgment.

MR. WOOTEN: What we need to do is talk about those contracts also, so we can --

MR. CASH: Well, I mean --

THE REPORTER: Are we on the record?

MR. WOOTEN: No. No.

MR. CASH: No, no, no.

THE VIDEOGRAPHER: Ends the deposition at 5:30.

(Deposition concluded at 5:30 p.m.)

- - -

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Cindy D. McClary, the undersigned authority, certify that BILL NEWLAND personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 25th day of June, 2009.

_____
CINDY D. McCLARY, RPR, CRR
Notary Public - State of Florida
My Commission No. DD617209
My Commission expires: 1/10/2011

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Cindy D. McClary, Registered Professional Reporter, certify that I was authorized to and did stenographically report the videotaped deposition of BILL NEWLAND; and that pages 1 through 280, inclusive, are a true record of my stenographic notes.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 25th day of June, 2009.

_____

CINDY D. McCLARY, RPR, CRR

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