

1 IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
2 JACKSONVILLE DIVISION

-----:
3 SANDY S. TRENT, SARALEY INEZ MEISMER :
ANDREW TURNER, JABINO TURNER, :
4 VERONICA TAYLOR, RICO TAYLOR, :
BRUCE S. TUCKER, MICHELLE TUCKER, :
5 and FRANCES PULLINS, on behalf of :
themselves and all others similarly :
6 situated, :
Plaintiffs, :
7 : Case No.:
v. : 3:06CV-374-
8 : J-32HTS
MORTGAGE ELECTRONIC :
9 REGISTRATION SYSTEMS, INC., :
Defendant. :

10 ----- :
McLean, Virginia
11 Monday, September 25, 2006

12 VIDEO DEPOSITION OF:
13 R.K. ARNOLD,
14 called for oral examination by counsel for the
15 Plaintiffs, pursuant to notice duces tecum, at the
16 offices of Capital Reporting Company,
17 8200 Greensboro Drive, Suite 900, McLean, Virginia,
18 before Donna L. Linton of Capital Reporting, a
19 Registered Merit Reporter, Certified Court Reporter
20 and Notary Public in and for the Commonwealth of
21 Virginia, scheduled to begin at 10:15 a.m., when
22 were present on behalf of the respective parties:

1 A P P E A R A N C E S:
2
3 On behalf of Plaintiffs:
4 BRIAN L. WEAKLAND, ESQUIRE
5 10015 West Broad Street
6 Glen Allen, Virginia 23060
7 (804) 346-2400
8 - and -
9 APRIL CARIE CHARNEY, ESQUIRE
10 Jacksonville Area Legal Aid, Inc.
11 126 West Adams Street

12 Jacksonville, Florida 32202
13 (904) 356-8371
14
15 On behalf of Defendant:
16 ROBERT M. BROCHIN, ESQUIRE
17 Morgan, Lewis & Bockius, LLP
18 200 South Biscayne Boulevard, Suite 5300
19 Miami, Florida 33131
20 (305) 415-3456
21 - and -
22

3

1 APPEARANCES: (continued)
2
3 SHARON McGANN HORSTKAMP, ESQUIRE
4 MERS Vice President and General Counsel
5 1595 Spring Hill Road, Suite 310
6 Vienna, VA 22182
7 (703) 761-1280
8
9 ALSO PRESENT:
10 WILLIAM C. HULTMAN, Senior Vice President MERS
11 Daniel Holmstock, Videographer

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(Exhibits attached by counsel.)

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is Tape Number 1
3 of the videotaped deposition of Mr. R.K. Arnold
4 taken in the matter of Sandy S. Trent, et al.,
5 Plaintiffs, v. Mortgage Electronic Registration
6 Systems, Inc., Defendant, pending in the United
7 States District Court for the Middle District of
8 Florida, Jacksonville Division, Case Number
9 3:06-CV-374-J-32HTS.

10 This deposition is being held at the
11 offices of Capital Reporting Company,
12 8200 Greensboro Drive, McLean, Virginia, on
13 September 25th, 2006, at approximately 10:17 a.m.

14 My name is Daniel Holmstock from the firm
15 of Capital Reporting Company, and I am the
16 certified legal video specialist. The court
17 reporter today is Donna Linton, in association with
18 Capital Reporting Company.

19 For the record, will counsel please
20 introduce themselves and whom they represent?

21 MR. WEAKLAND: My name is Brian Weakland,
22 and I represent the Plaintiffs in this action.

6

1 MS. CHARNEY: April Charney, Jacksonville
2 Legal Aid, on behalf of the Plaintiffs.

3 MR. BROCHIN: My name is Bobby Brochin,
4 Morgan, Lewis & Bockius, and I am counsel for the
5 Defendant.

6 MS. HORSTKAMP: Sharon Horstkamp. I am
7 general counsel with MERS, the Defendant.

8 MR. HULTMAN: William Hultman, and I'm the
9 senior vice president of MERS.

10 THE VIDEOGRAPHER: Okay. Will the court
11 reporter, please, swear or affirm in the witness?

12 WHEREUPON,

13 R.K. ARNOLD,

14 called as a witness, and having been first duly

15 sworn, was examined and testified as follows:

16 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

17 BY MR. WEAKLAND:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. Could you state your name for the record?

21 A. R.K. Arnold.

22 Q. And by whom are you employed?

7

1 A. MERS Corp., Inc.

2 Q. In what capacity?

3 A. I am president and CEO.

4 Q. Are you affiliated at all with a company
5 called Mortgage Electronic Registration Systems,
6 Inc.?

7 A. Yes, sir.

8 Q. And how are you affiliated with that
9 company?

10 A. I'm president and CEO of that company as
11 well.

12 Q. And what is the relationship between
13 MERS -- or rather, can we for the record call
14 Mortgage Electronic Registration Systems MERS?

15 A. Yes.

16 Q. What is the relationship between MERS and
17 MERS Corp.?

18 A. MERS is a wholly owned subsidiary of MERS
19 Corp, Inc.

20 Q. Is MERS a Delaware corporation?

21 A. Yes, sir.

22 Q. Is it a private corporation?

8

1 A. Yes, sir.

2 Q. Is MERS Corp. a public corporation?

3 A. No, sir.

4 Q. Is there anyone at MERS that you would
5 report to, sir?

6 A. Other than the board of directors, no.
7 Q. How many members are there on the board of
8 directors of MERS?
9 A. Five.
10 Q. Are they the same members as in the board
11 of directors of MERS Corp., Inc.?
12 A. No, sir. That company has 15 directors.
13 Q. Are there any common directors in the two
14 companies?
15 A. There are a few common.
16 Q. How long have you been president and CEO
17 of MERS, Inc.?
18 A. Over eight years.
19 Q. When was MERS, Inc., incorporated?
20 A. Which company are you referring to?
21 Q. MERS.
22 A. MERS?

9

1 Q. Yes.
2 A. It was in the -- in the summer of 1998.
3 Q. Were you the initial president and CEO of
4 MERS?
5 A. Yes, sir.
6 Q. When was MERS Corp., Inc., incorporated?
7 A. 1995.
8 Q. What is the business of MERS Corp., Inc.?
9 A. MERS Corp., Inc. operates the MERS system.
10 Q. Can you tell me a little bit generally
11 what that entails?
12 A. It's an electronic system that keeps track
13 of interest in loans that have been registered.
14 Q. MERS Corp. does that; is that correct?
15 A. MERS Corp. does that.
16 Q. All right. What does MERS do, then?
17 A. MERS serves as mortgagee of record in the
18 county land records of the respective loans.
19 Q. Does MERS have separate financial
20 accounts?
21 A. Yes, sir.
22 Q. Are the assets of MERS also the assets of

10

1 MERS Corp., Inc.?
2 A. Only to the extent that it's a wholly
3 owned subsidiary.

4 Q. Are you here today, sir, in the capacity
5 of a representative of MERS?

6 A. Yes, sir.

7 Q. Have you had an opportunity to view the
8 notice of your deposition today?

9 A. Yes, sir.

10 Q. Are you an individual at MERS who has
11 knowledge of the general nature of the business of
12 MERS?

13 A. Yes, sir.

14 Q. Do you have knowledge of MERS's business
15 relationship with mortgage lenders who have
16 provided financing for residential real estate
17 purchases by the named plaintiffs in this case?

18 A. Yes, sir.

19 Q. Are you familiar with MERS's business
20 operations in the state of Florida including, but
21 not limited to, its involvement in mortgage
22 foreclosure actions and suits to collect unpaid

11

1 debts in the state of Florida?

2 A. Yes, sir.

3 Q. Are you the person at MERS who's in the
4 best position to have knowledge of those areas?

5 MR. BROCHIN: Object to the form of that
6 question.

7 THE WITNESS: Considering all the areas
8 combined, I believe so.

9 BY MR. WEAKLAND:

10 Q. Now, have you ever had your deposition
11 taken before?

12 A. Yes, sir.

13 Q. How many times?

14 A. As in my current capacity?

15 Q. Yes.

16 A. Once.

17 Q. When was that?

18 A. That was in a -- I forget the exact time,
19 but it was in another lawsuit.

20 Q. What state was that in?

21 A. New York.

22 Q. Can you briefly tell me what the nature of

12

1 that litigation was?

2 A. It was a dispute with the county clerk.
3 Q. Was MERS a party to that case?
4 A. Yes, sir.
5 Q. Did MERS sue the county clerk in that
6 case?
7 A. Yes, sir.
8 Q. Has that case been completed, to your
9 knowledge?
10 A. The case has run its course and is now
11 before the Court of Appeals in New York, which is
12 the highest court in that state.
13 Q. Did that case involve MERS trying to get
14 an order requiring the clerk to file certain MERS
15 documents?
16 A. Yes, sir.
17 Q. What -- if you can, briefly -- I don't
18 want to spend a whole lot of time on this -- go
19 over your educational background.
20 Did you graduate from college?
21 A. Yes, sir.
22 Q. What college and what was your degree?

13

1 A. I have a bachelor's from the University of
2 Oklahoma in finance, I have an MBA from the
3 University of Dallas and I have a law degree from
4 Oklahoma City University.
5 Q. I'm sorry, Oklahoma University?
6 A. The bachelor's is from the University of
7 Oklahoma.
8 Q. Right. And your law degree is from?
9 A. Oklahoma City University.
10 Q. Are you a practicing attorney?
11 A. I am licensed in Oklahoma and Texas.
12 Q. Do you practice law in Oklahoma and Texas?
13 A. No, I don't.
14 Q. Is your license -- are your licenses still
15 current in those states?
16 A. Yes, sir, both licenses.
17 Q. Do you reside in the Commonwealth of
18 Virginia?
19 A. Yes, sir.
20 Q. Mr. Arnold, before you became president
21 and CEO of MERS, did you work in the banking
22 industry?

1 A. Yes, sir.

2 Q. Can you briefly tell me some of the
3 positions that you've held?

4 A. For the five years immediately prior to
5 coming to MERS, I was vice president and counsel
6 for AT&T Universal Card in Jacksonville, Florida.
7 And prior to that I was counsel for USAA Bank in
8 San Antonio, Texas.

9 Prior to that I practiced law with
10 Holloway Dobson in Oklahoma City. Prior to that I
11 worked for Johnson & Johnson in Sherman, Texas.

12 Q. Is that the corporation Johnson & Johnson?

13 A. Yes, sir.

14 Q. In what capacity?

15 A. At that point in my career, I was an
16 accountant.

17 Q. That was before law school?

18 A. Yes, sir.

19 I've also worked for Liberty National
20 Bank.

21 Q. Okay. In what capacity?

22 A. I was banking officer at that point.

1 Q. That was prior to law school?

2 A. That was actually during law school. So I
3 graduated from college with a bachelor's from OU,
4 went to the Army for four years.

5 After that I went to work for
6 Johnson & Johnson for two years where I got my MBA,
7 and after that I worked for Liberty National Bank
8 for three years while I got my law degree.

9 Then I went to work for Holloway Dobson in
10 the private practice of law in Oklahoma City. Then
11 I went -- was hired by USAA Bank in San Antonio,
12 Texas, then I was hired by AT&T in Jacksonville,
13 Florida, and then MERS hired me.

14 Q. Did you live in Jacksonville, Florida?

15 A. Yes, sir.

16 Q. What time period was that?

17 A. 1991 through 1995.

18 Q. And then you came to Virginia as president
19 and CEO of MERS Corp.?

20 A. Yes, sir, over the Christmas holidays.

21 Oh, check that. I came as senior vice

22 president and general counsel.

16

1 Q. Was the company already incorporated at
2 the time you started?

3 A. It had been incorporated for a few months
4 prior to hiring me.

5 Q. Were you one of the incorporators of MERS
6 Corp.?

7 A. I was not one of the incorporators. I was
8 one of the first officers hired.

9 Q. Is there any individual that you could
10 point to who would be the main incorporator of MERS
11 Corp. or the driving force, or however you would
12 identify it, the individual who was chief person
13 behind MERS Corp.?

14 A. Well, there are many people that deserve
15 credit for how MERS came about.

16 To answer that question, I would say that
17 I was on the original executive team. So it was
18 basically a corporation to the Secretary of State
19 until such time as officers were hired, and I was
20 on one of the original teams that was hired.

21 Q. Did you generate the idea of MERS as a
22 corporation serving as mortgagee of record in

17

1 various cases and county land records?

2 A. My -- my team was the implementing team
3 for that concept. That concept I would say really
4 belongs to no person.

5 It -- it was generated by various
6 committees in the mortgage industry. It was
7 germinated by the Mortgage Bankers' Association.
8 Fannie Mae, Freddie Mac had a lot to -- lot of
9 input into that, and it was a collective idea that
10 moved around in the mortgage industry.

11 And ultimately it was determined that it
12 made a great deal of sense for both the industry
13 and consumers, and that's when the company was
14 created on paper and that board of directors hired
15 the first executive team which I was part of.

16 Q. Thank you. Would it be fair to say that
17 you were present through the development of the
18 MERS project or idea?

19 A. Well, I don't want to overstate anything

20 except to say that I was a key player in the entire
21 process.
22 Q. Prior to MERS Corp. and MERS, had there

18

1 been any entity in the United States that did a
2 similar business?

3 A. No, sir.

4 Q. As we sit here today, is there any
5 competitor of MERS doing the business that MERS is
6 doing?

7 A. Well, we think of our competition as being
8 the status quo, and so we do not have a 100 percent
9 market share, for example. So there are mortgage
10 companies that -- that use our system and there are
11 mortgage companies that don't. And to that extent,
12 we -- we have to compete for their business.

13 Q. I see. When you say 100 percent of the
14 market share, is the market share equal to all of
15 the residential mortgages in the United States?

16 A. For the purposes of my answer, I -- that's
17 what I meant. We don't have 100 percent of those.

18 Q. Can you estimate what your market share
19 is?

20 A. It would just be an estimate because, as
21 you may know, their -- the mortgage industry flows
22 almost like a body of water. Sometimes it's very

19

1 hot and sometimes it's -- it's lower.

2 We are -- I would be very comfortable in
3 saying that we have a 60 percent market share.

4 Q. Is that share any different in Florida,
5 for example?

6 A. Probably not. If it is, it would be in
7 that vicinity.

8 Q. Now, if we -- if we can just look at
9 Florida for a second -- and I'm not going to hold
10 you to that 60 percent number, because I understand
11 that it's -- it's somewhat fluid. It is --

12 A. I appreciate that, because it's a -- it's
13 a diff -- you know, the government revises its
14 numbers all the way -- 18 months after the end of a
15 year. So it could look like it's 60, but in the --
16 in the final analysis, it could be -- it could
17 be 55. It could even be 50. And on an origination

18 basis, that's a different number still.
19 For example, out of all the loans in the
20 United States that are currently active, we
21 probably only have about 25 or maybe 26 percent of
22 those.

20

1 So as far as the number of homeowners in
2 the United States that we have a relationship with
3 vis-a-vis MERS, that's probably only 1 in 4. And
4 the numbers I was giving you is on an origination
5 basis, so we're talking only new ones there.

6 Q. Okay. So I understand this, would it --
7 would it be fair to say that -- I'm just going to
8 say 50 percent, because that was the lowest number
9 you gave me -- 50 percent of the new loans -- and
10 we're talking residential loans, right?

11 A. (Nodding head.)

12 Q. Yes?

13 A. Yes, sir.

14 Q. Okay. 50 percent of the new residential
15 loans that are happening in Florida right now are
16 affiliated with the MERS system?

17 A. Yes, sir. And I think -- the numbers
18 probably would be -- if we could agree on
19 50 percent on an origination basis and 25 percent
20 of the existing loans out there in the United
21 States, I'm very comfortable with that answer.

22 Q. Okay. I just want to stick with Florida

21

1 for a second.

2 Would you say 25 percent of all loans in
3 Florida are involved with MERS?

4 A. Well, Florida is such an important state.
5 It's the -- it's the third or fourth largest state
6 in the United States, and so my educated guess
7 would be that that footprint would be similar to
8 what we have nationwide.

9 Q. I see. Okay. Give me one second.

10 Now, when this case was moved into federal
11 court, there was a document called Notice of
12 Removal and there were some figures in here. Let
13 me -- let me see if I can just ask you to comment
14 on these.

15 Well, first, would you agree that there

16 are more than 100 mortgage foreclosure actions
17 brought in the name of MERS in the state of Florida
18 in the last four years?

19 A. Well, there are none now.

20 Q. Right. But in the last four years?

21 A. I -- I believe that there would be at
22 least a hundred.

22

1 Q. The notice of removal says, if I may,
2 between the period of March 17, 2002 through
3 March 17, 2006, there were a total of 19,646
4 pending and completed foreclosures that were
5 brought in the name of MERS as plaintiff in
6 Florida.

7 Would you agree with that?

8 A. That number is taken directly from our
9 system, so, yes, I would agree with that.

10 Q. And those are just the cases themselves;
11 would that be correct?

12 A. Those are the cases shown on the MERS
13 system as being foreclosed in Florida.

14 Q. Can you estimate at the time this document
15 was filed, which was in April of this year, how
16 many were pending and how many were completed?

17 A. No, sir, I can't estimate that.

18 Q. Would you -- would you agree that the
19 number of completed foreclosures would be more than
20 half of the 19,646?

21 A. Well, I can say that the document you're
22 referring to was a document filed with the court

23

1 for the purpose of removal. And whatever that
2 says, that came directly from searches on the MERS
3 system at the time.

4 Q. The document also says that this number is
5 less than the number of individuals who have been
6 sued by MERS in Florida; would you agree with that?

7 In other words --

8 A. The number that have been completed?

9 Q. No. Let me see if I can rephrase that.

10 The number of mortgage foreclosure cases
11 brought by MERS as plaintiff is less than the
12 number of individuals and entities who have been
13 sued by MERS in mortgage foreclosure complaints.

14 A. Well, that -- that is a matter of course
15 because there are multiple borrowers and they would
16 be sued in the same foreclosure.

17 Q. So you agree -- you would agree that the
18 number of individuals sued by MERS in foreclosure
19 actions in Florida in the last four years would be
20 greater than 19,646?

21 A. And the document says that 19,646 are the
22 number of foreclosures?

24

1 Q. Yes. And my question is the number of
2 individuals who have been sued by MERS would be
3 greater than that number, correct?

4 A. Yes, sir (handing).

5 Q. Thank you. I believe you testified a few
6 minutes ago that there are no cases pending at the
7 moment in Florida where MERS is named as a
8 plaintiff; is that what you said?

9 MR. BROCHIN: Object to the form. I don't
10 think that's what he said, but --

11 BY MR. WEAKLAND:

12 Q. I didn't understand what you said.

13 A. Well, any foreclosure filed in Florida --
14 we have a moratorium in Florida on foreclosures, so
15 all foreclosures were to cease in Florida as of, I
16 believe, June of 2006.

17 So it -- if there were a foreclosure, it
18 would be rogue, and I do not believe that there is
19 one.

20 Q. When you say moratorium, can you define
21 what you mean by that?

22 A. None.

25

1 Q. None. Is the moratorium in place to stop
2 future cases?

3 A. The moratorium is in place to keep future
4 cases from being filed by MERS.

5 Q. What about cases that are pending where
6 MERS is a plaintiff?

7 A. Well, pending cases, we have -- we have
8 dealt with them on a case-by-case basis. Depending
9 on what -- what point in the foreclosure process
10 the case is, we have dealt with that on a
11 case-by-case basis. Many of them have been

12 assigned out.
13 Q. Is there any case that you're aware of as
14 we sit here today where MERS is the sole plaintiff
15 in a foreclosure action in Florida?
16 A. Currently pending?
17 Q. Yes.
18 A. I am not personally aware of that. There
19 may be one.
20 Q. Is that what you referred to as a rogue
21 case?
22 A. Well, that would be rogue only if it's

26

1 been filed after June. And when I say rogue,
2 there's a -- there's a rather harsh penalty
3 associated with that. There's a \$10,000 penalty if
4 that is done, which is way more than enough to curb
5 the activity by our members.
6 Q. \$10,000 penalty imposed by MERS?
7 A. Yes.
8 Q. On a member?
9 A. On a member if he were to file a
10 foreclosure in our name. That was put in place
11 until we get all this sorted out.
12 Q. I see. Now, you just testified that the
13 pending cases are dealt with on a case-by-case
14 basis; is that correct?
15 A. Yes.
16 Q. Can you enunciate any standards that you
17 have communicated to servicers or attorneys on how
18 to handle these cases that are still pending?
19 A. Well, the moratorium, of course, applies
20 to all cases going forward. We had con -- we had
21 conducted foreclosures for eight years with no
22 trouble whatsoever and then encountered some

27

1 challenges that seemed to confuse the issue.
2 So to keep the problem from getting more
3 confusing, if you will, we decided to go ahead and
4 put in the moratorium and appeal those cases. So
5 those cases are on appeal.
6 And as far as the cases that were pending
7 at the time, for example, some of those are
8 undisputed cases where the -- the defendant in the
9 foreclosure action has already voluntarily moved

10 out, and in that circumstance, we wouldn't feel
11 compelled to assign that out of MERS.

12 On the other hand, if a challenge is
13 raised in a foreclosure action, we might very well
14 assign it out. Now, we might also attempt to
15 convince the court that what we're doing is fine
16 because we believe it is fine.

17 So it's on -- it's on a case-by-case
18 basis, just depending on exactly what's going on in
19 that case. Every case is different.

20 Q. I didn't ask you this. You touched on it
21 a little bit, but I -- let me ask a question and
22 see if you can give me a more complete answer.

28

1 What are the reasons MERS has imposed a
2 moratorium, as you are testifying?

3 A. Well, as a general proposition, and that's
4 the reason we're here today, what we do in the
5 realm of foreclosure has been challenged.

6 And rather than cause just compounding
7 issues as far as the numbers that are piling up and
8 how it's been done, we're not interested in
9 misleading anyone. And so when that question was
10 raised, really out of the clear blue -- again, we
11 have been conducting business for at least
12 eight years without a problem at all, and then the
13 question was raised and -- and that became an issue
14 in the lawsuit.

15 And really as a matter of guidance to our
16 members and making sure that we weren't trying to
17 mislead anyone and thinking, frankly, in terms of
18 consumer impact, we just decided that it's an
19 incidental part of our business and let's just put
20 in a moratorium, appeal the cases, and let's --
21 let's find out.

22 And once we win those, which we think that

29

1 we will, then the problem will be answered with
2 clarity and -- and we can -- you know, we can make
3 the decision at that point. Again, like I said,
4 it's an incidental part of our business.

5 Q. Is the moratorium in effect in states
6 other than Florida?

7 A. No, sir.

8 Q. Florida is the only state?
9 A. Yes, sir.
10 Q. Was the decision for a moratorium done by
11 you? Who decided to do a moratorium?
12 A. Based upon advice from my team, the
13 decision was mine.
14 Q. Did the board of directors determine to do
15 a moratorium?
16 A. The board of directors approved a
17 recommended rule that made it -- made it a board
18 rule, a membership rule. It's a condition of
19 membership of MERS.
20 Q. The lawsuit we're discussing today is a
21 class action in federal court in Jacksonville.
22 Did this lawsuit have any effect in MERS's

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1 decision to have a moratorium in Florida?
2 A. No.
3 Q. Was there a particular lawsuit that had
4 that effect?
5 A. Yes, sir. The first one was in Pinellas
6 County.
7 Q. Was that the decision by Judge Logan?
8 A. Yes, sir.
9 Q. Mr. Arnold, let me ask just a couple
10 questions about some of the names that appear on
11 Defendant's initial disclosures to Plaintiffs.
12 I don't know if you have seen this. If I
13 may show it to the witness (handing).
14 Do you recognize the name of Donna Glick?
15 A. I have heard that name.
16 Q. Do you know if she's an attorney with the
17 Law Offices of David Stern?
18 A. I believe so.
19 Q. Does Donna Glick have any professional
20 relationship with MERS?
21 A. I believe that Donna is one of the
22 attorneys that files foreclosure actions in the

31

1 name of MERS.
2 Q. Okay. Let me show you the next name,
3 H. Keith Tommerson. Do you recognize that name?
4 A. I don't recognize the name.
5 Q. Patricia Arango, A-R-A-N-G-O. Do you

6 recognize that name?
7 A. I've never heard that name.
8 Q. How about the Law Offices of Marshall
9 Watson; are you familiar with that --
10 A. I have heard of those law offices.
11 Q. Okay. And what do you know about those
12 law offices?
13 A. I believe that's --
14 MR. BROCHIN: Excuse me. Object to the
15 form of the question.
16 THE WITNESS: I believe that's a law
17 office that prosecutes foreclosures in the name of
18 MERS.
19 BY MR. WEAKLAND:
20 Q. Barry J. Marcus, have you seen that name
21 before?
22 A. No, I haven't.

32

1 Q. William Heller?
2 A. Yes.
3 Q. You know that name?
4 A. Yes, sir.
5 Q. And Mr. Heller is an attorney with Akerman
6 Senterfitt?
7 A. Yes, sir.
8 Q. That's A-K-E-R-M-A-N S-E-N-T-E-R-F-I-T-T.
9 And has the law firm of Akerman Senterfitt
10 filed foreclosure actions on behalf of MERS?
11 A. Yes, sir.
12 Q. Do you know the name Marisa Ajmo, A-J-M-O?
13 A. I can't say that I recall that name.
14 Q. Do you know the law firm of
15 Shapiro & Fishman?
16 A. Yes, sir.
17 Q. Out of Boca Raton?
18 A. Yes, sir.
19 Q. And does that law firm prosecute
20 foreclosure actions in the name of MERS?
21 A. Yes, sir.
22 Q. Those law firms that we just discussed,

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1 David Stern, Marshall Watson, Akerman Senterfitt,
2 Shapiro & Fishman, have they been retained by MERS
3 to prosecute foreclosure actions in the state of

4 Florida?

5 A. Yes.

6 Q. Do those law firms bill MERS for their
7 work?

8 A. No, sir.

9 Q. Who do they bill; do you know?

10 A. They bill the servicer responsible for
11 servicing the loan.

12 Q. Are you aware of whether these law firms
13 were the law firms involved in the foreclosure
14 actions against the named plaintiffs in our case?

15 A. I believe there are some. I don't know
16 whether they're an exact match or not.

17 Q. I neglected to ask you about
18 Henshaw & Culbertson. Is that another law firm
19 that does foreclosure actions on behalf of MERS?

20 A. It might be. That -- that name doesn't
21 hit me as one of our (pause)--

22 Q. The attorneys who have prosecuted

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1 foreclosure actions against the named plaintiffs in
2 our case, do they report to anybody at MERS?

3 A. Well, we have a certifying officer
4 colocated with each member, and so there's a dual
5 reporting responsibility there.

6 Q. Dual -- the attorney reports both to the
7 servicer and to MERS?

8 A. Yes.

9 Q. The certifying officer, is that an
10 employee of MERS?

11 A. That's an officer of MERS.

12 Q. Is there one person who occupies that
13 position?

14 A. There is at least -- there are four
15 executive officers of MERS, and then there are at
16 least one certifying officer colocated with every
17 one of our members.

18 Q. Are you a certifying officer?

19 A. I think I would be more correctly referred
20 to as an executive officer.

21 Q. Do the certifying officers report to you?

22 A. Yes, sir.

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1 Q. Do the attorneys involved in these

2 foreclosure actions in Florida ever report directly
3 to you?

4 A. There have been times when I've had
5 conversations with them, yes. And, in fact, the
6 ones that I express personal knowledge of knowing,
7 in several of those cases that was because I've had
8 conversations with them.

9 Q. Does MERS direct the attorneys in the
10 foreclosure actions in Florida?

11 A. Well, MERS sets guidelines of what they
12 are doing for us, which is foreclosures, nothing
13 else. And our guidelines are to be followed, and
14 that's an incident of membership.

15 Q. Are these guidelines published?

16 A. They are published.

17 Q. Do the attorneys who do the foreclosure
18 actions have access to these published guidelines?

19 A. They are on our website.

20 Q. Is that something that I could access as a
21 member of the general public?

22 A. Yes, sir.

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1 Q. Beyond the website are there any other
2 resources that these attorneys could look to for
3 MERS's policies?

4 A. Well, the member is another resource. The
5 member has copies of everything having to do with
6 their membership in MERS and what the rules and
7 procedures are.

8 Q. Are there opportunities for an attorney
9 who has a question to go online and get their
10 question answered?

11 A. There's an opportunity for that, and they
12 can also contact us directly by E-mail or
13 telephone, or they can post a question on the forum
14 and it would be answered anonymously, if they -- if
15 they would like.

16 And that's just for MERS. They can also
17 get all those -- all that information from the
18 member also.

19 Q. I see. Is there a closed list of
20 attorneys that MERS uses in Florida for foreclosure
21 actions?

22 A. I wouldn't describe it as closed because

1 there's always the possibility that a -- that a new
2 firm would come in and pass muster. There are law
3 firms that we would not use.

4 Q. The law firms that you use, do you feel
5 confident that those are law firms that are skilled
6 in foreclosure law?

7 A. Yes. I believe -- I believe I can say
8 that.

9 Q. Have you reviewed anything prior to your
10 coming to the deposition today?

11 A. Yes, sir.

12 Q. Did you review the files or individual
13 foreclosure actions of the named plaintiffs?

14 A. I don't think that I went through every
15 single one of the foreclosure complaints, no.

16 Q. Is there any foreclosure -- I'm talking
17 about the named plaintiffs now -- any of those
18 foreclosures that were not brought in the name of
19 MERS?

20 A. I believe they were all brought in the
21 name of MERS.

22 Q. And as we sit here today, do you know

1 whether all of those foreclosure actions are still
2 being brought in the name of MERS?

3 A. I think those of the named plaintiffs have
4 been assigned out.

5 Q. Okay. Let's talk about the assignment,
6 and I'm going to talk generally and if -- I might
7 get into the individual plaintiffs, but let me ask
8 you just generally.

9 When you say assigned out, what is being
10 assigned?

11 A. As I said in the beginning, the primary
12 business of MERS is serving as the mortgagee of
13 record in the county land records, and that's
14 pursuant to either a mortgage that has directed
15 that we are the mortgagee or by assignment making
16 us the mortgagee. So in both of those two events,
17 we are the mortgagee of record in the county land
18 records.

19 So when I refer to assigning the loan out,
20 I'm referring to another assignment generated by a
21 certifying officer of MERS assigning that mortgagee

22 interest to the servicer.

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1 Q. Define the mortgagee interest. What is
2 the mortgagee interest?

3 A. It's the legal ownership of the -- the
4 mortgage itself. It is the part of ownership that
5 has to do with being the one shown in the county
6 land records, which is really all that we do.

7 Q. And are those assignments recorded?

8 A. Well, it's not a requirement that the
9 assignment be recorded. The assignment certainly
10 could be recorded. The assignment would be
11 available to be recorded.

12 It might be presented to the judge if the
13 judge wanted to see it, but I think when I say
14 assign out, what I mean is MERS is no longer
15 prosecuting that foreclosure.

16 Q. Who are taking these assignments from
17 MERS?

18 A. The assignment would almost universally be
19 to the servicer. It could be to another party
20 directed by the servicer, but it is usually to the
21 servicer.

22 Q. Let me back up a little bit, because I

40

1 wanted to -- you mentioned the term MERS members.

2 What is -- what is a MERS member?

3 A. Well, in its basic form, it's someone who
4 has -- someone, typically a corporation, some very
5 small, some very large, who has filed an
6 application with us seeking to become a member.
7 And part of that is that they have agreed to go by
8 the membership agreement and the rules governing
9 membership.

10 Q. Does the MERS member receive stock in the
11 company?

12 A. No.

13 Q. What duties does MERS provide to the
14 member?

15 A. We serve as mortgagee of record in the
16 county land records.

17 Q. Why would the member want you to do that?

18 A. Well, we serve as -- that's how we keep
19 track. That's how the MERS system keeps track of

20 the various ownership interest in the month. And
21 that way we receive service of process and so
22 there's no question that we are the correct place

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1 to look when you're determining what the various
2 ownership interests are on a loan.

3 So the MERS system is actually on top of
4 the county recording system. We give additional
5 information having to do with, for example, who the
6 servicer is.

7 Q. What -- what is in the land records of the
8 county? What could I see if I went to the land
9 records of the county?

10 A. You would see one of two things, either a
11 mortgage naming MERS as the mortgagee or an
12 assignment naming MERS as the mortgagee. And that
13 assignment would have been from a mortgage that did
14 not name MERS as mortgagee probably.

15 Q. So an initial mortgage could name a MERS
16 member, and then an assignment from that MERS
17 member to MERS could appear in the records at some
18 later point?

19 A. Yes, sir. And maybe one in 20 come in
20 that way. At least 18 or 19 out of 20 come in with
21 MERS's name on the mortgage.

22 Q. Does the mortgage that is recorded

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1 identify the lender?

2 A. On the mortgage?

3 Q. Yes.

4 A. Probably in most cases. It's not a
5 requirement, but in most cases it would.

6 Q. On those mortgages, is MERS named as a
7 nominee for the lender?

8 A. Yes, although not in every case.

9 Q. What is a nominee?

10 A. Well, the nominee is a -- I guess you
11 could describe it several ways. It's a form of
12 agency. It's a placeholder. It's an attempt to
13 make it clear that we don't have all of the
14 interests, that we're acting in a representative
15 capacity. That's -- that's the meaning of the word
16 "nominee."

17 Q. I didn't do very well in real estate law

18 in law school, so you're going to have to help me
19 through this.
20 When there is a mortgage -- when a buyer
21 buys a house, I always thought that you got a
22 mortgage from the person who loaned you the money.

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1 Is that what happens in these cases, MERS
2 cases?
3 A. And that's common parlance. It's -- and I
4 would have to disagree with that to the extent that
5 what you're getting from the mortgage company is a
6 mortgage loan. It's a lot of times referred to as
7 a mortgage in the journalistic world, but you're
8 not getting a mortgage. You're getting a mortgage
9 loan or a loan for the purpose of buying real
10 property.
11 The borrower is actually giving back a
12 mortgage in exchange for that loan, so it's a
13 secure transaction. So the term getting a mortgage
14 is actually -- everyone knows what that means, and
15 so it's not -- it's not piddled with as far as
16 being incorrect.
17 But a correct answer to your question
18 was that -- would be that the borrower is not
19 getting a mortgage. They're getting a mortgage
20 loan and they're giving a mortgage back.
21 Q. But in this case, they're giving a
22 mortgage back not to the person that's lending them

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1 the money.
2 A. Well, they're giving a mortgage back to
3 the party that's lending them money. For the
4 purpose of securing that loan, they're naming the
5 party that will be in the county land records.
6 And so that's why when I say we're the
7 legal owner of the mortgage, all we do is sit there
8 in the county land records.
9 All the other parties that are involved in
10 a standard loan, mortgage loan, as I've described,
11 still do virtually those same jobs. We just now
12 have the MERS company that has agreed -- because of
13 the membership relationship that we have, we've
14 agreed to be in the county land records to make
15 sure that it protects the lien interest so no other

16 instrument can prime that first lien position.
17 Q. Now, for the Plaintiff Sandy Trent, it
18 appears that the note shows that she borrowed
19 \$112,730 from a company called United Capital
20 Mortgage Corporation.
21 Do you recognize that as a member of MERS?
22 A. Well, we have 3,000 members and a lot of

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1 them have similar names so I'm -- I'm not sure.
2 Q. Okay. That's fair.
3 In this case MERS was named as the
4 mortgagee, correct?
5 A. Is that -- are you showing me the
6 mortgage?
7 Q. I'll show you the -- I'll show you the
8 mortgage.
9 MR. BROCHIN: Maybe we can mark it as an
10 exhibit.
11 THE WITNESS: The note typically does not
12 refer to MERS.
13 BY MR. WEAKLAND:
14 Q. This might not be a good example
15 (handing).
16 A. This does not appear to be a MERS
17 mortgage.
18 Q. Okay.
19 A. Okay, I'm wrong. It is MERS as nominee
20 for the loan. It is a MERS mortgage.
21 Q. All right. So in this case --
22 MR. BROCHIN: Excuse me. Do you have an

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1 extra copy?
2 MR. WEAKLAND: Let's -- actually, let's
3 mark that as Exhibit 1, which is the -- the Sandy
4 Trent mortgage, and we'll make a copy at the break,
5 if you don't mind.
6 MR. BROCHIN: Okay.
7 THE WITNESS: Yes. This is what we call
8 the MOM, MERS as original mortgagee.
9 THE REPORTER: I'm sorry --
10 MR. BROCHIN: Can I just see the --
11 THE REPORTER: -- what did you call it?
12 THE WITNESS: MOM -- M-O-M -- MERS as
13 original mortgagee.

14 MR. BROCHIN: So what you're going to mark
15 is the complaint --
16 MR. WEAKLAND: No.
17 MR. BROCHIN: -- amended complaint?
18 MR. WEAKLAND: I'm going to mark the
19 mortgage.
20 MR. BROCHIN: Just the mortgage?
21 MR. WEAKLAND: Yes.
22 MR. BROCHIN: Okay. Then there's a note

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1 attached. Are you going to mark -- can we just be
2 clear what we're going to mark as an exhibit?
3 MR. WEAKLAND: We're going to mark this --
4 I think it's six pages of a mortgage.
5 MR. BROCHIN: So the recording
6 information, you're going to mark pages 1386
7 through 1391?
8 MR. WEAKLAND: You have it. I don't have
9 an extra one. Sorry.
10 MR. BROCHIN: You don't have it?
11 MR. WEAKLAND: No. I have a --
12 MR. BROCHIN: Oh, I'm sorry.
13 MR. WEAKLAND: -- an abstract of it.
14 MR. BROCHIN: But -- I just want the
15 record to be clear what you're marking as an
16 exhibit.
17 MR. WEAKLAND: Okay.
18 THE WITNESS: And I'm not that used to
19 reading those, so, yes, it is a MOM.
20 MR. WEAKLAND: Well, actually, let's take
21 a break now -- it's an hour -- and we'll get this
22 marked and come back.

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1 MR. BROCHIN: Maybe you can get a copy,
2 too.
3 THE VIDEOGRAPHER: The time is 11:14 a.m.
4 We're going off the record.
5 (Recess.)
6 THE VIDEOGRAPHER: The time is 11:32 a.m.
7 We're back on the record.
8 BY MR. WEAKLAND:
9 Q. Mr. Arnold, what is the MERS registry?
10 A. That refers to the MERS system, which is a
11 registered trademark for the electronic system,

12 that keeps track of mortgage interest, and that's
13 owned and operated by MERS Corp., Inc.

14 Q. I see. Is that something that I could
15 have access to?

16 A. You could have access to find out who the
17 servicer of the loan is.

18 Q. So if I have a -- if I have a mortgage
19 that's registered with MERS as mortgagee, could I
20 find out who the servicer of my loan is?

21 A. Yes.

22 Q. Could I find out who was the current owner

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1 of my mortgage note?

2 A. You would have to find that out through
3 the servicer. So the reason that we -- that we
4 give you the servicer is because the servicer is
5 really the best source for all that information.

6 The servicer knows where the note is; the
7 servicer knows what the status of your payments
8 are; the servicer would be able to tell you, for
9 example, within 48 hours of receiving a payment
10 whether the payment was credited to your account.

11 MERS would be an unnecessary barrier
12 there. So what our system -- what the MERS's
13 system does is give you the servicer and the
14 servicer has all that information.

15 Q. Does MERS have an 800 number that I could
16 call and ask questions about my loan?

17 A. The MERS system has a 1-800 number.

18 Q. Okay. Is that for --

19 A. You said -- you said MERS.

20 Q. I'm sorry.

21 A. Does that -- the MERS system is actually
22 part of MERS Corp., Inc.

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1 Q. Is that something a consumer would call to
2 get information on their mortgage loan?

3 A. Yes, sir.

4 Q. Do you provide consumers with the name of
5 the most recent or the current mortgage note holder
6 or owner?

7 A. No. We provide the servicer, the current
8 servicer, and that can be updated instantaneously.
9 So there's no lag like there would be with the

10 county land records, for example.

11 The -- the servicer that we give you is
12 the actual company that has your file, and that is
13 the proper company to tell you -- to answer
14 whatever kind of question you might have about your
15 loan.

16 Q. Now, the servicer and the mortgage note
17 owner could be one and the same company; is that
18 correct?

19 A. Yes, sir.

20 Q. Is that more often the case than not?

21 A. It's often the case. It's often not the
22 case. The notes themselves are to be liquid, and

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1 they can move rapidly from party to party. They
2 wind up in people's 401(k)s and -- and so
3 it's -- the numbers you hear on the television
4 about how huge the mortgage industry is, the reason
5 for that largely is because those notes can be
6 bought and sold and it drives down the cost of
7 getting a home loan because those notes are so
8 liquid.

9 Q. Does MERS keep track of all of those sales
10 of the mortgage notes?

11 A. The servicer keeps track of that.

12 Q. Not MERS?

13 A. Not -- not MERS. You could use the system
14 to keep track of it. You could utilize this MERS
15 system to track some of that for a member. A
16 member might be able to use the MERS system for
17 that, but really the party to go to to find out
18 where the note is is the servicer.

19 Q. Does the MERS registry list the names of
20 the borrowers?

21 A. It's the MERS system --

22 Q. Yes.

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1 A. -- and yes, sir.

2 Q. Does the MERS system have a database that
3 would show the borrowers in Florida?

4 A. Yes, sir.

5 Q. If at some point in this litigation we
6 would ask MERS to give us a list of all the
7 borrowers in Florida for whom MERS is a mortgagee,

8 is that something that could be accomplished?

9 A. It's not something that we would do.

10 Q. Could it be done?

11 A. It could probably be done.

12 Q. All right. Over the break, we had --

13 pardon me.

14 (Discussion off the record.)

15 BY MR. WEAKLAND:

16 Q. When you say it probably could be done,
17 what would be the difficulties with doing that, if
18 there are any?

19 A. Well, it would take programming. It would
20 take man hours. It would be unnecessary. You've
21 got borrowers in Florida. Why -- why would we
22 disclose the name of -- of borrowers to anyone?

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1 Those people aren't involved in foreclosures.

2 Foreclosures are -- make up less than
3 1 percent of all the loans that we have on the MERS
4 system. Less than 1 percent of those loans go into
5 foreclosure, and this lawsuit's about foreclosures.

6 Q. I think I asked you at one point the
7 services that MERS provides to members.

8 Is foreclosure litigation one of those
9 services that MERS provides to its lenders -- or to
10 its members?

11 A. I would say that that's incidental to our
12 primary service which is that we agree to serve in
13 the county land records as the mortgagee of record,
14 and we receive service of process and all of that
15 because of that.

16 So our primary purpose is -- dwarfs any
17 sort of foreclosure that we have. So I think the
18 proper way to describe our involvement with
19 foreclosure is that it's an incident of the fact
20 that we are the mortgagee of record.

21 Again, it's less than 1 percent of all the
22 loans that we have.

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1 Q. That number that you've just provided, is
2 that something that you've done a study of that you
3 know that's the percentage?

4 A. The less than 1 percent?

5 Q. Yes.

6 A. Yes, sir. It's actually .7 percent, so
7 it's actually significantly less than 1 percent.
8 Q. So of all the mortgages wherein MERS is a
9 mortgagee, less than 1 percent of those end up in a
10 foreclosure filed by MERS?
11 A. Go to foreclosures.
12 Q. Go to foreclosure.
13 A. That result in foreclosure.
14 Q. And that's not -- you're talking
15 nationally now?
16 A. Well, I would give the same answer.
17 That's a national figure, but Florida is so
18 significant as a -- as a percentage of the national
19 number that I think you'd find that it's comparable
20 in Florida as well.
21 Q. In the last four years, are there
22 foreclosures in Florida wherein MERS was the

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1 mortgagee that were not instituted by MERS?
2 A. Where MERS is the mortgagee?
3 Q. Yes.
4 A. Well, the foreclosures are instituted
5 jointly by MERS and the member. It's -- it's done
6 in the name of MERS, because we're the mortgagee of
7 record and the mortgage says that we have the right
8 to foreclose.
9 But the member is heavily involved in
10 that. For example, we would not know that a loan
11 is in default and should go to foreclosure without
12 the involvement of the member.
13 Q. A member could be a servicer?
14 A. Yes, sir.
15 Q. All right. In your experience in Florida,
16 have the servicers on their own filed foreclosures
17 in cases where MERS was the mortgagee?
18 A. Well, we have a certifying officer
19 colocated with them, so I think the answer is -- is
20 no. It's -- it proceeds with the involvement of
21 MERS.
22 Q. Thank you.

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1 A. Uh-huh.
2 Q. Before the break, Mr. Arnold, we were
3 discussing the mortgage loan of Sandy Trent.

4 Do you remember that conversation?

5 A. Yes, sir. That is a MERS mortgage.

6 Q. Let me -- let me show you --

7 MR. WEAKLAND: In fact, I'm going to have
8 the court reporter mark that as Exhibit 1.

9 (Plaintiff's Exhibit Number 1 was marked
10 for identification.)

11 BY MR. WEAKLAND:

12 Q. Now I think this has become a -- a
13 document with more than one -- more than one
14 document enclosed.

15 This is, I think -- for the record, the
16 first two pages appear to be the Amended Complaint
17 of Foreclosed Mortgage, the third page is a --
18 titled Notice Required by the Fair Debt Collection
19 Practices Act, and the fourth page starts the
20 mortgage.

21 So I'm going to ask if you could turn to
22 the fourth page of that Exhibit 1.

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1 I believe you testified -- correct me if
2 I'm wrong -- that this is a M-O-M or MERS original
3 mortgagee?

4 A. Yes, sir.

5 Q. Is that -- is that what the term is?

6 A. (Nodding head.)

7 Q. And you can see that by the language in
8 the mortgage; is that correct?

9 A. Yes, sir.

10 Q. And you testified that in some cases MERS
11 would not be named on the mortgage but would become
12 a mortgagee through a later assignment?

13 A. Exactly. And that might be one or two out
14 of 20.

15 Q. Does the mortgage in this case in
16 Exhibit 1 indicate that MERS is entitled to collect
17 money on the underlying debt?

18 MR. BROCHIN: Objection to the extent the
19 document speaks for itself.

20 THE WITNESS: Yes. I don't -- that is not
21 the case. MERS has the mortgage interest only.
22 The beneficial owner or the servicer are the ones

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1 that collect the debt.

2 BY MR. WEAKLAND:

3 Q. Sir, if you could go to the last two pages
4 of this document, and if you could identify what
5 this is.

6 MR. BROCHIN: Could you identify what
7 exactly by page number or something you're
8 referencing?

9 MR. WEAKLAND: Well, it would be -- in the
10 upper right-hand part of the page, it would be
11 page 18 in the fax line, 018 and 019.

12 BY MR. WEAKLAND:

13 Q. And what is this, sir?

14 A. I believe it's a note, promissory note.

15 Q. Would this be the mortgage note?

16 A. Yes, sir, exactly.

17 Q. And I know the document speaks for itself,
18 but can you see anything on the document that would
19 indicate that MERS is a party to this note?

20 A. We typically are not on notes, so it's not
21 on this note, and I don't think you'll find it on
22 other notes either.

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1 Q. And to complete Exhibit 1, if you could go
2 back to the first page, which has a 007 on the
3 top -- do you see that?

4 A. Yes.

5 Q. And what is this document?

6 A. Its title is Amended Complaint to
7 Foreclose Mortgage.

8 Q. And is MERS a plaintiff in this
9 foreclosure action?

10 A. Yes, we are.

11 Q. And on the second page, there is a
12 signature line for Donna Glick. Do you see that?

13 A. Yes, sir.

14 Q. And who does she represent in this action?

15 A. She would represent both MERS and
16 CitiMortgage.

17 Q. And the third page, which is -- has a 009
18 at the top, what is that?

19 A. The title is notice required by the Fair
20 Debt Collection Practices Act.

21 Q. Okay. In the mortgage transactions in
22 Florida, does the mortgagor or the borrower pay any

1 money to MERS?

2 A. The borrower does not pay any money to
3 MERS.

4 Q. Does MERS receive any money from the
5 borrower?

6 A. No.

7 Q. Do you know whether the HUD-1 statement on
8 these transactions would show a payment to MERS as
9 a closing cost for the buyer?

10 A. There would not be a payment to MERS from
11 the borrower regardless of whether it was on the
12 HUD-1 or not. That money -- it could be on the
13 HUD-1, and if it were on the HUD-1, that represents
14 a payment to the lender.

15 Q. So the borrower would pay the lender a sum
16 of money and the lender would pay the money to
17 MERS?

18 A. If it were on the HUD-1.

19 Q. Is there a standard charge for -- a
20 standard charge that MERS imposes for each
21 mortgage?

22 A. Yes.

1 Q. What is that charge?

2 A. \$3.95 per loan.

3 Q. Is there a cost basis that MERS has
4 developed to reach that figure of \$3.95? Is there
5 some rational basis for \$3.95 as compared to \$5 or
6 \$10?

7 A. A large part of it is the fact that we are
8 an industry utility created for the purpose of
9 lowering the cost of borrowing money for consumers.
10 And so our prices are kept as low as possible yet
11 high enough to ensure the profitability of MERS and
12 the care and maintenance of the MERS system.

13 Q. Is there a per unit cost to MERS for each
14 mortgage? Do you understand what I mean?

15 A. I think I understand what you're asking,
16 and it varies widely.

17 For example, every situation where there's
18 a challenge to a foreclosure, the -- the cost to
19 MERS far outstrip \$3.95. But as I said, that's
20 well less than 1 percent of all of the loans we
21 charge that for. So 99 plus percent of the loans

22 just pass and people make their payments according

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1 to the schedule, and in those cases, the cost is
2 dramatically lower.

3 Q. There is some cost to MERS, though --

4 A. Yes, sir.

5 Q. -- for each mortgage?

6 A. Yes, sir.

7 Q. And the cost would include what types of
8 things? What costs does MERS have?

9 A. MERS?

10 Q. Yes.

11 A. Well --

12 Q. Other than the foreclosure costs and so
13 forth.

14 A. Well, that's -- that's a major part of the
15 costs.

16 If you're talking about MERS itself, MERS
17 is the company that serves in the county land
18 records and goes forward with the foreclosure to
19 the extent that that becomes required.

20 The costs of that litigation are borne by
21 the member, and those costs are balled up in the
22 profitability of the member.

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1 Q. So if I -- if what I understand is
2 correct, you have -- less than 1 percent of all
3 mortgages end up in foreclosure?

4 A. Of our mortgages?

5 Q. Of your mortgages.

6 A. (Nodding head.)

7 Q. And the cost of litigation are not paid by
8 MERS?

9 A. I didn't say that. The cost of the
10 foreclosure would not be paid by MERS. It would be
11 paid by the respective member.

12 Cost of litigation -- generally, for
13 example, this litigation we're talking about,
14 involved in, right here, MERS is the defendant, and
15 it adds up to a shocking amount of money.

16 Q. The \$3.95, though, is less than what is
17 paid to record a mortgage; isn't that correct?

18 A. Well, when you asked me earlier about
19 whether MERS has competition, that's -- that's a --

20 you know, we have to keep our fees as low as
21 possible. And so, yes, that's a very low fee, and
22 it -- while it's not related to recording costs, it

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1 gives you an example of how low our fees are
2 because, yes, to record a document with the county
3 land records costs many, many, many times that
4 much.

5 Q. Does the borrower pay that fee of
6 recording to the lender as part of the settlement
7 costs?

8 A. Yes.

9 Q. So the lender bears the recording fee of
10 the mortgage; is that correct?

11 A. Yes.

12 Q. The members also pay a membership fee --

13 A. Yes, sir.

14 Q. -- correct?

15 Is there a flat rate for the members to
16 pay?

17 A. Unlike the registration fee, which is
18 \$3.95 per loan, we do have tiers for membership.
19 So if you are a -- say, a mom and shop [sic]
20 mortgage company that's just very small, 50 loans a
21 year, you're going to pay a low membership fee.
22 And if you're a large mortgage company, probably of

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1 the names you've commonly heard, Countrywide, Wells
2 Fargo, Chase, they're going to pay a lot more in
3 the form of membership.

4 Q. Is that based on the number of loans?

5 A. It's actually based, for example, upon the
6 number of certifying officers that they would have.

7 So a very -- a very small mortgage company
8 might have one certifying officer, and that might
9 be the CEO. So the cost for that mortgage company,
10 for us to maintain our relationship with them is
11 dramatically lower than, say, a Countrywide, which
12 may have a hundred or more certifying officers.
13 And we keep track of all our certifying officers so
14 we know who they are.

15 Q. From the consumer standpoint, does the
16 consumer pay money to MERS at any time during the
17 mortgage loan process?

18 A. Never.
19 MR. BROCHIN: Just so we're clear, when
20 you -- you mean [sic] consumer, you mean the
21 borrower?
22 MR. WEAKLAND: The borrower, correct.

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1 THE WITNESS: Never.
2 BY MR. WEAKLAND:
3 Q. All right. But the borrower's lender pays
4 money to MERS not only on the mortgage but on the
5 membership fee?
6 A. If they are a member.
7 Q. They don't have to be a member?
8 A. There's no requirement to be a member of
9 MERS.
10 Q. Can the lender who's not a member of MERS
11 enjoy any of the MERS services?
12 A. No, they cannot. They have to be a member
13 and go by the membership agreement and the rules of
14 membership, and part of that is that they would
15 have to pay the appropriate fees.
16 Q. Does the membership agreement with MERS
17 provide that MERS has to be involved in any
18 foreclosure action?
19 A. No. In fact, it's -- it's an option and
20 they're free to proceed to assign it out of MERS
21 back to themselves, if you will, and proceed.
22 And, in fact, that's -- that is what --

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1 since the moratorium, that's what's happening in a
2 large way in Florida.
3 It's an incident of the fact that we're
4 the mortgagee of record. If they choose not to
5 take advantage of it, that's no different than that
6 99 percent of the loans that don't go into default.
7 Q. Initially when the borrower assigns
8 mortgage notes, I think that you testified that
9 MERS is not a party to the mortgage note; is that
10 correct?
11 A. The note.
12 Q. At some time during the course of loan
13 servicing, does MERS become a party to the mortgage
14 note?
15 A. We become a holder of the note.

16 Q. At what time does that happen?
17 A. It -- at the time of foreclosure.
18 Q. The judgment in foreclosure or the -- the
19 complaint in foreclosure?
20 A. Well, the note is typically held in a
21 secure vault. And one of the things, I guess,
22 that's not commonly known is that that's usually a

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1 national bank or some other large facility that has
2 stainless steel vaults and it's -- it's like money.
3 And so that note, the real question about
4 the holder of note is who has authority to access
5 it and get it out of that facility. And -- and so,
6 you know, as we -- as we get into the foreclosure
7 process, MERS gains that authority to get that
8 note.

9 MR. WEAKLAND: Let's take a break.
10 THE VIDEOGRAPHER: The time is 11:59 a.m.
11 This completes Tape Number 1 of the videotaped
12 deposition of Mr. R.K. Arnold.

13 (Discussion off the record.)

14 THE VIDEOGRAPHER: The time is 12:00 p.m.,
15 and this is Tape Number 2 of the videotaped
16 deposition of Mr. R.K. Arnold.

17 BY MR. WEAKLAND:

18 Q. Mr. Arnold, backing up just a bit, we
19 talked about the HUD-1 statement and what the
20 borrower pays in closing costs.

21 If that 3.95 were listed as a payment, as
22 a closing cost, would the borrower pay that at the

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1 time of closing?

2 MR. BROCHIN: Objection to the form of the
3 question. I think that's calling for a lot of
4 speculation there.

5 THE WITNESS: Yeah, I don't know what's
6 paid and what not -- is not paid. If it's on the
7 HUD-1, it's disclosed as a potential fee.

8 BY MR. WEAKLAND:

9 Q. Can you give me an idea of the range of
10 the membership fees from the smallest mom and pop
11 operation to SunTrust, for example?

12 A. The smallest would be what we call a lite
13 membership, which would be \$264 annually.

14 Q. Did you say light?
15 A. That's a lite member. That's a --
16 Q. L-I-G-H-T?
17 A. L-I-T-E, like a lite beer.
18 Q. Okay.
19 A. And that just expresses the fact that
20 they're -- they're less of a drain on our -- on our
21 resources by the way that you think that number
22 equates to the savings they would receive for one

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1 loan a month, and it goes up to \$7,500 a year for
2 the largest mortgage companies.
3 Q. Would the average be somewhere right in
4 the middle of those two numbers?
5 A. Well, there are very few large companies,
6 so I don't know what the average or the --
7 Q. I guess the average would be right in the
8 middle. What would be the median?
9 A. Well, the median -- both numbers -- we
10 have a lot of lite members. Over a thousand
11 probably.
12 Q. Out of how many total members?
13 A. I would say 3,000. The very largest
14 mortgage companies begin to drop off pretty
15 quickly. So once you get past the top 10, it
16 starts to go down pretty significantly. By the
17 time you're through with the top 30, you start
18 coming out on a -- on a different list in the
19 newspaper -- in the newspaper.
20 Q. Okay. Are there servicers -- servicers who
21 are not lenders as members of MERS?
22 A. There are servicers who are not members of

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1 MERS.
2 Q. Let me rephrase that.
3 Are there servicers who are members of
4 MERS who are not lenders?
5 A. Yes.
6 Q. Are those servicers included in the 3,000
7 total that you just discussed?
8 A. Yes.
9 Q. About how many of those would be servicers
10 but not lenders?
11 A. In fact, I don't even know that we would

12 be able to determine that because they could
13 become -- they could have become a lender or
14 stopped lending.
15 Q. During the course of a mortgage loan where
16 the borrower is paying it off, that mortgage loan
17 could be transferred many times during that period,
18 correct?
19 A. The mortgage loan?
20 Q. Yes.
21 A. The note?
22 Q. Yes.

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1 A. It could be bought and sold. It's a
2 negotiable instrument.
3 Q. Are all of those transfers recorded in the
4 MERS system?
5 A. No.
6 Q. Why not?
7 A. Well, it's a negotiable instrument, and
8 there's no requirement to update the MERS system.
9 If the -- if the member wanted to do that, then
10 they can utilize the MERS system for that. But the
11 negotiable instrument is designed under the UCC to
12 move freely. So it could be pledged, it can be
13 transferred, it can move.
14 Q. If I had access into the MERS registry, I
15 think you testified that I would be able to see the
16 current servicer?
17 A. Yes.
18 Q. If that servicer changed over time, would
19 I be able to see the progression of servicers over
20 the course of my loan?
21 A. Well, the MERS system would show the
22 current servicer, and under the Truth in Lending

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1 Act, the previous servicer would have to have sent
2 a notification to the borrower to change where they
3 send the payments and the new servicer would have
4 to send a letter to the borrower saying now send
5 the payments to us. It's called a hello/good-bye
6 letter.
7 And so the borrower receives notice that
8 the servicer has transferred and the MERS flag
9 would point to the new servicer. You get the

10 current servicer from the MERS system.
11 Q. Did MERS lend any money to any of the
12 named plaintiffs in this case?
13 A. No.
14 Q. Did MERS provide financing for any
15 residential real estate purchases in Florida?
16 A. No.
17 Q. Is MERS in the business of lending money?
18 A. No.
19 Q. Did MERS buy any mortgage loan paper of
20 the Plaintiffs for fair value?
21 A. No.
22 Q. Did MERS buy any residential mortgage loan

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1 paper in Florida for fair value?
2 A. Would you repeat that?
3 Q. Did MERS buy any residential mortgage loan
4 paper in Florida for fair value?
5 A. No, sir.
6 Q. Is MERS in the business of buying
7 residential mortgage loan paper for fair -- for
8 fair value?
9 A. No, sir.
10 Q. Has MERS ever obtained a license to act as
11 a mortgage lender in Florida?
12 A. No, sir.
13 Q. Has MERS purchased the right from any of
14 the Plaintiffs' lenders to foreclose on their
15 mortgage loans?
16 A. No, sir.
17 Q. Does MERS provide money consideration when
18 mortgages are assigned to MERS?
19 MR. BROCHIN: Excuse me?
20 BY MR. WEAKLAND:
21 Q. Do you understand?
22 MR. BROCHIN: I just wanted to see what

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1 the question said.
2 Could you rephrase that?
3 MR. WEAKLAND: What? The last question?
4 MR. BROCHIN: Yes, please --
5 MR. WEAKLAND: Okay.
6 MR. BROCHIN: -- or reask it. Or could
7 the court reporter read back --

8 MR. WEAKLAND: Yes, I lost it.
9 THE REPORTER: Question: Does MERS
10 provide money consideration when mortgages are
11 assigned to MERS?

12 THE WITNESS: Provide?

13 BY MR. WEAKLAND:

14 Q. Could you -- do you -- okay. Let me --
15 let me see if I can rephrase that.

16 At some point I think you testified that
17 mortgages are assigned to MERS. Maybe not on
18 en lim (phonetic spelling) cases, but at some later
19 point?

20 A. Yes, sir.

21 Q. On those assignments, does MERS pay money
22 to the original mortgagee?

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1 A. No.

2 Q. Is there any consideration that is paid by
3 MERS to the original mortgagee for those
4 assignments?

5 A. No.

6 Q. Let me ask about mortgage notes. Does
7 MERS ever take an assignment of a mortgage note?

8 A. No, sir. We become the holder of the --
9 of the mortgage note.

10 Q. At what point do you become the holder of
11 the mortgage note?

12 A. As the loan begins to move toward
13 foreclosure, it becomes more and more evident that
14 we might have to present the note in foreclosure,
15 and there's an instruction to MERS that they are to
16 foreclose and that makes us the holder.

17 Q. When you say as the loan begins to move
18 forward to foreclosure, what events move the loan
19 forward to foreclosure?

20 A. Well, there has to be a default. The
21 member has to determine that the loan is in
22 default. A -- an update has to be sent to the MERS

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1 system that foreclosure is to begin, and that is
2 the instruction that initiates the foreclosure.

3 The certifying officer, as I've said, is
4 colocated with the member, and so that certifying
5 officer is involved in the foreclosure. And so the

6 access to the note as the foreclosure begins, it
7 becomes more and more evident, for example, if they
8 pay immediately, the note will remain in that
9 vault.

10 As the foreclosure moves forward to the
11 filing phase, it has to become more and more
12 evident that MERS might very well have to produce
13 that note. And under the membership agreement and
14 the rules, we are to become the holder.

15 Whether or not the note is actually pulled
16 out of the vault and presented in the court depends
17 on what the judge requires. It depends on the
18 state. So at the time of, for example, a
19 foreclosure judgment, the note would be presented
20 to the judge.

21 Prior to that it's held in as secure a
22 location as possible because it is paramount to

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1 money and it's not a smart idea to have it in
2 briefcases and accordion files and stuff like that.

3 So to the extent we can keep it in
4 custody, that's what we do, and who has the
5 authority to receive possession of that note shifts
6 to MERS as we move into the foreclosures.

7 Q. These notes are held in different banks
8 around the country?

9 A. Yes, sir, and they're typically -- any
10 mortgage company of size is going to have a
11 relationship with a facility like that.

12 Q. When the note is pulled out of whatever
13 depository it's in, is the -- is there an
14 assignment of the note, is there some quick changes
15 done to the note or is it presented to the court
16 exactly as it was in the vault?

17 A. It is. It is typically presented to the
18 court just exactly as it appears in the vault. It
19 could be endorsed over to one party or another.
20 It's a negotiable instrument, so it can -- it can
21 move freely.

22 In many cases it is just taken out of the

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1 vault and would ultimately be shown to the judge,
2 but -- and canceled by the court. But it's
3 between -- there's a lot of space between lip and

4 cup there that you don't want to lose the note.
5 Lost notes are an issue in the mortgage industry
6 because there's so many billions of it.

7 So every precaution is taken to try to
8 keep from losing track of that note, and the best
9 way is to keep it in a secured facility.

10 Q. Is there -- you outlined a procedure as to
11 when the loan begins to move forward to
12 foreclosure, and I was -- I wanted to ask you is
13 there any procedures in place by MERS that include
14 maybe negotiating a settlement with the consumer
15 prior to foreclosure?

16 A. We never had any involvement in that at
17 all.

18 Q. Why not?

19 A. We don't have that expertise. We don't
20 have that information. We -- we know nothing about
21 how to work that out. That would depend upon the
22 servicer's relationship with the -- with the

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1 beneficial owner of the loan.

2 Our job is to serve as mortgagee of record
3 in the county land records, and part of that is we
4 would need to be a party to the foreclosure.

5 Q. Does the servicer have the discretion to
6 work out a deal with the borrower before involving
7 MERS in a foreclosure action?

8 A. I would say that the servicer always has
9 that authority. It is almost always contained by
10 some sort of requirement from the beneficial owner.
11 So I would say, yes, the servicer has certain
12 latitude, but they -- they are not the beneficial
13 owner in those cases, and so they would -- they
14 would have to be operating within instructions.

15 For example, forgiveness of a late
16 payment. A servicer might be able to do that,
17 whereas they might not be able to accept less than
18 the face value of the note.

19 Q. When a loan -- a mortgage loan goes into
20 default, is there any risk to MERS?

21 MR. BROCHIN: Object to the form of the
22 question.

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1 THE WITNESS: I would say no. There's an

2 obligation that we would play a role in the
3 foreclosure.

4 BY MR. WEAKLAND:

5 Q. But as far as losing money, if the
6 borrower didn't pay, would MERS lose money?

7 A. No, sir.

8 Q. Of the named plaintiffs in this case, did
9 MERS ever acquire ownership of their mortgage
10 notes?

11 A. Well, we are the legal owner of the
12 mortgage, and we ultimately during the foreclosure
13 become the owner and the holder of the note for the
14 purposes of foreclosure.

15 Q. How does MERS become owner of the mortgage
16 note?

17 A. Well, we gain possession of it for the
18 purpose of foreclosure, and we've done it that way
19 for eight years. It's very recently that
20 somebody's challenged that, and that's -- that's
21 what we're resolving here.

22 But we become -- the mortgage says that we

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1 have the authority to foreclose. And so we're
2 taking that authority and doing what needs to be
3 done to do our job to foreclose. Part of that is
4 becoming the holder of the note so that ultimately
5 we can present it to the judge if need be.

6 Q. Other than the physical possession of the
7 note, is there any document that indicates that
8 MERS has ownership interest in the mortgage note?

9 A. There is a rule that requires that we be
10 the holder of the note.

11 Q. Is there an assignment of the note to
12 MERS?

13 A. Notes are not assigned.

14 Q. Is there a sale of the note to MERS?

15 A. They don't have to be sold. We gain
16 possession because of our duty as the legal owner
17 of the mortgage. We have to have possession of the
18 note so that we can move forward with that.

19 It is in a representative capacity because
20 there's a beneficial interest owner and we're
21 operating on their behalf.

22 Q. Does MERS have a portfolio of residential

1 loans payable to MERS?

2 A. No, sir.

3 Q. Does MERS have financial statements?

4 A. Yes, sir.

5 Q. Do the statements in the past four years
6 indicate that MERS holds a portfolio of residential
7 mortgage notes?

8 A. No, sir.

9 Q. Has MERS prevailed in any of the
10 foreclosure actions in the state of Florida in the
11 last two years?

12 A. No, sir.

13 Q. Has MERS obtained money judgments in
14 foreclosure actions in Florida in the last
15 two years?

16 A. No, sir. We don't -- we don't collect
17 money.

18 MR. WEAKLAND: Let's take a break.

19 THE VIDEOGRAPHER: The time is 12:19 p.m.
20 We're going off the record.

21 (Luncheon recess.)

22 (Plaintiff's Exhibit Number 2 was marked

1 for identification.)

2 THE VIDEOGRAPHER: The time is 1:15 p.m.,
3 and we're back on the record.

4 MR. WEAKLAND: Thank you.

5 BY MR. WEAKLAND: (Resumed)

6 Q. Mr. Arnold, let me just go back and touch
7 on a couple things that I didn't ask you.

8 We talked about the MERS members, and I
9 think we've identified lenders and servicers. Are
10 there any other categories that are MERS members?

11 A. There could also be a category of members
12 who just want to be a part of MERS, say, for
13 example, a journalist or -- or a -- some expert
14 in mortgage lending or a county recorder, a
15 county -- we have county recorders or county
16 government officials that are MERS members, and if
17 they're with the government, they would not pay the
18 membership fee.

19 Q. Any other category of members?

20 A. I guess with the possible exception, which
21 kind of falls into the category I've just mentioned

22 of, say, companies that do work for mortgage

85

1 companies.

2 Q. Title companies, for example?

3 A. Title companies could be members.

4 Q. Are there title insurance companies?

5 A. Could -- could be. Membership is
6 typically open.

7 Q. How does MERS assess the fee for those
8 members who don't have transactions on the MERS
9 system?

10 A. As I said, in the case of a governmental
11 entity, we would -- we wouldn't charge it. For
12 example, FHA pays no -- no membership fee.

13 On some of the other categories, it would
14 probably be \$1,000 annually.

15 Q. Does MERS make more money from the \$3.95
16 fee or the membership fee?

17 MR. BROCHIN: Object to the form of the
18 question.

19 THE WITNESS: Much more with the 3.95 fee.

20 BY MR. WEAKLAND:

21 Q. When MERS prevails in foreclosure
22 litigation in Florida, does MERS obtain a judgment?

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1 A. When we foreclose in Florida?

2 Q. Yes.

3 A. Yes. Ultimately we obtain a judgment.
4 And I think you asked me earlier whether we had --
5 whether there was anything at risk in that -- in
6 that foreclosure. And my answer was really in line
7 with your other questions, which was financial
8 risk. We are heavily at risk as far as, you know,
9 having to follow the rules of court and enforcing
10 our rules that our members must go by.

11 We're also -- we also have jeopardy as far
12 as if we were to fail in the foreclosure realm,
13 that would be a part of our value proposition that
14 would not be there. And I mentioned earlier that
15 that's -- that's incidental to our mainline of
16 business, which is serving as mortgagee of record,
17 but it's a piece of that value that the members are
18 entitled to and that is to be able to use us for
19 foreclosures.

20 So, yeah, we have a good bit at risk when
21 it comes to the foreclosure itself. It has to be
22 done right and we can encounter counterclaims,

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1 which is, in essence, what has happened here in
2 this case.

3 So we -- once we go to court and we get
4 involved in the foreclosure, we have a lot at risk,
5 but, of course, it would have to do with whether or
6 not we're doing what we're supposed to do in terms
7 of that foreclosure and our obligation to foreclose
8 that we've undertaken through our membership.

9 Q. Is that risk similar to the risk that an
10 attorney would have if he didn't do a good job in
11 the litigation?

12 MR. BROCHIN: Object to the form.

13 THE WITNESS: It's -- you know, I would --
14 I would think that that example is a fair one in a
15 lot of respects. The key difference, though, is an
16 attorney is doing work for a third party.

17 In our situation, we are the first party.
18 We are actually the owner and holder of the
19 mortgage and note proceeding forward with the
20 litigation, and so ours is not a third party kind
21 of professional risk that a lawyer would have.
22 Ours is a first party risk as a litigant.

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1 BY MR. WEAKLAND:

2 Q. The risk that you described is a risk of
3 loss of future business?

4 A. That, I suppose, would depend upon how
5 significant our members consider the incident of
6 foreclosure to be in the overall MERS proposition.

7 As I said several times earlier, less than
8 1 percent of loans registered on the MERS system go
9 to foreclosure. And -- and so I think if -- if
10 a -- if you lost the ability to foreclose, I think,
11 you know, you have -- you have a loss in our value
12 proposition.

13 Q. Let's take the Trent foreclosure, which is
14 in front of you, as an example.

15 If, for some reason, MERS lost that case,
16 tell me what item of value -- or each item of value
17 that MERS has lost.

18 MR. BROCHIN: Object to the form of the
19 question.

20 THE WITNESS: Well, it would be to our
21 value proposition as opposed to -- you know, as
22 I -- as I answered earlier, you know, we -- unless

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1 it came to the form of a counterclaim that we lost,
2 we wouldn't financially lose money if this didn't
3 go forward in our name, but it would draw away from
4 our value proposition which is that of serving as
5 mortgagee of record. And our members understand
6 that to be something that's standard, and part of
7 that is that the foreclosure will go through the
8 MERS process, if need be.

9 So we would lose that part of our value
10 offering.

11 BY MR. WEAKLAND:

12 Q. What interest is MERS advancing on its own
13 behalf in the Trent case?

14 A. We have contracted -- we have two key
15 pieces of this. One is that the borrower has made
16 us the mortgagee of record through the mortgage and
17 that mortgage says that we have the right to
18 foreclose.

19 The obligation to foreclose comes with our
20 relationship with our member who is the servicer or
21 lender or whoever it may be in the case of that
22 loan. So we're really joined at the hip sort of

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1 from the beginning, from -- particularly on the
2 MOMs, MERS as original mortgagee. The borrower has
3 made us the mortgagee of record. That's clearly
4 stated in the mortgage, and they clearly give us
5 the authority to conduct the foreclosure.

6 As far as whether the foreclosure will be
7 conducted in our name, that's a determination that
8 our member would make, whether they wanted to avail
9 themselves of that indicia of us serving as legal
10 owner and mortgagee of record.

11 And as I mentioned earlier, in Florida,
12 we've instituted a moratorium on that aspect until
13 we get all this resolved because we really are
14 looking to better the process, and we just
15 determined that to the extent that we have

16 litigation that brings this into question, let's
17 put in a moratorium and let's litigate and just do
18 it through the courts like -- like is really the
19 only way we're going to get a resolution to this.
20 Q. Is your -- when I mean your, I mean
21 MERS -- is MERS's bottom line affected whether it
22 wins or loses that case, Exhibit 1?

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1 MR. BROCHIN: Objection. I object to the
2 form of the question.
3 THE WITNESS: I would say absolutely we
4 are affected.
5 BY MR. WEAKLAND:
6 Q. How is it affected?
7 A. It impacts the obligation that we've
8 undertaken through a membership with the member.
9 Q. The member stops paying you?
10 A. No. The member paid us. We were paid for
11 it.
12 Q. Okay. Again, the question is what loss
13 would you suffer financially if you lost that case,
14 MERS?
15 A. Well, now you say financially. We -- for
16 one thing, to litigate the case costs us money
17 as -- as we sit here today.
18 As far as, you know, financial loss, we
19 get into a lawsuit and there are counterclaims.
20 That impacts us definitely from a cost standpoint.
21 Q. Do you have a fee agreement with the
22 lawyer who is representing MERS in the Trent case?

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1 A. No, sir. That is -- that a -- well, a fee
2 agreement we pay -- the member is actually the one
3 that pays, but it's sort of a three-way agreement,
4 and that's the same way as an insurance defense is
5 handled maybe in a car wreck. There is a fee
6 that's being paid to the attorney.
7 Q. But not by MERS?
8 A. Not by MERS.
9 Q. Did MERS ask for attorneys' fees in the
10 Trent case and awarded attorney fees?
11 MR. BROCHIN: Objection to the extent the
12 complaint, I'm sure, speaks for itself.
13 THE WITNESS: Yeah. And that -- that is

14 probably a standard part of any lawsuit. Whether
15 they were awarded or not is something that I guess
16 would remain to be seen ultimately. But there may
17 be a prayer for that, but in no event would that
18 money go to MERS. That would go to the attorney.

19 BY MR. WEAKLAND:

20 Q. When MERS obtains a judgment in its
21 foreclosure actions, does MERS reflect those
22 judgments in its financial records, in its

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1 financial reports?

2 A. No.

3 Q. Can you estimate the total dollar amount
4 of judgments obtained by MERS in Florida
5 foreclosure actions since 2002?

6 MR. BROCHIN: Hold on a minute.

7 Will you re-read the question so he could
8 hear it again, please?

9 THE REPORTER: Question: Can you estimate
10 the total dollar amount of judgments obtained by
11 MERS in Florida foreclosure actions since 2002?

12 THE WITNESS: We haven't received -- we
13 don't get money judgments. The only thing that
14 would come close to that is the actual foreclosure
15 itself, which is an in rem action for title to the
16 property.

17 I don't want to mislead you.

18 BY MR. WEAKLAND:

19 Q. That's okay.

20 A. I can easily say zero.

21 Q. When a judgment is entered by the court in
22 these foreclosure actions, who is the judgment

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1 creditor?

2 A. There's no judgment creditor as far as
3 MERS is concerned. The property is foreclosed, the
4 court does whatever it does in the appropriate
5 jurisdiction to move title to, in most cases, the
6 servicer.

7 So MERS is really only -- only involved on
8 an in rem basis. It's a foreclosure action not for
9 money. It's a foreclosure action for property.

10 We're not involved in an action for money
11 at all. Now I'm not saying that that isn't also

12 contained in there, but that's on behalf of another
13 partner.

14 Q. What other party are you talking about?

15 MERS is the only party on the --

16 A. Well, I think this might be a good
17 example, Trent. It's a foreclosure in the name of
18 MERS and CitiMortgage. And it might be the case
19 that CitiMortgage has some claim that it wants to
20 then try to go for money damage claim, but that's
21 based upon the fact that the debt might exceed the
22 value of the property.

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1 MERS is not involved in anything like
2 that. Our -- we have no knowledge of what the
3 outstanding debt is. We know that it's in default
4 and our job is to foreclose it. And the extent of
5 our involvement and the extent of our expertise is
6 that we would do what's necessary within the rules
7 of the court to plead that and have that mortgage
8 interest moved by the court to probably the member.

9 Q. I understand. Didn't MERS ask for
10 deficiency judgment in the Trent case, and hasn't
11 it asked for deficiency judgments in other cases of
12 the Plaintiffs?

13 A. To the extent that there is something like
14 that, that would be the creditor or the -- the
15 lender or the servicer going forward and -- and
16 trying to get some money judgment.

17 Once the foreclosure is granted, the
18 extent of the MERS involvement is over with.

19 Q. Does MERS in its foreclosure actions in
20 the state of Florida ask for deficiency judgments?

21 MR. BROCHIN: Are you talking about any
22 foreclosure action?

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1 MR. WEAKLAND: Yes.

2 MR. BROCHIN: Object to the form of the
3 question.

4 BY MR. WEAKLAND:

5 Q. Well, any of the foreclosure actions of
6 the named plaintiffs.

7 MR. BROCHIN: Object to the form of the
8 question. It calls for a legal conclusion in which
9 I'm sure the operative pleadings would cover.

10 BY MR. WEAKLAND:

11 Q. You can answer.

12 A. Well, I've expressed what we do, which is
13 we're involved in an in rem action. There may be
14 other parties that are seeking collection of the
15 debt or full payment over and above what the
16 property is ultimately sold for, but the very
17 nature of a deficiency judgment by definition would
18 require the determination of the deficiency. And
19 typically we have to go back in and prove how much
20 the property was sold for, and at that point MERS
21 would not even be a -- have any involvement in that
22 whatsoever.

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1 So our involvement is for the purpose of
2 getting the property -- getting possession of the
3 property lawfully by the court put over to one of
4 the parties involved, probably the servicer. Then
5 the property is sold often at auction, and then
6 there typically has to be a reassessment to the
7 court of what that deficiency is. MERS would have
8 no involvement in that whatsoever.

9 Q. At some point does MERS have right of
10 possession of the property after a foreclosure
11 action?

12 MR. BROCHIN: Object to the form of the
13 question. It calls for legal conclusions.

14 BY MR. WEAKLAND:

15 Q. In Florida?

16 MR. BROCHIN: Same objection.

17 THE WITNESS: And the reason I'm being
18 careful here is because I don't want -- I want to
19 give you a fair answer. I hope -- I hope -- I've
20 tried to do that all day.

21 The intention is never that the property
22 would come to MERS. We're not the beneficial

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1 owner. We've never claimed to be the beneficial
2 owner, and, in fact, our membership agreement and
3 rules make it clear we're not the beneficial owner.
4 So for us to become the actual owner in the form of
5 a sheriff's deed is something that we don't want to
6 do.

7 Now, if that happens, it might happen as

8 an accommodation in a particular situation, so I'm
9 not saying that it would never happen. I'm saying
10 that that would be a special situation that a
11 certifying officer would not be able to authorize.
12 That's not routine for us to become the owner of
13 the property.

14 What we do is foreclose the property.
15 The -- the necessary actions in foreclosure are
16 conducted by us with involvement from the other
17 members, and we take that forward and do what has
18 to be done within the rules of the court to obtain
19 a foreclosure judgment. That by definition is an
20 in rem action, so it's only for the property.

21 At that point, it would go to the
22 sheriff's sale. And, yeah, there have been

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1 situations where the sheriff mistakenly put MERS on
2 the deed, but we try to quickly correct that and
3 get the property over to the true beneficial owner.

4 BY MR. WEAKLAND:

5 Q. Mr. Arnold, what I'm trying to find out is
6 what does the judge do? If the judge has a
7 complaint with a prayer of relief with MERS as the
8 only plaintiff, does the judge at the time of
9 entering the judgment substitute a third party as
10 the judgment creditor?

11 MR. BROCHIN: Excuse me. Object to the
12 question on twofold. One, you're asking for a
13 legal conclusion, and you're also asking him to
14 give an answer generically when the -- it may
15 differ from case to case depending on the
16 circumstances of the file.

17 MR. WEAKLAND: Well, I object to the --

18 THE WITNESS: We're not a -- we're not a
19 judgment creditor. We -- we don't -- we don't have
20 a judgment for the right to collect money from the
21 borrower. The only judgment that we strive for is
22 an in rem judgment that declares that the property

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1 has been foreclosed and that it can now be sold at
2 a sheriff's sale. And we don't even want to be
3 involved in the sheriff's sale except we are to the
4 extent it's necessary to comply with what the
5 sheriff's requirements are.

6 So when we go to the sheriff's sale, the
7 sheriff announces that MERS has an in rem judgment
8 on the property. We don't have a problem with
9 that. What we would prefer not to have happen is
10 when the property is sold for somehow, then, the
11 deed to come to us. The deed ought to go to the
12 party that paid value for that.

13 A judgment creditor, as I understand it,
14 is someone who has a judgment saying that they can
15 collect money from someone, and we just do not do
16 that.

17 BY MR. WEAKLAND:

18 Q. All right. You just testified that MERS
19 has an in rem judgment.

20 A. Yes.

21 Q. Does MERS report in its financial
22 statements the value of that in rem judgment?

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1 A. No.

2 MR. BROCHIN: Object -- objection. Asked
3 and answered.

4 BY MR. WEAKLAND:

5 Q. Is MERS involved in Florida in pursuing
6 deficiency judgments in foreclosure actions?

7 MR. BROCHIN: Objection. Asked and
8 answered.

9 THE WITNESS: No.

10 BY MR. WEAKLAND:

11 Q. Is MERS involved in placing lis pendens on
12 the record in foreclosure actions in Florida?

13 A. Well, a lis pendens is just to make it
14 clear that -- that there's certain things that are
15 happening in litigation that the world is being put
16 on notice. So to the extent that it involves the
17 legal ownership of the mortgage interest, we would
18 certainly play whatever role there would be
19 appropriate.

20 So if there is a foreclosure pending in
21 the name of MERS and the standard in the
22 jurisdiction is that that would somehow be

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1 expressed in the county land records, certainly.

2 Q. The question was has MERS filed lis
3 pendens in foreclosure actions in Florida? Is your

4 answer yes?
5 MR. BROCHIN: Objection. Asked and
6 answered.
7 BY MR. WEAKLAND:
8 Q. Well, is your answer yes?
9 MR. BROCHIN: Objection. Asked and
10 answered.
11 THE WITNESS: We may have.
12 BY MR. WEAKLAND:
13 Q. As you sit here today, do you know whether
14 you have or not?
15 MR. BROCHIN: Are you talking about any
16 case?
17 MR. WEAKLAND: MERS.
18 MR. BROCHIN: Are you talking about in any
19 foreclosure action?
20 MR. WEAKLAND: In Florida.
21 MR. BROCHIN: Are you saying --
22 THE WITNESS: I'm saying that we

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1 would be --
2 MR. BROCHIN: Excuse me. Are you talking
3 about anyone in the state of Florida, or are you
4 just talking about these six cases?
5 MR. WEAKLAND: I'm talking about MERS
6 filing lis pendens in foreclosure actions in
7 Florida in the last four years.
8 MR. BROCHIN: In any case?
9 MR. WEAKLAND: In any case.
10 MR. BROCHIN: Objection to the form of the
11 question.
12 THE WITNESS: It may have happened. I
13 have no personal knowledge of a particular case
14 where it has happened. My answer is to the effect
15 that it's something that is incident to the
16 foreclosure itself.
17 BY MR. WEAKLAND:
18 Q. Does MERS have any procedures in place to
19 advise servicers or attorneys in Florida when to
20 file lis pendens actions?
21 A. Those guidelines are that the foreclosure
22 should be conducted in the standard way that

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1 foreclosures are conducted in the jurisdiction, and

2 we rely on the judgment of our outside counsel to
3 follow local practice.
4 Q. Mr. Arnold, I'm going to show you what's
5 been marked as composite Exhibit Number 2, which
6 I'll state for the record is actually three
7 documents all pertaining to the plaintiffs the
8 Taylors in this case.

9 MR. BROCHIN: Let me ask you a question
10 for the record. You handed me a copy of Exhibit
11 Number 2. In my copy the third page is blank,
12 which I believe had some important language on it.

13 MR. WEAKLAND: May I see the original?
14 Actually, Mr. Brochin, that's -- what you
15 see on page 3 is -- actually should be on the
16 bottom of page 2. It just broke like that.

17 MR. BROCHIN: Okay. But it's just -- I
18 don't know if this is incomplete intentionally or
19 not, but the mortgage says page 1, page 2. The
20 third page is blank which says page 2 of 12 pages,
21 and then the fourth page is page 12 of 12 pages.
22 So it seems to be a rather incomplete copy of the

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1 mortgage itself.

2 MR. WEAKLAND: Let me take a break to see
3 if we have the complete document.

4 THE VIDEOGRAPHER: Off the record?

5 MR. WEAKLAND: Yes.

6 THE VIDEOGRAPHER: The time is 1:42 p.m.
7 We're going off the record.

8 (Recess.)

9 THE VIDEOGRAPHER: The time is 1:50 p.m.
10 We're back on the record.

11 BY MR. WEAKLAND:

12 Q. Okay. We've scoured our files here and we
13 don't find the complete mortgage for the Taylors.
14 I'm only interested, really, in the first page of
15 that mortgage, so if you could look at the first
16 page of Exhibit 2 --

17 MR. BROCHIN: Okay. So we're -- we're
18 agreeing --

19 MR. WEAKLAND: Yes.

20 MR. BROCHIN: -- or making it clear for
21 the record that the exhibit is not a complete set
22 of the mortgage?

1 MR. WEAKLAND: It's not the complete
2 mortgage, that is correct.

3 BY MR. WEAKLAND:

4 Q. Now, if you could look at that first page.
5 Is this an M-O-M MERS mortgage?

6 A. Yes, it is.

7 Q. All right. So that means that the initial
8 mortgage signed by, in this case, the Taylors, MERS
9 was named as the mortgagee?

10 A. And we have the authority to foreclose
11 under this mortgage.

12 Q. Okay. So the answer was yes?

13 A. Yes.

14 Q. You're the original mortgagee?

15 A. Yes.

16 Q. Okay. The fifth page of this exhibit is
17 entitled note. Do you see that, sir?

18 A. Yes.

19 Q. And do you know whether at any time in the
20 litigation with the Taylors MERS obtained any
21 rights to the mortgage note?

22 A. Well, we obtained the right as the holder

1 of the note for purposes of foreclosure.

2 Q. And you became holder of the note because
3 you physically took possession of the note?

4 A. Well, that note, as I said earlier,
5 probably remains in a custodial facility as long as
6 possible.

7 Possession of the note really has to do
8 with who has the authority to go and get it, and
9 during the foreclosure process, that possession
10 needs to shift to MERS so that we can ultimately,
11 at the request of the judge, present the note to
12 the defendant.

13 And also, as far as items involved in that
14 judgment of lawsuit, we can and are involved in
15 other things going along with that lawsuit, one of
16 which is potentially the filing of the lis pendens,
17 another of which might be a judgment for attorney
18 fees which the mortgage also provides for. Another
19 might be some sort of deficiency judgment that is
20 pursued but will not wind up being paid to MERS.

21 So we are along for the ride on the

22 foreclosure fully, and so whatever needs to be pled

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1 in the foreclosure, as long as they're following
2 our rules and as long as the debt is actually in
3 default, whatever rights come from the mortgage and
4 the mortgage note, we can and might very well be
5 involved in any of that as far as being a named
6 party.

7 And I am caught between giving you a fair
8 answer and -- and possibly leaving something out
9 here, so I'm trying to go overboard to make sure
10 that, you know, once we go down the foreclosure
11 path, we're in it all the way. We have
12 responsibility for how it's conducted. We have
13 encountered counterclaims, one of -- many of which
14 have involved themselves in Florida.

15 That's why we put in the moratorium,
16 because we want a clear answer from the courts of
17 what we are actually doing. The last thing we want
18 is to make the process of mortgage lending more
19 complex. We want to make it easier for people to
20 borrow money and less expensive for them to buy
21 homes. And so to the extent that it becomes
22 confusing, we certainly don't want to be part of

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1 that and that's why the moratorium in Florida.

2 Q. Okay.

3 A. As far as the conduct of the foreclosure
4 itself, whatever associated -- is associated with
5 that foreclosure, we're involved in. And the part
6 I meant a few minutes ago is that none of that
7 money will come to MERS. That's -- that's the only
8 difference.

9 So we might be involved as a party, but,
10 for example, a deficiency for legal fees, that
11 money would ultimately rightfully be paid to the
12 member who is the one who footed the bill for the
13 legal fees all along.

14 Q. You mentioned that at some point MERS has
15 the authority to go get the note.

16 What triggers that authority? Is there
17 some document or some agreement?

18 A. It's a rule.

19 Q. By whom?

20 A. We must -- by MERS. For us to do the
21 foreclosure, we must be a holder.
22 Now, yes, that's in a representative

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1 capacity because we're never the beneficial owner.
2 But as far as being a holder for the purpose of
3 presenting the note to the judge at the time that
4 the foreclosure judgment is issued, we are the
5 responsible party for that.

6 Q. Do you get into possession of the note by
7 virtue of physically holding the note?

8 A. We ultimately would but maybe only as it's
9 presented to the judge because as I said, it's
10 going to be held in a secure facility as long as it
11 possibly can be. That's why you get copies
12 presented in court. That's why you'll get -- you
13 could get a certified copy presented in court.
14 That's why you, for example, might have an
15 affidavit saying that the note is in such a place.
16 And this is all done as need be with the judge in
17 control.

18 So once the judge says I want the note
19 right here in front of me so I can cancel it so
20 that this debtor and defendant can then go on about
21 their business and declare this foreclosure
22 complete, we are the responsible party.

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1 And so whether or not that note is in a
2 secure facility -- for example, we would not be
3 able to go and get that note in the middle of the
4 night. So, yes, there are characteristics of a
5 secure facility that we would need to deal with.

6 As far as having a right to go in and get
7 that note, yes, we are the holder for purposes of
8 foreclosure. We would not have any other rights,
9 so we don't have the right to be paid the note. We
10 have the right to foreclose the note. We hold the
11 note for the purpose of foreclosure.

12 MR. WEAKLAND: Madam court reporter, could
13 you read the last question back and the beginning
14 of his answer?

15 THE REPORTER: Question: Do you get into
16 possession of the note by virtue of physically
17 holding the note?

18 Answer: We ultimately would, but maybe
19 only as it's presented to the judge because as I
20 said, it's going to be held in a secure facility.
21 MR. WEAKLAND: Let me interrupt. Go back,
22 please, two questions ago.

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1 THE REPORTER: Question: You mentioned
2 that at some point, MERS has the authority to go
3 get the note. What triggers that authority? Is
4 there some document or some agreement?

5 Answer: It's a rule.

6 Question: By whom?

7 Answer: We must -- by MERS. For us to do
8 a foreclosure, we must be a holder.

9 Now, yes, that's in a representative
10 capacity --

11 MR. WEAKLAND: Thank you. That's --
12 that's fine.

13 BY MR. WEAKLAND:

14 Q. Let me go back to that, when I asked you
15 by what authority does MERS obtain the note and you
16 said by a rule.

17 What rule are you talking about?

18 A. The rule of membership in MERS is that to
19 proceed with a foreclosure, we have to be the
20 holder.

21 Q. Is that a MERS rule?

22 A. That is a MERS rule.

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1 Q. I'm sorry, I thought it was a judge rule.

2 Okay. So before MERS -- well, strike
3 that.

4 Does MERS always have the authority to go
5 get the note?

6 A. Only in a foreclosure.

7 Q. Only after default?

8 A. Only after default. We're -- we're the
9 holder for the purpose of foreclosing and wouldn't
10 have any need to hold the note otherwise.

11 Q. Does the lender have any right -- rights
12 with regard to that note at the time MERS obtains
13 it?

14 MR. BROCHIN: Object to the form of the
15 question. It calls for legal conclusions relating

16 to a lender.
17 THE WITNESS: The -- someone else holds
18 all the other rights, so the -- the note has a
19 number of things associated with it. One is the
20 fact that it's got a mortgage attached to it and
21 that mortgage has all kinds of things, for example,
22 the right to foreclose. The mortgage says that the

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1 mortgagee has the right to foreclose.
2 As far as collecting payments, MERS
3 doesn't have the right to collect payments. The
4 note says that those payments need to be sent
5 somewhere else. And sometimes that's not even to
6 the note holder. That would be to the servicer.

7 BY MR. WEAKLAND:

8 Q. This rule that you talked about, is that
9 rule contained in the membership agreement between
10 MERS and the servicer?

11 A. It's part of the membership agreement,
12 it's part of our recommended foreclosure procedures
13 and it has also been reincorporated into the most
14 recent rule changes that we've made. And that, of
15 course, is on top of the fact that in foreclosure,
16 we don't do foreclosures anymore until we get all
17 of this resolved.

18 Q. You also testified that none of the money
19 comes to MERS in the foreclosure.

20 A. Yes, sir.

21 Q. Is that because of the agreement that you
22 have with the servicers?

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1 A. Well, it's a combination of several
2 things. For one thing, we don't have a right to
3 collect the money. And that's probably the
4 predominant thing. It's a -- it's a note to a
5 lender. It's not a note to MERS. And as I said
6 earlier, we haven't purchased any right to collect
7 moneys from the note.

8 Q. Did you purchase the right to obtain a
9 judgment?

10 A. No, we -- we did not do that. We received
11 a fee in return for our agreement to serve as
12 mortgagee of record in the county land records, an
13 incident to which would be our involvement in a

14 foreclosure.
15 Q. Is MERS providing legal services for its
16 members' --
17 A. No.
18 Q. -- foreclosure?
19 A. No. We're the mortgagee of record. We
20 almost have to be part of the foreclosure because
21 we're mortgagee of record.
22 Q. Are any of the judgments obtained in

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1 foreclosure recorded in court records under the
2 name of MERS --
3 MR. BROCHIN: Object to the form of the
4 question.
5 BY MR. WEAKLAND:
6 Q. -- in Florida?
7 MR. BROCHIN: Object to the form of the
8 question.
9 THE WITNESS: The -- the lawsuit that is
10 filed to foreclose on the piece of property,
11 whatever is involved in that as a characteristic
12 of -- of the way foreclosures are done according to
13 the court rules in that jurisdiction -- and I
14 realize in this case we're talking about Florida,
15 but this applies nationwide -- there's always local
16 counsel involved in those pleadings.
17 There's never been a situation where an
18 employee of MERS has filed a foreclosure action.
19 It's always done with a local attorney licensed to
20 practice law. The pleadings plead us in the way
21 necessary to express the interests that I've
22 described to you today, which is that we are the

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1 legal owner of the mortgage, we're the mortgagee of
2 record. The mortgage says that we have a right to
3 foreclose, and our rules say and our agreement with
4 the member says that we are to become the holder at
5 the time necessary during foreclosure, which in any
6 event would be at the final thing if the judge
7 requires it.
8 Now, whether the loan is in default,
9 that's a determination by the member. They
10 instruct us that the loan is in default, and that
11 invokes their contractual relationship with us so

12 that now we must go forward and foreclose that
13 mortgage. We hire local counsel to do that. The
14 member is heavily involved there.

15 And as I said, it's much -- it's much like
16 insurance defense. The attorney going in there has
17 a routine relationship with both the member and
18 MERS, and the foreclosure is filed in the name of
19 MERS.

20 BY MR. WEAKLAND:

21 Q. What prevents MERS from just taking that
22 judgment in foreclosure and running with it --

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1 MR. BROCHIN: Object to the --

2 BY MR. WEAKLAND:

3 Q. -- not -- not getting the lender involved
4 at all in the process at that point forward?

5 MR. BROCHIN: Object to the form of the
6 question.

7 THE WITNESS: Well, that would violate our
8 rules because we have to have a determination that
9 there's a -- been a default from the member. It
10 would also -- it would also violate our contract
11 because our rights are only that of a mortgagee of
12 record until such time as the member invokes the
13 requirement that we would take that to the next
14 step and foreclose and, you know, whatever other
15 wrongfulness is associated with people that don't
16 do their duty and just take off.

17 We're very -- we're very focused on -- on
18 minimizing this to the extent that we can. So
19 anytime a member chooses not to foreclose in the
20 name of MERS, we're -- we're fine with it.

21 BY MR. WEAKLAND:

22 Q. Would you agree that it's a contractual

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1 obligation that MERS has with its member that would
2 prevent MERS from taking to itself the foreclosure
3 judgments?

4 A. Well, I think it's that, plus in equity,
5 we're not -- we're not entitled to that, so I would
6 think that anything that was done as far as that
7 goes would be -- could be overturned.

8 Q. Is that contractual obligation, does that
9 appear in any document signed by the borrower?

10 A. That we can't steal money?
11 Q. That indicates that where MERS is suing in
12 foreclosure that there's this contractual
13 obligation that MERS has with the lender to dispose
14 of assets to the lender.
15 A. Well, the mortgage itself says that MERS
16 has the right to foreclose according to the terms
17 of the mortgage which is according to the terms of
18 the note.
19 So the note must be in default. So the
20 borrower is agreeing that upon default, whatever
21 the terms are in the mortgage and the note can be
22 enforced against them in court. And that's the sum

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1 total of -- that's what we do.
2 Q. The attorneys who file foreclosure actions
3 in Florida -- who have filed foreclosure actions in
4 Florida on behalf of MERS, how are they chosen?
5 A. They are -- first of all, they have to be
6 licensed and, second, they have to want to be in
7 this sort of business. And foreclosures is a niche
8 of the -- of the law, the practice of law, which
9 you probably know. So unless you are the kind of
10 lawyer that handles foreclosures routinely, you
11 wouldn't be asked to do this.
12 The member oftentimes has a preference on
13 which law firm is used, and MERS would try very
14 hard to use that law firm unless we had determined
15 that we don't have confidence in that lawyer.
16 Q. In the class representatives' cases, who
17 is the lawyer's client?
18 A. Well, I would -- I would use the insurance
19 defense analogy because I think it's applicable in
20 this situation.
21 The pleadings are in the name of MERS.
22 There are certain things that MERS would have the

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1 right to control. For example, our name cannot be
2 used in a way that we determine is a conflict to
3 what our obligations are.
4 That having been said, the information
5 about the loan itself and where the payments have
6 been going to and who would need to be involved in
7 working things out with the borrower, that's the

8 member.

9 So, for example, you go to a hearing and
10 there's a request or a suggestion by the defendant,
11 the borrower, that they would like to try to work
12 something out, well, whether it's the MERS
13 certifying officer who hears that or it's the
14 attorney who hears that, they must get in contact
15 with the member. In fact, the member might have
16 been there and heard that.

17 Q. So to use your insurance analogy, who is
18 the -- we have three parties in each of those
19 cases. You've got the plaintiff -- well, you've
20 got the individual policyholder, for example, and
21 we'll say that's the same as the borrower, okay, in
22 our case.

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1 A. I would --

2 Q. Well, I'm trying to use your insurance
3 analogy.

4 A. Yeah. And the way I would set it up would
5 be that we were in the case of the policyholder.

6 Q. MERS and the policyholder are in the same
7 position?

8 A. That's what I would say.

9 Q. Okay. And in your analogy, who would be
10 the insurance company?

11 A. The member.

12 Q. And who would -- and the other two parties
13 would be the insured -- I'm sorry, the victim in
14 the insurance and the borrower?

15 A. No, not the -- not the victim. The victim
16 is the policyholder.

17 The -- the party that injured is --

18 Q. The tort-feasor?

19 A. -- the tort -- is the -- the tort-feasor
20 would be the borrower. I think if you lined up
21 contract law with tort law, that's the lineup that
22 you get.

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1 It ultimately boils down to the borrower
2 making good on the promise that they made in return
3 for being able to buy a home. They promise to pay
4 the mortgage loan and they granted a mortgage which
5 says that if the loan is not paid, the house can be

6 taken. So the borrower has an obligation and has
7 made a promise to pay the note.

8 In a foreclosure scenario, they have not
9 done that. So the question is what rules apply and
10 who is it that's going to enforce the mortgage that
11 says that they granted the authority to foreclose.

12 Q. Okay.

13 A. So with regard -- this is all in the
14 context of your question about the attorney's
15 representation. The attorney really is talking to
16 two parties there. One is the insurance company,
17 which would be the member, and the insured, which
18 would be MERS. And in both scenarios, there are
19 obligations that go to both of them. But in the
20 case of the lawsuit, the named party is the
21 insured.

22 So that is very close to what happens in

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1 the MERS context. The attorney has habitual
2 relationships with mortgage companies, and
3 oftentimes they have a habitual relationship with
4 MERS. The fact that the two come together in a
5 lawsuit just means that the attorney has to take
6 instructions from both. One is paying them, the
7 member, and the member is only going to pay them
8 for the work that is covered under the membership
9 agreement.

10 So their job is to foreclose. MERS is the
11 party that is actually controlling the foreclosure,
12 if you will, because it's our name being used.
13 That may have been long-winded, but that's --
14 that's how it lines up.

15 Q. Okay. Does the attorney in the MERS
16 situation, a foreclosure case, owe a primary duty
17 to MERS or to the servicer?

18 MR. BROCHIN: Object to the form of the
19 question.

20 THE WITNESS: The two don't come into
21 conflict, and I need to differentiate it that way.
22 I think ultimately MERS has the final say, but the

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1 money is actually owed to the member.

2 And so the contract between MERS and the
3 member is such that we really can't and won't get

4 ourselves in conflict with the member and that, I
5 think, raises the good example of if the borrower
6 shows up at court and says I've got a new job and
7 it's going to take me a few weeks to get that first
8 paycheck but things have changed and can I get on
9 some sort of a payment plan, MERS would have the
10 duty to -- under our agreement with the member, to
11 make sure that the member knows that.

12 And as I said earlier, the MERS system
13 will show the servicer, and so we will tell the
14 entire world who that servicer is. So there's
15 really no question who the right party to talk to
16 is. We even give a phone number and an E-mail
17 number [sic] that they can contact the member.

18 So we can't work out a payment arrangement
19 with them, but it's our duty to avail them the
20 opportunity if they want to talk to the member.
21 And so our -- our responsibilities are both to the
22 borrower, because we can only go according to the

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1 mortgage and it has to be in default. Our
2 obligations are to the member by virtue of our
3 contract with them.

4 MR. BROCHIN: I need a restroom break
5 whenever you get a break.

6 MR. WEAKLAND: Well, we're good for
7 breaks.

8 THE VIDEOGRAPHER: The time is 2:18 p.m.
9 We're off the record.

10 (Discussion off the record.)

11 THE VIDEOGRAPHER: The time is 2:27 p.m.
12 We're back on the record.

13 MR. BROCHIN: The question pending was can
14 I take a bathroom break.

15 MR. WEAKLAND: Good thing I was answering
16 in the affirmative.

17 BY MR. WEAKLAND:

18 Q. Mr. Arnold, before the lunch break, we
19 were discussing the loan beginning to move forward
20 to foreclosure, certain events happening.

21 At what point is the attorney involved in
22 that procedure?

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1 A. Well, it would depend on a particular

2 case. Each situation is different. I would -- at
3 the very least, the attorney is involved in
4 drafting the pleading.

5 Q. Is the attorney chosen by the lender or
6 servicer?

7 A. MERS has the final call on everything
8 having to do with the foreclosure. We do that to
9 the best of our ability and cooperation with the
10 member. So the member -- it's the member's note
11 that they're entitled to get paid on.

12 So to the extent that they have people
13 that they like to work with, we certainly try to
14 work with those people as well. And many times
15 those are the people that are most knowledgeable
16 about a particular situation, so it behooves us to
17 work with the people that are the most effective
18 and knowledgeable.

19 But in the end MERS has the authority to
20 say yes or no at virtually any point in the
21 foreclosure. And, in fact, there are attorneys we
22 will not use.

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1 Q. Is that the certifying officer who passes
2 on the attorneys?

3 A. The certifying officer would be one. The
4 MERS headquarters would be another place where we
5 could run afoul, say, of an attorney we don't want
6 to work with.

7 But the certifying officer is the MERS
8 officer that's colocated with the member and
9 oftentimes is the one that is in the position to
10 make the best judgment for MERS.

11 Q. Do you know whether the lawyers that were
12 retained to prosecute the foreclosures of the class
13 representatives in this case, or the potential
14 class representatives, were initially chosen by the
15 servicers?

16 A. Those attorneys were chosen by MERS. The
17 fact that it was at the recommendation of the
18 member or the fact that it was a relationship that
19 existed in other ways with the member is just a
20 factor that was considered. It's MERS that
21 approves using a particular law firm.

22 Q. Do these attorneys used for foreclosure

1 actions in Florida have standard fee agreements
2 that apply in MERS cases?

3 MR. BROCHIN: Yeah. I think you --

4 MR. WEAKLAND: Maybe that's not correct.
5 I may -- let me rephrase that. That wasn't very
6 good.

7 BY MR. WEAKLAND:

8 Q. Are the attorneys who are prosecuting the
9 cases against the class representatives in Florida,
10 the foreclosure cases, do they have the same fee
11 agreement -- same language in their fee agreement.

12 A. I wouldn't know that.

13 MR. BROCHIN: Okay. I was going to
14 caution you about some privileged information. But
15 if you don't know, you don't know.

16 MR. WEAKLAND: Okay.

17 BY MR. WEAKLAND:

18 Q. Are there any standards that MERS sets out
19 as far as what can be contained in fee agreements
20 for attorneys working in foreclosure cases?

21 A. Other than the general caveat that they
22 have to earn the fees that they get paid, you know,

1 the specific amount of the fee that the member is
2 paying is -- is a matter between them and the
3 member.

4 Q. Do the hourly rates of these attorneys
5 handling these foreclosure cases in Florida, do the
6 hourly rates vary?

7 MR. BROCHIN: If you know. I just want to
8 be careful about privileged information. So if
9 you -- I don't know if you know or not, but --

10 THE WITNESS: I don't know, but it's very
11 competitive. It's a competitive sector, so their
12 fees can be -- vary too widely, I would guess.

13 BY MR. WEAKLAND:

14 Q. Now, in Exhibit 1, if we go back to
15 that -- I can help you out here -- on page 3,
16 you've identified this by its heading, notice
17 required by the Fair Debt Collection Practices Act.
18 Do you see that?

19 A. Yes, sir.

20 Q. And do you know whether this notice was
21 sent to Sandy Trent?

22 A. I don't know. It's part of that file.

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1 Q. Is MERS a creditor to whom the debt is
2 owed in the Trent case?

3 MR. BROCHIN: Object to the form of the
4 question to the extent it calls for a legal
5 conclusion.

6 THE WITNESS: Are you referring to the
7 reference to creditor?

8 BY MR. WEAKLAND:

9 Q. I'm referring to the language in the -- on
10 page 3 of that document.

11 MR. BROCHIN: Well, that wasn't your
12 question, though. I mean --

13 BY MR. WEAKLAND:

14 Q. Well, I used the language at -- on page 3,
15 and so my question again would be was MERS the
16 creditor to whom the debt is owed in the Trent
17 case?

18 MR. BROCHIN: Object to the form of the
19 question to the extent it calls for a legal
20 conclusion.

21 THE WITNESS: We're never the beneficial
22 owner of the loan.

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1 BY MR. WEAKLAND:

2 Q. So is the answer no?

3 MR. BROCHIN: Object to the form of the
4 question.

5 BY MR. WEAKLAND:

6 Q. Let me put that another way.

7 Is it a true statement that MERS is the
8 creditor to whom Trent owed a debt?

9 MR. BROCHIN: Object to the form of the
10 question to the extent it calls for a legal
11 conclusion.

12 THE WITNESS: I have to agree to that
13 being as to a legal conclusion. The -- the
14 beneficial owner is not MERS. Our interest is as
15 the legal owner of the mortgage, as mortgagee of
16 record and we're the owner and holder of the note
17 for purposes of foreclosure.

18 So regardless of how the money is
19 ultimately paid or should be paid, it would not

20 come to MERS.
21 BY MR. WEAKLAND:
22 Q. Was the Law Offices of David Stern the

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1 attorney for MERS at the time the complaint was
2 filed in this case?

3 A. I can't tell that by the file, but they --
4 but they may have.

5 I would say with regard to your question
6 about the word "creditor," if during the process of
7 a foreclosure the borrower files bankruptcy, MERS
8 would be a creditor in bankruptcy even though no
9 money is owed to us.

10 So the referring to MERS as a creditor by
11 a law firm who is foreclosing based upon a
12 defaulted obligation might very well use the word
13 "creditor" in that context because if a bankruptcy
14 was filed, then MERS would immediately,
15 instantaneously, based on the automatic stay, be a
16 creditor and would have to then file a claim in
17 bankruptcy as a creditor.

18 So it's possible to be a creditor without
19 having money owed to you.

20 Q. Is that what happened in this case, the
21 Trent case?

22 A. We have no beneficial interest in a loan

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1 ever. So if we're referred to as a creditor, it
2 might very well be either because we had the right
3 to foreclose or the fact that the bankruptcy code
4 would call us a creditor if there's a bankruptcy,
5 and you are talking about a defaulted situation.

6 So it oftentimes happens that during a
7 foreclosure there is a bankruptcy. And instantly
8 in the automatic stay, creditors are stayed and
9 MERS is a creditor and would have to file a claim
10 in bankruptcy as a creditor.

11 So the reference to MERS as a creditor for
12 some purposes might -- might very well be
13 legitimate. That's not because the money is owed
14 to MERS.

15 Q. The second part of that statement, the
16 creditor to whom money is owed, did Sandy Trent
17 ever owe any money to MERS?

18 MR. BROCHIN: Object to the form of the
19 question. It calls for legal conclusions.

20 THE WITNESS: Our obligation is as the
21 mortgagee of record.

22 BY MR. WEAKLAND:

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1 Q. I understand that. Did Sandy Trent ever
2 owe any money to MERS?

3 MR. BROCHIN: Object to the form of the
4 question. It calls for a legal conclusion.

5 THE WITNESS: This --

6 MR. BROCHIN: Asked and answered.

7 THE WITNESS: And this says the
8 plaintiff -- there are two plaintiffs. The money
9 is owed to one plaintiff and the other plaintiff
10 has the mortgage interest to foreclose.

11 So it's not a good example because the --
12 the question about creditor does not necessarily
13 even apply to MERS in this case. Creditor to whom
14 money is owed, there's no question that money is
15 owed to a creditor, and that might very well be
16 Citi.

17 BY MR. WEAKLAND:

18 Q. Okay. I'm showing you Exhibit 2, the last
19 two pages of that exhibit, and if you could
20 identify what the last two pages are of that
21 exhibit?

22 A. The title is Notice Required by the Fair

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1 Debt Collection Practices Act.

2 Q. And I think you testified that Marshall
3 Watson was a law firm that MERS has used in
4 foreclosure actions in Florida, correct?

5 A. Yes, sir.

6 Q. And the date of this letter is
7 September 1, 2004; do you see that?

8 A. Yes. Yes, sir.

9 Q. Could you read the first paragraph there?

10 A. The Plaintiff, Mortgage Electronic
11 Registration Systems, Inc., as nominated for GMAC
12 Mortgage Corporation, is the creditor to whom the
13 debt is owed by those individuals who are obligated
14 under the promissory note and mortgage.

15 Q. Was Mortgage Electronic Registration

16 Systems the creditor to whom the Taylors owed a
17 debt?

18 MR. BROCHIN: Object to the form of the
19 question to the extent it calls for legal
20 conclusions.

21 THE WITNESS: Well, it says as nominee for
22 as GMAC Mortgage Corporation.

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1 BY MR. WEAKLAND:

2 Q. Did the Taylors owe any money at any time
3 to MERS?

4 A. They owed money to GMAC Mortgage
5 Corporation and we are that company's nominee.

6 Q. Did they owe any money to MERS?

7 MR. BROCHIN: Objection. Asked and
8 answered.

9 THE WITNESS: And this is a communication
10 from a -- from a law firm, and it says MERS as
11 nominee for GMAC, and the Plaintiffs owe money.

12 BY MR. WEAKLAND:

13 Q. Did the Taylors ever owe any money to
14 MERS?

15 MR. BROCHIN: Object to the form of the
16 question --

17 THE WITNESS: No.

18 MR. BROCHIN: -- to the extent it calls
19 for a legal conclusion. It was asked and answered.

20 MR. WEAKLAND: Okay. Let's take a break.

21 THE VIDEOGRAPHER: The time is 2:41 p.m.
22 This completes Tape Number 2 of the videotaped

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1 deposition of Mr. R.K. Arnold.

2 (Recess.)

3 THE VIDEOGRAPHER: The time is 2:55 p.m.
4 This is Tape Number 3 of the videotaped deposition
5 of Mr. R.K. Arnold.

6 BY MR. WEAKLAND:

7 Q. Mr. Arnold, in the cases of the named
8 plaintiffs, the debt that they owe is to their
9 lenders; is that correct?

10 A. Well, MERS has the right to enforce that
11 debt but not the right to apply the proceeds to
12 their business.

13 Q. I understand. So the debt is owed to the

14 lenders; is that correct?

15 MR. BROCHIN: Object to the form to the
16 extent it calls for a legal conclusion, and I think
17 that's the fifth time you've asked that question.

18 THE WITNESS: The debt is owed and MERS
19 has the right to enforce that debt. We would have
20 to turn those proceeds over to the beneficial
21 owner, and we're never the beneficial owner.

22 So we have all the authority necessary to

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1 enforce the debt and foreclose the property and for
2 that we become the holder for the purposes of
3 foreclosure. So our right to enforce the debt is
4 part and parcel to our right to foreclose because
5 you can only foreclose if the note is in default.

6 So MERS has the right to foreclose the
7 mortgage. It also, part and parcel to that, has
8 the right to enforce the debt. And in these
9 letters -- first of all, these letters come from
10 law firms. They didn't come from MERS. They
11 typically name MERS as nominee for GMAC or Citi and
12 is pursuant to a right that MERS has to enforce the
13 terms of the note. So these letters are just
14 informing borrowers that there's a demand for
15 payment of the note.

16 BY MR. WEAKLAND:

17 Q. These letters came from your attorneys,
18 MERS's --

19 A. Yes.

20 Q. -- attorneys?

21 A. Yes.

22 Q. Are you testifying that MERS has a right

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1 to obtain a judgment but just can't keep it?

2 MR. BROCHIN: Object to the form of the
3 question.

4 THE WITNESS: We have the right to obtain
5 a judgment in foreclosure. We have the right to
6 foreclose the note which the mortgage is attached
7 to giving us the right to foreclose. You can't
8 foreclose unless it's in default.

9 And at the end of the day, we take that
10 all the way through to conclusion. But as you
11 asked me earlier, we don't take that to our balance

12 sheet because that debt is actually -- the
13 beneficial ownership of that debt actually belongs
14 to another party.

15 BY MR. WEAKLAND:

16 Q. You -- in foreclosure you collect money
17 and give it to a third party; is that --

18 MR. BROCHIN: Object to --

19 BY MR. WEAKLAND:

20 Q. Is that what you're saying?

21 MR. BROCHIN: Object to the form of the
22 question. I don't think that's what he said, but

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1 also to the extent it calls for a legal conclusion.

2 THE WITNESS: We don't collect money. We
3 prosecute a lawsuit, and that is to enforce a note.

4 And with an abundance of caution or in some -- some
5 way his legal judgment, this law firm determined

6 that a notice should be sent to the borrower. And

7 that -- that letter looks like a good faith attempt

8 to enforce -- or to inform the borrower that MERS

9 has the right to enforce the debt. It doesn't mean

10 that the debt would be applied to our financial

11 statements.

12 BY MR. WEAKLAND:

13 Q. In the foreclosure actions does MERS

14 collect something of value on behalf of another

15 party?

16 MR. BROCHIN: Object to the form of the
17 question as it calls for a legal conclusion.

18 THE WITNESS: Everything we do is in the

19 context of prosecuting a lawsuit. And I -- as far

20 as the description of who is what in that lawsuit,

21 we are the plaintiff in the lawsuit, we've engaged

22 counsel to pursue a lawsuit. The attorney might

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1 very well have determined that there should be a
2 letter going somewhere, and that was an attempt to
3 comply with whatever Florida law is, a good faith
4 attempt to comply.

5 So at the end of the day, our obligation

6 is to get the foreclosure judgment. Any funds that

7 would come from that, the beneficial ownership is

8 not with MERS. Those funds would need to be sent

9 to the member.

10 BY MR. WEAKLAND:

11 Q. In the foreclosure actions in Florida,
12 does MERS obtain something of value that it passes
13 on to another party?

14 MR. BROCHIN: Objection to the form of the
15 question on two grounds. First, it was asked and
16 answered and, second, objection to the extent it
17 calls for a legal conclusion.

18 THE WITNESS: We just prosecute a lawsuit.
19 We just prosecute a lawsuit. That's what we do.

20 BY MR. WEAKLAND:

21 Q. What does MERS do in prosecuting a lawsuit
22 that a lawyer couldn't do in prosecuting a lawsuit?

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1 A. I'm not sure I understand that.

2 MR. BROCHIN: Yeah. I was going to say,
3 I'm not sure I understand that either, and that
4 certainly calls for some legal conclusion and maybe
5 you could clarify it.

6 BY MR. WEAKLAND:

7 Q. I mean, you testified, did you not, sir,
8 that all MERS does is prosecute a lawsuit?

9 MR. BROCHIN: Objection.

10 BY MR. WEAKLAND:

11 Q. Is that what you testified to, sir?

12 MR. BROCHIN: Well, first of all, the
13 record will speak exactly to what he testified to
14 in the context of the question asked.

15 MR. WEAKLAND: Can we read back his
16 statement?

17 THE REPORTER: Which statement?

18 MR. WEAKLAND: Where he says all we do is
19 prosecute a lawsuit.

20 THE REPORTER: Question: In foreclosure
21 act --

22 MR. BROCHIN: That's before that.

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1 THE REPORTER: In the foreclosure actions
2 in Florida, does MERS obtain something of value
3 that it passes on to another party?

4 Mr. Brochin: Objection to the form of the
5 question on two grounds. First, it was asked and
6 answered and, second, objection to the extent it
7 calls for a legal conclusion.

8 The Witness: We just prosecute a lawsuit.
9 We just prosecute a lawsuit. That's what we do.
10 BY MR. WEAKLAND:
11 Q. Is that testimony accurate, sir?
12 MR. BROCHIN: Object to the form of the
13 question.
14 THE WITNESS: I believe so.
15 BY MR. WEAKLAND:
16 Q. So MERS has no direct stake in the outcome
17 of a foreclosure action --
18 MR. BROCHIN: Object to the word --
19 BY MR. WEAKLAND:
20 Q. -- is that correct?
21 A. I think we --
22 MR. BROCHIN: Object to -- excuse me.

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1 Object to the form of the question to the extent it
2 calls for a legal conclusion.
3 THE WITNESS: We -- we have a stake in the
4 litigation. We have an obligation to go forward
5 with it and follow the rules, and we have -- we
6 have a lot at stake. If we -- if we lose, then it
7 takes away from our value proposition. We have --
8 it's very important to us that we be able to
9 perform whatever obligations we have as the
10 mortgagee of record. We have the rights of any
11 mortgagee of record, and that is what this lawsuit
12 will prove.
13 BY MR. WEAKLAND:
14 Q. Mr. Arnold, MERS files foreclosures to
15 collect debts in Florida, does it not?
16 MR. BROCHIN: Object to the form of the
17 question. It calls for a legal conclusion.
18 THE WITNESS: We file lawsuits to
19 foreclose on property and to enforce the terms of
20 the note that pledged the property for payment of
21 the note.
22 BY MR. WEAKLAND:

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1 Q. Does MERS collect debts in Florida?
2 MR. BROCHIN: Objection to the form of the
3 question to the extent it calls for a legal
4 conclusion and to the extent it's been asked and
5 answered on numerous occasions.

6 THE WITNESS: We do not collect debts in
7 Florida. We prosecute lawsuits.

8 BY MR. WEAKLAND:

9 Q. Do the mortgages that the plaintiffs have
10 in this case require them to repay the loan to
11 MERS?

12 A. No. The notes will designate exactly
13 where those payments should be sent. They should
14 never be sent to MERS.

15 Q. Do those mortgages secure the performance
16 by the plaintiff, performance to MERS of any
17 obligations?

18 A. Only to the extent that we have the right
19 to enforce the note and we're doing that as these
20 notices say. We're doing that as nominee. We had
21 the right to foreclose. We had the right to
22 enforce the note in a lawsuit, which is exactly

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1 what we do.

2 BY MR. WEAKLAND:

3 Q. Do those mortgages provide that MERS has
4 the right to accelerate sums upon default?

5 MR. BROCHIN: Objection to the form of the
6 question. I believe the mortgages, although not a
7 complete one, as an exhibit speak for themselves in
8 terms of what they do and do not say.

9 MR. WEAKLAND: I would object to the
10 speaking objections.

11 BY MR. WEAKLAND:

12 Q. Go ahead.

13 A. That's typically a provision contained in
14 a note.

15 Q. I understand that. But do the accelerated
16 payments go to MERS?

17 A. No. Payments never go to MERS. We don't
18 have the beneficial interest.

19 Q. Is MERS licensed as a debt collector in
20 the state of Florida?

21 A. No, sir.

22 MS. CHARNEY: Can we take a five-minute

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1 break to make sure that we have everything
2 altogether that we want?

3 THE VIDEOGRAPHER: The time is 3:08 p.m.

4 We're going off the record.
5 (Recess.)
6 (Plaintiff's Exhibit Number 3 was marked
7 for identification.)
8 THE VIDEOGRAPHER: The time is 3:16 p.m.
9 We're back on the record.
10 MR. WEAKLAND: Thank you.
11 BY MR. WEAKLAND:
12 Q. Almost done here, Mr. Arnold.
13 A. No problem.
14 Q. I'm showing you what's been marked as
15 Exhibit 3, and you see on the bottom there is a
16 notation MERS 0041 and on the second page MERS
17 0042?
18 A. Yes, sir.
19 Q. Do you know if this document was produced
20 by your counsel in response to a document request
21 in this case?
22 A. I'm not sure how it was produced.

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1 Q. Was this document in the files of MERS, if
2 you know?
3 A. I don't know that either.
4 Q. Have you ever seen this document before?
5 A. I'm not sure I recall seeing this
6 particular document.
7 Q. Do you see the date on this document?
8 A. December 3, 2004.
9 Q. And do you know who Frank Reder is,
10 R-E-D-E-R?
11 A. I don't know Frank. He's probably an
12 attorney for Butler & Hosch.
13 Q. Is Butler & Hosch one of the law firms
14 that has been retained by MERS to prosecute
15 foreclosure actions in Florida?
16 A. Yes, sir, they are.
17 Q. In your preparation for the deposition
18 today, sir, did you have a chance to review the
19 complaints in foreclosure that were filed against
20 the named plaintiffs?
21 A. I think that was one of the first
22 questions you asked me and I -- I don't recall

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1 going through each of the foreclosure complaints.

2 Q. Have you seen them at some time in your
3 capacity as CEO of MERS?

4 A. Well, I'm familiar with -- with what a
5 foreclosure complaint is. As far as the -- and
6 they may have even been at that table. I don't --
7 I don't recall going through the foreclosure
8 complaint itself.

9 Q. Sir, you're here today in your capacity as
10 the corporate representative of MERS.

11 Is there anybody else at MERS who would
12 have knowledge of Exhibit 3 being in the files of
13 MERS?

14 A. This -- this letter?

15 Q. Yes.

16 A. From the law firm?

17 Q. Yes.

18 A. Are you telling me that this was produced
19 pursuant to a request for documents?

20 MR. BROCHIN: No. May I? Let's just be
21 clear what the question was.

22 MR. WEAKLAND: Let's go off the record for

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1 a minute.

2 MR. BROCHIN: Okay.

3 THE VIDEOGRAPHER: The time is 3:20 p.m.
4 We're going off the record.

5 (Discussion off the record.)

6 THE VIDEOGRAPHER: The time is 3:21 p.m.
7 We're back on the record.

8 THE WITNESS: So we got all that worked
9 out?

10 BY MR. WEAKLAND:

11 Q. I think we have a -- we've agreed to a
12 somewhat cloudy understanding of this document.

13 MR. BROCHIN: A what?

14 MR. WEAKLAND: A cloudy understanding of
15 this document.

16 MR. BROCHIN: Oh, cloudy. You want to
17 know, if I understand you right, where Exhibit 3
18 came from when we produced it?

19 MR. WEAKLAND: Yes.

20 MR. BROCHIN: And I will go back and find
21 out where that is and provide you that information.

22 MR. WEAKLAND: Okay.

1 BY MR. WEAKLAND:

2 Q. Generally, sir, does MERS retain
3 litigation files on foreclosure actions?

4 A. Generally no. Although to the extent that
5 there would be counterclaims and there would be a
6 need for somebody at headquarters to get involved,
7 that would become a file. But as a general
8 proposition, they are handled by the certifying
9 officer and colocated with the member.

10 Q. I think you testified that you have
11 reviewed some documents before you came here today?

12 A. Yes, sir.

13 Q. Can you just generally describe what those
14 documents are?

15 A. Of course the -- the complaint in this
16 lawsuit, our answer, the rebuttal filing. I've
17 reviewed our rules and procedures. I've
18 reviewed -- one of your first questions was the
19 general business of MERS, and I've spent a good bit
20 of time making sure that I could fairly answer that
21 on behalf of my team.

22 The documents that had to do with some of

1 the notices that you asked me about, I've looked at
2 those. The foreclosure rules in detail, I've
3 looked at those. We spent a few days getting ready
4 for it over the -- you know, a day here and a day
5 there, getting ready for it.

6 MR. WEAKLAND: Okay. That's all I have.

7 MR. BROCHIN: Okay.

8 MR. WEAKLAND: Will you read or waive --

9 MR. BROCHIN: No, we do not waive -- he
10 does not waive reading. We want to read.

11 THE VIDEOGRAPHER: The time is 3:24 p.m.
12 on September 25th, 2006. This completes the
13 videotaped deposition of Mr. R.K. Arnold.

14 (Whereupon, at 3:24 p.m., the deposition
15 of R.K. Arnold concluded.)

16 * * * * *

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22 Date _____ R.K. ARNOLD _____

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1 Robert M. Brochin, Esquire
2 Morgan, Lewis & Bockius, LLP
3 200 South Biscayne Boulevard, Suite 5300
4 Miami, Florida 33131
5 IN RE: SANDY TRENT, et al. v. MERS
6 Dear Mr. Brochin,
7 Enclosed please find your copy of the
8 deposition of R.K. Arnold, along with the original
9 signature page. As agreed, you will be responsible
10 for contacting the witness regarding signature.
11 Within 30 days of receipt, please forward
12 errata sheet and original signed signature page to
13 counsel.
14 If you have any questions, please do not
15 hesitate to call. Thank you.
16
17 Sincerely,
18
19 Donna L. Linton, RMR-CCR-CLR
20 Reporter/Notary Public
21 cc: Brian L. Weakland, Esquire
22 April Carie Charney, Esquire