

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - ATLANTIC COUNTY
DOCKET NO. F-10209-08

BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATE HOLDERS CWABS,
INC. ASSET-BACKED CERTIFICATES,
SERIES 2005-AB3

Plaintiff(s),

vs.

VICTOR and ENOABASI UKPE

Defendant(s).

VICTOR and ENOABASI UKPE
Counterclaimants and
Third Party Plaintiffs,

vs.

BANK OF NEW YORK AS TRUSTEE FOR
THE CERTIFICATE HOLDERS CWABS,
INC. ASSET-BACKED CERTIFICATES,
SERIES 2005-AB3

Defendants on the Counterclaim,

and

AMERICA'S WHOLESALE LENDER;
COUNTRYWIDE HOME LOANS, INC.;

MORGAN FUNDING CORPORATION,

ROBERT CHILDERS; COUNTRYWIDE

HOME LOANS SERVICING LP,

PHELAN, HALLINAN & SCHMIEG,

P.C.,

Third Party Defendants

April 7, 2010

William Hultman

1 Oral sworn video/telephone conference
2 deposition of WILLIAM HULTMAN, taken in the law office
3 of Morgan, Lewis, Bockius, 502 Carnegie Center,
4 Princeton, New Jersey, before Michelle M. Downes, a
5 Certified Court Reporter and Notary Public of the
6 State of New Jersey, commencing at 10:55 a.m. on the
7 above date, there being present:

8 LAW OFFICES OF JAMES F. VILLERE, JR.
9 BY: JAMES F. VILLERE, JR., ESQUIRE
10 MARK J. MALONE, ESQUIRE
11 Attorneys for Ukpes as Defendants and
12 Third Party Plaintiffs

13 SOUTH JERSEY LEGAL SERVICES
14 BY: ABIGAIL SULLIVAN, ESQUIRE
15 Attorneys for Ukpes as Defendants and
16 Third Party Plaintiffs

17 Via video conference in Washington DC:

18 GOODWIN PROCTER, LLP
19 BY: SABRINA M. ROSE-SMITH, ESQUIRE
20 Attorneys for Plaintiffs Bank of New York
21 as Trustee for the Certificate Holders
22 CWABS, Inc. Asset-Backed Certificates,
23 Series 2005-AB3 and Countrywide as Third
24 Party Defendants

25 MORGAN, LEWIS, BOCKIUS, LLP
BY: ROBERT M. BROCHIN, ESQUIRE
Attorneys for MERS

Via telephone:

 WILENTZ, GOLDMAN & SPITZER
BY: DANIEL S. BERNHEIM, ESQUIRE
Attorneys for Third Party Defendant

Also present:

Judy Romano, Esquire (via telephone)
John Murphy, Esquire (via video)
Daniel E. Orr, Esquire

(By agreement of counsel, the signing, sealing and certification of the deposition were waived, and all objections, except as to the form of the questions, were reserved to the time of trial.)

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E X H I B I T S

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(Hultman-1, MIN Summary, was marked for identification; Hultman-2, MIN Milestones, was marked for identification; Hultman-3, Signing Authority Agreement, was marked for identification; Hultman-4, Corporate Resolution, was marked for identification; Hultman-5, Bank of New York (Western Trust) Membership application, was marked for identification; Hultman-6, Countrywide Home Loans Membership application, was marked for identification; Hultman-7, Letter dated 11/1/09, was marked for identification; Hultman-8, Letter dated 4/30/00 was marked for identification; Hultman-9, MERS Terms and Conditions, was marked for identification; Hultman-10, MERS Procedures Manual, was marked for identification; Hultman-11, MERS Rules of Membership, was marked for identification; Hultman-12, Letter dated 1/8/99, was marked for identification; Hultman-13, Delaware Secretary of State Certification, was marked for identification; Hultman-14, Certificate of Incorporation effective 1/1/99, was marked for identification; Hultman-15, MERS Rules of

1 Membership, was marked for identification;
2 Hultman-16, MERS Procedure Manual, was marked
3 for identification; Hultman-17, MERS Bylaws
4 dated 10/17/95, was marked for
5 identification; Hultman-18, MERS Bylaws dated
6 1/1/95, was marked for identification;
7 Hultman-19, Letter dated 2/18/10, was marked
8 for identification; Hultman-20, Subpoena
9 dated 2/16/10, was marked for identification;
10 Hultman-21, Letter dated 3/17/10, was marked
11 for identification; Hultman-22, PHS 10-11,
12 Referral Account Detail Report, was marked
13 for identification; Hultman-23, PHS 475-476,
14 E-mail exchange, was marked for
15 identification; Hultman-24, Assignment dated
16 3/14/08, was marked for identification;
17 Hultman-25, Complaint with FDCPA Notice dated
18 3/13/08, was marked for identification;
19 Hultman-26, MERS Policy Bulletin dated
20 2/17/10, was marked for identification;
21 Hultman-27, MIN Milestones, was marked for
22 identification; Hultman-28, MERS Corporate
23 Resolution Application Form, was marked for
24 identification; Hultman-29, Stipulation, was
25 marked for identification.)

1 (The following is a conference with
2 Judge Todd:)

3 THE COURT: Now, this is Judge Todd,
4 I'm sitting in my courtroom, the attorneys are
5 participating by telephone. I understand there's a
6 court reporter there. Some of the attorneys are --
7 let me ask the attorneys who are participating to
8 enter their appearances and to note preliminarily the
9 caption and the docket number of the case.

10 MR. MALONE: Okay. I will start, Your
11 Honor. This is Mark Malone for the Ukpe defendants.
12 The caption of the case is Bank of New York as Trustee
13 for the Certificate Holders CWABS, Inc. Asset-Backed
14 Certificate Series 2005-AB3 versus Victor and Enoabasi
15 Ukpe, docket number F-10209-08. And appearing with me
16 this morning are Abigail Sullivan of South Jersey
17 Legal Services and James Villere.

18 MR. ORR: Your Honor, this is Daniel
19 Orr with Morgan, Lewis, Bockius representing nonparty
20 MERS. They're the witness who is appearing today.
21 With me is Robert Brochin who is in our DC office with
22 the witness.

23 THE COURT: Anybody else?

24 MR. BERNHEIM: This is Dan Bernheim
25 from Wilentz Goldman representing the firm Phelan,

1 Hallinan and Schmieg. I am participating by telephone
2 conference.

3 MS. ROSE-SMITH: Your Honor, this is
4 Sabrina Rose-Smith, I'm here on behalf of Bank of New
5 York and third parties Countrywide Home Loans
6 Servicing and Countrywide Home Loans, Inc., and I am
7 in Washington DC with the witness.

8 MR. BERNHEIM: In addition, Your Honor,
9 Judy Romano who is in-house counsel for the law firm
10 is also participating by telephone conference.

11 MR. MURPHY: John Murphy, I'm also in
12 Washington DC and I'm in-house counsel for MERS.

13 THE COURT: Is that everyone?

14 MR. MALONE: Mr. Brochin.

15 MR. ORR: I entered an appearance for
16 Mr. Brochin.

17 THE COURT: Now, whose pro hac vice
18 admission is being sought? For what litigant party?

19 MR. ORR: Your Honor, we've sought
20 Mr. Brochin's pro hac vice admission on an expedited
21 basis so defendants who served a subpoena on MERS, and
22 they requested that we seek Mr. Brochin's pro hac vice
23 admission since he would be appearing remotely from
24 Washington DC with the witness. There has been no
25 objection to the application. Under normal

1 circumstances, Your Honor, I would defend the
2 deposition, however, I am recovering from spine
3 surgery and I cannot sit for an extended period of
4 time.

5 THE COURT: Who is that that was just
6 speaking?

7 MR. ORR: This is Daniel Orr, Your
8 Honor.

9 THE COURT: So Mr. Brochin's going to
10 be admitted pro hac to represent the person, to
11 represent MERS in conjunction with the deposition that
12 is being conducted this morning?

13 MR. ORR: Yes, Your Honor. We're
14 actually not -- since MERS is not actually a party,
15 and the witness or the deposition is being conducted
16 out of state, we're not actually sure whether or not a
17 pro hac admission is required under the rules.
18 However, defendants have suggested that it is, and
19 since there was no opposition to the application, you
20 know, we thought it would be prudent to ask the
21 Court's permission.

22 THE COURT: And does the application
23 that's pending recite consistent with the pro hac vice
24 rule, either a long-standing relationship with the
25 client or expertise in the area of the law or

1 something like that?

2 MR. ORR: Yes, Your Honor, Mr. Brochin
3 has a long-standing attorney/client relationship with
4 MERS. He has represented MERS in over 70 proceedings.

5 THE COURT: And the witness is actually
6 appearing in what jurisdiction?

7 MR. ORR: The witness is appearing
8 remotely by video teleconference from Washington DC,
9 Your Honor.

10 THE COURT: That's where Mr. Brochin is
11 also?

12 MR. ORR: Yes.

13 (Conference with Judge Todd ends.)

14 WILLIAM HULTMAN,
15 having been duly sworn, was examined
16 and testified as follows:

17 BY MR. MALONE:

18 Q. Mr. Hultman, my name is Mark Malone.
19 With me are co-counsel, we represent the Ukpe
20 defendants, Abigail Sullivan of South Jersey Legal
21 Services and James Villere. Good morning.

22 A. Good morning.

23 Q. I understand you have been deposed
24 previously, is that correct?

25 A. Yes.

1 Q. Approximately in the last three years,
2 how many times have you been deposed?

3 A. Four times.

4 Q. Do you remember the names of those
5 cases?

6 A. I do not.

7 Q. Okay. Briefly, would you describe for
8 us your legal education?

9 A. I went to the State University of New
10 York Law School at Buffalo from 1977 -- or graduated
11 in 1977.

12 Q. Are you a member of any bar currently?

13 A. I'm a member of the New York Bar.

14 Q. And would you describe for us your
15 employment history after graduating from law school?

16 A. I worked for a firm LaTona and
17 Associates, which was a general practice firm in
18 Buffalo, New York for two years. I worked as a staff
19 attorney for the Forest Oil Corporation at Bradford,
20 Pennsylvania for two years. I worked for the law firm
21 of Moot and Sprague for a period of five years, first
22 as an associate and then as a partner. I was then an
23 Administrative Vice President of Empire of America
24 Federal Savings Bank and later I became the treasurer
25 of that institution. I then worked for the FDIC as a

1 managing agent for the Resolution Trust Corporation
2 for about a period of 17 months. I worked for three
3 Midlantic Banks as a vice president for a period of
4 about two and a half years. I then worked for Barnett
5 Bank in Jacksonville, Florida for a period of four
6 years after that, and I worked at MERS for the last
7 14 years -- or 12 years, excuse me.

8 Q. When did you first start working at
9 MERS?

10 A. February of 1998.

11 Q. And when I say MERS, I'm going to use
12 that as an abbreviation for Mortgage Electronic
13 Registration Systems, Inc., is that understood?

14 A. Yes.

15 Q. And is that an appropriate shorthand
16 for describing your employer?

17 A. My employer is not MERS. If you're
18 using Mortgage Electronic Registration System, Inc. --

19 Q. Who is your employer?

20 A. Merscorp, Inc.

21 Q. Do you have any kind of relationship
22 with Mortgage Electronic Registration Systems, Inc.?

23 A. Yes.

24 Q. What is that relationship?

25 A. I'm the secretary and treasurer.

1 Q. And do you have any kind of
2 relationship with MERS? What is your relationship
3 with Merscorp, Inc.?

4 A. I'm senior vice president and corporate
5 division manager, and I also have -- I'm also the
6 secretary and treasurer of that corporation.

7 Q. Today's subpoena is directed towards
8 Mortgage Electronic Registration Systems, Inc. You
9 understand that?

10 A. I do.

11 Q. And do you understand that the answers
12 you're giving will bind Mortgage Electronic
13 Registration Systems, Inc.?

14 A. I do.

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

17 BY MR. MALONE:

18 Q. And further, do you understand you're
19 testifying under oath today?

20 A. Yes.

21 Q. And that your answers will be used or
22 may be used as evidence in a court proceeding in New
23 Jersey. Do you understand that?

24 MR. BROCHIN: Objection.

25 THE WITNESS: If that's a question,

1 yes.

2 BY MR. MALONE:

3 Q. That was a question. And if at any
4 time you don't understand my question, please just
5 tell me and I'll try and rephrase it. I'd like to
6 start by going through the documents that have been
7 premarked that were sent to us by your counsel in
8 response to a subpoena and -- in response to a
9 subpoena. The first set of documents we received, we
10 have marked as Hultman Exhibit 1, and they are MERS --
11 they have been Bates stamped MERS 1 -- Hultman Exhibit
12 1 has been marked as MERS 1. Do you have that
13 available?

14 MR. BROCHIN: Okay. Again, we're not
15 going to have it with the Hultman-1. What we have is
16 Bates stamp document MERS/Ukpe 1, it's a letter dated
17 February 18th and it's Bates stamped 1 through 6.

18 MR. MALONE: That's not the one, Bobby.
19 I'm talking about MERS, MERS 1, not MERS/Ukpe.
20 There's two distinct sets of documents that was
21 explained -- as was explained in both sets of letters
22 that were sent to you yesterday.

23 MR. BROCHIN: Yeah, good, but all I'm
24 looking at are the documents that apparently
25 Ms. Sullivan provided to Dan Orr that were scanned in

1 and sent to us. That's what I'm looking at.

2 MR. MALONE: Okay. And he --
3 Ms. Sullivan gave Dan a set of documents marked MERS 1
4 through MERS 432. If you could locate that set of
5 documents, I'd like to just identify those, the
6 documents that were provided by MERS.

7 MR. BROCHIN: I got the letters, I
8 don't have those. I say we go off the record for a
9 second.

10 (Discussion off the record.)

11 MR. MALONE: Maybe we can start at
12 least in terms of the identification of exhibits. I
13 can tell you what the court reporter has marked and
14 you can note on your copies the court reporter
15 exhibit.

16 MR. BROCHIN: What I'm going to do is
17 when you refer to an exhibit as Hultman X, I'm going
18 to write that down on this exhibit itself and keep a
19 copy.

20 MR. MALONE: Correct. And if you could
21 get someone to print out from your office the letter
22 that was sent to you.

23 MR. BROCHIN: I have the letter.

24 MR. MALONE: Okay. That has the
25 identical information. So you can just double check

1 it against that.

2 MR. BROCHIN: Yeah, I got that.

3 MR. MALONE: Okay.

4 BY MR. MALONE:

5 Q. Starting with the MERS/Ukpe exhibits
6 which are exhibits that we have marked for the
7 deposition, MERS/Ukpe 1, a single page has been marked
8 as Hultman-19. And for the record, it's a
9 February 18th letter from Abigail Sullivan to Sharon
10 M. Horstkamp, Vice President and General Counsel
11 Merscorp.

12 MR. BROCHIN: So the witness now has
13 that document in front of him.

14 BY MR. MALONE:

15 Q. All right. Mr. Hultman, you have
16 MERS -- I'm sorry, you have Hultman Exhibit 19 in
17 front of you. Have you seen that letter before today?

18 A. No.

19 Q. Okay. Moving on to Hultman Exhibit 20,
20 Bates stamp MERS/Ukpe 002 through 006.

21 A. I have it.

22 MR. BROCHIN: Marking that as Hultman
23 exhibit number?

24 MR. MALONE: 20. 20.

25 THE WITNESS: Got it.

1 BY MR. MALONE:

2 Q. Okay. Have you seen Hultman Exhibit 20
3 prior to today?

4 A. Yes, I have.

5 Q. And would you tell us what you did in
6 response to efforts to comply with Hultman Exhibit 20,
7 a subpoena? What you did to comply.

8 A. I directed members of my -- the people
9 that work for me in the law department to produce the
10 relevant documents.

11 Q. Okay. Mr. Hultman, regarding your
12 attention to paragraph one of the subpoena in Hultman
13 Exhibit 20, can you tell us what documents, if any,
14 were located in response to the request in paragraph
15 one which is found on Bates stamped MERS/Ukpe 003?

16 A. On paragraph one you mean?

17 Q. Yes.

18 A. We found a copy of the -- of what we
19 would call a signing agreement between MERS -- and I'm
20 using MERS to mean Mortgage Electronic Registration
21 Systems, Inc., the law firm of Phelan, Hallinan and
22 Schmieg and Countrywide Home Loans, LLP. We have not
23 found an executed copy of the other, the other
24 agreement referenced in that paragraph. We did
25 have -- we do have an unsigned copy of it, but not a

1 signed copy.

2 Q. And I'm sorry, what document do you
3 have an unsigned copy of referenced in paragraph one?

4 A. The Signing Authority Agreement between
5 MERS, Phelan, Hallinan and Schmieg and Countrywide
6 Home Loans, PC.

7 Q. Okay.

8 A. The PC firm.

9 Q. And for the record, paragraph one does
10 not mention a signing agreement. But you have, you
11 have found and located a signing agreement in response
12 to your search for paragraph one documents?

13 A. That's the only agreement that we have.
14 There's a -- we have an unsigned work copy of the
15 agreement and we have a signed -- an image of the
16 signed copy between MERS, Phelan Hallinan and Schmieg,
17 and Countrywide Home Loans.

18 MR. MALONE: We have not received a
19 copy of that unsigned work copy. We request a copy of
20 that, Mr. Brochin, and we can send a follow-up letter
21 to that effect.

22 MR. BROCHIN: We'll send you a copy.

23 BY MR. MALONE:

24 Q. All right. Paragraph one also asks for
25 the application of the law firm to have the attorneys

1 get appointed. Have you located any application by
2 the law firm for its attorneys to be appointed as MERS
3 officers?

4 A. No.

5 Q. Generally, in your experience, do MERS
6 officers who are what MERS would call certifying
7 officers make application to get appointed as
8 officers?

9 A. There is a -- for MERS members, there
10 is a form that is filled out by the member, which
11 triggers the production of a Corporate Resolution.

12 Q. And are the -- is the law firm Phelan,
13 Hallinan and Schmieg a MERS member?

14 A. No.

15 Q. And can you tell us what the
16 application process was that was followed for a
17 nonMERS member Phelan, Hallinan and Schmieg?

18 A. There isn't an application process.

19 Q. Then can you describe for us what
20 process was followed resulting in members of Phelan,
21 Hallinan and Schmieg entering into a signing agreement
22 with MERS by which certain attorneys in the Phelan,
23 Hallinan and Schmieg firm were made officers of MERS?

24 A. Countrywide, representatives of
25 Countrywide requested by e-mail that we enter into a

1 signing agreement between Countrywide, MERS, and that
2 law firm. They supplied us with a list of the persons
3 who would be appointed MERS officers in that
4 correspondence.

5 MR. MALONE: We have not received a
6 copy of that e-mail. We request that we be provided
7 with that, that piece of communication.

8 BY MR. MALONE:

9 Q. To your knowledge, is that e-mail the
10 first documentation leading up to -- chronologically
11 the first documentation leading up to the appointment
12 of Francis Hallinan as a MERS assistant secretary and
13 vice president?

14 A. I believe so, yes.

15 Q. Were there any conversations, to your
16 knowledge, preceding the e-mail being sent?

17 A. I don't know.

18 Q. Were you involved in the process of a
19 nonMERS member, Mr. Francis Hallinan, becoming
20 appointed as a MERS officer, that is an assistant
21 secretary and vice president?

22 A. Yes.

23 Q. In what way were you involved in the
24 process?

25 A. I executed the signing agreement and

1 executed the resolution.

2 Q. Do you know, do you know when the
3 e-mail was dated requesting from Countrywide that
4 Mr. Hallinan and other members of his firm be made
5 MERS officers?

6 A. I don't have that date in my head.

7 Q. Approximately, how much was it before
8 you executed the signing agreement? Agreement For
9 Signing Authority?

10 A. I don't know.

11 Q. Was the case of the Phelan firm
12 attorneys becoming MERS officers when they were not
13 MERS members the first time, to your knowledge, that,
14 that had happened, that is employees of nonMERS
15 members were made officers of MERS?

16 A. I'm not sure I understand your
17 question.

18 Q. Okay. Let's drop back then. At one
19 point in time, did MERS have a policy that only MERS
20 members could nominate their employees to be MERS
21 officers?

22 A. Yes.

23 Q. When did that policy change?

24 A. I don't have an exact recollection of
25 the time frame, but it was early in the process in the

1 first couple years.

2 Q. And could you tell us what you mean by
3 early in the process in the first couple of years?

4 A. Sometime before 2000.

5 Q. Can you tell us how the change came
6 about?

7 A. Members requested that we consider it
8 and we decided to do it.

9 Q. Was there, these requests for members,
10 was there some kind of correspondence from the members
11 requesting it?

12 A. I don't recall.

13 Q. To your knowledge, is there any
14 documentary record of the members requesting this
15 change in the early years, sometime prior to 2000?

16 A. I did not make an examination and I do
17 not recall.

18 Q. Who evaluated the request by the
19 members that nonMERS members be able to have their
20 employees nominated and appointed as officers of the
21 corporation?

22 A. The officers of the corporation.

23 Q. And who are they at the time?

24 A. I believe at the time, the president
25 was R.K. Arnold, the vice president was Daniel

1 McLaughlin, another vice president Carson Mullen, and
2 myself as secretary and treasurer.

3 Q. What was the process that the four of
4 you undertook leading up to a decision to change MERS'
5 policy so that employees of nonmembers of MERS could
6 become corporate officers?

7 A. I don't have any recollection of those
8 conversations right now.

9 Q. Since you received the subpoena, have
10 you talked to any other person about those early days
11 how this change came about?

12 A. I did not.

13 Q. The matter of changing MERS' policy so
14 that nonMERS member's employees could become officers
15 of the corporation, was that matter presented to the
16 MERS Board of Directors?

17 A. I don't recall.

18 Q. Do you have any knowledge of any
19 resolution by the MERS Board of Directors authorizing
20 a change in MERS policy such that employees of nonMERS
21 members could become officers of the corporation?

22 A. There was a resolution that authorized
23 me to appoint officers of MERS that was passed by the
24 board of directors of that company.

25 Q. What company was that, that passed that

1 resolution?

2 A. MERS.

3 Q. When was that resolution passed?

4 A. April of 1998.

5 Q. We have not received a copy of that
6 resolution and we'd like to receive it for today's
7 deposition.

8 MR. BROCHIN: I believe that's one of
9 the documents that were sent to you last night.

10 MR. MALONE: I do not believe so. We
11 went through the documents last night. The documents
12 you sent us last night.

13 MR. BROCHIN: John is indicating he
14 sent it to Ms. Sullivan last night and he's going
15 to --

16 MR. MURPHY: At 6:26 p.m.

17 MR. MALONE: What is the identity of
18 the document, John? How is it captioned?

19 MR. MURPHY: MERS board meeting
20 minutes.

21 MR. MALONE: No, we have not received
22 any such document. You may have sent it, but we
23 haven't -- we haven't --

24 MS. SULLIVAN: It's going to be tricky
25 but I can try.

1 MR. MALONE: Okay. Does Dan have a
2 copy on this end? It may have been received last
3 night, but none of us have it.

4 MR. BROCHIN: I believe John sent it
5 directly to Ms. Sullivan.

6 MR. MALONE: Ms. Sullivan unfortunately
7 left her office at 5 o'clock, 6 o'clock, and so if it
8 was sent directly to her, the communication is still
9 sitting in her office. So let me --

10 MR. BROCHIN: It was sent by e-mail. I
11 don't know if you have the ability to pick them up
12 outside of your office, but it was sent by e-mail.

13 MR. MALONE: Let me ask first because
14 that indicates to me we don't have a complete set of
15 the MERS production. The last documents we received
16 from Mr. Murphy were the MERS bylaws. That's the last
17 document. I'm sorry, yeah, MERS bylaws. Yeah, MERS
18 bylaws dated January 1, 1995. MERS 421 through MERS
19 432 is what we marked them. Correct? So Mr. Murphy,
20 if we could, Bobby, just to clarify the record, after
21 you sent the MERS bylaws dated January 1st, 1995 last
22 night you sent some additional documents?

23 MR. MURPHY: I sent the 1999 bylaws via
24 e-mail to Ms. Sullivan at 3:45 p.m.

25 MS. SULLIVAN: We have that.

1 MR. MALONE: This is mismarked, I
2 think.

3 MR. VILLERE: I think it is, too.

4 MR. MALONE: And you also sent -- just
5 one moment, please. The last document we had received
6 and actually been able to access or did access was
7 around 4:30 in the afternoon and it is the MERS bylaws
8 dated January 1, 1999. So John, can you tell us what
9 has been sent since then?

10 MR. MURPHY: The only other document
11 that was sent was the MERS board meeting minutes and I
12 sent that at 6:26 p.m. to Ms. Sullivan.

13 MR. MALONE: And the date of those
14 minutes? I'm sorry?

15 MR. MURPHY: I'm looking it up.
16 April 9, 1998.

17 MR. BROCHIN: But you sent the
18 certified resolution as well?

19 MR. MURPHY: Yes.

20 MR. BROCHIN: That was attached to the
21 minutes?

22 MR. MALONE: How many pages was the
23 document, John, if you know?

24 MR. MURPHY: Six.

25 MR. MALONE: Okay. Was a copy sent to

1 Mr. Orr?

2 MR. MURPHY: No.

3 MR. BROCHIN: No.

4 MR. MALONE: Can a copy be sent to
5 Mr. Orr now?

6 MR. BROCHIN: We can resend it to you
7 right now.

8 MR. MALONE: We don't have the ability
9 to print it out, that's the problem. We're in your
10 office in Princeton.

11 MR. BROCHIN: Okay. Yes, we can send
12 one to Mr. Orr.

13 MR. MALONE: Could one be sent to
14 Mr. Orr with the request that he run it off and bring
15 it down to us, or someone bring it down to us?

16 MR. BROCHIN: Yes.

17 (Discussion off the record.)

18 MR. MALONE: While we're waiting for
19 that document, I do have some questions that I can
20 continue with.

21 MR. BROCHIN: Yes, please, I think that
22 would be helpful.

23 BY MR. MALONE:

24 Q. Okay. The meeting of the board of
25 April 9, 1998, Mr. Hultman, did you attend that

1 meeting?

2 A. I did.

3 Q. And what was the board that met? What
4 was the name of the corporation?

5 A. It was Mortgage Electronic Registration
6 Systems, Inc.

7 Q. We've been provided some incorporation
8 documents reflecting that Mortgage Electronic
9 Registration Systems, Inc. was incorporated, we have
10 Delaware Secretary of State Certificate of
11 Incorporation dated December 30, 1998, effective
12 January 1, 1999. So are there earlier Articles of
13 Incorporation than the ones that have been provided to
14 us?

15 A. Yes.

16 MR. MALONE: We would ask that those
17 earlier articles be provided also then since --

18 BY MR. MALONE:

19 Q. What is the relationship between the
20 earlier company that had a meeting of the board on
21 April 9, 1998 and the company that was incorporated in
22 Delaware on December 30, 1998, with an effective date
23 of incorporation of January 1, 1999?

24 A. The corporation that was incorporated
25 at 1999 is a wholly owned subsidiary of Merscorp, Inc.

1 Prior to 1999, the name of that corporation was
2 Mortgage Electronic Registration Systems, Inc. and
3 prior to that, there was a predecessor corporation
4 which was a membership corporation which also had the
5 name Mortgage Electronic Registration Systems, Inc.

6 Q. And can you tell us if anything the
7 predecessor board did on April 9, 1998, was binding on
8 the new corporation incorporated on -- incorporated
9 effective January 1, 1999?

10 MR. BROCHIN: Object to the form of the
11 question.

12 THE WITNESS: Basically, the subsidiary
13 assumed all of the authority relating to holding title
14 to the mortgage that the original corporation had.

15 BY MR. MALONE:

16 Q. Other than assuming --

17 MR. MALONE: I'm sorry, I'll have the
18 court reporter -- I'll ask the court reporter to read
19 that answer back.

20 (The stenographer read back the
21 last answer.)

22 BY MR. MALONE:

23 Q. Other than assuming something to do
24 with the mortgage the original corporation had, did
25 anything the prior corporation did bind the new

1 corporation when it came into existence effective
2 January 1, 1999?

3 A. Most of the -- again, the authority
4 that related to holding title to the mortgage was
5 adopted by the new corporation.

6 Q. And I'm sorry, maybe you can explain
7 that a little bit. I'm not sure what's meant by the
8 authority relating to the holding of a mortgage.

9 A. The subsidiary is a single purpose
10 corporation that was incorporated for the sole purpose
11 of holding title to the mortgage. The other
12 operations of the old corporation remained with the
13 parent corporation, the operation of the registry and
14 the other operational issues associated with the MERS
15 process.

16 Q. And when you say holding title to the
17 mortgage, can you explain what you mean by that
18 phrase?

19 A. One of the things that the primary duty
20 of the subsidiary is to act as mortgagee when
21 requested by the borrower and our members.

22 Q. If I follow your answer, and forgive
23 me, I'm not a corporate lawyer, so I'm having some
24 difficulty. The subsidiary, I understand it, took
25 over, its sole purpose became holding title to

1 mortgages?

2 A. Yes.

3 Q. Did it have any other responsibilities?

4 A. No.

5 Q. Can you explain to us why that change
6 was made?

7 A. Yes.

8 Q. Please do.

9 A. As a requirement for mortgages that
10 were securing loans or promissory notes that were sold
11 to securitize trust, the rating agencies would only
12 allow mortgages MERS -- well let me step back. They
13 required that a bankruptcy remote single purpose
14 entity be created in order for transactions holding
15 loans secured by MERS, by mortgages MERS served as
16 mortgagee to be in those pools and receive a rating,
17 an investment grade rating without any changes to the
18 credit enhancement. They required that to be a
19 bankruptcy remote single purpose subsidiary of MERS,
20 of Merscorp.

21 Q. And is MERS, Inc. the entity that came
22 into existence on January 1, 1999, a bankruptcy remote
23 vehicle?

24 A. Merscorp, Inc., which is the parent
25 corporation, is a Delaware stock corporation of

1 Mortgage Electronic, which is the sole shareholder in
2 Mortgage Electronic Registration Systems, Inc., the
3 bankruptcy remote subsidiary.

4 Q. And my question simply is, is MERS,
5 your MERS, Mortgage Electronic Registration Systems,
6 Inc., is it a bankruptcy remote vehicle?

7 MR. BROCHIN: Object to the form of the
8 question.

9 THE WITNESS: It falls within what's
10 generally considered to be that.

11 BY MR. MALONE:

12 Q. And for the record, could you briefly
13 explain to us, based on your knowledge, what is meant
14 by the phrase bankruptcy remote?

15 A. There are requirements that required,
16 under rating agency criteria, that set out the things
17 that are required in order to be considered that type
18 of entity, which are spelled out in the charter and
19 among them is the requirement that there be an
20 independent director and that, that independent
21 director in that subsidiary, if it ever was in a
22 position that it needed to file for protection of the
23 bankruptcy laws, that independent director would have
24 to vote in favor of that before that could happen.

25 Q. So if I follow you correctly, Mortgage

1 Electronic Registration, Inc., the company that came
2 into existence on January 1, 1999, is a separate and
3 distinct legal entity than the prior company, is that
4 correct?

5 A. That's correct. That's correct.

6 Q. Is the new company -- was the new
7 company in any way bound by any acts of the prior
8 company?

9 A. To the extent that we --

10 Q. The court reporter couldn't hear your
11 answer.

12 A. The subsidiary corporation assumed some
13 of the obligations of the parent corporation.

14 Q. Which obligations were assumed by the
15 new subsidiary corporation?

16 A. The ones that related to holding title
17 to mortgages or acts as mortgagee or beneficiary under
18 a deed of trust.

19 Q. Other than what you just described, was
20 the new corporation in any way bound by any other
21 prior activity of the earlier corporation?

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

24 THE WITNESS: No.

25 BY MR. MALONE:

1 Q. Specifically, was the new corporation
2 in any way bound by resolutions passed by the old
3 corporation?

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

6 THE WITNESS: Only to the extent that
7 they assumed those resolutions.

8 BY MR. MALONE:

9 Q. Can you tell us which resolutions the
10 new company, the company that came into existence on
11 January 1, 1999 assumed?

12 A. There's a whole series of them. I
13 don't have them in front of me and I didn't look at
14 them in preparation for this deposition.

15 Q. Okay. One was produced today and
16 actually, we don't have a resolution. Do you know if
17 any resolution from the old board was adopted by the
18 new board as binding that has any relevance to the
19 appointment of nonmember employees as corporate
20 officers?

21 A. I did not look at the records. I would
22 have to go back and look at the records.

23 Q. Okay. What would it take you to do
24 that, to go back -- I take it you have to go back to
25 your office?

1 A. Yes.

2 Q. Okay. We're going to ask that, that be
3 done and that the end of today, we'll move to adjourn
4 the deposition but not complete it and we can pick up
5 by way of telephone conference at your convenience.
6 But this fundamental question whether anything the old
7 board did has any relevance to what we're talking
8 about today remains open. I'm going to ask that --

9 MR. MALONE: Mr. Orr has delivered to
10 us a document captioned Mortgage Electronic
11 Registration Systems, Inc., Board of Directors,
12 Regular Meeting, MERS Corporate Headquarters, has an
13 address and it has a date of April 9, 1998, and it
14 says Agenda at the top. And at the back of the
15 document, there is a certificate saying -- well, I'll
16 get to it once the exhibit is marked. Why don't we
17 have this --

18 MR. BROCHIN: Okay. Well, you're going
19 to need to send that to me because we don't have a
20 copy of that. The reporter is marking it as an
21 exhibit, so.

22 MR. MALONE: We haven't marked it yet.

23 MR. BROCHIN: I'm going to have to get
24 a copy of that and I'm going to have to get it printed
25 and marked as an exhibit here. So maybe you can move

1 on to some other area and return to this at a later
2 time.

3 MR. MALONE: Okay. Well, let me
4 just -- I'm agreeable to that. I have one question
5 though about what was sent to us, but let me mark it.
6 For the record, we haven't gotten it yet, but the
7 stipulation that Mr. Orr signed on this end and
8 Ms. Sullivan signed we have had premarked by the
9 reporter as Hultman Exhibit 29. I don't believe you
10 have that because it was just marked this morning.
11 And we can make available a copy to you during the
12 recess. So I'm going to ask the court reporter to
13 mark this document that Mr. Murphy had sent last
14 evening and Mr. Orr delivered to us this morning the
15 agenda document, I'll ask to be marked Hultman-30.

16 (Hultman-30, Agenda dated 4/9/98, was
17 marked for identification.)

18 MR. MALONE: Bobby, have you gotten a
19 copy of the agenda item?

20 MR. BROCHIN: No, I haven't.

21 MR. MALONE: Okay. I do want to come
22 back to it, but I said I had one question and that has
23 to do with the, the Corporate Resolution that's at the
24 back of the exhibit, and it has Mr. Hultman's
25 signature, but it's dated December 20, 2002.

1 BY MR. MALONE:

2 Q. Mr. Hultman, can you explain to us how
3 a resolution of April 9, 1998 doesn't get your
4 signature on it until December 20, 2002?

5 A. That's a copy that we found in the file
6 where I had certified it as of that date for some
7 other purpose.

8 Q. And am I correct in understanding that
9 the copy that was found in the file was undated?

10 A. I don't understand your question.

11 Q. You indicated that the document that we
12 have that you don't have a copy of yet, but it's
13 Hultman-30, the last page has a certificate signed by
14 you and it's dated December 20, 2002. If I understood
15 your explanation a moment ago, this is a copy of the
16 resolution found in the file that you dated on
17 December 20, 2002 for some other matter.

18 A. Are you asking me the question?

19 Q. Did I understand you correctly?

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

22 THE WITNESS: I lost track of the
23 thread here because you keep moving back and forth. I
24 don't understand what you mean.

25 BY MR. MALONE:

1 Q. When you did something on December 20,
2 2002, can you tell us if you found a copy of the
3 resolution in the file? A copy of this resolution?

4 A. I don't recall the circumstances under
5 which I executed that certificate.

6 Q. Was there, to your knowledge, a signed
7 copy of the certificate in the file when you went
8 looking back in December of 2002?

9 A. I don't recall what happened in 2002.

10 Q. If I understood you correctly a moment
11 ago, you certified this document on December 20, 2002
12 in relation to some other matter. There was a reason
13 you were being asked to do it some four and a half
14 years after the board met. Do you recall what the
15 reason was?

16 A. No.

17 Q. On December 20, 2002, were you the
18 secretary of Mortgage Electronic Registration Systems,
19 Inc.?

20 A. Yes.

21 Q. Okay. And this resolution, is this a
22 resolution of Mortgage Electronic Registration
23 Systems, Inc., the company that came into existence on
24 January 1, 1999, or is it a resolution of an earlier
25 company?

1 A. It's both.

2 Q. Were you the secretary of Mortgage
3 Electronic Registration, Inc. the company that existed
4 on April 9, 1998?

5 A. Yes.

6 Q. When did you first become secretary of
7 any entity known as Mortgage Electronic Registration
8 Systems, Inc.?

9 A. I believe in April of 2000 -- 1998.

10 Q. Is there some board minute reflecting
11 that you have -- that you were appointed as the
12 secretary, as an officer, a secretary of the
13 corporation?

14 A. Yes.

15 MR. MALONE: Okay. And we'd ask that,
16 that minute be provided and any corresponding
17 resolution establishing that you were, in fact, the
18 secretary of an entity known as Mortgage Electronic
19 Registration Systems, Inc. as of April 9, 1998.

20 BY MR. MALONE:

21 Q. When the board met on April 9, 1998 --
22 well, I'll withdraw that. Before I go on to any
23 further questions, I think it important you both have
24 a copy of the document in front of you. You're still
25 waiting for it?

1 MR. BROCHIN: Still waiting for it.

2 MR. MALONE: All right. I will come
3 back to Hultman-30 then.

4 BY MR. MALONE:

5 Q. And I'm going to ask you to clarify
6 something for me because there's some confusion on my
7 part and my colleague's part given the name -- given
8 the names of the companies and the fact that this new
9 company that came into existence on January 1st, 1999
10 has the same name of an earlier company that had
11 different responsibilities. So maybe we can go back
12 to the first company, the first Mortgage Electronic
13 Registration Systems, Inc. The one that passes -- the
14 one that meets on April 9, 1998. When was that
15 company formed?

16 A. October 1995.

17 Q. And was that formed in accordance with
18 a set of bylaws?

19 A. Yes.

20 Q. And has that set of bylaws been made
21 available to us?

22 A. No.

23 MR. MALONE: Actually, is Mr. Murphy in
24 the room?

25 MR. MURPHY: Yes.

1 BY MR. MALONE:

2 Q. Mr. Murphy did provide a copy
3 yesterday, and once you have your complete set of
4 documents that you provided to us, we'll go through
5 them, they include a set of bylaws from 1995. But
6 until you see them, I won't ask you anymore questions
7 about them.

8 The resolution that was passed -- I'm
9 sorry, the meeting that took place on April 9, 1998,
10 was that in accordance with the bylaws of 1995?

11 A. Yes.

12 Q. And do you recall what that -- what
13 those bylaws, those 1995 bylaws said about the
14 appointment of corporate officers?

15 A. It says whatever it says. I don't have
16 it in front of us so I can't tell you what it says.

17 Q. Okay. Did the company that was formed
18 in 1995, Mortgage Electronic Registration Systems,
19 Inc., go out of existence at some point?

20 A. Yes.

21 Q. When did it go out of existence?

22 A. June 30, 1998.

23 Q. And was there a successor company that
24 took over its responsibilities?

25 A. Yes.

1 Q. And what was the successor company?

2 A. Mortgage Electronic Registration
3 Systems, Inc. that was incorporated on June 30, 1998.

4 Q. And am I correct that this is, for
5 purposes of clarity, this is the second entity created
6 with the name Mortgage Electronic Registration
7 Systems, Inc.?

8 A. Yes.

9 Q. And did that entity, the entity that
10 was formed on June 30, 1998, go out of existence at
11 some point?

12 A. No.

13 Q. Was a new entity with the same name,
14 Mortgage Electronic Registration Systems, Inc.,
15 created effective January 1, 1999?

16 A. Yes.

17 Q. And can you explain to me, a
18 noncorporate lawyer, how two companies with identical
19 names can exist at the same time?

20 A. It can't.

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

23 BY MR. MALONE:

24 Q. I'm sorry?

25 A. They cannot.

1 Q. They cannot. So can you explain to me,
2 for purposes of clarity -- I'm going to ask you was
3 the company that came into existence on January 1,
4 1999 the third company with the identical name
5 Mortgage Electronic Registration Systems, Inc.?

6 A. Yes.

7 Q. You told us the first company went out
8 of existence at some point. What happened to the
9 second company around the time the third company was
10 formed?

11 A. It changed its name and gave us consent
12 that the new corporation take that name.

13 Q. Okay. And when did this name change
14 take place?

15 A. January 1st, 1999.

16 Q. And what was the name change, please?

17 A. The name was changed to Merscorp, Inc.

18 Q. I'm sorry, that was -- that's the name
19 of the third -- I'm sorry. Withdrawn. Withdrawn. So
20 there's an entity that comes into existence on
21 January 1st, 1999 known as Merscorp, Inc.?

22 A. No.

23 Q. I'm sorry, straighten me out. I'm
24 confused.

25 A. Are you asking me a question?

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

3 BY MR. MALONE:

4 Q. Tell us when Merscorp, Inc. came into
5 existence.

6 A. The corporate, the corporation with the
7 name Merscorp Inc. was incorporated on June 30, 1998.

8 Q. But its name was not Merscorp, Inc. on
9 June 30, 1998, is that correct?

10 A. Yes.

11 Q. And what was its name on June 30, 1998?

12 A. Mortgage Electronic Registration
13 Systems, Inc.

14 Q. And precisely, when did it take on the
15 new name?

16 A. January 1st, 1999.

17 Q. Thank you. And were any new Articles
18 of Incorporation filed with that name change?

19 A. No. A Certificate of Amendment was
20 filed.

21 MR. MALONE: Okay. We'd like to
22 receive a copy of the Certificate of Amendment.

23 BY MR. MALONE:

24 Q. Now, I'm trying to follow the path
25 taken by the entity that held a meeting on April 9,

1 1998. Is the entity that met on April 9, 1998 now
2 known as Merscorp, Inc.?

3 A. No.

4 Q. Is the entity that met on April 9, 1998
5 now known as Mortgage Electronic Registration Systems,
6 Inc.?

7 A. If you mean the corporation and
8 incorporated in 1999, no.

9 Q. What is the entity, if anything, that
10 met on April 9, 1998 known as?

11 A. It doesn't exist.

12 Q. And I think I'm getting a better
13 understanding. When did this entity that met on
14 April 9, 1998 cease existing?

15 A. June 30, 1998.

16 MR. MALONE: I'm sorry, I need to mute
17 a second. Go offline.

18 (Discussion off the record.)

19 BY MR. MALONE:

20 Q. Mr. Hultman, can you please explain to
21 us the entity MERS 2, the second iteration of a
22 company with the name Mortgage Electronic Registration
23 Systems, Inc., did that succeed totally to the
24 business interest of MERS 1?

25 A. Yes.

1 Q. And in succeeding to the business
2 interest, did it take on all of the -- were all of the
3 prior resolutions and actions of a board from MERS 1
4 carried over and became the responsibility of MERS 2?

5 A. Yes.

6 Q. Now, when MERS 3 was created, you've
7 indicated there was division of responsibilities
8 between MERS 3 and the entity that became Merscorp,
9 Inc., is that correct?

10 A. There is no Merscorp, Inc. Oh, excuse
11 me, I'm sorry, yes. I'm sorry, I wasn't listening
12 carefully.

13 Q. Okay. Would you describe for us what
14 the responsibilities were in terms of the previous
15 organization, MERS 2. What responsibilities does
16 Merscorp, Inc. take on when it started?

17 A. When Merscorp, Inc. started on June 30,
18 1998, it succeeded and assumed all of the duties and
19 responsibilities of powers of the original MERS
20 Corporation, Inc. in 1995. As of January 1st, 1999,
21 the functionalities of the original companies were
22 bifurcated into two parts. The subsidiary held was
23 given the responsibility to hold title to the mortgage
24 lien or become the beneficiary of a deed of trust and
25 all the responsibilities related to that. The parent

1 company, and the parent company obviously was the sole
2 shareholder of the subsidiary, the parent company is
3 the operating company which all -- everybody's
4 employed by the operating company. It's the company
5 that owns the registries, owns all of the intellectual
6 property. It's the one that does all of the
7 operations. So in essence, everything that the old
8 companies did except for the title holding function.

9 Q. And as for the title holding function,
10 that now resides with the third iteration of Mortgage
11 Electronic Registration Systems, Inc. as of January 1,
12 1999, is that correct?

13 A. Yes.

14 Q. And are there related responsibilities
15 to holding title?

16 A. Are there?

17 Q. Yes.

18 A. Is that the question?

19 Q. Yes, that's the question.

20 A. Well, there are, there are things that
21 come, that come from that.

22 Q. What things come from that?

23 A. Well, you know, that company is
24 responsible to release the lien when the loan is paid
25 off that it's holding title to, or holding title to

1 the security interest. If there are bankruptcy
2 proceedings, that company is authorized to conduct
3 certain of the actions of bankruptcy, it can
4 foreclose. Generally, whatever functions that are
5 related to being a mortgagee and provided in the terms
6 of the mortgage instrument itself.

7 Q. The word certified, what does it mean
8 to you as first a lawyer?

9 MR. BROCHIN: Object to the form of the
10 question.

11 THE WITNESS: I don't understand your
12 question.

13 BY MR. MALONE:

14 Q. As an attorney, from time to time, have
15 you had to certify documents?

16 A. Yes.

17 Q. Okay. And when you certify those
18 documents, what does the word certify mean in that
19 context?

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

22 THE WITNESS: I'm certifying that
23 they're a true and accurate representation of what
24 they're purported to be.

25 BY MR. MALONE:

1 Q. And when a MERS officer is appointed or
2 someone is appointed as a MERS certifying officer,
3 what does the word certifying mean in certifying
4 officer?

5 A. Just a name.

6 Q. I understand it's just a name, but does
7 it have any meaning at all within the corporate
8 entity? Does a certifying officer have any
9 responsibilities?

10 A. They have the responsibilities that are
11 enumerated in the Corporate Resolution appointing them
12 a vice president, assistant secretary.

13 Q. And when, when one of those certifying
14 officers carries out those responsibilities, are they
15 certifying to something? Are they attesting to the
16 truth and accuracy of what they're doing?

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

19 THE WITNESS: They are carrying out the
20 roles that are enumerated in the resolution which
21 authorizes them to take certain actions and that's
22 what they're doing.

23 BY MR. MALONE:

24 Q. Other than just being a name, to your
25 knowledge, was there any reason the term certifying

1 officer was selected for purposes of naming these
2 officers?

3 A. It's just a name for the officers,
4 other than the other corporate officers, that were
5 appointed to manage the rest of the functionality of
6 the corporation.

7 Q. So if I follow correctly, sometime back
8 in April of 1998, the issue of appointing certifying
9 officers came up at a board meeting, is that correct?

10 A. Yes.

11 Q. Was that the first time the topic of
12 appointing certifying officers had come up to your
13 knowledge?

14 A. No.

15 Q. When did it first come up?

16 A. It had been there ever since the
17 corporation, since the corporation was reincorporated,
18 I think.

19 Q. When was that that the corporation was
20 reincorporated that you're talking about?

21 A. I think it was in 1995 or '96.

22 Q. And can you give us some background,
23 please, as to why there were discussions around 1995
24 or 1996 about a need for certifying officers?

25 A. I wasn't there at that time.

1 Q. And can you just briefly tell us your
2 knowledge of the reason you believe those discussions
3 go back as early as 1995 or 1996?

4 A. I have seen resolutions that go back
5 earlier than 1998.

6 Q. And the resolutions you saw said what?

7 A. Prior to April of 1998, there were
8 resolutions passed by the board for each member when
9 requested.

10 Q. And those were resolutions having to do
11 with certifying officers?

12 A. Yes.

13 Q. And is a certifying officer -- prior to
14 April of 1998, when the board would pass a resolution,
15 were those certifying officers considered officers of
16 the corporation?

17 A. Yes.

18 Q. Do they have corporate powers?

19 A. Yes.

20 Q. And was the appointment of those, those
21 officers, those certifying officers made as a result
22 of an action by the board of directors?

23 A. Yes.

24 Q. Were those officers, prior to April of
25 1998, called assistant secretaries?

1 A. I don't recall.

2 Q. Were those officers, prior to April of
3 1998, called vice presidents?

4 A. I don't recall.

5 MR. MALONE: Bobby, do you have the
6 exhibit yet?

7 MR. BROCHIN: I do not.

8 MR. MALONE: The agenda? It's almost
9 12:30, I'm going to suggest we break for lunch until
10 1:30, hopefully by then you'll have it. If not, we
11 can fax you a copy.

12 MR. BROCHIN: No, I'll have it. I'm
13 sure I'll have it by the end of the lunch break.

14 MR. MALONE: Let's break for lunch then
15 and resume at 1:30. Thank you.

16 MR. BERNHEIM: Can I ask that somebody
17 e-mail me this exhibit?

18 MR. BROCHIN: Yes, we can go do that.
19 Where do you want it e-mailed?

20 MR. BERNHEIM: Dbernheim at Wilentz dot
21 com.

22 MR. BROCHIN: We will send it to you.

23 MR. MALONE: So we'll adjourn back here
24 at 1:30.

25 MR. BROCHIN: Okay, very good.

1 (Luncheon recess.)

2 (At this point, the deposition
3 continued with another court reporter.)

4 * * * * *

5
6
7 MR. MALONE: Bobby, you now have the documents
8 that were sent us last night around 6:30. The first
9 page is marked Agenda. That first page marked Agenda,
10 we're going to have that marked by the court reporter as
11 Hultman-30.

12 (Agenda marked Hultman-30 for Identification)

13 MR. MALONE: The next three pages, the minutes
14 starting on the first page saying minutes and ending on
15 numbered page three signed April 9, 1998 by Sharon
16 Hortskamp we're going to mark Hultman-31. Let's have
17 that done now.

18 (Minutes marked Hultman-31 for Identification)

19 MR. MALONE: And then the last two pages, one
20 is marked Corporate Resolution, it's blank, and the
21 other is marked Corporate Resolution Mortgage Electronic
22 Registration Systems. We're going to put, and I just
23 want to confirm this with Mr. Hultman, am I correct in
24 reading that the first of these two --

25 MR. BROCHIN: Are you asking that?

1 MR. MALONE: Off the record.

2 (Corporate Resolution marked Hultman-32 for
3 Identification)

4 MR. MALONE: 32 is a two-page exhibit. The
5 first page is captioned Corporate Resolution of Mortgage
6 Electronic Registration Systems, Inc. and has
7 Mr. Hultman's signature of December 20, 2002. The
8 second page of the exhibit, Hultman-32, is a Corporate
9 Resolution, unsigned, captioned Corporate Resolution.

10 Now that you have the documents, I would like
11 to go through what we attempted to do this morning but
12 could not. I'm going to give the court reporter the
13 stack of the original exhibits and going to go through
14 and make sure you have the same premarked exhibits.

15 First, in terms of documents provided to us in
16 response to the subpoena, do you have Hultman Exhibit --
17 do you have a document marked MERS 1 in the lower
18 right-hand corner?

19 MR. BROCHIN: Yes. I'm going through and I
20 have marked off of your letter. So far I'm up to
21 exhibit number -- last number I marked is 14.

22 MR. MALONE: Could we start with the witness
23 being shown Hultman Exhibit 1, please.

24 MR. BROCHIN: Yes, we can do that.

25 BY MR. MALONE:

1 Q Mr. Hultman, could you describe what that
2 document is?

3 A This is a MIN summary report off of the MERS
4 system relating to a loan by Mr. and Mrs. Ukpe.

5 Q At the bottom some information appears to have
6 been redacted. Can you tell us what was redacted and
7 why?

8 A No, I cannot.

9 MR. MALONE: We would like to get an
10 unredacted copy of whatever was at the bottom of the
11 page. We're putting a request in for an unredacted copy
12 listed as a privelege claim.

13 BY MR. MALONE:

14 Q Mr. Hultman, this exhibit, Hultman Exhibit 1,
15 was it produced in response to the subpoena today?

16 A Yes.

17 Q Turning to Hultman Exhibit 2, can you tell us
18 what this document is?

19 A These are the milestone reports that were
20 generated off the MERS system relating to the same line
21 as the MIN summary.

22 Q Was this document produced pursuant to the
23 subpoena today by MERS?

24 A Yes.

25 Q And again, there's information that has been

1 redacted at the bottom of the page. Do you know what
2 the information is?

3 A No.

4 MR. MALONE: And again we'll ask for an
5 unredacted copy of this exhibit unless there's an
6 associative privelege.

7 BY MR. MALONE:

8 Q Turning to Hultman Exhibit 3, do you have
9 that, please?

10 A I do.

11 Q And it's captioned Agreement for Signing
12 Authority. It is a two-page document. Does your
13 signature appear on the second page?

14 A Yes.

15 Q And is it dated October 23, 2007?

16 A No.

17 Q Your signature date is not dated October 23rd?

18 A Excuse me. I'm reading the wrong line. Yeah,
19 10-23-07.

20 Q Was this document produced pursuant to the
21 subpoena to MERS?

22 A Yes.

23 Q Turning to Hultman Exhibit 4, two-page
24 document marked in the bottom MERS-5 and MERS-6. Do you
25 have that?

1 A Yes.

2 Q Was this document produced pursuant to the
3 subpoena?

4 A Yes.

5 Q I would like to spend a moment more on this
6 particular document. It's captioned Corporate
7 Resolution. Do you see that at the top?

8 A Yes.

9 Q Did the MERS Board of Directors pass this
10 resolution?

11 A The resolution was passed pursuant to the
12 authority that was delegated to me by the Board of
13 Directors.

14 Q My question to you is did the MERS Board of
15 Directors pass this resolution?

16 A By virtue of the delegation to me that's an
17 action of the Board, so they passed the resolution.

18 Q And is it your testimony -- where is the Board
19 resolution you're talking about that this relates to,
20 Hultman Exhibit 4?

21 A I told you I hadn't reviewed the records so I
22 don't know where that is right now.

23 Q I believe that it's specifically asked for in
24 the subpoena and the follow-up letter requesting
25 documents and I'm going to ask that the witness be

1 directed to produce that resolution as a central
2 document in the case and we're going -- we will adjourn
3 the deposition today to a further date until the witness
4 has an opportunity to search for and locate and if it
5 exists, produce that particular resolution. When was
6 that?

7 MR. BROCHIN: Personally it's not relevant,
8 but what -- I think we are all talking about a different
9 resolution, so can you tell us what resolution you are
10 even referring to?

11 MR. MALONE: The question I asked Mr. Hultman
12 a moment ago was whether the Board of Directors passed a
13 resolution relating to Hultman Exhibit 4 and I'll spell
14 that out a little bit more.

15 BY MR. MALONE:

16 Q Did the Board of Directors appoint a
17 resolution appointing employees of Phelan, Hallinan &
18 Schmieg, L.L.P. as assistant secretaries and
19 vice-presidents of Mortgage Electronic Registration
20 Systems, Inc., that's the first question. I think
21 Mr. Hultman answered it yes. Is that correct,
22 Mr. Hultman?

23 A That's correct.

24 Q And my next question is -- my next question
25 will be when did the Board pass that resolution

1 appointing members of Phelan, Hallinan & Schmieg, L.L.P.
2 as assistant secretaries and vice-presidents of MERS?

3 A The resolution was adopted pursuant to the
4 delegated authority to me on October 23, 2007.

5 MR. BROCHIN: And a copy of that resolution
6 that authorized him has been produced.

7 MR. MALONE: Please, Mr. Brochin. Could I
8 have the last answer by the witness read back.

9 (The following answer was read by the
10 stenographer: "Answer: The resolution was adopted
11 pursuant to the delegated authority to me on October 23,
12 2007?")

13 BY MR. MALONE:

14 Q So when did the Board meet to pass that
15 resolution, the one referenced in Hultman Exhibit 4?

16 A They didn't.

17 Q When did the Board duly adopt a resolution
18 authorizing the appointment of attorneys from Phelan,
19 Hallinan & Schmieg to be appointed as assistant
20 secretaries and vice-presidents of the corporation?

21 A October 23, 2007.

22 Q And did the Board meet that day, October 23,
23 2007?

24 A No.

25 Q When did the Board meet in relation to this

1 particular resolution, this Corporate Resolution Hultman
2 Exhibit 4?

3 A They originally met in April of 1998 and
4 delegated me the authority to do this, and so by virtue
5 of the fact that I had the delegated authority when I
6 appointed them officers on October 23, 2007, that was an
7 action of the Board.

8 Q Your testimony, Mr. Hultman, is back in April
9 of 1998 the Board of a predecessor company authorized
10 you to appoint non-members of MERS as assistant
11 secretaries and vice-presidents of a successor
12 corporation?

13 MR. BROCHIN: Excuse me. Object to the form
14 of the question.

15 Q Go ahead, please answer.

16 A No.

17 Q What did the Board do in April of 1998 in
18 terms of authorizing you to appoint anyone to do
19 anything?

20 A What they authorized me to do was they
21 delegated me the authority to elect persons requested by
22 members to be officers of Mortgage Electronic
23 Registration Systems, Inc.

24 Q What kind of officers?

25 A Assistant secretary and vice-president.

1 Q And your testimony is that is what the Board
2 did in April of 1998?

3 A Yes.

4 Q And that resolution that was passed back in
5 April of 1998 was by a company that as I understand it
6 went out of existence in June of 1998, is that correct?

7 A Yes.

8 Q How does a resolution of a company that went
9 out of existence in June of 1998 become effective
10 October 23, 2007?

11 MR. BROCHIN: Object to the form of the
12 question. Calls for a legal conclusion.

13 Q Answer the question, please.

14 A As I explained to you before, the corporation
15 -- the first MERS corporation went out of existence and
16 the second MERS corporation assumed its duties and
17 obligations and then when the third MERS corporation was
18 formed, that corporation assumed some of the duties and
19 obligations of the original MERS vis-a-vis the second
20 MERS. At that point, what I think I said was that I
21 didn't know where the documentation was that ratified
22 the original resolution.

23 Q I recall some testimony along those lines that
24 certain resolutions were ratified, but not all
25 resolutions of the prior MERS corporation, is that

1 correct?

2 MR. BROCHIN: Object to the form of the
3 question. Again, you're asking him about your
4 recollection of his testimony.

5 Q You answered yes, is that correct?

6 A I'm not sure what question I answered and what
7 question you're asking me now.

8 Q Let me try it again now. I will rephrase it.
9 When MERS, the third MERS corporation came into
10 existence on January 1, 1999, it was a shrunken
11 corporation, correct, it had far less authority than its
12 predecessor corporations, is that fair to say?

13 A I don't know that I would characterize it that
14 way.

15 Q Okay. You indicated previously it had limited
16 authority to deal with title issues, correct?

17 A I don't think that's the way I characterized
18 it.

19 Q Then I don't want to mischaracterize it.
20 Would you please characterize what the authority of the
21 MERS three corporation was as of January 1, 1999.

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

24 A When the third MERS corporation was
25 incorporated, some of the duties and authority that was

1 exercised by the original two MERS were split off and
2 placed into that company and those are the ones that
3 relate to acting as mortgagee or acting as beneficiary
4 of loans originated by MERS members that had chosen, or
5 their borrowers had chosen to make us the mortgagee or
6 beneficiary.

7 Q And at that point on January 1, 1999 the two
8 prior MERS corporations, MERS one and MERS two, had
9 adopted over the course of time numerous resolutions, is
10 that correct?

11 MR. BROCHIN: Object to the form of the
12 question.

13 A Yes.

14 Q And were all of those prior resolutions
15 adopted by MERS three or just some of them?

16 A Some of them.

17 Q Was the resolution of April 9, 1998 granting
18 the secretary the power to appoint certifying officers
19 adopted by the new MERS corporation on or after January
20 1, 1999?

21 A I don't know.

22 Q What would you have to do to find out?

23 A The same thing I told you two hours ago, I
24 would need to go back and look through the records of
25 that corporation.

1 Q Then I will make the same request that I made
2 two hours ago that you go back, look through the records
3 of that corporation, please advise your counsel when you
4 have done that, if there is such a document, let us
5 know, if there isn't such a document, let your counsel
6 know, and we will then arrange to resume the deposition
7 so we can have an answer to that question.

8 MR. BROCHIN: We are writing down all your
9 requests, but I just didn't want you to believe our
10 silence is an agreement that we're going to have to come
11 back and answer more questions.

12 MR. MALONE: Understood.

13 MR. BROCHIN: I certainly think we are going
14 to make every effort to produce for you those documents,
15 I just don't want you to take that as some agreement
16 that we think it's either relevant or was asked for.

17 MR. MALONE: Okay. Understood, thank you.

18 MR. BROCHIN: Okay, thank you.

19 BY MR. MALONE:

20 Q Mr. Hultman, as corporate secretary of the
21 present MERS -- first off, are you the corporate
22 secretary of the present MERS corporation, what I have
23 been calling MERS three, the one that came into
24 existence on January 1, 1999?

25 A Yes.

1 Q And were you the corporate secretary of the
2 prior MERS corporation that we have been calling MERS
3 two?

4 A Yes.

5 Q And were you the corporate secretary of the
6 initial MERS corporation, the one we have been calling
7 MERS one?

8 A I was the corporate secretary at that MERS
9 since I was elected somewhere I think in the March,
10 April time frame of 1998.

11 Q And were you assistant corporate secretary
12 prior to that?

13 A No.

14 Q Was there an assistant secretary, corporate
15 secretary prior to?

16 A I don't recall.

17 Q As corporate secretary would you tell us,
18 please, what the significance is for MERS three if MERS
19 three did not adopt as one of the resolutions the April
20 9, 1998 resolution by MERS one?

21 MR. BROCHIN: Object to the form to the extent
22 it calls for a legal conclusion.

23 Q Answer the question, please.

24 A I'm sorry, I've lost track of the question.
25 Just ask me again.

1 Q I will ask the reporter to read it back.

2 (The stenographer read the pending question)

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

4 Q Turning to the second page of Hultman Exhibit
5 4, there are a series of attorneys identified. The
6 second one from the top is a Francis S. Hallinan,
7 Esquire. Do you see that?

8 A Yes.

9 Q Do you know Mr. Hallinan?

10 A Do I know him personally, is that your
11 question?

12 Q Yes, do you know him personally?

13 A I know that he works for the Hallinan Schmieg
14 law firm.

15 Q Other than looking at this piece of paper how
16 do you know that?

17 A I don't know it from this piece of paper. I
18 know it from other corporate records.

19 Q What other corporate records?

20 A The request that was made by Countrywide.

21 Q And this is the e-mail request you mentioned
22 earlier?

23 A I believe so, yes.

24 Q That you have seen, correct?

25 A Yes.

1 Q How recently did you see that e-mail request?

2 A In the last couple days.

3 Q And again, it has not been produced to us. I
4 asked for it earlier. Is there anything else? You said
5 you saw corporate records in addition to an e-mail.
6 What else have you seen that led you to believe that
7 Mr. Hallinan is a MERS officer?

8 A I was probably advised by somebody on my
9 staff.

10 Q And if someone from your staff advised you, do
11 you remember who that was?

12 A No, I do not.

13 Q Do you remember what they said?

14 A I do not.

15 Q Did they give any indication of what
16 documents, if anything, they had looked at before
17 advising you that Mr. Hallinan was an officer of MERS?

18 A I don't recall.

19 Q Do the assistant secretaries of the
20 corporation report to the secretary of the corporation?

21 A Yes.

22 Q How often does Mr. Hallinan report to you?

23 A I don't believe I've ever spoken to or heard
24 from him.

25 Q Do the assistant secretaries -- first off, are

1 you a salaried employee of MERS?

2 A No.

3 Q Are you a salaried employee of MERS Corp,
4 Inc.?

5 A Yes.

6 Q Are any of the employees of MERS, Inc.
7 salaried employees?

8 A I don't understand your question.

9 Q Does anyone get a paycheck, if they are an
10 employee of MERS, Inc., do they get a paycheck from
11 Mercer, Inc.?

12 A There is no MERS, Inc.

13 Q I thought, sir, there's a company that was
14 formed January 1, 1999, Mortgage Electronic Registration
15 Systems, Inc. Does it have paid employees?

16 A No, it does not.

17 Q Does it have employees?

18 A No.

19 Q Just so there's not any confusion, I have been
20 using MERS, but I thought we had an agreement earlier
21 today that would be a shorthand for Mortgage Electronic
22 Registration Systems, Inc. Have you been confused?

23 A I was confused because you said MERS, Inc.
24 There is no MERS, Inc.

25 Q Thank you. I will go back to just using MERS

1 then. Does MERS have any salaried employees?

2 A No.

3 Q Does MERS have any employees?

4 A Did they ever have any? I couldn't hear you.

5 Q Does MERS have any employees currently?

6 A No.

7 Q In the last five years has MERS had any
8 employees?

9 A No.

10 Q To whom do the officers of MERS report?

11 A The Board of Directors.

12 Q To your knowledge has Mr. Hallinan ever
13 reported to the Board?

14 A He would have reported through me if there was
15 something to report.

16 Q So if I understand your answer, at least the
17 MERS officers reflected on Hultman Exhibit 4, if they
18 had something to report would report to you even though
19 you're not an employee of MERS, is that correct?

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

22 A That's correct.

23 Q And in what capacity would they report to you?

24 A As a corporate officer. I'm the secretary.

25 Q As a corporate officer of what?

1 A Of MERS.

2 Q So you are the secretary of MERS, but are not
3 an employee of MERS?

4 A That's correct.

5 Q Does MERS have any policy for auditing the
6 activities of its officers; does MERS audit the activity
7 of its officers?

8 A Well, there is a Board of directors who is
9 responsible for all the activities of the corporation.

10 Q And my question to you was does MERS audit the
11 activities of its officers?

12 A I don't understand your question.

13 Q How many assistant secretaries have you
14 appointed pursuant to the April 9, 1998 resolution; how
15 many assistant secretaries of MERS have you appointed?

16 A I don't know that number.

17 Q Approximately?

18 A I wouldn't even begin to be able to tell you
19 right now.

20 Q Is it in the thousands?

21 A Yes.

22 Q Have you been doing this all around the
23 country in every state in the country?

24 A Yes.

25 Q And all these officers I understand are unpaid

1 officers of MERS?

2 A Yes.

3 Q And there's no live person who is an employee
4 of MERS that they report to, is that correct, who is an
5 employee?

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

8 A There are no employees of MERS.

9 Q To your knowledge has the MERS Board ever
10 audited the activity of any of these thousands of MERS
11 officers that you have appointed?

12 A If you mean by audited do they review and are
13 they responsible for the activities of those officers,
14 the answer is yes.

15 Q Would you explain to us how the Board does
16 that review, what I would call audit?

17 A Through the four corporate officers of MERS
18 consisting of the president, there's two
19 vice-presidents, and a -- excuse me, one vice-president
20 now, and the secretary-treasurer who is me.

21 Q Have you ever investigated a complaint against
22 any of the certifying officers that you have appointed
23 over the years?

24 A Yes.

25 Q Tell us as you recall what the circumstances

1 were.

2 MR. BROCHIN: Excuse me. Object to the form
3 of the question. Go ahead.

4 A Routinely people ask me to verify that people
5 who have signed instruments are corporate officers and
6 we have a process to review that and verify that people
7 have the proper corporate authority to sign those
8 instruments. We have had complaints about somebody
9 violating our policies and procedures and rules and we
10 have investigated those and where necessary we have
11 corrected their activities, and so we monitor what they
12 do and if there is a problem, we resolve it and take
13 appropriate actions.

14 Q Have you ever disciplined any of the corporate
15 officers that you have appointed?

16 A Yes.

17 Q Tell us the circumstances under which you
18 disciplined a corporate officer or officers appointed by
19 you.

20 MR. BROCHIN: Object to the form of the
21 question. Go ahead.

22 A There were attorneys and officers of MERS who
23 violated rules involving foreclosures, and they were
24 sanctioned appropriately.

25 Q What were the rules those attorneys were

1 violating regarding foreclosures?

2 A There are rules in our rules of procedure
3 about how MERS foreclosures need to be prosecuted in our
4 name, and they hadn't followed those rules.

5 Q And in particular what rule was violated; what
6 conduct did the attorneys engage in that violated the
7 rule?

8 MR. BROCHIN: Object to the form of the
9 question.

10 A Primarily bringing foreclosures in Florida
11 after we suspended them, and bringing foreclosures
12 without having possession of the promissory note.

13 Q Turning to what has been marked Hultman
14 Exhibit 5, do you have that in front of you?

15 A Yes, I do.

16 Q Would you tell us what this document is,
17 please.

18 A This is the membership application and
19 agreement for the original member with Bank of New York
20 ID 1579, I think. I can't read it, but I think that's
21 the number.

22 Q And the name of the company is BNY Western
23 Trust, a subsidiary of the Bank of New York, is that
24 correct?

25 A That's what the application says.

1 Q And to your knowledge have there been
2 successor companies to the company named in this
3 exhibit, Exhibit 5, and have those successor companies
4 remained MERS members?

5 A Yes.

6 Q And to your knowledge is the Bank of New York
7 Mellon a MERS member?

8 A Yes.

9 Q And prior to a merger between the Bank of New
10 York and Mellon Bank to your knowledge was the Bank of
11 New York a MERS member?

12 A Yes.

13 Q Did the Bank of New York Western Trust as
14 identified in Exhibit 5 file a process in place for
15 becoming a MERS member?

16 A Restate the question.

17 Q Did they file an application?

18 A Which company?

19 Q The Bank of New York, BNY Western Trust
20 Company.

21 A This would be the application they filed.

22 Q And did the MERS membership rules or
23 membership procedures require someone who wanted to be a
24 member to file an application?

25 A Yes.

1 Q And was this document employed by MERS in
2 response to the subpoena, that is, Hultman Exhibit 5?

3 A Yes.

4 Q Turning to Hultman Exhibit 6, was it provided
5 by MERS in response to the subpoena?

6 A Yes.

7 Q And this is an application by Countrywide Home
8 Loans for membership, is that correct?

9 A Hang on one second. We are just making sure I
10 have the right materials. Just repeat the question,
11 please.

12 Q Sure. I will rephrase it. Was this an
13 application filed by Countrywide Home Loans to become a
14 member?

15 A Yes.

16 Q Now, is Countrywide Home Loans to your
17 knowledge a different entity than Countrywide Financial
18 Corporation?

19 A Yes.

20 Q Is Countrywide Financial Corporation a member
21 of MERS?

22 A By virtue of the way that their agreement was
23 set up, yes.

24 Q I didn't understand that. Could you explain
25 what it is by virtue of the way their agreement was set

1 up that Countrywide Financial Corporation is also a
2 member.

3 A There is a letter agreement that is part of
4 the agreement modifying our standard agreement that said
5 that not just Countrywide, but Countrywide affiliates
6 would also be deemed members of MERS.

7 Q Do you know if that letter agreement has been
8 produced today, that is, a letter agreement that makes
9 Countrywide Financial Corporation a MERS member?

10 A I think it's Exhibit 8.

11 Q I'll turn to Exhibit 8 in a moment then.

12 MR. BROCHIN: Mark, could I ask the first time
13 you introduce an exhibit by number you also make a
14 reference to the bates stamp numbers?

15 MR. MALONE: Sure, I will be glad to.

16 BY MR. MALONE:

17 Q The exhibit that we are looking at right now,
18 Hultman Exhibit 6, is marked MERS-11, MERS-12. Do you
19 see that, Mr. Hultman?

20 A I do.

21 Q Turning to Exhibit 7, which is marked MERS-13
22 and MERS-14, do you have that?

23 A I do.

24 Q Was this exhibit, Exhibit 7, produced in
25 response to the subpoena by MERS?

1 A Yes.

2 Q And could you briefly describe what this
3 exhibit is, what it represents.

4 A It is a letter amendment to our normal rules
5 and procedures.

6 Q And can you tell us the subject matter of the
7 amendment? What areas of the rules and procedures were
8 amended by this agreement?

9 A This allows affiliates -- excuse me, this one
10 is for brokers of Countrywide to use the MERS document,
11 the MERS security instrument, even though they are not a
12 member of MERS. It allows them to be referenced on the
13 MERS security interest for loans where MERS serves as
14 mortgagee.

15 MR. MALONE: Could I have the last answer read
16 back, please.

17 (The stenographer read the previous answer)

18 Q Could you explain that a little bit more,
19 Mr. Hultman.

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

22 A In a table funded relationship where
23 Countrywide controls the production of the documents but
24 is committed to purchase those loans upon closing, the
25 broker will appear as the payee on the note and so the

1 reference to MERS as nominee for that broker and its
2 successors it assigns is permitted by virtue of this
3 agreement.

4 Q Are there particular brokers that Countrywide
5 designated pursuant to this agreement that MERS agreed
6 could be the subject of this agreement?

7 A I'm not sure I understand the question, the
8 way it was phrased.

9 Q Does Exhibit 7 address specifically named
10 brokers by Countrywide?

11 A By name?

12 Q By name, yes.

13 A No, it does not.

14 Q The reference in the first line of the exhibit
15 talks about understanding an agreement to deviate from
16 the regular MERS rules. Do you see that?

17 A Yes.

18 Q And what were the regular MERS rules regarding
19 brokers?

20 A I don't think that's what it's referring to.

21 Q I'm sorry, what is it referring to in terms of
22 deviating from the regular rules?

23 A Normally only members would be referenced in
24 the security interest and we would be nominees for
25 members.

1 Q And if Countrywide's name appears on the
2 mortgage -- on the note, the promissory note, as the
3 lender, does that mean that Countrywide originated the
4 loan as compared to a broker?

5 A What it means is that they are the payee of
6 the loan.

7 Q If the broker originated the loan under this
8 deviation, this agreement to deviate, would the broker's
9 name then appear in the mortgage?

10 A It could, yes, it could.

11 Q And in which document in particular or
12 documents would the broker's name appear?

13 A It would be on the note.

14 Q On the note, not the mortgage?

15 A I don't understand your question.

16 Q I'm asking which document would the broker's
17 name appear. You answered on the note, and I'm just
18 confirming that the broker's name would appear on the
19 note as opposed to the mortgage instrument?

20 A No, it would be referenced -- if MERS was
21 serving as the mortgagee for that promissory note, there
22 would be a reference to the broker in the mortgage
23 instrument.

24 Q This document, Exhibit 7, was produced by MERS
25 in response to our discovery requests. To your

1 knowledge does it have any relevance to the complaint in
2 this case, if you know?

3 MR. BROCHIN: Object to the form of the
4 question. Are you talking about a complaint where MERS
5 is not a party to the case?

6 MR. MALONE: Yes, talking about the complaint
7 in this case.

8 MR. BROCHIN: And whether a document has
9 relevance to that complaint?

10 MR. MALONE: Yes, if he knows.

11 MR. BERNHEIM: My question was, Mr. Malone,
12 are you referencing the foreclosure complaint as opposed
13 to any claims that have been filed by the Ukpes?

14 MR. MALONE: Yes, I was referencing the
15 foreclosure complaint, if you're familiar with it.

16 MR. BROCHIN: Object to the form of the
17 question if that's what you're asking this witness of
18 MERS.

19 A I don't understand the question.

20 MR. MALONE: I will rephrase the question.

21 BY MR. MALONE:

22 Q One of the parties in the Ukpes' counterclaim
23 and third party complaint is a broker identified as
24 Morgan Funding, Inc. Are you familiar with Morgan
25 Funding, Inc.?

1 A No, I'm not.

2 Q Are you familiar with any brokers that
3 Countrywide Home Loans used relevant to this agreement
4 to deviate, Hultman Exhibit 7?

5 A I don't have any information on that right
6 now.

7 Q Now, turning to Hultman Exhibit 8, MERS-15
8 through 18, was this a document produced in discovery by
9 MERS?

10 A Yes.

11 Q You made a reference to Exhibit 8 a moment ago
12 with regard to questions I was asking about Countrywide
13 Financial Corporation becoming a MERS member. Do you
14 recall that reference?

15 A I do.

16 Q And can you tell us where in Exhibit 8,
17 Hultman Exhibit 8, there's any reference to Countrywide
18 Financial Corporation that would lead you to believe
19 Countrywide Financial Corporation was a MERS member.

20 A I think I'm actually thinking of a different
21 document than this one.

22 Q Well, first off, is there something in this
23 document that would indicate that Countrywide Financial
24 Corporation is a MERS member, this document being
25 Hultman Exhibit 8?

1 A I just need to look through it.

2 Q Sure, take your time.

3 A I don't think so.

4 Q And you say you're thinking of another
5 document. What document are you thinking of?

6 A I think there is a subsequent letter to April
7 30, 2000 that may have expanded or further amended the
8 MERS regular terms and conditions, rules and procedures.

9 Q And you think that other document references
10 Countrywide Financial Corporation?

11 A I think my recollection is that it said
12 Countrywide Home Loans for itself and other affiliates.

13 MR. MALONE: I'm going to ask that that
14 document be produced. We have not received it.

15 BY MR. MALONE:

16 Q Is it your understanding that that document,
17 if it exists, would include Countrywide Financial
18 Corporation?

19 A Yes.

20 Q And do you know when that other document came
21 into existence?

22 A Sometime after April 30, 2000.

23 Q Did it come into existence on or before March
24 13, 2008?

25 A I don't recall.

1 Q Again, we're going to ask you to search your
2 files and see if such a document exists and if it does,
3 please produce it.

4 Turning to Exhibit 9, Hultman Exhibit 9 marked
5 MERS-19 and MERS-20. First, was this a document
6 produced by MERS?

7 A Yes.

8 Q Would you briefly describe for us what Hultman
9 Exhibit 9 is.

10 A These were the standard terms and conditions
11 which are part of the membership agreements in effect I
12 think as of October 5, 2000.

13 Q And are there terms and conditions that were
14 in existence or applicable prior to October 5, 2000?

15 A Yes.

16 Q And have they been produced?

17 A I don't know.

18 Q I don't recall seeing them, so I'm going to
19 ask that we have the earlier set of terms and conditions
20 produced, particularly the terms and conditions in
21 effect on March 14, 2008, the date of the assignment at
22 issue in this lawsuit.

23 Going back a moment, if I could, to Hultman
24 Exhibit 8; in the first paragraph, this is on page MERS
25 bates stamp 15, ask you to just read the first paragraph

1 to yourself, please.

2 A Okay.

3 Q There is a reference to three distinct
4 documents being collectively referred to as the
5 governing documents. Do you see that?

6 A I see that it says there are four documents.

7 Q I'm sorry, four documents. Membership
8 application, terms and conditions, rules of membership,
9 and procedures manual, four documents, thank you. Were
10 those four documents as of April of 2000 collectively
11 the governing documents?

12 A Yes.

13 Q Has the concept of governing documents changed
14 at all since April 30, 2000? By that I mean have any of
15 these four documents been deleted, have any new
16 documents been added, or are these documents, these four
17 documents, still considered the MERS governing
18 documents?

19 A Same four documents are considered the
20 governing documents, but I believe that except for the
21 terms and conditions there have been changes to the
22 application, rules of membership, and the procedures
23 manual, which are periodically revised.

24 Q Turning to Hultman Exhibit 10. It has been
25 bates stamped MERS-21 through MERS-175. Is this a

1 document that was produced by MERS in response to the
2 subpoena?

3 A It looks like mine is not a complete copy.
4 I'm missing pages 63 through 174 inclusive.

5 Q It clearly is not a complete copy.

6 A It looks like it goes from 21 to 62 and then
7 there's 175.

8 MR. BROCHIN: What are you missing, 63 --

9 THE WITNESS: 63 to 174.

10 A Now I've got a complete copy.

11 Q Would you describe for us, please, what MERS
12 Exhibit 10 is.

13 A It's a procedures manual that outlines
14 procedures that provide a level of detail below our
15 rules and below our terms and conditions of the manner
16 in which we expect our members to operate in the MERS
17 process.

18 Q And this is one of the four governing
19 documents, is that correct?

20 A That is correct.

21 Q And it indicates on the bottom right-hand
22 corner a date of June 8, 2009, is that correct?

23 A That's what it says.

24 Q And we'll get to it in a few moments, I hope,
25 but we had requested and you did send to us the earlier

1 terms and conditions. So we will get to those in a
2 moment. Just in case I didn't ask, Hultman Exhibit 10
3 was produced in response to the subpoena?

4 A Yes.

5 Q Turning to Hultman Exhibit 11, was that
6 produced in response to the subpoena?

7 A Yes.

8 MR. BROCHIN: Could you read the bates stamps
9 for the exhibit.

10 MR. MALONE: Sure. MERS-176 through MERS-276.

11 THE WITNESS: I'm missing something.

12 MR. MALONE: I'm sorry, I read too much. It's
13 MERS-176 through MERS-218.

14 THE WITNESS: That's what I have too.

15 BY MR. MALONE:

16 Q This is the complete document, I believe, that
17 was provided to us. If you look at the cover page,
18 table of contents, rule 14 is the last rule and begins
19 on page 39, and this has rule 14. It's not clear
20 whether that's the end of rule 14. Do you know if there
21 is more to that document beyond page 43?

22 A I can't confirm that. I don't know. It may
23 or may not.

24 Q We would ask you to check that and if there is
25 more to Exhibit 11, the MERS Corp Inc. Rules of

1 Membership, beyond what has been bates stamped MERS-176
2 through MERS-218, we would ask that you supplement your
3 document production accordingly. This document -- this
4 is called MERS Corp., Inc. Rules of Membership, is that
5 correct?

6 A That's what the title is.

7 Q And what is the relationship of MERS Corp.,
8 Inc.'s Rules of Membership and the governing documents
9 for MERS members?

10 A This is part of the governing documents that
11 govern the relationship between both MERS and MERS Corp.
12 with its members.

13 MR. MALONE: We just heard some reference to
14 page 43 and Hultman Exhibit 11.

15 MR. BROCHIN: What we were saying is that
16 Exhibit Number 11 is a complete set of the Rules of
17 Membership.

18 MR. MALONE: Okay.

19 MR. BROCHIN: That ended on page 43.

20 BY MR. MALONE:

21 Q So the first numbered page numbered by MERS is
22 one and the last numbered page numbered by MERS is 43,
23 is that correct?

24 A That's correct.

25 Q And we have bates stamped them, the first

1 numbered page MERS-176 and the last page MERS-218.

2 A That's correct.

3 Q And that represents a complete Exhibit 11,
4 correct?

5 A Yes.

6 Q And these Rules of Membership reflect an
7 active date of June, 2009, is that correct?

8 A Yes.

9 Q And in a moment we will get to the earlier
10 version of those rules. Turning to Hultman Exhibit 12,
11 which is MERS-299, do you have that?

12 A I do.

13 Q And was this produced by MERS in response to
14 the subpoena?

15 A Yes.

16 Q And can you tell us what the document
17 represents?

18 A It is a cover letter from the CT Corporation
19 Systems filing the Certificate of Incorporation for the
20 third MERS Registration Systems, Inc.

21 Q Hultman Exhibit 13, bates stamped MERS-220, do
22 you have that?

23 A I do.

24 Q Was it produced pursuant to the subpoena?

25 A Yes.

1 Q And can you tell us what it represents?

2 A It's a document from the secretary of state
3 certifying that an attachment, which is not attached to
4 it, is a true copy of the Certificate of Incorporation
5 filed on the 30th day of December, 1998.

6 Q And turning then to MERS Exhibit 14 -- I'm
7 sorry, strike that, Hultman Exhibit 14, bates stamped
8 MERS-221 through 226; first, is this a document produced
9 by MERS in response to the subpoena?

10 A Yes.

11 Q And could you describe the document for us,
12 please.

13 A This is the Certificate of Incorporation of
14 Mortgage Electronics Registrations Systems, Inc. that
15 was effective January 1, 1999.

16 Q And this is the third iteration of MERS, is
17 that correct?

18 A Yes.

19 Q And turning to the last page, page six of the
20 Certificate of Incorporation, is that your signature at
21 the bottom of the page?

22 A Yes, it is.

23 Q And you were the sole incorporator of MERS
24 when it was incorporated effective January 1, 1999?

25 A Yes.

1 Q Turning then to Hultman Exhibit 15 marked
2 MERS-227 through MERS-272; do you have that?

3 A I'm just checking the pages. I do.

4 Q Was this exhibit, Exhibit 15, produced in
5 response to the subpoena?

6 A Yes.

7 Q And is this an earlier copy of the MERS Corp.
8 Rules of Membership?

9 A It is a copy of the Rules of Membership that
10 was in effect as of July, 2006.

11 Q To your knowledge was this set of the Rules of
12 Membership in effect during March of 2008?

13 A Yes.

14 Q Turning then to Hultman Exhibit 16, bates
15 stamped MERS-273 through MERS-400, do you have that?

16 A I do. I'm just checking the pages here.

17 Q Was Hultman Exhibit 16 produced pursuant to
18 the subpoena?

19 A Yes.

20 Q And briefly would you describe for us what
21 Hultman Exhibit 16 is.

22 A This is an earlier version of the procedures
23 manual that was prior to the one produced as Hultman
24 Exhibit Number 10.

25 Q And did this earlier version, that is, Hultman

1 Exhibit 16, become effective December 9, 2007?

2 A Yes.

3 Q Was it in effect during March of 2008?

4 A Yes.

5 Q Turning then to MERS Exhibit 17, MERS-401 --
6 I'm sorry, strike that. Turning to Hultman Exhibit 17,
7 bates stamped MERS-401 through MERS-421; do you have
8 Hultman Exhibit 17?

9 A I do.

10 Q And was this produced pursuant to the
11 subpoena?

12 A Yes.

13 Q And briefly can you describe for us what this
14 exhibit is.

15 A This was the bylaws of the first iteration of
16 MERS.

17 Q That's the one we were calling MERS one?

18 A Yes.

19 Q And once again, when did MERS one go out of
20 existence?

21 A June 30, 1998.

22 Q And do these bylaws govern the conduct of the
23 Board of Directors during April of 1998?

24 A Yes.

25 Q Turning to Article 6 of the bylaws on MERS

1 bates stamp 414; do you have that?

2 A Which page are you looking at?

3 Q MERS 414, Article 6, Officers.

4 A Okay.

5 Q It's numbered page 14. Do the bylaws provide
6 that the officers of the corporation shall be chosen by
7 the Board of Directors?

8 A It does.

9 Q Do the bylaws provide that the Board of
10 Directors may appoint one or more vice-presidents and
11 other officers?

12 A Yes.

13 Q Turning to the same exhibit, what has been
14 marked bates stamp MERS 416, could I ask you to turn to
15 that, Section 8.

16 A Okay.

17 Q There is a discussion of vice-president and
18 vice-presidents within the body of Section 8. Do you
19 see that?

20 A Yes.

21 Q Are those vice-presidents that have to be
22 appointed by the Board?

23 A Yes.

24 Q Is there anything in that section authorizing
25 the appointment of vice-presidents by you?

1 A No.

2 Q To your knowledge is there anything in any
3 MERS bylaw in existence at any time authorizing you to
4 appoint vice-presidents of MERS?

5 A I think Section 2 is the operative section
6 that would govern officers appointed by me.

7 Q Section 2, what MERS page is that, MERS bates
8 stamp?

9 A Page 414.

10 Q You're under Article 6, Section 2. And I
11 would ask you to read that into the record, please.

12 A "Section 2; Additional officers. The Board of
13 Directors may appoint one or more vice-presidents,
14 treasurers and such other officers and agents giving any
15 of them such further designation or alternate titles, as
16 it shall deem necessary, who shall hold their offices
17 for such terms and shall exercise such powers and
18 perform such duties as the Board determines from time to
19 time."

20 Q Is there any reference to the secretary of the
21 Board being delegated authority to appoint
22 vice-presidents?

23 MR. BROCHIN: Objection. The document speaks
24 for itself.

25 Q I understand. You're referring to this

1 document as authorizing you to appoint vice-presidents
2 of the corporation, correct?

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

4 Q I'm sorry, what did you say?

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

7 A I said this is the section that authorizes the
8 Board in our belief to delegate the authority to me to
9 appoint the certifying officers under the resolution
10 that we discussed previously.

11 Q Is there any reference to the Board delegate
12 or delegation or some variation of the word delegate in
13 Section 2 of Article 6 on bates stamp MERS 414?

14 MR. BROCHIN: Objection. The document speaks
15 for itself.

16 A We believe that the section that says "who
17 shall hold their offices for such terms and shall
18 exercise such powers and perform such duties as the
19 Board shall determine from time to time", and the Board
20 determined that I get delegated authority.

21 Q All of that is what you just read, the last
22 clause of Section 2 beginning with "The Board of
23 Directors may appoint one or more vice-presidents?

24 A They did, and they appointed me.

25 Q Did they appoint Mr. Hallinan; did the Board

1 of Directors appoint Mr. Hallinan as vice-president of
2 the corporation?

3 A Yes.

4 Q We have been through this before, but I'm
5 missing the minutes of the Board meeting when
6 Mr. Hallinan was appointed an officer, a vice-president,
7 of MERS. Do they exist?

8 A There are no minutes. I said this four times.
9 There are no minutes. They delegated to me the
10 authority and I appointed him, and you have seen the
11 resolution that was adopted pursuant to my delegated
12 authority. That's the only record we're talking about.

13 Q I've seen something that you say is a
14 resolution, but I have not seen a resolution of the
15 Board referencing the appointment of Mr. Hallinan as a
16 vice-president of MERS.

17 MR. BERNEHIM: Objection. Asked and answered
18 and argumentative.

19 MR. BROCHIN: Is it a question or is it a
20 statement?

21 MR. MALONE: Could I have the last answer read
22 back or maybe two answers back.

23 (The stenographer read the following answer:
24 "Answer: There are no minutes. I said this four times.
25 There are no minutes. They delegated to me the

1 authority and I appointed him, and you have seen the
2 resolution that was adopted pursuant to my delegated
3 authority. That's the only record we're talking
4 about.")

5 BY MR. MALONE:

6 Q When you reference a resolution that was
7 adopted, Mr. Hultman, are you saying that the Board
8 adopted a resolution backing your appointment of
9 Mr. Hallinan as an officer of the corporation?

10 A I don't think I understand your question.

11 Q After you appointed Mr. Hallinan as an officer
12 of the corporation pursuant to the powers you claim you
13 have to appoint assistant secretaries and
14 vice-presidents of the corporation, did the Board pass
15 upon your activity?

16 A I don't understand your question.

17 Q At some point in time you appointed Francis
18 Hallinan an officer of the corporation, correct?

19 A Yes.

20 Q When was that you made the appointment?

21 A The date of that resolution.

22 Q That resolution, is that a resolution of the
23 Board or is that a resolution of yours?

24 A It is a resolution of the Board.

25 Q When did the Board pass that resolution?

1 A For the fifth time, they appointed me and
2 delegated me the authority to appoint Mr. Hallinan as an
3 officer of MERS. You saw the resolution, which we
4 produced for you, and I'm not changing my answer.

5 Q I'm not sure I have an answer to my question.
6 My question is after you appointed Mr. Hallinan an
7 officer of MERS pursuant to what you claim you had
8 authority to do based on an April 9, 1998 resolution by
9 MERS one, did the MERS three Board ever do anything to
10 ratify your appointment, Mr. Hultman --

11 A No.

12 Q -- of Mr. Hallinan?

13 A No.

14 Q Prior to your appointment of Mr. Hallinan as a
15 MERS officer did the MERS three Board ever do anything
16 to ratify your authority to appoint corporate assistant
17 secretaries and vice-presidents?

18 MR. BROCHIN: Object to the form.

19 A And that's the part that I've said to you, I
20 need to go back and review the minutes to produce the
21 documentation for that.

22 Q And just to clarify, you're uncertain what the
23 answer is presently?

24 A I have no recollection either that it's there
25 or it's not there. I need to go back and look for it.

1 MR. MALONE: We would like to take a
2 five-minute break.

3 (Off the record)

4 BY MR. MALONE:

5 Q Turning to we were discussing MERS bylaws,
6 Hultman Exhibit 17, and can you tell us who signed these
7 -- who signed as the corporate secretary; is it Phyllis
8 K. Slesinger?

9 A Yes.

10 Q Did you replace Ms. Slesinger as the corporate
11 secretary?

12 A I don't think so.

13 Q Who succeeded Ms. Slesinger, if you know?

14 A I believe R. K. Arnold.

15 Q Did you succeed Mr. Arnold as corporate
16 secretary?

17 A Yes.

18 Q Turning to Hultman Exhibit 18 marked MERS 421
19 through MERS 432; do you have that?

20 A I do.

21 Q Do these contain a set of the bylaws effective
22 January 1, 1999?

23 A Yes.

24 Q And inviting your attention to Article 6
25 dealing with the appointment of officers of the --

1 dealing with officers of the corporation, is there
2 anything in here specifically addressing the delegation
3 by the Board to you of the power to appoint assistant
4 secretaries and vice-presidents for MERS?

5 A Article 6, Section 2.

6 Q And by the way, these bylaws came into effect
7 on January 1, 1999, is that correct?

8 A Yes.

9 Q And the prior set of bylaws from Exhibit 17
10 ceased to apply as of June 30, 1998, is that correct?

11 A Yes.

12 Q And were there some operative bylaws that
13 addressed the issue of appointment of corporate officers
14 during that period following June 30th of 1998 when
15 Hultman-17 expired and the beginning of the operation of
16 the bylaws on January 1, 1999 reflected in Hultman
17 Exhibit 18?

18 A Yes.

19 Q And what bylaws were they?

20 A Those were the bylaws of the current MERS
21 Corp. Inc. which had the name Mortgage Electronic
22 Registration Systems, Inc. prior to January 1, 1999.

23 MR. MALONE: We're going to ask that those
24 bylaws also be produced.

25 Q Was it your position, Mr. Hultman, that during

1 the period those bylaws you just mentioned were in
2 effect, that you had the power to appoint corporate
3 vice-presidents and assistant secretaries of the entity
4 that was operating after June 30, 1998 and before
5 January 1, 1999?

6 A Yes.

7 Q And was it the same section, Article 2 --
8 Article 6, paragraph two, of the bylaws that you were
9 relying upon, if you know?

10 A I don't know what the designation was, but
11 there was a similar provision in those bylaws.

12 Q Similar to the one we just looked at in the
13 other set of bylaws?

14 A That's correct.

15 Q We're picking up in sequential order, Hultman
16 Exhibit 19 marked MERS/Ukpe-1, I think we did discuss
17 that briefly earlier today. It is a letter and I think
18 you said you hadn't seen it before today.

19 A If you're referring to Exhibit 19, I have not
20 seen this before today.

21 Q Correct. And Hultman Exhibit 20 we were
22 discussing earlier, this is the subpoena that you
23 reviewed prior to today and arranged for documents to be
24 produced, correct?

25 A Yes.

1 Q And just for clarification, on paragraph two
2 of the subpoena, that's MERS bates stamp MERS/Ukpe 003
3 paragraph two "Any and all documents relating to the
4 MERS corporate resolution appointing PHS attorneys as
5 MERS officers"; are there any documents that you're
6 aware of beyond what have been produced today relating
7 to this paragraph with the exception of what you
8 discussed earlier which is to see whether MERS Corp
9 three adopted the earlier resolution of MERS Corp one?

10 MR. BROCHIN: Object to the form of the
11 question.

12 Q Do you understand the question?

13 A No.

14 Q Let me break it down in two parts then.
15 First, with regard to what you have produced today are
16 you aware of any other documents that have any bearing
17 or relevance to what's requested in paragraph two of the
18 subpoena?

19 A Yes.

20 Q What documents are you aware that have a
21 bearing on paragraph two of the subpoena?

22 A The ones that I have agreed to review the
23 records of the third MERS to produce.

24 Q And the records of the third MERS that has to
25 do with whether MERS three adopted the April 9, 1998

1 resolution of MERS one, is that correct?

2 A Yes.

3 Q And in addition there has been a reference to
4 an e-mail from some Countrywide entity requesting that
5 Mr. Hallinan and other lawyers from the firm be
6 appointed as MERS officers, is that correct?

7 A That's correct, yes.

8 Q You're going to look for that. Other than
9 those two items, are there any other documents about
10 which you're aware that have any relevance to paragraph
11 two of the subpoena?

12 MR. BROCHIN: Object to the form of the
13 question.

14 A Not to my knowledge.

15 Q On paragraph three requesting "an original or
16 true copy of the MERS Board of Directors minutes of the
17 MERS Board meeting passing the resolution appointing
18 Phelan, Hallinan & Schmieg attorneys as MERS officers",
19 are there any minutes responsive to paragraph three?

20 A Yes.

21 Q And what are those minutes?

22 A Materials that I thought we sent them at some
23 point today, the April 9, 1998 minutes of that meeting.

24 Q And we have a document that has been marked
25 Hultman-31 and it was provided today. It reflects

1 minutes of the Board of Directors regular meeting April
2 9, 1998. Those are the minutes you're referring to?

3 A I don't have that document.

4 Q That's the one we waited all morning for.

5 A Well, 30 is the agenda. 31 is the minutes,
6 and 32 is a copy of that resolution.

7 Q And your testimony is that Hultman Exhibit 31
8 is responsive to paragraph three of the subpoena, is
9 that correct?

10 A Yes.

11 Q And is there anything in Hultman Exhibit 31,
12 minutes of an April 9, 1998 meeting, that mentions the
13 law firm Phelan, Hallinan & Schmieg?

14 A Only the fourth resolution by motion made,
15 seconded, passed and the Board of Directors authorized
16 the secretary of the corporation to approve certified
17 officers of the corporation.

18 Q And is there a reference to Phelan, Hallinan &
19 Schmieg in that passage you just read?

20 A To the extent that there certifying officers,
21 yes.

22 Q Could you point out to me where in these
23 minutes it says the Board has passed a resolution
24 appointing Phelan, Hallinan, Schmieg as MERS officers?

25 MR. BROCHIN: Object to the form of the

1 question.

2 A It says that the Board approved resolution
3 authorizing the secretary of the corporation to approve
4 certifying officers of the corporation.

5 Q Now, earlier --

6 A These people are certifying officers of the
7 corporation.

8 Q Earlier we had a discussion about what was
9 meant by that back in April of 1998 and I asked you if
10 the people who were appointed as certifying officers
11 were appointed as vice-presidents of the corporation
12 back then. Do you recall that question?

13 A No.

14 Q Let me ask it now. Back in April of 1998 were
15 certifying officers being made vice-presidents of the
16 corporation?

17 A Yes.

18 Q And back in April of 1998 were certifying
19 officers being made assistant secretaries of the
20 corporation?

21 A Yes.

22 Q Was there something submitted to the Board
23 beforehand, before the meeting of April 9, explaining to
24 the Board what was being accomplished by delegating
25 authority authorizing the secretary to approve

1 certifying officers?

2 A I don't believe so.

3 Q You told us earlier that certifying officer
4 was a name, do you remember that, just is a name?

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

7 A Yes.

8 Q To your knowledge was the Board aware at the
9 time of this resolution that certifying officers would
10 have the title of vice-president?

11 A I don't recall.

12 Q To your knowledge was the Board aware at this
13 time that the certifying officers would have the title
14 of assistant secretary of the corporation?

15 A I don't recall.

16 Q Were these minutes ever read to the Board and
17 approved by the Board?

18 A Yes.

19 Q When did that occur?

20 A At a meeting in May of 1998.

21 MR. MALONE: And I do not believe we have
22 those minutes, so I would ask that a copy of those
23 minutes be provided to us, that is, the minutes of the
24 May, 1998 Board meeting approving the minutes of April
25 9, 1998.

1 BY MR. MALONE:

2 Q Now, turning to Hultman Exhibit 32 -- by the
3 way, Hultman Exhibits 30, 31 and 32 were produced by
4 MERS today pursuant to the subpoena, is that correct?

5 A Yes.

6 Q Turning to Exhibit 32, the first page as we've
7 assembled it is captioned Corporate Resolution Mortgage
8 Electronic Registration Systems, Inc. Do you see that?

9 A Yes.

10 Q And the resolution -- it's resolved, I'm
11 paraphrasing the first paragraph of the corporate
12 resolution, it's resolved that it's in the best interest
13 of the corporation that the secretary is authorized to
14 review and approve the nominations of members of their
15 respective certifying officers of MERS. Can you explain
16 to us your understanding of what that resolution
17 approved?

18 A Members would nominate people to be officers
19 of MERS and we would review and appoint them if it was
20 appropriate.

21 Q And the nominations back in that date, back in
22 1998, were they limited to just employees of members or
23 did it also include non-employees of members?

24 A It wasn't specified.

25 Q Do the MERS terms and conditions address that

1 issue?

2 A I don't recall.

3 Q Do any of the governing documents address that
4 issue?

5 A I would have to look at them. I don't recall.

6 Q Do any of the governing documents permit the
7 appointment of non-employees of members?

8 A I don't recall.

9 Q I'm going to ask you to review between now and
10 the next time we continue this deposition the answer to
11 that question, whether there is anything in the
12 governing documents authorizing you to appoint a
13 non-employee of a member as a MERS assistant secretary
14 or a MERS vice-president.

15 Now, am I correct --

16 MR. BROCHIN: I just want you to know, I know
17 you said okay, but I don't want you to think my silence
18 is in any way agreeing that this witnesses is going to
19 need to come back and answer a question.

20 MR. MALONE: That's understood completely,
21 Mr. Brochin.

22 MR. BROCHIN: I won't make that point any
23 further.

24 MR. MALONE: It is a continuing objection.

25 MR. BROCHIN: Fair enough. Thank you.

1 MR. MALONE: You're welcome.

2 BY MR. MALONE:

3 Q Inviting your attention, again, to the first
4 paragraph of this first page of Hultman-32, it says "The
5 secretary shall be authorized to sign a corporate
6 resolution substantially similar to the one attached
7 hereto and incorporated herewith"; do you see that,
8 Mr. Hultman; did I read it correctly?

9 A Yes.

10 Q Continuing, "Said Corporate Resolution shall
11 be evidence of the corporation's approval and shall
12 state all powers granted to said certifying officers";
13 do you see that?

14 A Yes.

15 Q Now, the certificate that follows it indicates
16 there was a Board meeting on April 9, 1998, but the date
17 of the certificate is December 20, 2002, correct?

18 A Yes.

19 Q And the signature is yours, correct?

20 A Yes.

21 Q Did you place that date, that is, the
22 handwritten date of December 20, 2002 on the document
23 Hultman Exhibit 32?

24 A No.

25 Q Who placed the date on the exhibit?

1 A Sharon Hortskamp.

2 Q Do you recall the circumstances under which
3 Miss Hortskamp put a date of December 20, 2002 on a
4 certificate relating to a Board of Directors resolution
5 dating back to April 9, 1998?

6 A No.

7 Q Do you know if anyone ever signed and dated
8 this certificate prior to -- I'm sorry, let me withdraw
9 that. Do you know if anyone signed and dated the first
10 page of Hultman-32 prior to December 20, 2002?

11 A I don't understand your question.

12 Q On December 20, 2002 Miss Hortskamp placed a
13 date, a handwritten date, on this Corporate Resolution
14 certificate, correct?

15 A Yes.

16 Q And did you sign it after she placed the date
17 on it?

18 A Yes.

19 Q And my question is do you know if there is any
20 copy of this certificate with an earlier date on it that
21 says this certificate is dated this blank day of blank
22 month of blank year?

23 A It's possible.

24 Q Do you know?

25 A I do not know. I don't recall. I recall that

1 I signed more than one of these certificates when
2 requested by a member and we would sign them and date
3 them as the date they were requested.

4 Q Do you understand, Mr. Hultman, that there are
5 multiple copies of this certificate attached to the
6 Board's resolution of April 9, 1998?

7 A What I said was there are multiple
8 certificates attesting that on April 9, 1998 that
9 resolution was passed, not that there are multiple
10 copies of this certificate. They may have different
11 dates.

12 Q And again, we're referring to the first page
13 of Hultman-32. Can you explain why there would be a
14 need for multiple documents with different dates on it
15 for this certificate saying you're certifying the
16 foregoing is a true resolution adopted on the 9th day of
17 April, 1998?

18 A Members ask for it and so we provided it and
19 we certify that that's a true copy.

20 Q And the resolution we're talking about, we
21 have an agenda, we have minutes, and where is the
22 original resolution of which this is a true, you're
23 certifying to a true copy?

24 A It's just language. There's not -- it was not
25 an official copy of it. There's multiple copies of it.

1 Q Under the certificate language on Hultman-32
2 it says I William C. Hultman being the corporate
3 secretary of Mortgage Electronic Registration Systems
4 hereby certify that the foregoing is a true copy of a
5 resolution duly adopted by the Board of Directors of
6 said corporation at a meeting held on the 9th day of
7 April, 1998. I haven't completed reading it, but as far
8 as I read did I read it accurately?

9 A Yes.

10 Q By certifying, are you certifying to the
11 accuracy of what you're saying here on Hultman-32?

12 MR. BROCHIN: Object to the form of the
13 question.

14 A Yes.

15 Q And in certifying to the accuracy that this is
16 a true copy of a resolution, are you communicating to
17 the readers that there is a resolution that was adopted
18 by the Board?

19 A Yes.

20 Q Of which this is a true copy?

21 A Yes.

22 Q Where is that resolution?

23 A There is not one resolution. There are
24 multiple copies of it. I was at the meeting. I was --
25 I presented the resolution. I know what the resolution

1 says. I can testify to that.

2 Q I understand your statement about copies, but
3 is there an original resolution adopted by the Board?

4 A I don't understand what you mean by original.

5 Q When is the first date to your knowledge that
6 a true copy is dated at the bottom just above your
7 signature?

8 A I don't understand your question.

9 Q I'll try it again. Hultman-32 with your
10 signature has a date of 20th day of December, 2002, and
11 there you are certifying that even though this is dated
12 December 20, 2002 it is a true copy of a resolution
13 adopted some four and-a-half years earlier, correct?

14 A That's correct.

15 Q When is the earliest date that you recall
16 starting to certify true copies?

17 A I don't have any recollection.

18 Q How many had you certified up to this point,
19 do you recall; any idea?

20 A No.

21 Q Do you keep a record of these certifications?

22 A There may be copies in the files of the
23 member, but I would have to go look.

24 Q And in the files of the members are you
25 talking about MERS members -- MERS copy of the files?

1 A We have member files.

2 Q MERS does?

3 A Yes. Correspondence with our members, we have
4 copies of correspondence between us.

5 Q Is there any central registry of these
6 certificates saying this is a true copy of the
7 resolution?

8 A No.

9 Q My colleague has just pointed out to me from
10 the MERS bylaws Hultman Exhibit 17 Section 8 on MERS 416
11 under the heading vice-president talks about "in the
12 absence of the chief executive officer the
13 vice-president, if any, or in the event there be more
14 than one vice-president, the vice-presidents in their
15 order designated or in the absence of any designation
16 then in the order of their election shall perform the
17 duties of the chief executive officer". My question is
18 is there a list of the vice-presidents of MERS giving a
19 designated order of the type referenced in Section 8 of
20 the bylaws?

21 A No.

22 Q Are the vice-presidents of MERS elected?

23 A Yes.

24 Q Were you elected?

25 A I'm not a vice-president, but I am an elected

1 secretary-treasurer.

2 Q And you were elected by the Board, is that
3 correct?

4 A Yes.

5 Q Was Mr. Hallinan elected by the Board?

6 A Yes.

7 Q When was he elected by the Board?

8 MR. BROCHIN: Objection.

9 A Whatever the date of that resolution, sometime
10 October of 2007.

11 Q Do I understand then that the Board got
12 together and voted to elect Mr. Hallinan a
13 vice-president of MERS?

14 MR. BROCHIN: Objection. Asked and answered.

15 MR. MALONE: No, that question definitely has
16 not been asked.

17 MR. BROCHIN: It's definitely been asked and
18 it definitely has been answered.

19 A By virtue of the fact that the Board delegated
20 to me the authority to appoint these officers, that's an
21 action of the Board and of the corporation, so yes.

22 Q My question specifically was did the Board get
23 together and vote? Did they elect Mr. Hallinan?
24 Election is a vote. Was there --

25 A I disagree.

1 Q Now, the resolution that you attached to your
2 certificate that you certified to this, a certificate
3 saying that the foregoing is a true copy of a
4 resolution, that resolution talked about the appointment
5 -- that the secretary of the corporation is authorized
6 to review and approve the nominations of members of
7 their respective certifying officers without a prior
8 approval of the Board of Directors. The secretary shall
9 be authorized to sign a Corporate Resolution
10 substantially similar to the one attached hereto. So I
11 will ask you to turn to the page, the second page of
12 Hultman-32. That Corporate Resolution, is that second
13 page of the Corporate Resolution substantially similar
14 to the one attached hereto referred to on the first
15 page?

16 A I don't understand your question.

17 Q Attached to the second page of Hultman-32 is
18 captioned Corporate Resolution, correct?

19 A Yes.

20 Q It's a blank unsigned document, correct?

21 A Yes.

22 Q In its opening paragraph on the first page of
23 the Corporate Resolution there is a sentence that says
24 the secretary shall be authorized to sign a Corporate
25 Resolution substantially similar to the one attached

1 hereto. My question is is the second page of the
2 exhibit the Corporate Resolution referred to on the
3 first page?

4 A Yes.

5 Q And would you read into the record, please,
6 the opening lines of the Corporate Resolution, the form
7 of Corporate Resolution, attached as the second page to
8 Hultman-32.

9 A Be it resolved that blank be an employee of
10 blank, the member, a member of Mortgage Electronic
11 Registration Systems, Inc., MERS, is hereby appointed as
12 certifying officer of MERS and such is authorized to,
13 and then it enumerates actions.

14 Q And then the introductory paragraph, does the
15 introductory paragraph apply to appointing employees of
16 members?

17 A That's what it says.

18 Q Does it say anything about appointing
19 non-employees of members?

20 MR. BROCHIN: Object to the form.

21 A That form does not.

22 Q Is there a later form that does talk about
23 appointing non-employees of members?

24 A This is the form we use in association with
25 the authority signing agreements.

1 Q My question is is there a later form Corporate
2 Resolution that has language saying be it resolved that
3 blank being a non-employee of a member, something to
4 that effect?

5 A I don't believe that there is one that says
6 that language.

7 Q Is there one that says something comparable to
8 that to your knowledge?

9 A Yeah, the one that we're talking about that is
10 dated October 20 something 2007.

11 Q But that's not the blank resolution that the
12 Board passed. I'm asking if there's something that the
13 Board said Hultman, you as the secretary are authorized
14 to sign a corporate resolution substantially similar to
15 the one attached hereto?

16 A The one that I'm referring to is substantially
17 similar to it.

18 Q When you say the one -- the one you approved,
19 this is the one appointing the members of Phelan,
20 Hallinan & Schmieg, you say that is substantially
21 similar to the second page of Hultman Exhibit 32, is
22 that your judgment or is there some legal opinion of
23 corporate counsel either in house or outside counsel
24 that the resolution appointing members of Phelan,
25 Hallinan & Schmieg is substantially similar to the form

1 resolution attached as the second page to Hultman 32?

2 MR. BROCHIN: Let me object to the extent that
3 that question calls for you to divulge attorney/client
4 communications, so if you are aware of an opinion of
5 counsel that has been referred to you, you should not
6 answer that question.

7 MR. MALONE: And I'm going to object to your
8 objection. The question just calls for a yes or no,
9 doesn't get into the substance. So I'm going to ask
10 that the witness answer it. If you were to assert it's
11 in the privelege log, I'm going to ask the basis for it,
12 who were the parties to the communication, what was the
13 subject matter of the communication, otherwise, I don't
14 think your objection is well-founded.

15 MR. BROCHIN: I don't know what you're talking
16 about quite frankly, but I don't want this witness to
17 disclose inadvertently communications he has had with
18 counsel and my instruction and objection is simply for
19 him not to do so.

20 MR. MALONE: And I don't want him to.

21 MR. BROCHIN: I don't know what you're talking
22 about on a privelege log. You asked a question that
23 potentially called for him to disclose communications
24 with counsel and I am just advising the witness that he
25 should not disclose such communications.

1 MR. MALONE: I'm just trying to find out
2 whether such communications exist without getting into
3 the content.

4 MR. BROCHIN: That's not what your question
5 was.

6 BY MR. MALONE:

7 Q Are there any -- without going into the
8 substance of the communications, to your knowledge are
9 there any communications with in-house MERS corporate
10 counsel raising the question whether the Corporate
11 Resolution appointing members of the Phelan, Hallinan &
12 Schmieg firm is substantially similar to the Corporate
13 Resolution, the blank Corporate Resolution attached
14 hereto as the second page to Hultman Exhibit 32?

15 A There were discussions between me as corporate
16 secretary and members of the law department regarding
17 the signing authority and the accompanying resolution
18 that was used with it.

19 Q And when were those discussions?

20 A Around the time that that concept was
21 introduced to our process.

22 Q Let me ask the question just to finalize that
23 you're going to assert a privelege, would you relate the
24 substance of these discussions, please, and don't answer
25 until your counsel instructs you otherwise.

1 MR. BROCHIN: Why are you asking him a
2 question that calls for confidential information?

3 MR. MALONE: I just want to establish you're
4 going to assert a privelege to it, that's all.

5 MR. BROCHIN: A privelege to a communication
6 between a witnesses and his lawyer?

7 MR. MALONE: Well, were there other people
8 present?

9 MR. BROCHIN: Isn't that a privelege?

10 MR. MALONE: Were there other people present?
11 If you want to assert a privelege, please do so,
12 otherwise answer the question.

13 MR. BROCHIN: That wasn't your question. I
14 instruct the witness not to answer the question on
15 grounds it calls for atttorney/client privelege
16 communications.

17 BY MR. MALONE:

18 Q On the attachment, the second page to Hultman
19 Exhibit 32, the Corporate Resolution, the form Corporate
20 Resolution, has five numbered paragraphs. Do you see
21 those?

22 A Yes.

23 Q Do any of those numbered paragraphs authorize
24 the certifying officers to assign a promissory note?

25 A No.

1 Q Has MERS to your knowledge ever authorized a
2 certifying officer to assign a promissory note?

3 A I don't recall.

4 Q In paragraph two there is a reference to
5 assigning the lien of any mortgage loan registered on
6 the MERS system. Do you see that?

7 A Yes.

8 Q And by lien are we talking about the security
9 interest, the mortgage, that accompanies a promissory
10 note?

11 A Yes.

12 Q And when a mortgage is recorded on the MERS
13 system identifying MERS as the mortgagee as nominee for
14 its lender, what is the value of that mortgage in terms
15 of what MERS holds?

16 MR. BROCHIN: Object to the form of the
17 question to the extent it characterizes MERS as being
18 recorded. Go ahead.

19 A I don't understand the question.

20 Q When a mortgage is recorded with a county
21 clerk's office identifying MERS as the mortgagee, what
22 is the value of that mortgage to MERS? Does it have a
23 value?

24 A It's part of our process.

25 Q I understand it's part of your process, but

1 let's take this case, for example, a promissory note was
2 executed on July 29, 2005 in the amount of \$224,000, and
3 a mortgage giving a security interest to MERS as nominee
4 for an identified lender was also executed. The
5 mortgage was recorded with the county clerk's office.
6 What is the value of that mortgage to MERS when it's
7 recorded?

8 MR. BROCHIN: I object to the extent that I
9 don't understand. It's vague and ambiguous.

10 A I don't understand what you mean by value.

11 Q Well, does it have some value to MERS that
12 MERS can sell it for?

13 A If you mean can we sell the mortgage and
14 receive consideration or monetary value, no.

15 Q Does MERS report the mortgage as an asset?

16 A No.

17 Q Does MERS pay any taxes on the mortgage?

18 A Well, there are recording taxes paid in
19 certain jurisdictions by the borrower.

20 Q Other than those recording taxes, does MERS
21 pay any taxes on it as if it were a property asset?

22 A No.

23 Q When a certifying officer assigns a mortgage,
24 does MERS receive any money?

25 A No.

1 Q When a certifying officer assigns a mortgage
2 and this is where MERS is the mortgagee of record, does
3 the certifying officer request permission of MERS before
4 assigning the mortgage interest?

5 A No.

6 Q When the certifying officer assigns a mortgage
7 in MERS name, where MERS is the mortgagee, does the
8 certifying officer provide a copy of the assignment to
9 MERS?

10 A Only to the extent that they are an officer of
11 MERS. If they have a copy and they retain it for their
12 own files and those are deemed records of MERS, that
13 would be the only way. They don't send it to the
14 corporate office.

15 Q Do I follow you that in your view the records
16 of Phelan, Hallinan & Schmieg, the law firm, if they
17 execute an assignment as MERS officers, that those
18 records, records relating to that assignment, are MERS
19 records?

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

22 A I didn't say that.

23 Q What did you say?

24 A I said that if the certifying officer had a
25 copy of the assignment in his or her possession, I

1 suppose somebody could deem those to be a record of
2 MERS.

3 Q Does MERS deem -- I'm sorry, go ahead.

4 A I was done.

5 Q Does MERS deem the law firm's records to be
6 MERS records?

7 A No.

8 Q And just for clarification, if I understood
9 you correctly, the law firm does not forward a copy of
10 the assignment to MERS?

11 A Not in the ordinary course. If we requested
12 it for some reason, they would forward it to us.

13 Q Do the MERS officers from the Phelan, Hallinan
14 & Schmieg firm receive compensation, a remuneration or
15 consideration of any kind for performing duties on
16 behalf of MERS?

17 A I don't understand your question.

18 Q Well, are they performing a service, the
19 lawyers from Phelan, Hallinan & Schmieg when they act as
20 certifying officers of MERS; are they performing a
21 service of MERS?

22 A Are they providing a service to MERS, is that
23 your question?

24 Q Yes.

25 A They are carrying out the authority granted to

1 them under the Corporate Resolution.

2 Q And is that authority to do something on
3 behalf of MERS?

4 A To the extent that the service or investor has
5 asked them to assign an instrument taking that security
6 interest out of legal title from MERS to someone else,
7 that's what they are doing.

8 Q And is that something done on behalf of MERS?

9 A Yes.

10 Q Do they receive any consideration,
11 remuneration, salary, benefits, bonuses, anything of
12 value from MERS for performing that service for MERS?

13 A No.

14 MR. BROCHIN: Object to the form of the
15 question.

16 Q Does MERS itself track assignments of its
17 interests in mortgages by the certifying officers?

18 A Yes.

19 Q In what way do you track those assignments?

20 A If a mortgage is being assigned out of title
21 where MERS is the title holder, there is a requirement
22 under our rules and procedures that the MERS system be
23 updated to reflect that that mortgage has been assigned
24 out of MERS.

25 Q I understand there is a requirement in your

1 procedures, but that's an updating done by the member,
2 is that correct?

3 A Yes.

4 Q My question is does MERS itself do anything to
5 track these assignments?

6 A That's how we track the assignments.

7 Q You're allowing the members to do it, correct?

8 A We rely on the members updating the system to
9 tell us. That's how members tell us what they've done.

10 Q And if the member does not update the system,
11 then you have no knowledge, is that correct?

12 A We would not have knowledge through the
13 system, that's correct.

14 Q Do you do any parallel, do you maintain any
15 kind of parallel system to check on the accuracy or
16 completeness of what the members report?

17 A No, other than our auditing process and
18 quality assurance procedures.

19 Q Do you have any idea of the value of mortgages
20 as security interest assigned by MERS officers in a
21 given year in New Jersey?

22 A I do not have that information.

23 Q Is that information available to MERS?

24 A MERS only keeps the original principal
25 balance, so I would not have any knowledge or be able to

1 determine what the current balance was at the time of
2 the assignment.

3 Q Going back a while ago to the officers that
4 you have appointed over the years, is there a listing of
5 the officers you've appointed?

6 A There is a data base of them.

7 Q And you indicated earlier you weren't sure how
8 many you appointed. When did this data base begin?

9 A Probably 1997.

10 Q Before the April 9, 1998 Board meeting?

11 A Yes.

12 Q And is it still maintained, the data base of
13 officers who have been appointed by you?

14 A Yes.

15 Q And approximately how many officers have been
16 appointed by you since 1997?

17 MR. BROCHIN: Objection. Asked and answered.

18 A I don't know.

19 Q I'm going to ask you to provide the listing of
20 the data base for the MERS officers appointed by you.

21 Does the Board do anything to oversee the
22 appointment process, that is, do they ask you to later
23 report to them who you have appointed, what their
24 qualifications are, whether they are performing
25 satisfactorily; is there any Board oversight in any way

1 of your appointing of the MERS assistant vice-presidents
2 -- I'm sorry, assistant secretaries and vice-presidents?

3 A Yes.

4 Q And explain the process by which the Board
5 exercises oversight over your appointing those officers.

6 A The Board of MERS is responsible for the
7 actions of the officers, the corporate officers who they
8 have delegated the authority to manage those people, so
9 in the sense that they know what we're doing. Then if
10 they have lack of confidence or they find something that
11 they think is inappropriate or hasn't been done right,
12 they would take the appropriate actions to fix it.

13 Q Now, could I ask you to turn again a moment to
14 the second page of Hultman-32, the form Corporate
15 Resolution that's attached to the first page of
16 Hultman-32. The second page of Hultman-32 mentions a
17 resolution that certain, an unidentified person, is an
18 employee of a member and appointed as certifying
19 officers. I would like you to turn to the first page of
20 Exhibit 4, a two-page document marked MERS 5 and 6, the
21 corporate resolution at issue in the current litigation.
22 Does that resolution Exhibit 4 in any way reference that
23 Phelan, Hallinan & Schmieg, the attorneys, are employees
24 of a MERS member?

25 A No.

1 Q And this resolution is limited to two areas,
2 correct, whereas the form resolution attached to Hultman
3 Exhibit 32 has five areas, is that correct?

4 A Yes.

5 Q And can you tell us why the resolution
6 appointing Phelan, Hallinan & Schmieg was limited to
7 just two areas assigning the lien and releasing the
8 lien?

9 A Because that's what Countrywide asked us to
10 do.

11 Q And when Countrywide asked you to do that, is
12 that in this e-mail you mentioned earlier or is it in
13 some separate communication?

14 A It's part of the signing agreement.

15 Q Part of the signing agreement. And when you
16 mention signing agreement, are you referring to Hultman
17 Exhibit 3, the agreement for signing authority?

18 A Yes.

19 Q Can you tell us where in Hultman Exhibit 3
20 there is language limiting the authorization to act as a
21 certifying officer to just assigning the lien and
22 releasing the lien as opposed to the five areas, five
23 numbered paragraphs in the second page of Hultman
24 Exhibit 32?

25 A Because this is attached to the signing

1 agreement, so Exhibit 4 is the exhibit that's referenced
2 in paragraph one of Exhibit 3.

3 Q I understand. Now, let me try the question
4 again. Exhibit 4 authorizes Phelan, Hallinan & Schmieg
5 attorneys to do two things, assign a lien and release a
6 lien whereas the certification attached to what is
7 represented to be a resolution of the Board of April 9,
8 1998 has five numbered paragraphs; in addition to
9 releasing a lien and assigning a lien, paragraph three
10 authorized executing documents, paragraph four
11 authorized taking any and all actions and executing all
12 documents, etcetera, and paragraph five calls for taking
13 such actions and executing such documents that may be
14 necessary to fulfill the member's servicing obligations.
15 Those latter three paragraphs on the second page of
16 Hultman Exhibit 32 are missing. They have been excluded
17 from Hultman Exhibit 4, and my question is why have they
18 been excluded?

19 MR. BROCHIN: Objection. Asked and answered.

20 A Because that's all that Countrywide asked us
21 the authority to give to them.

22 MR. BROCHIN: Excuse me for one minute. We
23 just got a note that this is going to turn off in ten
24 minutes so I need to make a call to get it extended.

25 (Off the record)

1 MR. MALONE: We're back on.

2 BY MR. MALONE:

3 Q Mr. Hultman, from April, 1998 to the present
4 have you appointed all of the vice-presidents and all
5 the secretaries of MERS or has someone else also
6 exercised that appointment authority?

7 A I can't recall an instance where it wasn't me.

8 Q Have the bylaws at any point been amended to
9 provide for appointments of vice-presidents by the
10 secretary, by you?

11 A The bylaws that were in effect in January,
12 1999 have not been amended.

13 Q And the bylaws that were in effect in April of
14 1998, were they ever amended to your knowledge?

15 A I don't believe so.

16 Q And have the bylaws ever been amended, either
17 set of those bylaws, been amended to provide for
18 appointment of assistant secretaries by you?

19 A As I said, neither set was amended to my
20 knowledge.

21 Q To your knowledge has anyone else used your
22 authority to appoint certifying officers under the
23 resolution of April, 1998?

24 A No.

25 Q Prior to April, 1998 was there a meaning to

1 the term certifying officer that was commonly used in
2 MERS?

3 A Yes.

4 Q What was that meaning?

5 A It was the same meaning.

6 Q And the same meaning as what, I'm sorry? What
7 was the meaning?

8 A Again, the certifying officers are those
9 officers that the members have requested that we elect
10 officers of MERS, and prior to the meeting at which the
11 delegated authority of the resolution was passed there
12 had been other resolutions passed by the Board
13 authorizing certifying officers.

14 Q And did all the certifying officers have
15 basically the same scope of authority as set forth in
16 the second page of Hultman 32?

17 A Yes.

18 Q Except as limited when a member asks for a
19 more limited scope of authority?

20 A That's correct.

21 Q And just going back to Hultman-32, the
22 attachment. It talks about an employee of a member, and
23 your view is that the resolution appointing a non member
24 -- a non-employee of a member is substantially similar
25 to the second page of Hultman-32?

1 A It would be my opinion that that's within the
2 resolution that was passed by the Board.

3 Q And similarly is it your opinion that a
4 resolution appointing a non-employee of a non member,
5 would that be within the scope of the April 9, 1998
6 resolution?

7 A So long as it was requested by a member, yes.

8 Q Now, does the Board maintain errors and
9 omissions insurance for its officers?

10 A It retains errors and omissions for the
11 officers, the corporate officers, but not the certifying
12 officers.

13 Q So I understand that in the case of
14 Mr. Hallinan, the Board -- the company does not provide
15 any insurance coverage for any errors and omissions on
16 his part?

17 A Our errors and omissions policy that we have
18 for our corporations do not cover the certifying
19 officers.

20 Q And does MERS insure its interest in the
21 mortgage, whatever interest that is?

22 A I'm not sure I understand your question.

23 Q When MERS is named as the mortgagee, as
24 nominee for the lender on a MERS mortgage, and that
25 mortgage is recorded with a county recording office,

1 does MERS get any insurance on whatever interest MERS
2 has; does it attempt to insure that interest?

3 A We do not purchase insurance.

4 Q And does MERS internally for accounting
5 purposes place any kind of value on the mortgage that's
6 recorded naming MERS as the mortgagee?

7 A We do not record a dollar value to the
8 mortgages in our financial statements, our books and
9 records for accounting purposes.

10 Q Did Phelan, Hallinan & Schmieg ever
11 communicate to you that they were being sued in
12 connection with a foreclosure action where they had
13 assigned MERS's interest?

14 A Not to me.

15 Q Now, you have appointed in this case, in the
16 Ukpe case, Mr. Hallinan to act as a MERS certifying
17 officer in assigning MERS's interest in the lien, the
18 mortgage lien, is that correct?

19 A No.

20 Q Turning to Hultman Exhibit 4, if you could,
21 please, the Corporate Resolution. What is being done in
22 that first sub paragraph saying assign the lien?

23 A The servicer has requested MERS to assign the
24 lien and the MERS certifying officer executed that
25 assignment instrument.

1 Q I'm sorry, when did the servicer request MERS
2 to assign the lien?

3 A Sometime prior to the assignment.

4 Q And is there a request that goes from the
5 servicer to MERS requesting MERS to release the lien?

6 A They requested it from the certifying officer.

7 Q Did they request it of MERS directly?

8 MR. BROCHIN: Object to the form of the
9 question.

10 A The MERS certifying officer is an officer of
11 MERS.

12 Q I understand.

13 A So that's a request to MERS.

14 Q In your corporate headquarters down in Reston,
15 Virginia do you receive notification that the MERS
16 member has requested the release of the lien?

17 A Are we talking about the release or
18 assignment?

19 Q The assignment of the lien, I'm sorry, talking
20 about the assignment. Do you receive --

21 A We do not receive any information prior to the
22 assignment. Post assignment there is a requirement to
23 update the MERS system by the servicer to reflect that
24 that servicer has requested the assignment out of MERS
25 to some other party.

1 Q Turning to Hultman Exhibit 21, which is marked
2 MERS/Upte --

3 A What is that?

4 Q It's marked MERS/Upte 007 through 009 and it
5 is a letter dated March 17, 2010 from Abigail Sullivan
6 on the letterhead of South Jersey Legal Services.

7 A I don't think I have that.

8 MR. BROCHIN: Here it is.

9 Q It has been premarked now as Hultman Exhibit
10 21.

11 A I have it now.

12 Q Okay. Have you seen that before today?

13 A I have.

14 Q And did you review it in preparation for your
15 testimony today?

16 A I did.

17 Q And paragraph one asks for testimony on the
18 subject matter of MERS ownership of or interest in the
19 promissory note that is the subject of the Ukpe
20 foreclosure case. With regard to paragraph one would
21 you tell us what MERS ownership is of the promissory
22 note?

23 A MERS holds title to the security interest
24 securing the payment of the note held by at this point
25 Bank of New York.

1 Q And what you just described is the mortgage,
2 is that correct?

3 A I'm describing the relationship to what MERS
4 does with respect to the entire transaction.

5 Q So that answer, are you saying MERS has an
6 ownership interest in the promissory note?

7 A I'm describing what our interest is in this
8 transaction.

9 Q Let me break the question down then. Does
10 MERS have an ownership interest in the promissory note
11 that the Ukpes signed?

12 MR. BROCHIN: Object to the form of the
13 question.

14 A If you mean ownership interest in the sense
15 that are we entitled to any of the proceeds of the
16 promissory note, the answer is no.

17 Q And in describing any other kind of interest
18 you have in the promissory note, I think you were
19 answering that in your view MERS does have an interest
20 in the Ukpes' promissory note, is that correct?

21 A What I'm saying is we have -- we are the
22 agents of the note holder holding title to the mortgage,
23 securing the repayment of the promissory note when the
24 borrower pledges the property to them.

25 Q When you're saying the agent of the note

1 holder, as of March, 2008 who held the note?

2 A I don't know. I would have to look.

3 Q How do you know you're the agent of the note
4 holder as of March 13, 2008 if you don't know who the
5 holder is?

6 A Because the terms of the mortgage provide
7 that.

8 Q The terms of the mortgage provide that you're
9 going to be the mortgagee of record as nominee for the
10 lender, correct?

11 A And the lender's successor it assigns. So
12 whenever the note transfers to whoever transfers, we
13 become the new agent of the new note holder.

14 Q So if I understand you, if the note is
15 assigned from A to B to C to D, you automatically under
16 the terms of the agreement become D's agent?

17 A The borrower when he executes the mortgage has
18 granted us in conveyance of the property in which we
19 hold title to the security interest as agent for the
20 benefit of the note holder and note holder successor it
21 assigns, so when they endorse and deliver the note to
22 their subsequent purchaser, then we become their nominee
23 or agent. It is a synonymous term.

24 Q Is there an agreement between MERS and the
25 successor in this case that you can continue to operate

1 as their agent?

2 A There's two agreements. There's the
3 membership agreement between us and our members and
4 there's the mortgage itself.

5 Q So there is a membership agreement between
6 MERS and Bank of New York addressing this question?

7 A Yes.

8 Q We would like that membership agreement. We
9 have not been provided it, but if I understand you, that
10 membership agreement authorizes MERS to continue to act
11 as the agent after the note is assigned up to the
12 trustee for the securitized trust?

13 MR. BROCHIN: I think you have the application
14 for BONY.

15 MR. MALONE: I have an application, but I
16 don't have a membership agreement.

17 A The application incorporates by reference and
18 when they sign it, they are automatically agreeing to be
19 a member and that's part of the whole -- all those
20 governing documents become the membership agreement
21 between MERS and the lenders and servicers.

22 Q So if I understand you correctly, that
23 membership agreement of which Bank of New York is a
24 member authorizes MERS to continue to act as an agent
25 any time a MERS mortgage is assigned to Bank of New

1 York?

2 A I wouldn't agree with that characterization.

3 Q I'm just trying to get the best -- what
4 characterization would you say is accurate?

5 A What I said is MERS remains the mortgagee even
6 though the note has been transferred from the original
7 lender to subsequent purchasers, and each time that note
8 moves by endorsement and delivery we become the agent of
9 the new purchaser, and that's by virtue of the mortgage
10 and by virtue of the membership agreements between MERS
11 and its members.

12 Q So in this case do you know when the Ukpes'
13 mortgage loan -- mortgage and note were passed on to the
14 Bank of New York?

15 A I do not know when the note was sold to the
16 Bank of New York.

17 Q There's a Pooling and Servicing Agreement
18 dated September 27, 2005 by which there have been
19 pleadings submitted in the case saying that the trust
20 took possession of the note and mortgage as of
21 September, 2005. Is it your view that if that happened,
22 that you continued as the agent for Bank of New York?

23 MR. BROCHIN: Object to the form of the
24 question to the extent it calls for speculation.

25 A If consideration was paid by the Bank of New

1 York to the seller, then we would then represent the
2 Bank of New York as mortgagee.

3 Q And is there any need at the time, if the note
4 and mortgage went up to the Bank of New York as part of
5 a securitized trust, is there any need to change the
6 recorded records with the county clerk; is there any
7 need to reflect those transfers or can MERS keep its
8 place as recorded title holder?

9 A There's no change in the mortgagee so there's
10 no need to update the county land records.

11 Q When is there a need to update the county land
12 records?

13 A If the loan is not modified or assigned or if
14 it's foreclosed out, in those events, those are typical
15 events where the land records will be updated.

16 Q You say modified or assigned. In this case
17 are you aware that your MERS certifying officer created
18 an assignment assigning both the Ukpes' note and
19 mortgage to the plaintiff in this case?

20 A I am aware that that's what the assignment
21 instrument says.

22 Q And are you aware that the assignment is to a
23 MERS member?

24 A Yes.

25 Q And why did there need to be an assignment to

1 a MERS member on or about March 14, 2008?

2 A I don't know.

3 Q Is there anything in the MERS terms or
4 conditions that required the law firm to create an
5 assignment assigning to a MERS member on March 14, 2008?

6 A I don't know why they did that.

7 Q Turning to Hultman Exhibit 22 marked
8 MERS/Ukpe-11. It is a two-page exhibit. At the top it
9 says Referral Account Detail Report. Do you have that
10 document?

11 A I do.

12 Q Have you ever seen this particular document
13 prior to today?

14 A Yes.

15 Q When did you see this particular document?

16 A Yesterday.

17 Q And other than seeing this document yesterday
18 have you seen similar Referral Account Detail Reports
19 prior to yesterday?

20 A Are you talking about with respect to this
21 loan or in general?

22 Q In general.

23 A I may have seen one or two before, but not
24 related to this loan.

25 Q And if you know, what is the function of a

1 Referral Account Detail Report in the foreclosure
2 process?

3 A I don't know what the purpose is.

4 Q Inviting your attention to the second page of
5 the exhibit which is bates stamped MERS/Ukpe 011 and
6 also bears a bates stamp of PHS11, on the left-hand side
7 about two-thirds of the way down there is a heading
8 foreclosures in the name of -- do you see that?

9 A Yes.

10 Q And it gives the name of the plaintiff in this
11 case and then says and/or MERS as appropriate. Do you
12 see that?

13 A Yes.

14 Q Do you have any idea why this document gives
15 instructions to foreclose in the name of either/or; what
16 turned out to be the plaintiff and/or MERS; in other
17 words, why is MERS being named as an alternative
18 plaintiff?

19 A I don't know.

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

22 Q Were you aware that instructions were being
23 given to the Phelan, Hallinan & Schmieg firm to name
24 MERS as a possible plaintiff?

25 A I don't know what was instructed to the Phelan

1 law firm.

2 Q If the servicer gave instructions to the law
3 firm to bring a foreclosure action in MERS name, would
4 that be consistent with MERS terms and conditions or in
5 violation of MERS terms and conditions?

6 A So long as it wasn't in the State of Florida.
7 Investors or servicers are the ones who make the
8 election to decide whether to foreclose in the name of
9 MERS or in the name of some other party and if they
10 chose to do it in the name of MERS, they just need to
11 follow our rules and procedures.

12 Q And what are those rules and procedures in New
13 Jersey if one is to foreclose in the name of MERS?

14 A Those are enumerated in the procedures and the
15 rules that we publish on our web site. I didn't
16 memorize them and I don't know what the specific
17 differences are between the states.

18 Q Turning to Hultman Exhibit 23, two-page
19 document bates stamped MERS/Ukpe 012 and MERS/Ukpe 013,
20 also bates stamped PHS475 through 476. Do you have that
21 document?

22 A I do.

23 Q Have you seen it before today?

24 A Yes.

25 Q Did you see it before yesterday?

1 A No.

2 Q Were you aware that Kevin Wolfe associated
3 with the judiciary of the State of New Jersey had made a
4 request to one of your certifying officers for a true
5 copy of the MERS Corporate Resolution documenting the
6 expressed authority as assistant secretary and
7 vice-president to act for MERS; were you aware of that?

8 A Not before yesterday.

9 Q I take it then the law firm never notified you
10 of this inquiry?

11 A They didn't notify me, no.

12 Q Do you know if they notified anyone in MERS?

13 A I do not know that.

14 Q Turning to the second page of the exhibit,
15 reflects there has been a redaction of the identity or
16 the entities for which Corporate Resolutions are
17 provided. There are six lettered paragraphs, A through
18 F, and only B appears, Countrywide Financial
19 Corporation. Do you see that?

20 A Yes.

21 Q To your knowledge has MERS executed Corporate
22 Resolutions authorizing Phelan Hallinan & Schmieg to act
23 as MERS officers with respect to other members?

24 A Yes.

25 Q What other members?

1 A I don't know them all.

2 Q Which ones do you know?

3 A Wells Fargo.

4 Q Anyone else?

5 A No.

6 Q So there are four other resolutions and
7 certifications by you, correct, appointing Phelan
8 Hallinan & Schmieg as corporate officers, but you don't
9 recall the names of the MERS member for those four other
10 resolutions?

11 MR. BROCHIN: Object to the form of the
12 question.

13 A That's correct.

14 Q Towards the top of the exhibit, the second
15 page marked MERS/Ukpe 013 there is an entry sent and it
16 says Thursday, December 10, 2009. Do you see that?

17 A Yes.

18 Q And the subject is Corporate Resolutions, and
19 do you see there's a reference to attachments?

20 A Yes.

21 Q Do you know anything about those attachments?

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

24 Q I didn't hear your answer.

25 A No.

1 Q Do you know where those attachments came from?
2 In other words, did they come from MERS if they were
3 corporate resolutions or did they come from some other
4 source?

5 MR. BROCHIN: Are the attachments attached?

6 MR. MALONE: No.

7 MR. BROCHIN: Object to the form of the
8 question.

9 A I have no knowledge what those are or where
10 they came from.

11 BY MR. MALONE:

12 Q Turning then to Hultman Exhibit 24, marked in
13 the bottom right-hand corner MERS/Ukpe 14 and 15, have
14 you seen this document prior to today or yesterday?

15 A No.

16 Q Inviting your attention to the first page of
17 the exhibit, the third paragraph, do you see the words
18 together with the bond, note or other obligation?

19 A Yes.

20 Q Does that indicate to you that not only is
21 there an assignment of the mortgage interest, but this
22 document purports to assign an interest in the note?

23 A It says what it says.

24 Q And reading it, does it indicate to you that
25 there is an assignment of the note?

1 A It says what it says.

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

4 BY MR. MALONE:

5 Q If the Phelan, Hallinan & Schmieg firm
6 attempted to assign a promissory note by this
7 assignment, would that be a violation of MERS policies
8 and procedures?

9 A No.

10 Q As corporate officers of MERS were members of
11 the Hallinan firm authorized to assign promissory notes
12 then?

13 A There is a general catch-all in the resolution
14 that says that they can do whatever else they need to do
15 in the interest of servicing the loan. There have been
16 times when notes have been improperly endorsed to MERS,
17 and sometimes the certifying officers have to endorse
18 those. There have been occasions when that has
19 happened.

20 Q Do you know if that happened in this case?

21 A I'm not aware of the circumstances here.

22 Q If there were no mistaken endorsement to MERS
23 of the note and the Hallinan firm attempted to assign
24 the note, would they be acting within the scope of their
25 authority as MERS vice-presidents and assistant

1 secretaries?

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

4 MR. BROCHIN: I object as well to the extent
5 it calls for a legal conclusion.

6 BY MR. MALONE:

7 Q Answer the question, please.

8 A It's not a violation of our rules or
9 procedures.

10 Q What was MERS interest in the Ukpe promissory
11 note as of March 14, 2008?

12 A As I answered twice before, I believe, we hold
13 the security interest for the benefit of the note holder
14 as an agent and to the extent that that's an interest,
15 it's an interest.

16 Q And that's your answer, that's MERS interest
17 in the note?

18 A In this particular case, yes.

19 Q And what was the value of that interest in the
20 Ukpes' note to MERS?

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

23 A If you mean is there a monetary value --

24 Q Yes.

25 A -- there isn't any.

1 Q Did you pay -- I'm sorry, finish your answer.

2 A I said no.

3 Q Did MERS pay anything for whatever interest it
4 claims to have in the Ukpes' promissory note?

5 A We were granted a security interest in the
6 promissory note. That's our interest. We did not
7 receive -- we did not pay anything for it. It was
8 granted to us by the borrower.

9 Q And if I recall your answers earlier, you have
10 no entitlement to any payments under the note, is that
11 correct?

12 A That's correct.

13 Q And elsewhere has MERS taken the position that
14 it is not in the business of lending money, talking
15 about the Nebraska case in particular?

16 MR. BROCHIN: Can you have the question
17 reread.

18 (The stenographer read the pending question)

19 MR. BROCHIN: I object to the form of the
20 question to the extent it's asking this witness to opine
21 on legal positions taken by MERS. If you understand
22 the question, you can answer it.

23 A MERS to my knowledge did not have a beneficial
24 interest in any of the proceeds of the note in question
25 here.

1 Q The term beneficial interest is one that is
2 used in connection with MERS. Could you define what a
3 beneficial interest is, please.

4 A A person who is entitled to the benefits of
5 the proceeds of the note.

6 Q And just so if I understand you correctly, is
7 it your testimony MERS was owed nothing by the Ukpes on
8 the promissory note, MERS was not entitled to any
9 payment from the Ukpes?

10 A That's my understanding.

11 Q In terms of the meaning of beneficial
12 interest, does beneficial interest, does it equate to
13 the right to proceeds under the note?

14 A Among other things.

15 Q And in addition to the right to proceeds what
16 else is meant by the concept of beneficial interest?

17 A Well, they are the ones who have the ultimate
18 direction of disposition of an asset.

19 Q Does MERS prohibit its members from claiming
20 MERS has an ownership interest in promissory notes?

21 A What we have said in the foreclosure
22 procedures that they would not allege that we were the
23 owner of the note and that we are only the holder of the
24 note.

25 Q Does MERS not only say that, but does MERS

1 prohibit its certifying officers from claiming MERS has
2 an ownership interest in the note?

3 A I don't know that we have any expressed
4 prohibition, but implicit in many of our rules and
5 procedures that notion is there.

6 Q Are you aware of any provision in MERS
7 documents threatening to impose fines if a member claims
8 MERS has an ownership interest in a promissory note?

9 A It can. In conjunction with foreclosures if
10 they allege in a complaint that MERS is the owner of a
11 note, that could open them up to sanctions, monetary
12 sanctions, under one of our rules.

13 Q When you used the word holder in your answer a
14 few moments ago, what do you mean by the use of the
15 phrase holder?

16 A The party who is in possession of the note.

17 Q So you're just talking about pure physical
18 possession, not an ownership interest, is that correct?

19 A Whether it's characterized ownership interest
20 or not, I didn't say. What I said was the holder is the
21 person who is in physical possession of the note.

22 Q When MERS is the holder, does MERS claim any
23 beneficial interest in the note?

24 A No.

25 Q Turn to the next Hultman Exhibit 25, bates

1 stamped MERS/Ukpe 16 through 25. Do you have that
2 document?

3 A I do.

4 Q I just ask you to read the first count,
5 paragraph number one, to yourself, please.

6 A Okay.

7 Q There is a reference to America's Wholesale
8 Lender. Is America's Wholesale Lender a MERS member?

9 A The party that that is a d/b/a for is a MERS
10 member.

11 Q Can you tell us how you were aware that
12 America's Wholesale Lender is a d/b/a for a MERS member?

13 A Countrywide has told me that.

14 Q And the MERS member in this case, could you
15 identify who the MERS member is?

16 A Countrywide Home Loans.

17 Q And paragraph two, I would ask you to read
18 that to yourself.

19 A Okay.

20 Q Does it reflect that to secure the payment of
21 the obligation, the note referenced in paragraph one,
22 that the borrowers, the Ukpes, executed to MERS as
23 nominee for America's Wholesale Lender a purchase money
24 mortgage of even date with said note and conveyed it?

25 A No.

1 Q Would you summarize for us what --

2 A Well, it says what it says, but you only read
3 part of the sentence and dropped out at successors and
4 assigns.

5 Q Okay. Does it provide that MERS was made the
6 -- that the mortgage instrument, the security interest,
7 was executed to MERS as nominee for America's Wholesale
8 Lender?

9 A That's what it says.

10 Q And then it continues, successors and assigns.
11 And then turning to paragraph four, does it say that the
12 holder of the obligation and its mortgage assigned them
13 as follows, and reciting in sub paragraph A, reflecting
14 that the assignment is by Mortgage Electronic
15 Registration Systems?

16 MR. BROCHIN: Are you asking him a question?

17 MR. MALONE: I'm inviting his attention to
18 that. Does he see that language in paragraph 4 and 4A.

19 A I have read paragraph 4 and 4A.

20 Q Now, in terms of the introductory sentence to
21 paragraph four, was MERS ever the holder of the
22 obligation, that is, the note?

23 A I'm not aware of any time that it was the
24 holder.

25 Q Turning to Exhibit 26, Hultman Exhibit 26,

1 bates stamp MERS/Ukpe 026, reflects it is a policy
2 bulletin dated February 17, 2010. Are you familiar with
3 the subject of this policy bulletin?

4 A Yes.

5 Q And can you explain to us what brought about
6 the policy bulletin.

7 A Our desire to improve the process.

8 Q And were there particular areas in your view,
9 in MERS view, that needed improvement in terms of the
10 process?

11 A Well, we're always trying to continually
12 improve our process.

13 Q Turning to Hultman Exhibit 27, MERS/Ukpe 27.

14 A Okay.

15 Q Can you explain to us what this is?

16 A This is a milestone report for the subject
17 loan generated by the MERS system.

18 Q Could I ask you to turn back to Hultman
19 Exhibit 1, please, bates stamped MERS 1. Hultman
20 Exhibit 1 is a MIN summary and not a milestone report.
21 Can you tell us what information is tracked on the
22 summary as opposed to what information is tracked on the
23 milestone report?

24 A The MIN summary is the current status of the
25 loan on the MERS system and the milestones are certain

1 historical events.

2 Q Now, if a milestone report is to be accurate,
3 are the members required to record in the MERS system
4 every time there is a transfer of beneficial rights?

5 A That's part of our procedures, yes.

6 Q Now, if in fact there is a securitized trust
7 -- do you have some familiarity with the securitization
8 process?

9 A Yes.

10 Q And you mentioned earlier the concept of a
11 true sale. Every time there is a true sale in the
12 context of a securitization does that reflect there has
13 been a transfer of beneficial rights?

14 A I don't understand what you mean.

15 Q Earlier when I asked you about the meaning of
16 beneficial rights you indicated it had to do with the
17 right to payment, that was an incident of beneficial
18 rights. So every time there is a sale and someone else
19 has the right to payment, should that sale be reflected
20 in the MERS milestone report?

21 A Not necessarily.

22 Q Under what conditions should a sale be
23 reflected in the MERS milestone reports and what
24 circumstances can a sale be ignored by the member in
25 terms of reporting to MERS?

1 A In general when there are internal transfers
2 within an organization where a member or one of its
3 affiliates is represented in the investor field,
4 internal transfers between affiliated entities within
5 that member's affiliated group would not normally be
6 reflected on the system unless they chose to do so, but
7 we will not require that, but then when they sell that
8 beneficial interest or sell the note to an unaffiliated
9 member, at that point they are required to update the
10 system, the investor field on the system.

11 Q Okay. Turning to Hultman Exhibit 2 and
12 Hultman Exhibit 27, do they appear to be in terms of
13 content the same milestones report?

14 A Yes, because it's the same MIN.

15 Q And by the way, the MIN, in this case what is
16 the MIN? First off, does MIN stand for Mortgage
17 Identification Number?

18 A Yes.

19 Q And is it a unique number assigned to each
20 MERS mortgage?

21 A Each loan that's registered on the MERS system
22 must have a MIN assigned to it, yes.

23 Q What is the MIN in this case if you can just
24 read it into the record.

25 A 11570005618649-3.

1 Q And does that -- do the components of that MIN
2 number mean anything? Do they relate to a geographical
3 area, MERS member, or is it just a series of random
4 numbers?

5 A The first seven digits is usually the party
6 that generated the MIN. Sometimes the second ten
7 numbers can be a loan number or they can be a sequential
8 number. It's up to the member to decide that generates
9 the MIN, what they are. The only requirement that we
10 have is that it's not a duplicate of another MIN that's
11 already been registered. And then the final number is a
12 -- it is a check digit, then there's an algebraic
13 formula that creates it based on the prior numbers so
14 that people don't fat finger the numbers.

15 Q And does this milestone report reflect a
16 registration on August 2, 2005?

17 A Yes.

18 Q And what is being registered; what kind of
19 interest is being registered on August 2, 2005?

20 A By register it means that a mortgage, a
21 secured interest in the form of a mortgage or deed of
22 trust has been created naming MERS as the mortgagee or
23 beneficiary and recorded in the land records.

24 Q Now, the servicer is indicated to be BAC Home
25 Loans Servicing, L.P. Do you see that?

1 A Yes.

2 Q Do you know if that organization was even in
3 existent in August of 2005?

4 A I believe it was with a different name.

5 Q What was the name of the organization that was
6 in existence on August 2, 2005 with a different name?

7 A Countrywide Home Loans.

8 Q And do you have any explanation how if
9 Countrywide Home Loans was the name of the business back
10 in August of 2005, how your records get updated to
11 reflect a more recent name as opposed to keeping the
12 name that was in existence back in August, 2005?

13 A Because the org ID didn't change. When
14 Countrywide changed the name of its organization, we
15 instituted a change to that org ID, the name assigned to
16 it, it's a global change, and goes through a -- back
17 into the records from before that change was effective.

18 Q And the next entry, and there are only two
19 entries on this milestone report, the second entry is
20 dated September 23, 2005, and can you tell us what's
21 occurring there; what is being memorialized in this
22 milestone?

23 A It's showing that the investor that was being
24 shown in the system at the time of the original
25 registration on August 2, 2005 has been changed to Bank

1 of New York Mellon which was org ID 1579.

2 Q And that reflects that it's the old investor
3 or BAC Loan Servicing L.P., is that correct?

4 A Yes.

5 Q And then as of September 23rd there is a
6 transfer to a new investor, as you've said, the Bank of
7 New York Mellon. Does that mean that the Bank of New
8 York is the -- by investor is that meant the Bank of New
9 York is the owner of this interest?

10 A It's the beneficial owner, yes, generally.

11 Q And by beneficial owner, could you explain
12 again what is meant by beneficial owner in the context
13 of this milestone entry.

14 A They are generally the holder of the note or
15 the beneficial owner. In this case they are probably
16 more carefully characterized as the holder of the note.

17 Q And why do you say probably more carefully
18 characterized as holder since the reference is to
19 transfer of beneficial rights?

20 A One of the beneficial rights in the trust are
21 the ultimate security holders and again, it's just a
22 name of a field on a system that's not a legal system of
23 record. It's just to tell us who we're working for.

24 Q If there were other transfers prior to and
25 subsequent to September 23, 2005 of the interest in the

1 note, should they be reflected on the milestone report?

2 A In most cases, yes.

3 Q Turning to Hultman Exhibit 28 bates stamped
4 MERS/Ukpe 28, this is a document, has a caption near the
5 top Corporate Resolution Request Form. Do you see that?

6 A Yes.

7 Q And it's a three-page document bates stamped
8 MERS/Ukpe 28 through MERS/Ukpe 30 and are you familiar
9 with this Corporate Resolution Request Form?

10 A Yes.

11 Q And could you explain to us what its purpose
12 is.

13 A It's the way that the members either get their
14 original Corporate Resolution or if they made changes to
15 the officers that they would like to have signing
16 authority for MERS, they would use it to update their
17 existing Corporate Resolution.

18 Q And on the -- well, let me just follow that.
19 If, for example, if I were a MERS member and I had to
20 appoint an employee as a certifying officer, have MERS
21 appoint my employee has a certifying officer, I could go
22 on the web site, put my company name in, address, put it
23 in the name of the employee, and that would reflect a
24 request that my employee become an officer?

25 A That's correct.

1 Q What would happen once MERS received the
2 request?

3 A It goes to someone in the law department to
4 review and if it's in accordance with our -- they check
5 who the member is, make sure it's a valid member, valid
6 org ID, make sure it's not someone trying to get a
7 Corporate Resolution who is not entitled to one, and if
8 everything is in order, it comes to me to sign and then
9 it goes back to the member and then we log it into our
10 system.

11 Q In your experience has a member ever made a
12 request that one of its employees be appointed a MERS
13 officer; has MERS ever rejected a request?

14 A I don't know.

15 Q Now, on the second page of the exhibit,
16 Hultman Exhibit 28 towards the bottom your name appears
17 in the phrase I, William C. Hultman. Do you see that?

18 A Yes.

19 Q And it reflects that the foregoing is a true
20 copy of a resolution duly adopted by the Board of
21 Directors effective as of a date certain. Are you
22 referring, when you say the foregoing is a true copy of
23 a resolution, are you referring to that same April 9,
24 1998 resolution we discussed earlier today?

25 A No. I'm referring to the one that I'm signing

1 as of that date.

2 Q But it says the foregoing is a true copy of a
3 resolution duly adopted by the Board of Directors.
4 What's duly adopted by the Board of Directors?

5 A Again, I can go over it again because I have
6 been delegated the authority, when I make the delegation
7 and when I sign the resolution, that becomes a
8 resolution of the Board as of that date.

9 Q So if I went looking for the original of the
10 resolution duly adopted by the Board, it would take me
11 back to this document, is that correct?

12 A If you were to ask me for a copy of the
13 resolution, I would give you the copy that was -- on the
14 day that I signed it.

15 Q And if I were to ask for the original of the
16 resolution, what would you give me?

17 A I don't understand what you mean by original
18 resolution.

19 Q Well, this is a true copy. You're certifying
20 as to this is a true copy. That would imply there is an
21 original some place. So if I asked you to give me the
22 original, what would you produce?

23 A I will not accept your characterization that
24 way.

25 Q Then what do you mean by true copy? True copy

1 of what?

2 A The resolution that I adopted at that date. I
3 know what the resolution is. I don't have to look at a
4 piece of paper. I know what it is. It's the same for
5 everybody at that time frame.

6 Q Let's try that with Hultman Exhibit 4, which
7 is the Corporate Resolution relating to the Phelan,
8 Hallinan & Schmieg firm. What you signed -- I'm sorry,
9 I will wait until you have it. You're certifying that
10 what has your signature at the bottom, you're certifying
11 that it is a true copy of a resolution duly adopted by
12 the Board, that the foregoing is a true copy. So I
13 understand the word copy and that this document has your
14 signature is a true copy. Do I understand that the
15 original of this true copy is the same document but with
16 original ink or it would say the same thing?

17 A The resolution is an intangible. I'm passing
18 a resolution and I'm certifying that that's an accurate
19 representation of the authority that has been delegated
20 to these certifying officers.

21 Q You say the resolution is intangible. Does
22 that mean there's not a piece of paper, there's not an
23 original?

24 A It is an agreement that they have this
25 authority between MERS and its officers.

1 Q When you say the agreement, are you referring
2 to the Agreement for Signing Authority, Hultman Exhibit
3 3?

4 A No, I'm referring to the contract, the
5 agreement between the parties, that's what the agreement
6 is. They get to assign liens and they get to release
7 liens and I am attesting that that's an accurate
8 representation of the authority that has been delegated
9 to them by me pursuant to the authority of the Board of
10 Directors.

11 Q I understand, and I'll try to stop it with
12 this, but I understand you're saying that the foregoing
13 is a true copy of a resolution, so what is said above is
14 a copy of a resolution adopted by the Board. If I asked
15 you to take me, Mr. Hultman, you've just said this is a
16 true copy, take me to the original resolution, is there
17 a piece of paper adopted by the Board, original
18 resolution?

19 A No. I've told you this five times.

20 Q Thank you.

21 MR. MALONE: For the record, we have marked
22 the stipulation as Hultman Exhibit 29. I don't know if
23 you have a copy there. We have the original with Dan
24 Orr's signature and Abigail Sullivan's signature. We
25 would ask other counsel to please sign their copies and

1 submit them to us and we will have a conformed copy of
2 the stipulation, a completed copy of Exhibit 29 which we
3 will then distribute to everyone. I would like to take
4 a five-minute break and then wrap up.

5 (Off the record)

6 MR. MALONE: We're back.

7 BY MR. MALONE:

8 Q Mr. Hultman, if I could invite your attention
9 again to Hultman Exhibit 24. It's the document
10 captioned Assignment of Mortgage.

11 A Okay.

12 Q Towards the top of the second page do you see
13 the bold language "I agree to the terms of this
14 assignment"?

15 A Yes.

16 Q And following that there is a signature and
17 below the signature is the typed name Francis S.
18 Hallinan. Do you see that?

19 A Yes.

20 Q And Mr. Hallinan signs as assistant secretary
21 and vice-president of Mortgage Electronic Registration
22 Systems, Inc. My question is directed to his choice of
23 title. Did MERS give any directions as to how their
24 certifying officers could sign; in other words, was it
25 okay for Mr. Hallinan to identify himself as an

1 assistant secretary of MERS on the assignment?

2 A Yes.

3 Q Was it okay for him to identify himself as a
4 vice-president of MERS in the assignment?

5 A Yes.

6 Q And does MERS give any direction to its
7 certifying officers as to language for use in an
8 assignment or is that up to the individual MERS
9 certifying officers to choose whatever language they
10 feel is appropriate?

11 A It's up to the servicer or the investor.

12 Q Now, do you have any idea how the name of the
13 plaintiff in this case was chosen?

14 A No.

15 Q The assignment document, Hultman Exhibit 4, in
16 your judgment does it effectively transfer whatever
17 interest MERS had in the mortgage document as of March
18 14, 2008?

19 A I'm not a New Jersey lawyer, but it looks like
20 it purported to do so.

21 MR. MALONE: I have no further questions.
22 Thank you very much.

23 MR. BROCHIN: If I could do a couple
24 housecleaning things. This witness does not waive
25 reading of the deposition. Second, what I would like to

1 do is take a set of the exhibits and documents that the
2 witness actually looked at here and send them to the
3 court reporter and have that set travel with the
4 exhibits to the deposition itself.

5 MR. MALONE: If I'm following you, the court
6 reporter has the original exhibits. They will be
7 included in the transcript. Additionally you want this
8 second set included?

9 MR. BROCHIN: Yes.

10 MR. MALONE: And what I've done with the
11 second set, I've just handwritten them as exhibits, the
12 only point there is so there's no question, okay.

13 MR. BROCHIN: The exhibit he was looking at is
14 the same as the exhibit that was marked at the
15 deposition. Can we do that?

16 MR. MALONE: We're fine with that.

17 MR. BROCHIN: Could I request the court
18 reporter to take a copy of the exhibits and Federal
19 Express them to me tomorrow even before the transcript
20 is prepared.

21 *****
22
23
24
25

C E R T I F I C A T I O N

STATE OF NEW JERSEY

SS.

COUNTY OF CAMDEN

I, Lisa L. Barth, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that I reported the deposition in the above-captioned matter; that the said witness was duly sworn by me; that the reading and signing of the deposition were waived by said witness and by counsel for the respective parties; that the foregoing is a true and correct transcript of the stenographic notes of testimony taken by me in the above-captioned matter.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

LISA L. BARTH, CSR 30X100110100

Dated: April 20, 2010

MICHELLE M. DOWNES, CSR XIO01596

Dated: April 20, 2010