

Richard M. Cieri
Ray C. Schrock
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Jeffrey S. Powell
Daniel T. Donovan
Gregory L. Skidmore
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Ste. 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

Counsel for Ally Financial, Inc.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
-----)	

**DECLARATION OF JONATHAN D. JANOW IN SUPPORT OF ALLY FINANCIAL,
INC’S OPPOSITION TO THE MOTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO PRECLUDE TIMOTHY DEVINE FROM TESTIFYING
ABOUT ANY OF THE MATTERS AS TO WHICH DISCOVERY FROM HIM HAS
BEEN BLOCKED BASED ON A CLAIM OF PRIVILEGE**

I, JONATHAN D. JANOW, hereby declare, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an associate at the law firm of Kirkland & Ellis LLP, counsel to Ally Financial, Inc. (“AFI”) in the chapter 11 cases of the above captioned matter. I respectfully submit this declaration in support of AFI’s Opposition To The Motion Of The Official Committee Of Unsecured Creditors To Preclude Timothy Devine From Testifying.

2. Attached to my Declaration as Exhibit A in support of AFI’s opposition are excerpts from the deposition testimony of Timothy Devine, dated November 19, 2012.

Dated: May 14, 2013
Washington, D.C.

/s/ Jonathan D. Janow
Jonathan D. Janow

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

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VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27973

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TIMOTHY DEVINE

MR. BRYAN: This is 121?

MR. KAUFMAN: I believe so.

MR. PRINCI: Thank you.

Q. Did you see this letter from
Mr. Solomon on or about its date?

A. Yes.

Q. Were you the one who drafted it?

A. I don't recall.

Q. Wasn't this letter part of the
approach that was decided upon at your
meeting with Mr. Solomon when you spoke
with him about how to deal with
Ms. Patrick?

MR. BRYAN: Objection to form.

MR. PRINCI: Objection as to
form.

A. Yeah, I'm not sure what was
decided at that meeting that I had with
Mr. Solomon.

Q. Let me show you the document
that has been marked previously as
Exhibit 51, which is an e-mail dated
October 26, 2011, from Mr. Solomon to a
number of people, including yourself.

1 TIMOTHY DEVINE

2 Did you -- and there's an
3 attachment, a letter dated October 25,
4 2011, from Ms. Patrick to Mr. Solomon. Do
5 you have that in front of you?

6 A. Yes.

7 Q. Did you receive Mr. Solomon's
8 e-mail with the attachment on or about its
9 date?

10 A. Yes.

11 Q. And did you read Ms. Patrick's
12 response to Mr. Solomon's October 21st
13 letter?

14 A. I don't have that response in
15 front of me.

16 Q. I think it's part of the
17 exhibit.

18 A. Oh, sorry. Okay. October 25.

19 Q. Yes. You understood that
20 Ms. Patrick's letter was in response to
21 Mr. Devine -- Mr. Solomon's October 21st
22 letter, right?

23 A. I do remember seeing the letter,
24 yes.

25 Q. And you recognize that it was

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TIMOTHY DEVINE

Ms. Patrick's response to Mr. Solomon's
October 21st letter, correct?

A. What I recognize is that I did
see this letter from Kathy Patrick to
Mr. Solomon.

Q. You saw Ms. Patrick's statement
in last paragraph of her letter that her
clients did not accept the contention that
AFI didn't bear liability for the PLS and
R&W claims they were threatening, correct?

A. I -- I read the letter.

Q. You saw that --

A. I read --

Q. -- part of the letter?

A. That's not what it says.

Q. In the last paragraph of the
letter Ms. Patrick said "Our clients do
not, however, accept your assertion that
Ally Financial, Inc., does not ultimately
bear the liability associated with the
repurchase and servicing claims described
in my October 17th letter. Ally does."

You see that?

A. Yes, I saw that.

1 TIMOTHY DEVINE

2 Q. You have seen these documents
3 before, haven't you?

4 A. As I said, I don't remember in
5 particular seeing this document.

6 Q. Do you know who prepared the
7 document?

8 A. No.

9 MR. KAUFMAN: Let's mark as the
10 next exhibit an e-mail chain that runs
11 from December 7, 2011 to December 15,
12 2007. This one has Bates number Ally
13 PEO 0042503. So I ask that it not be
14 published on the screen.

15 (9019 Exhibit 124, e-mail chain
16 that runs from December 7, 2011 to
17 December 15, 2007, Bates Ally PEO
18 0042503, marked for identification, as
19 of this date.)

20 MR. BRYAN: Thank you.

21 Q. Do you have this document in
22 front of you?

23 A. Yes.

24 Q. And did you send the e-mail at
25 the top of the chain on December 15, 2011?

1 TIMOTHY DEVINE

2 A. It looks like I did.

3 Q. And did you send that e-mail
4 after receiving the communication from
5 Ms. Patrick's firm forwarding draft
6 confidentiality and tolling agreements?

7 A. It looks like I did. I don't
8 remember days of the week in December of
9 2011.

10 Q. The e-mail -- the e-mails
11 underneath yours reflect that Mr. Sheeren
12 sent draft confidentiality and tolling
13 agreements to Ms. Hamzephour, she
14 forwarded it to you FYI and then you
15 responded, right?

16 A. Yeah. I don't see any
17 attachment, unless I'm missing a page, to
18 Exhibit 124. I just see what appears to
19 be a cover e-mail.

20 Q. I'm aware. We -- we looked at
21 that document, those documents before.
22 This is a continuation of the e-mail chain
23 that we looked at earlier.

24 In any event, am I correct,
25 Mr. Devine, that looking at this you

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TIMOTHY DEVINE

received a copy of Mr. Sheeren's e-mail to
Ms. Hamzephour who sent it to you FYI?

A. Are you referring back to
Exhibit 122?

Q. No. I'm referring to this
exhibit.

A. Oh, well, as I said, there's
nothing attached. So if you are asking me
to talk about what is attached, I can only
read --

Q. I wasn't. I wasn't.

A. Okay, sorry.

Q. I didn't ask you anything about
what was attached.

MR. BRYAN: Why don't you just
rephrase the question or restate it.

Q. In your e-mail, Mr. Devine, you
said "Pursuant to our plan I will reach
out to Kathy Patrick by e-mail letting her
know that Tammy has forwarded me the
correspondence and asked me to follow up.
First step, requesting confirmation of her
representation by clients."

You wrote that, correct?

1 TIMOTHY DEVINE

2 A. Yeah, that looks like I wrote
3 that, yes.

4 Q. And when you said, "First step
5 requesting confirmation of her
6 representation by clients," what -- what
7 is it that you were referring to? You
8 want to know the scope of her
9 representation and the identity of her
10 clients?

11 A. This e-mail looks to me like an
12 e-mail that I would have written to Tammy
13 Hamzephour, who was general counsel at
14 that time for the ResCap entities. And it
15 appears to include an understanding as to
16 what my role would be in connection with
17 what Tammy asked me to do. That's what it
18 appears to reflect.

19 Q. When you said "pursuant to our
20 plan," what plan was that?

21 A. The -- the discussion there and
22 the plan that's referred to would reflect
23 a plan that the lawyers had advised and
24 recommended to the client and had
25 authority from the client to pursue. So

1 TIMOTHY DEVINE

2 MR. BRYAN: All right. Let's
3 take a break.

4 THE VIDEOGRAPHER: The time is
5 11:29 a.m. and we are off the record.

6 (Whereupon, there is a recess in
7 the proceedings.)

8 THE VIDEOGRAPHER: The time is
9 11:38 a.m. and we are back on the
10 record.

11 Q. Looking at Exhibit 130. These
12 e-mails reflect a number of communications
13 between yourself and Mr. Franklin or his
14 colleagues; is that correct?

15 A. I don't recognize the name Janet
16 Laughlin or Laughlin but she appears to be
17 related to the Talcott Franklin firm.

18 Q. Did you send each of the e-mails
19 that show you as the author?

20 A. I appear to have, sure.

21 MR. KAUFMAN: Let's mark as the
22 next exhibit a document bearing Bates
23 number Ally 0209505 to 9508. The
24 first page of which shows it has been
25 redacted.

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TIMOTHY DEVINE

(9019 Exhibit 131, series of redacted e-mails, Bates Ally 0209505 to 9508, marked for identification, as of this date.)

Q. I'm not sure why the first page was redacted, Mr. Devine. This is the way it was produced to us. But if you look at the second and third pages, that's an e-mail that you sent, is it not?

A. You know what, I'm not trying to be difficult, I don't see the heading of that e-mail.

Q. I know. It was redacted by your counsel.

A. So it's really hard for me to say. I can see why you ask, it does have at the third page my standard signature block but -- and I'll ask Linda to look for a time on calendars and so on. But that looks, the second page looks like an e-mail I would have sent but I can't see the signa- -- I can't see the send block. So I don't know who it went to. It looks like it came from me but you can -- you

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TIMOTHY DEVINE

can recognize I'd be hard pressed unless I
had that send block.

Q. Do you know who you sent your
e-mail to?

A. No. That's what I'm struggling
with.

Q. In the text of the e-mail on the
second going over to the top of the third
page, you were laying out strategy for
dealing with Tal Franklin, weren't you?

MR. BRYAN: Objection to form.

A. Yeah, I can see -- are you
referring to the last -- the
second-to-last paragraph on that second
page.

Q. The whole thing. You are urging
a meeting. You are saying we can use the
meeting to do the following. You are
saying pre- -- you're talking about
presetting their expectations, pulling
together a conversation to discuss things.
All of that is part of laying out a
strategy for dealing with Mr. Franklin,
wasn't it?

1 TIMOTHY DEVINE

2 A. Yeah. I can't tell. It appears
3 to be but, again, without that front page
4 I'm a little bit hamstrung.

5 Q. In the second page -- sorry,
6 second paragraph of the e-mail which
7 begins on the second page you said we
8 ought to have a meeting with them pointing
9 out that you had pushed them off at the
10 last minute on February 2nd meeting.

11 Do you see that?

12 A. Yes.

13 Q. Why had you pushed that
14 February 2 meeting off?

15 A. I don't remember if that's the
16 one in particular. But I remember that we
17 did push off one Talcott Franklin meeting
18 when my mother-in-law was dying.

19 MR. KAUFMAN: Let's mark as the
20 next exhibit an e-mail chain on
21 March 6, 2012, all showing a subject
22 of Tolling Agreement Request.

23 (9019 Exhibit 132, e-mail chain
24 dated March 6, 2012, subject, Tolling
25 Agreement Request, marked for

1 TIMOTHY DEVINE

2 Q. And did you receive the e-mails
3 from Jeff Cancelliere and Patty Zellman
4 above your e-mail?

5 A. Yes, it looks like I did.

6 MR. KAUFMAN: Let's mark as the
7 next exhibit another e-mail chain,
8 this one on March 22nd to March 23,
9 2012.

10 (9019 Exhibit 133, e-mail chain
11 dated March 22nd to March 23, 2012,
12 marked for identification, as of this
13 date.)

14 MR. PRINCI: What exhibit is
15 this?

16 THE COURT REPORTER: 133.

17 MR. PRINCI: Pardon?

18 MR. KAUFMAN: 133.

19 MR. PRINCI: Thank you.

20 Q. Looking at the first e-mail in
21 the chain from David Sheeren to you on
22 March 22, 2012, at 10:09 a.m., did you
23 receive that e-mail from Mr. Sheeren?

24 A. It looks like I did, yes.

25 Q. And did you receive -- although

1 TIMOTHY DEVINE

2 it's not attached, did you receive a
3 template for the RMBS pool data and a
4 blank sheet for the most frequent --
5 frequent repurchase reps along with it?

6 A. I -- I don't remember. I assume
7 I did. I don't remember though.

8 Q. Okay. Did you send Mr. Sheeren
9 a response on March 23 at 10:33 a.m.?

10 A. Yes.

11 Q. And did you recommend in that
12 e-mail a call to walk through
13 Mr. Sheeren's chart with him?

14 A. Yes.

15 Q. And did you also send the e-mail
16 at the top of the exhibit on March 23,
17 2012, the one you sent to Ms. Rosten?

18 A. Yes.

19 Q. And in that e-mail you ask
20 Ms. Rosten to work with Mr. Sheeren to set
21 up a regular meeting every other week with
22 him or others at his firm concerning rep
23 and warranty issues, correct?

24 A. Yes.

25 Q. Was that done?

1 TIMOTHY DEVINE

2 A. Yes, I believe that was done.

3 Q. Okay.

4 A. I think if -- if you go back to
5 the bottom of that exhibit, 133, I'm not
6 sure if it was the exact same meeting
7 or -- or whether it was that meeting
8 schedule that Linda Rosten was setting up
9 but I asked to make sure to include John
10 Ruckdaschel.

11 MR. KAUFMAN: Let's mark as the
12 next exhibit a March 23, 2012 e-mail
13 to Mr. Devine from Ginger Cavanaugh,
14 attached to which is a letter dated
15 March 22, 2012, from Talcott Franklin
16 to Mr. Devine.

17 (9019 Exhibit 134, March 23,
18 2012 e-mail to Mr. Devine from Ginger
19 Cavanaugh, with attached letter dated
20 March 22, 2012 from Talcott Franklin
21 to Mr. Devine, marked for
22 identification, as of this date.)

23 A. Thank you.

24 Q. Looking at what we just marked,
25 did you receive this e-mail and attachment

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TIMOTHY DEVINE

on March 23, 2012?

A. It looks like it, yeah.

Q. Looking at the letter from Mr. Franklin that's attached, Mr. Franklin expressed frustration about the progress of negotiations with him; is that correct?

MR. PRINCI: Objection as to form.

Q. That is the substance of his letter?

A. Just a moment. I --

Q. Sure. Take your time.

A. Okay. I have completed reading the letter. Thanks.

Q. And in substance, Mr. Franklin expressed -- expressed frustration about the progress of negotiations with him; is that right?

MR. BRYAN: Object to form.

MR. PRINCI: Objection to form.

A. I -- I think the letter speaks for itself. I'd -- I'd be hard pressed to characterize it in summary fashion.

Q. You would?

1 TIMOTHY DEVINE

2 A. Yes.

3 Q. Mr. Franklin complained
4 specifically in the third paragraph of his
5 letter that meetings had been delayed and
6 that Ally had failed to provide responses
7 to offers of compromise or to move
8 negotiations forward, right?

9 A. That's what it says.

10 Q. And you understood when you
11 received his letter that he was
12 essentially threatening that if things
13 didn't move forward to his satisfaction,
14 that would be some consequences?

15 A. If you are asking me how I
16 responded to him, I can answer that
17 question. If you are asking me what I
18 thought and what my mental impressions
19 were against this potential adversary, I'm
20 not going to answer it.

21 Q. I'm only -- you -- you are
22 saying you won't tell me whether you
23 understood upon receiving the letter that
24 Mr. Franklin was threatening you if things
25 didn't move forward to his satisfaction?

1 TIMOTHY DEVINE

2 MR. BRYAN: I think the letter
3 speaks for itself. If you are asking
4 him what did -- if you want him to
5 paraphrase the letter, if that's what
6 the goal of the question is --

7 Q. I did neither. I want to know
8 whether you understood when you received
9 the letter that to be the case?

10 MR. BRYAN: Understood what to
11 be the case?

12 MR. KAUFMAN: That Mr. Franklin
13 was threatening that if things didn't
14 move forward to his satisfaction,
15 there would be consequences.

16 MR. BRYAN: Objection to the
17 form.

18 A. I can see reading the letter
19 here now that he was apparently frustrated
20 but you'd probably be better to ask him
21 exactly what he intended to communicate by
22 the letter.

23 Q. I know what he wrote. I was
24 only asking what your understanding of
25 what he was saying was when you got it.

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TIMOTHY DEVINE

Are you telling me you are not going to answer that question?

A. What my mental impressions were of this potential adversary in litigation?

Q. Yes.

A. Yes, I'm not going to answer that.

Q. Okay.

MR. KAUFMAN: Let's mark as the next exhibit an e-mail chain between Mr. Devine and Kathy Patrick on April 5, 2012.

(9019 Exhibit 135, e-mail chain between Mr. Devine and Kathy Patrick on April 5, 2011, marked for identification, as of this date.)

Q. Looking at what we have just marked, is this an exchange of e-mails you had with Ms. Patrick on April 5, 2012?

A. Yes, that's what it looks like.
Yes.

MR. KAUFMAN: Let's mark as the next exhibit an e-mail from Mr. Devine to Ms. Patrick on April 16, 2012.

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TIMOTHY DEVINE

Attached to which is a draft
confidentiality agreement.

MR. PRINCI: Is this Exhibit
136?

THE COURT REPORTER: Yes.

(9019 Exhibit 136, e-mail from
Mr. Devine to Ms. Patrick dated
April 16, 2012, with attached draft
confidentiality agreement, marked for
identification, as of this date.)

A. Thank you.

Q. Looking at the document we just
marked, did you send this e-mail to
Ms. Patrick with the attached draft on
April 16, 2012?

A. Yes. It looks like that's
exactly what I did.

Q. Let me show you the document
that has been marked previously as
Exhibit 76, which is an e-mail chain on
April 17, 2012. And let me direct your
attention to the e-mail at the top of the
first page, the one from you to Gary Lee
and Tammy Hamzephour at 9:57 a.m.

1 TIMOTHY DEVINE

2 Do you see that?

3 A. Sorry. Say that again, please.

4 Q. The e-mail at the top of the
5 first page of the exhibit from you to
6 Mr. Lee and Ms. Hamzephour at 9:57 a.m.

7 Do you see that?

8 A. From me -- at the top of the
9 first page?

10 Q. Correct.

11 A. Yes.

12 Q. Did you send that e-mail?

13 A. It looks like I do.

14 Q. And your e-mail reported on a
15 conversation you had with Mr. Lee the day
16 before, was that correct?

17 A. Yes.

18 Q. And one of the things you had
19 talked about with Mr. Lee was whether to
20 include a dollar figure or dollar figures
21 for a potential contribution from AFI in a
22 presentation to Ms. Patrick; is that
23 correct?

24 A. Yes.

25 Q. And you said that you didn't

1 TIMOTHY DEVINE

2 think a potential dollar range should be
3 shared with Kathy Patrick at that point;
4 is that correct?

5 A. Yes.

6 Q. Why not? Why did you think that
7 a dollar figure should not be shared with
8 her?

9 A. Are you asking me what I thought
10 or what I said to Gary and Tammy about
11 what I thought? Because if you want to
12 know my answer, I can answer the second
13 one.

14 Q. Answer the second one.

15 A. Okay. What I said to Gary and
16 Tammy was that the business hasn't gotten
17 to an Ally Financial, Inc. number yet.
18 Meaning AFI and ResCap have not come to an
19 understanding as to the amount that the
20 parent AFI and the debtors would agree to
21 in their separate negotiations.

22 Q. Are you finished?

23 A. Yeah.

24 Q. You also said "Can always share
25 with her at next round of discussion."

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TIMOTHY DEVINE

What made you think that at the next round of discussion you'd have such a figure to share with her?

A. I don't remember in particular but as I understood it, those negotiations were going on and if they had arrived at a number and an agreement at a number, then we would have been able to share it with Kathy Patrick.

Q. Let me show you the document that's been marked previously as Exhibit 79, which are e-mails between yourself and Ms. Hamzephour.

Did you send the e-mail at the bottom of this exhibit to Ms. Hamzephour on April 23, 2012?

A. That's what it looks like, yes.

Q. And am I correct that this e-mail was in preparation for an upcoming meeting with Kathy Patrick?

A. Just one moment. Let me refresh my memory. Yes, I think that's right in the timeline.

Q. And specifically this was about

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TIMOTHY DEVINE

what information should be presented to
Ms. Patrick in a waterfall presentation;
is that correct?

A. It -- it regards certain
information that should be presented in a
waterfall for Kathy Patrick.

Q. And -- and among those things
you recommended using 3 billion, 4 billion
and 6 billion as the low, medium, high
valuations of PLS and R&W exposure; is
that correct?

MR. BRYAN: Objection.

Q. Isn't that what you are
referring to in the first sentence to
Ms. Hamzephour?

MR. BRYAN: Objection to the
form.

A. No, that's not what I was
referring to.

Q. You say "would like to recommend
3, 4, 6 rather than -- rather than 4, 5, 6
as low, medium, high." Weren't you
recommending -- let me ask you this first.
The 3, 4, 6, that -- that referred to

1 TIMOTHY DEVINE

2 billions, correct?

3 A. Yes.

4 Q. And you were recommending using
5 3 billion, 4 billion and 6 billion as the
6 low, medium and high valuations to be
7 included in a waterfall presentation to
8 Ms. Patrick, correct?

9 MR. BRYAN: Objection to form.

10 A. I don't know what you mean by
11 valuations in that question.

12 Q. What did the 3, 4, 6 refer to?

13 A. That referred to, as I sit here
14 today and recollect, three potential
15 hypothetical scenarios involving what I
16 understood at the time to be ResCap's
17 presentation to the Kathy Patrick team
18 regarding potential allowed claims for the
19 class of claimants of which the Kathy
20 Patrick clients represented one part.

21 Q. Okay. And you said to
22 Ms. Hamzephour that you would provide
23 analytics to support those values,
24 correct?

25 A. I said I will provide analytics

1 TIMOTHY DEVINE

2 to demonstrate how one could get to 3 or 4
3 or 6 billion.

4 Q. Okay. And did you have those
5 analytics?

6 A. I don't recall whether I had
7 them as of April 23 or not.

8 Q. Okay. You also recommended
9 using \$750 million rather than \$1 billion
10 as a potential AFI contribution; is that
11 correct?

12 A. Yes, that is correct.

13 Q. And as to that you said, "I
14 don't have basis to say it should be a
15 billion and it would be better to leave
16 some room for negotiation."

17 Do you see that?

18 A. I see that.

19 Q. Okay. Then you went on to say,
20 "If we want to use a billion we will need
21 clearance from AFI and I haven't spoken to
22 Mike." Were you referring to
23 Mr. Carpenter there?

24 A. Yes.

25 Q. What made you choose 750 million

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TIMOTHY DEVINE

as the potential AFI contribution to show Ms. Patrick at this point?

A. Sitting here today, my best memory is that I must have heard discussion in the separate conversation over an AFI and ResCap settlement that used the term -- the -- the figure 750.

Q. Okay.

A. But even as I sit here today, I recognized that that conversation was ongoing. And the only reason that a figure was being used in these ResCap waterfalls at all was so that ResCap could at least put a placeholder out in front of these potential claimants.

Q. Okay.

A. It wasn't a final figure, in other words.

Q. When you say you must have heard discussion. Discussion between whom?

A. Well, it would have come from folks who were aware of the status of the other conversation -- the other negotiation.

1 TIMOTHY DEVINE

2 Q. Who was that?

3 A. It could have been lawyers. It
4 could have been business people who
5 were -- who had heard that figure.

6 Q. Who reported it to you?

7 A. I don't remember.

8 Q. Did you have clearance to
9 include a 750 dollar -- 50 million dollar
10 number in a waterfall presentation to
11 Ms. Patrick at this point?

12 MR. PRINCI: Objection as to
13 form.

14 A. Well, first of all, it wasn't --
15 it wasn't an Ally waterfall. And I was
16 simply recommending -- I had been
17 presented a draft waterfall to which I was
18 responding in this e-mail to Tammy
19 Hamzephour. And reading backward in time
20 it appears that the draft I saw had a
21 \$1 billion figure as a potential AFI
22 contribution. And my recommendation to
23 Tammy was that she not include 1 billion,
24 as I felt it would have been misleading
25 given the status of the separate

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TIMOTHY DEVINE

negotiation as I understood it to -- to stand that day.

Q. By saying that using \$750 million would leave some room for negotiation, you had reason to believe, didn't you, that AFI's contribution could go higher?

MR. BRYAN: Objection to form.

A. If I remember correctly, the draft that I saw started with what I think they were calling at that time a base case, which was a \$0 contribution of AFI to the estates. And then I think that they went to 250, 500 and 750. So I had reason to believe that it could be as low as 0 and as I indicate here, up to 750.

Q. No, Mr. Devine, you said that using 750 million would leave some room for negotiation. Are you telling me you had no reason to believe that AFI's contribution could go higher than that?

MR. BRYAN: Objection to form.

MR. PRINCI: Objection as to form.

1 TIMOTHY DEVINE

2 A. All I can say is that I had no
3 reason to believe that using a billion
4 would be an appropriate number for ResCap
5 to use at that time.

6 Q. Okay. Well, you were
7 recommending that 750 million be put on
8 the table for a waterfall presen- --
9 withdrawn -- that 750 million be used in a
10 waterfall presentation as the high end
11 contribution from AFI at that point,
12 right?

13 A. Right. Rather than a billion.

14 Q. Okay. And --

15 A. Because there was no basis for a
16 billion at that time.

17 Q. Mr. Devine, you are an
18 experienced negotiator, aren't you?

19 MR. PRINCI: Objection to form.

20 A. I -- I have negotiated
21 settlements before.

22 Q. You wouldn't have put your
23 absolute top dollar on the table to start
24 a negotiation with Ms. Patrick, would you
25 have?

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MR. BRYAN: Objection to form.

A. If you are asking me what I would or would have done (sic) on behalf of the client at that time, that would require me to speculate. If you are re-- if you are asking me why I said to Tammy Hamzephour it would be better to leave some room for negotiation, I can answer. And the answer would be I was mistaken. I mistakenly assumed that -- I was mis -- I was badly informed and I overspoke with regard to the status of the communications at that point.

I regret having put that in there because I really had no knowledge and it was foolish of me to put that statement in there.

Q. Were you chastised by anyone for doing that?

A. No. I just feel bad about it because it -- it was inaccurate. It was an inaccurate statement of the status of the communication.

Q. And you don't remember from what

1 TIMOTHY DEVINE

2 source you received that communication?

3 A. No.

4 Q. Okay. Whatever contribution AFI
5 was going to make towards this proposed
6 settlement with Ms. Patrick, it was going
7 to require releases from both the PLS, R&W
8 claimants and ResCap, correct?

9 MR. BRYAN: Objection to form.

10 A. Sorry, that -- sorry. I want to
11 make sure I understood your question.
12 Will you please repeat it.

13 Q. Whatever contribution AFI was
14 going to make towards this proposed
15 settlement with Ms. Patrick, it was going
16 to require releases from both the PLS, R&W
17 claimants and ResCap; is that correct?

18 MR. PRINCI: Objection as to
19 form.

20 MR. BRYAN: Same objection.

21 A. So it sounds now I better
22 understand your question like you are
23 asking me to speculate as to what possible
24 outcomes could have occurred at that point
25 in the negotiation.

1 TIMOTHY DEVINE

2 Q. I'm not asking you to speculate.
3 I'm asking you to tell me at the time that
4 you were preparing to provide this
5 waterfall presentation to Ms. Patrick in
6 connection with proposed settlement with
7 her, wasn't it your understanding that AFI
8 in return for whatever contribution it
9 would be making to that settlement was
10 going to require releases from both the
11 PLS claimants as well as ResCap?

12 A. Couple -- couple points in
13 response. One, I wasn't preparing the
14 waterfall.

15 Two, we were not negotiating,
16 Kathy Patrick and me -- Kathy Patrick and
17 I with regard to whether or not the 750
18 would be consideration for anything that
19 the debtor received in connection with the
20 resolution of a debtor and Kathy Patrick
21 settlement agreement.

22 Q. Weren't those things all being
23 negotiated together, Mr. Devine?

24 A. The 750 was not being negotiated
25 with Kathy Patrick.

1 TIMOTHY DEVINE

2 Q. I understand that. But in order
3 to make a settlement with her there had to
4 be some contribution from AFI, right?

5 MR. PRINCI: Object to form.

6 A. You'd have to ask Kathy Patrick
7 what she was looking for in that regard.

8 Q. What was the point of including
9 a \$750 million number as a contribution
10 from AFI in a waterfall presentation to
11 Ms. Patrick if it wasn't understood that
12 in order to make any settlement there was
13 going to have to be a contribution from
14 AFI?

15 MR. BRYAN: Objection to form.

16 MR. PRINCI: Objection as to
17 form.

18 A. Now I understand your question.
19 So as I understand it at the time the
20 waterfalls, and I'm trying to remember
21 this, I don't -- there's no attachment to
22 the exhibit, but I think that the
23 waterfalls included 0 contribution from
24 Ally up to 750 million contribution from
25 Ally. And if you are asking me what was

1 TIMOTHY DEVINE

2 ResCap trying to get done at that time, I
3 understood from Tammy Hamzephour and Gary
4 Lee that ResCap was trying to give Kathy
5 Patrick a hypothetical fully sort of
6 caveated vision of some possible scenarios
7 in the event that they struck a deal, that
8 is, ResCap and Kathy Patrick, in
9 connection with a ResCap filing and an
10 allowed claim and so on. And without --
11 without -- Kathy Patrick at that time had
12 been duly informed that there was a
13 potential for an Ally and ResCap
14 settlement which would have or could have
15 included some contribution by Ally into
16 the estate. And so she was trying to
17 understand what potential such a
18 contribution, either from 0 up to 750,
19 would mean for her clients as she
20 evaluated for her part the -- the
21 settlement that was being negotiated
22 between ResCap and Kathy Patrick.

23 Q. And you understood, didn't you,
24 that if AFI were to make a contribution
25 towards that settlement it was going to

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TIMOTHY DEVINE

require releases both from the R&W claimants as well as from ResCap?

MR. BRYAN: Object to form.

A. So if -- if I understand your question, what I communicated to Kathy Patrick was that in connection with the settlement agreement she was trying to reach with the debtor, for which she sought Ally's support and assurance that Ally wouldn't object to it, Ally would seek a release -- Ally would seek the support of her clients of the plan that was being negotiated between ResCap and Ally at the time.

Q. And that plan would include releases both from third-party claimants such as her clients and ResCap, right?

A. The plan being negotiated between ResCap and Ally?

Q. Yes.

A. The plan being negotiated between ResCap and Ally would include a debtor release as well as a provision for third-party nonconsensual releases, that's

1 TIMOTHY DEVINE

2 correct.

3 Q. Okay.

4 MR. KAUFMAN: Let's mark as the
5 next exhibit an e-mail on April 24,
6 2012, from Mr. Devine.

7 (9019 Exhibit 137, WITHDRAWN,
8 marked for identification, as of this
9 date.)

10 Q. Looking at the document we've
11 just marked, Mr. Devine, did you send this
12 e-mail on April 24th?

13 MR. BRYAN: Again, Phil, can you
14 represent that this was not on our
15 clawback list?

16 MR. KAUFMAN: I don't have your
17 list in front of me, Patrick.

18 MR. BRYAN: I believe this one
19 plainly is.

20 MR. KAUFMAN: I don't -- you
21 believe this is on your clawback list?

22 MR. BRYAN: I do.

23 MR. KAUFMAN: Do you have a copy
24 of your list?

25 MR. BRYAN: We can take a break

1 TIMOTHY DEVINE

2 Q. Focusing on the e-mail that
3 starts on the bottom of the first page and
4 continues over to the second. That's an
5 e-mail you sent to Mr. Solomon and others
6 on April 27th, correct?

7 A. Just a moment, please.

8 Okay. Sorry, I'm ready to
9 answer your question.

10 Q. Is that an e-mail you sent to
11 Mr. Solomon and others on April 27th?

12 A. Yes.

13 Q. And you reported in your e-mail
14 a conversation you had just had with
15 Ms. Patrick, correct?

16 A. Yes.

17 Q. And was that an accurate summary
18 of your conversation with Ms. Patrick?

19 A. I assume it was.

20 Q. The next e-mail up is from
21 Mr. Solomon at 8:48 p.m. Did you receive
22 that e-mail?

23 A. Yes, it looks like I did.

24 Q. And then you responded to
25 Mr. Solomon at 8:50 p.m., correct?

1 TIMOTHY DEVINE

2 A. Yes.

3 Q. And the last line of your
4 response you said "Lots to do and have to
5 manage all client expectations since KP's
6 clients will take several hacks at us."

7 To what clients were you
8 referring?

9 A. I assume I was referring to the
10 clients that KP had identified.

11 Q. Okay. When you said "have to
12 manage all client expectations," which
13 client or clients were you talking about
14 there?

15 A. I was probably referring to the
16 ResCap client as well as the Ally client.

17 Q. And how did you believe those
18 expectations had to be managed?

19 MR. BRYAN: Objection to form.

20 MR. KAUFMAN: Let me withdraw
21 it.

22 Q. What expectations of those
23 clients did you believe had to be managed?

24 A. I'm trying to put myself back in
25 time. It wasn't clear to me that Kathy

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TIMOTHY DEVINE

Patrick and her clients were going to --
it wasn't clear to me at that time that a
deal was going to get done. And I assume
that's what I meant by having to manage
client expectations with regard to whether
a deal was going to get done or not.

Q. Okay. And how did you believe
those expectations concerning whether a
deal could get done needed to be managed?

MR. BRYAN: Objection to form.

A. I'm going to try and understand
your question better but would you please
clarify.

Q. You said "have to manage all
client expectations." And you explained
that those expectations had to do with
whether or not a deal with Ms. Patrick's
clients could get done, right?

A. That's my best memory of what I
was talking about. I confess I don't
remember exactly what I was talking about.

Q. How did you propose to manage
those expectations?

A. How in terms of who I'd speak

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TIMOTHY DEVINE

with or how in terms of what actions would
be taken?

Q. Both.

A. I don't remember.

Q. Who was going to do the
managing, you?

MR. BRYAN: Object to form.

A. I -- I think the client
expectations, you can see who is on the
e-mail here. You've got Gary Lee and
you've got Tammy Hamzephour. So I assume
that they would be managing whatever
expectations the ResCap client had. And
we have got Bill Solomon, Rick Cieri and
Ray Schrock who together would be managing
client expectations at Ally.

Q. What client were you on?

MR. BRYAN: Objection to form.

Q. Were you the lawyer for the
situation or were you on the Ally side?

MR. PRINCI: Objection as to
form.

MR. BRYAN: Objection to form.

A. With regard to the April 27 --

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TIMOTHY DEVINE

with regard to finalizing the deal with
Kathy Patrick in the role of reporting
back here in the e-mail Friday, April 27
it looks like 8:00 at night, I was
reporting back to Ally and ResCap teams
with regard to the conversation with Kathy
Patrick. It could be that Gary Lee was
having conversations at the same time, I
don't know. But what I reported was that
I had spoken with her and it looked like
essentially a pretty positive and upbeat
status report at that time.

Q. Okay.

A. So --

Q. I was referring to your
statement that, "have to manage all client
expectations." I'm trying to figure out
which client or clients were you managing?

A. I wasn't managing --

MR. BRYAN: Asked and answered.

A. -- any client.

Q. So everyone else that you
e-mail -- sent your e-mail to was doing
some managing but you weren't doing any,

1 TIMOTHY DEVINE

2 is that what you're saying?

3 MR. BRYAN: Objection to form.

4 MR. PRINCI: Objection as to
5 form.

6 A. I'm saying I wasn't managing any
7 client. If you're talking about managing
8 expectations --

9 Q. I'm talking managing
10 expectations.

11 A. Oh, that's different.

12 Q. Whose cli- -- which client
13 expectations were you managing?

14 A. I was --

15 MR. BRYAN: Objection to form.

16 A. I was providing information to
17 Tammy and Gary for their advice to the
18 ResCap clients and I was providing
19 information to Rick and Ray and Bill with
20 regard to the Ally client. But clearly by
21 that point I would have been participating
22 in attorney-client discussions with the
23 Ally client with regard to the Kathy
24 Patrick discussions.

25 MR. KAUFMAN: Let's mark as the

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TIMOTHY DEVINE

investor/securities litigation." And there's a \$400 million number next to that. Wasn't that some estimate of the possible or reasonably possible range of loss for securities litigation?

MR. BRYAN: Object to form.

A. Yeah. Well, there's a lot of detail behind that line. And as I sit here today, I just can't remember the detail. But as I recall, that would have been a number subject to a variety of stresses that were imposed on the process from outside of this sort of legal advisory function.

Q. Right. Okay.

A. That's the more complete answer.

Q. Let me show you what's been marked previously as Exhibit 83.

A. Thank you.

Q. Which is an e-mail chain on May 4, 2012. There are two e-mails in this exhibit. Did you receive the one from Mr. Lee on May 4?

A. Yeah, it looks like I did. Yes.

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TIMOTHY DEVINE

Q. And is the e-mail above that your response to Mr. Lee?

A. Yes. That's what it looks like.

Q. Mr. Lee referred to a call or meeting with Ms. Patrick that day. And you said our notes match. Were you and Mr. Lee both on a call with Mr. Patrick -- sorry -- with Ms. Patrick on May 4th?

A. I -- I don't remember. What -- what I do remember is that Gary Lee was having a variety of conversations with Kathy Patrick during that period, some of which I would have been included on and some of which I wouldn't have been included on.

Q. Well, he was summarizing in an e-mail what Ms. Patrick had proposed that day. And you said, "Our notes match." So you must have been on that call, right?

MR. PRINCI: Objection as to form.

A. Yeah, might. The reason I clarified my answer is that it could be that he was summarizing calls or meetings

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TIMOTHY DEVINE

that took place outside of my presence.

Q. You said our notes match --

A. So --

Q. Didn't that indicate your agreement with the summary he provided to you?

MR. BRYAN: Object to form.

A. Yeah. So as I recall during those days, as I said, there were times when I was talking with Kathy Patrick and there were times when Gary Lee was talking to Kathy Patrick. So it's just as reasonable in the misty fog of my memory right now to understand our notes match to describe a separate conversation that I had with Kathy Patrick with the agreement as Gary Lee describes it here.

It's possible that we were in the same meeting and that that's what that e-mail means. It's also possible that we were in separate meetings and we were comparing notes as to our understanding of what KP was proposing.

Q. Okay. In any event, your

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TIMOTHY DEVINE

understanding of the conversations with
Ms. Patrick matched the summary that
Mr. Lee provided in the e-mail to you; is
that correct?

A. That's correct.

Q. Okay. The five points listed by
Mr. Lee were the essential terms of the
deal you were discussing with Ms. Patrick
at that time; is that correct?

A. No.

Q. No. No?

A. No.

Q. Oh, okay. In point 4 of his
e-mail, Mr. Lee wrote, "The KP group will
enter into a plan support agreement which
would support the DIP, sale, sale process,
servicing, shared services and plan
releases provide that Ally contributes no
less than X dollars in cash."

Do you see that?

A. I see that, yes.

Q. And the plan releases that you
understood Mr. Lee was referring to there
were third-party releases to AFI and a

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TIMOTHY DEVINE

release from ResCap to AFI; is that correct?

A. Are you referring to number 4 only --

Q. That is what I'm referring to.

A. -- in isolation? Out of context, number 4?

Q. When you received Mr. Lee's e-mail --

A. Yeah.

Q. -- and responded to him that your notes matched his, I'm asking you whether you understood he was referring there in number 4 to the plan releases that would be received by Ally from both ResCap and third-party claimants?

A. I would say, as I sit here today, plan releases would refer to, at a minimum, the plan. The debtor release and the third-party nonconsensual release.

Q. Okay. Now, the minimum contribution from AFI in return for those releases is set -- is set forth in Mr. Lee's e-mail as X dollars in cash. Do

1 TIMOTHY DEVINE

2 you see that?

3 A. I see that.

4 Q. He just has an X.

5 A. Yes. I see that that number 4
6 refers to X dollars in cash.

7 Q. As of May 4 was the amount of
8 AFI's contribution still open with respect
9 to Ms. Patrick?

10 A. I don't -- I don't remember.

11 Q. As of May 4 how much was
12 Ms. Patrick demanding from AFI to enter
13 into a plan support agreement as part of
14 her settlement?

15 MR. PRINCI: Objection as to
16 form.

17 MR. BRYAN: Objection to form.

18 A. Kathy Patrick wasn't demanding a
19 certain amount of money from AFI into the
20 estate.

21 Q. Had she indicated to you that
22 the amount of AFI's contribution was
23 unimportant to her?

24 A. Had she indicated that it was
25 unimportant what AFI put in the estate?

1 TIMOTHY DEVINE

2 Q. Yes.

3 A. No, she did not indicate that to
4 me.

5 Q. Did she indicate that it was
6 important?

7 A. Yes.

8 Q. Okay. What did she say about
9 that?

10 A. Kathy Patrick understood that
11 the negotiation of a dollar number between
12 AFI and ResCap was going on separately
13 from the discussions over the RMBS
14 settlement. Notwithstanding that, she
15 understood that she had no direct role
16 or -- or standing to bargain for a number
17 there since the number -- since that
18 agreement was between the estate and Ally.
19 She did care about the number and she told
20 me that she cared about the number for the
21 obvious reason that she wanted to maximize
22 that figure from Ally Financial.

23 Q. But as of May 4th, had she
24 expressed an amount that she expected from
25 AFI if she were going to proceed with a

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TIMOTHY DEVINE

settlement?

A. I don't remember as of May 4th.

Q. Okay.

A. The days -- it's going to be very difficult for me to remember the particular days. Those conversations were very concentrated during that time.

Q. Well, the amount of AFI's contribution towards this settlement was important to AFI, wasn't it?

A. Toward the -- toward the ResCap settlement?

Q. In this settlement.

A. Well, we weren't -- we weren't contributing to this settlement.

Q. Yeah, okay. I guess technically that may have been true, Mr. Devine, but you certainly understood as both negotiations were proceeding that the money, whatever it might be, that AFI was going to settle with ResCap for was going to wind up in a settlement with Ms. Patrick, right?

MR. PRINCI: Objection as to

1 TIMOTHY DEVINE

2 form.

3 MR. BRYAN: Same objection.

4 A. What -- I certainly understood
5 that Kathy Patrick was negotiating with
6 ResCap for an allowed claim which would
7 govern or -- govern in part or would
8 potentially go toward resolution of the
9 eventual disbursement to her clients and
10 the class that are clients were in in the
11 estate. And that obviously the quantum of
12 the recovery of the estate, from whatever
13 source, was very interesting to her and
14 her clients.

15 Q. And the amount that AFI would be
16 paying for the releases from ResCap and
17 third parties was important to AFI, was it
18 not?

19 A. Yes.

20 MR. BRYAN: Object to the form.

21 Q. Okay.

22 MR. KAUFMAN: Why don't we take
23 a lunch break now. It's 1:30.

24 MR. BRYAN: What time do you
25 want to reconvene?

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TIMOTHY DEVINE

(9019 Exhibit 142, e-mail chain dated May 6, 2012, marked for identification, as of this date.)

Q. Looking at what we've just marked, the first e-mail in the chain, which starts at the very bottom of the first page and goes over to the second page, is from you to Mr. Renzi and Jeff Cancelliere, correct?

A. Yes.

Q. And you sent that e-mail?

A. Cc'ing Gary Lee at MoFo, yes.

Q. And you wanted to see how waterfalls would look with certain assumptions built into them; is that correct?

A. I was providing them figures it looks from here -- I don't have present recollection of what I was doing but it looks from this distance that I was providing them figures to fill in on a waterfall that was apparently in process. I don't know as I look here, because it's only a two-page exhibit, whether or not I

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TIMOTHY DEVINE

originated this subject help with waterfall before 8:00 p.m. if possible or if this is part of a longer e-mail communication string.

Q. Whether or not it's part of a longer e-mail communication string, Mr. Devine, in your e-mail to Mr. Cancelliere and Mr. Renzi you asked them to assume certain figures and plug them in to two possible waterfall scenarios, correct?

A. Yes, that's correct.

Q. And in each case you wanted it assumed that Ally's contribution to a settlement would be 750 cash, plus 200 for HFS, plus 100 for originations, right?

A. Yes.

Q. What did 200 for HFS signify?

A. I don't know exactly what it signified. And the reason I said that is I didn't really understand it at the time. As I sit here today, I believe it represented Ally's commitment to -- to assert some position with regard to the

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TIMOTHY DEVINE

stalking horse for the -- for a certain class of assets that were being offered for sale in the estate. But -- but I confess, I didn't know what it was then and frankly I don't know what it is now.

Q. What did you mean by 100 for originations?

A. Similar answer. I understood that the teams working on the Ally and ResCap settlement had come up with this sort of shorthand to represent what I was made to understand was the Ally cash contribution to the Ally and ResCap settlement, which is the settlement to which this sentence here refers. "Assume 750 Ally cash plus 200 for HFS plus 100 for originations constitute the Ally" cash contribution to the settlement. That's the Ally ResCap settlement that's being described. And as I said before, I really did not participate in or have any responsibility in working on that, those settlement discussions.

Q. Who was it that gave you those

1 TIMOTHY DEVINE

2 amounts?

3 A. I don't know. I -- I don't know
4 who gave me those amounts. It could have
5 been lawyers working directly on that
6 deal. It could have been people in a
7 business meeting that were providing an
8 update as to what those numbers were.

9 Q. As you sit here today, you have
10 no recollection of who was giving you
11 those numbers?

12 A. Other than the recollection I
13 just gave you?

14 Q. That it could have been any
15 number of people.

16 A. That's not what I said.

17 MR. BRYAN: Object to form.

18 Q. You said it could have been
19 lawyers working directly on that deal. It
20 could have been people in business
21 meetings that were providing an update.

22 A. Yes.

23 Q. So it could have been any -- any
24 one or more of those groups of people, is
25 that what you are saying?

1 TIMOTHY DEVINE

2 MR. BRYAN: Object to form.

3 A. It could have been the lawyers
4 working for Ally in connection with trying
5 to get that settlement or it could have
6 been people in a business context working
7 on the -- trying to get that Ally ResCap
8 settlement done.

9 Q. The first waterfall you wanted
10 to see using those numbers for an Ally
11 contribution was one where there would be
12 no money for any securities fraud
13 plaintiffs but keeping miscellaneous GUC
14 at same assumed level we had been
15 assuming, right?

16 A. Assuming for the moment no
17 dollars to any securities fraud investor
18 plaintiffs and keeping miscellaneous GUC
19 at same assumed level we have been
20 assuming, yes.

21 Q. And GUC was general unsecured
22 creditors?

23 A. Yes. Put it this way, that was
24 an acronym that was being used by ResCap
25 and its professionals to describe a

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2 certain class of potential claimants in
3 the estate. I don't know what they meant
4 by it. And I don't know who they meant by
5 it. But it had been kind of a fixture in
6 several of the waterfalls. And it's that
7 acronym and that fixture in the waterfalls
8 that I'm referring to and not any
9 particular group of plaintiffs -- or
10 claimants.

11 Q. When you said keeping
12 miscellaneous GUC at same assumed level we
13 had been assuming, what level had been
14 assumed?

15 A. I would refer you to those
16 various waterfalls for whatever the
17 assumption had been made in connection
18 with that GUC, miscellaneous GUC. I was
19 not responsible for preparing those
20 waterfalls. I don't know what they meant
21 by GUC. And so I don't want to mislead
22 here and suggest that GUC referred to any
23 particular claimants.

24 Q. Mr. Devine, you were the one who
25 was asking for this waterfall and what I'm

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trying to find out from you is what it was -- I'm trying to find out why you wanted it. And you are telling me you didn't understand a thing about what you were asking for?

MR. BRYAN: Objection to form.

That's not at all what you asked.

That's an entirely new question.

Q. Are you -- are you telling me today that you have no knowledge of the level at which it had been assumed a waterfall would flow to miscellaneous general unsecured creditors.

A. The purpose of my instruction there was to isolate variables that I didn't understand and didn't want moving around while I was driving variables that I did understand better. And so that's why as I sit here today I -- I have no idea what Renzi or Cancelliere or any of the professionals for the estate meant at that time by the miscellaneous GUCs or mean today by that class. I just didn't want them moving other variables around

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when they were plugging in these variables for the places that I was asking them to do it.

Q. Why did you want it assumed that there would be no dollars to any securities fraud investor plaintiffs.

A. I think that Mr. Lee had informed me that ResCap intended not to assign any dollars to any securities plaintiffs. ResCap had determined not to assign any claim or valuation of any claim to any securities plaintiffs.

Q. What -- what was the -- what was the language there?

A. Securities/fraud investor plaintiffs. And so again, I was not directing the creation of a waterfall. I was trying to hold still certain variables over which I had no control it being a ResCap waterfall.

Q. Okay. Mr. Devine, looking at the -- at the two scenarios you were requesting. One -- one kept the miscellaneous general unsecured creditors

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at the same assumed level we had been assuming and the other one assumed that the general unsecured creditors ended up at only half the value with being -- had been -- you had been assuming. Why did you want to see those separate waterfall presentations?

A. Well, first of all, you are assuming that I wanted to see them.

Q. You asked for them?

A. I asked for them. But you are assuming that I wanted to see them. And that -- that may not be an accurate assumption. At this point in the conversation there were many -- there was a lot of work going on at the same time. And I may have been asked by any number of people to please throw some alternative potential waterfalls up against the wall and see what had happened.

And my -- my best memory as I sit here today is I wouldn't have come up with the notion of assuming that miscellaneous GUCs end up at only half the

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2 value we had been assuming because I don't
3 recall understanding the level of GUCs to
4 be of interest to my client at that point.
5 And it's certainly true that I did not
6 understand my client to have any say as to
7 the assignment as amongst the various
8 creditor classes of any particular claim
9 or eventual disbursement in the waterfall.

10 Q. So if you didn't come up with
11 this, Mr. Devine, who was it that asked
12 you to get these waterfalls from Mr. Renzi
13 and Mr. Cancelliere?

14 MR. PRINCI: Objection as to
15 form.

16 A. Well, it would help me to know
17 whether or not I was the originator of
18 this e-mail or whether it was cut off from
19 a larger string, but even so at that point
20 recognize that Renzi didn't work for me
21 and Cancelliere didn't work for me. So
22 the fact that I'm asking them to do
23 something and cc'ing Gary Lee suggests to
24 me that I'm sort of a communication point
25 in helping to get some waterfall work

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2 done -- and then as you can see as you go
3 up the exhibit on page 1 of Exhibit 142,
4 Renzi responds to me, cc's Gary and
5 William Nolan, I don't know who that is.
6 And then I say, "Thanks, Mark," da, da,
7 da, da, "pass some additional stuff on."
8 But I'm sure to include Gary Lee at MoFo
9 as cc and Ruckdaschel for that matter who
10 is ResCap attorney to suggest to me that
11 I'm assisting in the process of running
12 down data again toward what appears to be
13 something of a tight deadline. It's 644
14 in the e-mail at the top. And the subject
15 line of the e-mail is --

16 Q. Is this in response to some
17 question I asked you?

18 MR. PRINCI: I'll object. He's
19 not through with his answer. Don't
20 interrupt the witness.

21 MR. KAUFMAN: Hey, you know
22 what, I'm taking back the three
23 minutes he just spent talking about
24 something that I didn't even ask
25 about.

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2 MR. BRYAN: He was in the middle
3 of an answer. You do not interrupt
4 the witness.

5 MR. KAUFMAN: Yeah, okay. I'm
6 just telling you.

7 MR. BRYAN: Mr. Devine --

8 MR. KAUFMAN: I am not going to
9 be cut off by Mr. Devine occupying all
10 of the time he can by -- by saying
11 whatever he feels like on the record.

12 MR. BRYAN: Well, that's an
13 entirely inaccurate description of
14 what's been happening today. He's
15 been answering your questions
16 directly. Now, I would ask that you
17 pause, let Mr. Devine complete his
18 answer and then ask your next
19 question.

20 Q. Go ahead, Mr. Devine, finish.

21 A. So I was just saying that it may
22 well be that I was participating with the
23 ResCap team toward trying to get a deal
24 done that both ResCap and Ally were trying
25 to get done and if you look at the e-mails

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2 it appears that we were all working
3 against a deadline. I don't know what the
4 purpose of that or the reason for that
5 deadline was but we were working to try to
6 get something done by 8:00 p.m.

7 Q. Who asked you to request these
8 waterfalls from Mr. Renzi and
9 Mr. Cancelliere, give me a name?

10 MR. PRINCI: Objection as to
11 form. Asked and answered.

12 A. I -- I don't remember.

13 Q. But you are sure it wasn't you
14 who came up with the idea to request these
15 waterfalls; is that correct?

16 A. I'm just looking at the
17 Exhibit 142 --

18 Q. Just answer me. Do you -- was
19 it -- are you sure it wasn't you who
20 asked -- who came up with the idea to
21 request these waterfalls?

22 MR. PRINCI: Objection.

23 MR. BRYAN: You are doing it
24 again. Don't interrupt witness.

25 MR. KAUFMAN: I'm entitled to an

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2 answer to my question.

3 MR. BRYAN: And he was about to
4 answer your question before you
5 interrupted him again. I'd ask you to
6 calm down. Let the witness --

7 MR. KAUFMAN: I am calm.

8 MR. BRYAN: Well, let the
9 witness answer your questions.

10 MR. KAUFMAN: I'm glad this is
11 all on videotape.

12 MR. BRYAN: Do you recall the
13 question pending?

14 THE WITNESS: I -- I thought it
15 was to try to find out whether or not
16 I remembered who asked me to run the
17 waterfalls.

18 Q. No. Are you sure it wasn't you
19 who came up with the idea to request these
20 waterfalls?

21 A. No, I'm not sure it wasn't me.

22 Q. Okay.

23 A. As I testified, I don't remember
24 who -- where -- where it came from, where
25 the source of that question was.

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2 Q. So it could have been you?

3 A. Could have been Kathy Patrick.

4 It could have been Gary Lee. It could
5 have been Tammy Hamzephour. Could have
6 been John Ruckdaschel.

7 Q. And it could have been you?

8 A. Could have been me.

9 Q. Okay.

10 A. As I said, that's unlikely.

11 Q. Did Mr. Renzi and
12 Mr. Cancelliere thereafter provide you
13 with the two waterfalls you requested?

14 A. I don't remember.

15 MR. KAUFMAN: Let's mark as the
16 next exhibit an e-mail on May 7, 2012,
17 from Mr. Devine to Ms. Patrick.

18 (9019 Exhibit 143, e-mail dated
19 May 7, 2012 from Mr. Devine to
20 Ms. Patrick, marked for
21 identification, as of this date.)

22 MR. KAUFMAN: This one shouldn't
23 be put up on the screen.

24 UNIDENTIFIED SPEAKER: Can I
25 publish this?

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today to believe that your e-mail that was produced to us by your counsel was altered in some way?

A. I just don't remember sending an e-mail at 5:18 in the morning.

Q. Well, obviously you did, right?

A. It seems to indicate that I sent it at 5:18 in the morning.

Q. You told Ms. Patrick that -- that the numbers you had shared with her that night, 750 plus 100 plus 200, the waterfalls you had run appear to show that PLS R&W claims across all of the trusts would take at above the \$1 billion threshold she had mentioned.

Do you see that?

A. Yeah, I -- I read the first paragraph.

Q. Okay. Can you explain what you were describing to Ms. Patrick in saying that across the entire run of all the trusts would take at above the threshold you had mentioned to me of a billion? What were you talking about?

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A. So if I remember correctly and just judging too by the e-mail in context, there -- the numbers I shared tonight -- I'm not sure whether or not ResCap would have provided waterfalls by this point. I know they provided some originals. I don't know whether they provided updated waterfalls or not. But in any event, it appears that we were both talking about some waterfalls, meaning what ResCap was projecting I guess is the best word with all sorts of assumptions and caveats, et cetera, including lots of unknowns as to how those waterfalls might or might not play out in an eventual ResCap filing.

But it appears that we are talking about those sorts of waterfalls and it appears that the waterfalls showed that total rep and warrant on all the PLS, that is, that would have referred in context to all rep and warrant claims of all sorts and all related claims to rep and warrant on all the private label securities, which by that time in the

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conversation would have meant the 392 or whatever the proper number is of securitizations that the ResCap entities offered during the subject years. Wrapped and nonwrapped referred to whether or not there was or wasn't monoline participation in some or all of the deal, particular deal.

"And with claims on all ResCap PLS rep and warrant." I don't remember what that next part refers to. "And with claims on all ResCap PLS rep and warrant valued at the figure you mentioned tonight." I just don't know what that was. That may have referred to a defect rate and/or a severity rate across the population.

But whatever it referred to, that if you assumed whatever that was, the PLS rep and warrant valued at the figure you mentioned tonight -- she must have mentioned a defect rate or some other figure -- appear to show that in light of all those assumptions that the PLS rep and

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warrant across the entire run of all the trusts, that is the entire class beyond her particular client holdings, would take at above the threshold you, meaning Kathy Patrick, had mentioned to me of a billion.

Q. What was the billion dollar threshold?

A. I don't remember a billion dollar threshold. Reading this now, the bid that all of the trusts would take referred to sort of a final outcome.

Q. I understand that. But what was the -- what was the threshold? What was the billion dollar threshold above which the trust would take?

A. I don't remember.

Q. What was the significance of the trust taking at above that level?

A. Reading this now, it looks like she had communicated to me an outcome figure that I -- that I used the word "threshold" with, that that class of claimants would take -- would -- would end up with over a billion dollars. I think

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2 that's what it means.

3 In context I was clear from
4 square one never to promise any take to
5 anybody, any outcome. Because first of
6 all, it wasn't my estate and second I had
7 no idea how the various claimants would
8 end up taking. And she understood that.

9 Q. The waterfalls that you
10 described in this e-mail excluded any
11 recovery for securities in common law
12 fraud plaintiffs, correct?

13 A. It looks here in the second
14 paragraph like there was a waterfall
15 assumption that securities in common law
16 fraud plaintiffs claims would be
17 subordinated.

18 Q. And you pointed out to
19 Ms. Patrick that you expected those
20 claimants to fight for a seat at the table
21 and that it would be hard to imagine there
22 wouldn't be some flow to them, right?

23 A. That seems to be what I was
24 saying to her at that time.

25 Q. Why did you believe it was hard

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to imagine that those claimants wouldn't get at least some recovery?

A. Well, first of all, I have no experience in a bankruptcy anything near this magnitude or complexity. So I was probably well beyond my comfort zone in making a statement like that. I did know, though, that there were parties out there who had no rep and warrant claims because they had sold their interests in the various securities and so to my understanding would not participate in a recovery in the rep and warrant structure. And that they would nonetheless seek to -- try to recover against the estate on the securities in common law claims.

Q. Yes. And you also said it was hard to imagine there wouldn't be some flow on those claims. Why did you believe that?

A. Based on my very general and inexpert understanding of the bankruptcy process where most parties who think they have claims eventually try to assert them.

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2 Q. So you are testifying that you
3 were having conversations and e-mail
4 exchanges with Ms. Patrick without knowing
5 what you were talking about?

6 MR. PRINCI: Objection to form.

7 MR. BRYAN: Objection as to
8 form. That's not at all what he said.

9 MR. KAUFMAN: That is what he
10 said.

11 MR. BRYAN: The record is
12 perfectly clear, that's not what he
13 said.

14 A. Kathy Patrick knew that I wasn't
15 providing any -- certainly any advice to
16 her and certainly not speaking on behalf
17 of anyone with regard to what eventual
18 outcomes would take place inside of the
19 bankruptcy.

20 Q. Let me show you document
21 previously marked as Exhibit 41, which is
22 an e-mail chain on May 7, 2012.

23 I'd like to focus first on the
24 first e-mail in this chain which is from
25 Gary Lee at 9:08 p.m. It's at the bottom

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of the second page. Do you see that?

A. Yes.

Q. Okay. Did you receive that e-mail?

A. It looks like I did.

Q. And Mr. Lee reported that after several calls with Ms. Patrick that evening she had come back at \$10 billion all in PLS and R&W with a 22 percent defect rate.

Do you see that?

A. I see that. Although the way you pronounced that isn't the way I would read it in context.

Q. Now, looking at your e-mail at 10:14 p.m. that night, which begins on the first page of the exhibit and goes over to the second page.

MR. BRYAN: Phil, I'm sorry to interrupt but this is a document that we had raised with the committee as our clawback that there would be an appropriate redaction made to this e-mail on the second page. The

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document you just handed the witness does not have that redaction. So to the extent you want to question the witness about everything but his e-mail that begins Rick and Gary, that's fine. But I'm not going to let you ask any questions about that paragraph.

Q. About which paragraph, the one that starts Rick and Gary?

MR. BRYAN: Correct.

MR. WYNNE: My understanding is that we didn't agree to that redaction or that clawback.

MR. BRYAN: Well, that notwithstanding on the record we are clawing this document back with an appropriate redaction and I'm not going to let you ask any questions about the second paragraph that begins "Rick and Gary," semicolon, on the second page.

MR. WYNNE: That's not -- that's not my understanding of what was

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discussed or what was agreed to with respect to the court. Perhaps we should go off the record and discuss this and resolve it.

MR. KAUFMAN: Okay. Let's go off the record.

THE VIDEOGRAPHER: The time is 2:48 p.m. and we are off the record.

(Brief recess.)

THE VIDEOGRAPHER: The time is 2:51 p.m. and we are back on the record.

THE WITNESS: Thanks.

Q. Please look at the e-mail that you sent at 10:14 p.m. on May 7th which begins at the bottom of the first page of Exhibit 41 and continues over to the second page. Do you see that?

A. I see that e-mail, yeah.

Q. And did you send that e-mail?

A. Yes. It looks like I sent that e-mail.

Q. The first part of your e-mail was addressed specifically to Mark Renzi

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2 and Jeff Cancelliere, right?

3 A. Yes.

4 Q. And you said "KP needs defect
5 rate. If we can persuade her team that
6 they are using wrong severities, etc., and
7 can preserve the defect rate, we can pick
8 away at the \$10 billion."

9 Why did you believe Ms. Patrick
10 needed a certain defect rate for her
11 settlement?

12 A. I believe that she told me that
13 her analysis and assessment of the loans
14 at issue had indicated a certain defect
15 rate. And notwithstanding the very
16 natural process of negotiation I
17 understood that she was reaching a point
18 where she wasn't going to compromise with
19 regard to what defect rate applied to this
20 loan population based on the analysis of
21 her team.

22 Q. What did you understand the term
23 "defect rate" to mean?

24 A. It -- the simplest way to
25 understand it is the rate at which loans

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2 in a particular pool would fail according
3 to the applicable standards against which
4 they would be adjudged. And in the
5 context of the private label securities,
6 in particular, the defect rate represented
7 the rate at which loans in the particular
8 pool at issue violated reps and warrants
9 according to the terms of the relevant
10 contract, which included that they must
11 breach the applicable standards, the
12 applicable reps and warrants in a way that
13 materially and adversely impacted the
14 interests of the counterparties.

15 Q. What was the significance of a
16 certain defect rate to the settlement
17 amount as you understood it?

18 A. So there were a lot of moving
19 parts and this is entirely out of context.
20 But to answer your question subject to the
21 variety of factors that were, one measure
22 of an appropriate claim from Kathy
23 Patrick's standpoint was again a very
24 rough level and disregarding for the
25 moment all sorts of complexities, the

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defect rate times the severities, times
the lifetime loss in a particular pool of
loan.

So that if you had a defect rate
you had a couple different variables
getting toward what she would have viewed
as an acceptable final low number in the
negotiation. And if the defect rate went
too low, the total dollar number of the
claim would go low as well.

Q. So did you understand from your
discussions with Ms. Patrick that the
defect rate was a significant factor in
driving the settlement number she was
looking for?

A. One among many.

Q. Okay. The next part of your
e-mail addressed to Gary Lee and Rick
Cieri, right?

MR. BRYAN: You are talking the
second paragraph?

MR. KAUFMAN: Yes.

A. Yes.

Q. And you asked them "What

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2 spare copy?

3 MR. KAUFMAN: This is the only
4 one I have got.

5 Q. Do you have the exhibit in front
6 of you, Mr. Devine?

7 A. Exhibit 1, marked 145?

8 Q. That's correct.

9 A. Yes.

10 Q. You see that's an e-mail from
11 you to Ms. Patrick on May 8th, 2012, at --
12 at 12:12 a.m. -- sorry -- on May 8th,
13 2012, at 12:12 a.m., correct?

14 A. If I'm looking at the right
15 exhibit which is, ends in Bates 928, it
16 says from Devine Timothy sent Tuesday, May
17 8th, 2012 4:11 a.m. Am I looking at the
18 wrong exhibit?

19 Q. Looking at the top one you
20 sent -- you sent this e-mail to
21 Ms. Patrick at 4:11 a.m.?

22 A. I don't know. That sounds
23 strange to me that I would have sent an
24 e-mail out at --

25 Q. However strange, is that your

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2 e-mail, Mr. Devine?

3 A. It looks like my e-mail.

4 Q. Do you have any reason to doubt
5 it's your e-mail?

6 A. I don't have reason to doubt
7 it's my e-mail.

8 Q. You said in that e-mail "I'm
9 getting lots of pressure on valuation
10 now." Who were you getting pressure from?

11 A. Well, it looks like from reading
12 the e-mail everything we know about our
13 product, referring to the ResCap
14 securitizations and the collateral
15 underneath them, from origination through
16 pooling through reps and diligence through
17 servicing makes our folks believe we are
18 better, that is lower, than Countrywide by
19 a large margin. I am being asked to
20 explain how we could agree to a defect
21 rate 150 of Countrywide's.

22 So judging by that context I was
23 probably getting pressure from people on
24 the ResCap side who were saying that a
25 defect rate 150 percent of Countrywide's

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Did you send the e-mail to
Mr. Cancelliere at 5:50 a.m. on May 9th?

A. I don't remember what time I
sent it but it looks here like an e-mail
from me to Jeff Cancelliere.

Q. You sent that e-mail, didn't
you?

A. It looks like it.

Q. And you wrote to
Mr. Cancelliere, "What is the defect rate
at 8.7 billion according to her
severities, etc., and according to ours."

Do you see that?

A. Yes.

Q. Why did you want that
information?

A. Well, let's start with the
question which distinguishes her
severities and ours. Because as I
mentioned earlier, Kathy Patrick's
formulas applied different severities to
the collateral in the pools that underlay
the various securitizations. And if you
apply a more aggressive severity, meaning

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that loans are more likely to fail according to whatever macroeconomic or otherwise or other stresses you put against it, your defect rate would be lower if you -- if you isolated two of the more significant variables that arrive at an outcome which -- with regard to total exposure.

And so it was important to understand the defect rate at a couple of different severities.

Q. Where did the \$8.7 billion number come from in your e-mail to Mr. Cancelliere?

A. Unfortunately, I don't have a timeline in front of me with regard to the various communications with the parties. But at some point it must have been communicated to me by either Gary Lee or Kathy Patrick that they were at least talking about a valuation figure for the allowed claim of this class at \$8.7 billion.

Q. And did you want to ascertain

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based on information that you were
requesting from Mr. Cancelliere, whether
that \$8.7 billion number could be
supported by a defect rate?

MR. BRYAN: Objection to form.

A. So the question is -- sorry, I
didn't get the question.

Q. Did you want to ascertain based
on information that you were requesting
from Mr. Cancelliere whether that
\$8.7 billion number could be supported by
a defect rate?

MR. BRYAN: Object to form.

A. I don't understand what you mean
by whether it could be supported by a
defect rate.

Q. You were asking Mr. Cancelliere
what is the defect rate at \$8.7 billion,
right?

A. Correct.

Q. Okay. What I'm asking you is
whether you wanted that defect rate to see
whether it could support an \$8.7 billion
claim, right?

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2 MR. PRINCI: Objection as to
3 form.

4 MR. BRYAN: Objection to form.

5 A. I don't understand what you mean
6 by support. I think what I was asking him
7 was very simple, what is the defect rate
8 at 8.7 billion. And I think he understood
9 my question correctly because he gave me
10 an answer. If you use our 44.1 billion
11 which was apparently our severity on the
12 population, and multiply times a defect
13 rate to get to 8.7, you'd have the figure
14 of 19.7. If you used Kathy Patrick's
15 severities, which apparently we understood
16 to be 48.7 billion, then the defect rate
17 would be around 17.9.

18 Q. Okay. What significance, if
19 any, did you attach to the information
20 Mr. Cancelliere gave to you?

21 A. I know that just based on the
22 series of e-mails that we looked at
23 preceding this one that parties were
24 looking at the defect rate to compare it
25 to the Bank of America settlement.

1 TIMOTHY DEVINE

2 Q. Did the information
3 Mr. Cancelliere gave to you in this e-mail
4 make you comfortable with an allowed claim
5 at \$8.7 billion?

6 MR. BRYAN: Object to form.

7 A. What do you mean by comfortable?

8 Q. Willing to go along with it.

9 A. All right. So with that
10 understanding in terms -- willing to go
11 along with it in the context of the
12 negotiation of a settlement by ResCap of
13 an allowed claim based on that number?

14 Q. Yes.

15 A. I'm not sure as of 5/9/2012 at
16 that time whether I was comfortable with
17 it or not. Because it was only one term
18 in a very complicated series of
19 transactions. And it would have been
20 within that much, much larger context as
21 to whether or not I would have advised the
22 client or not that that was a comfortable
23 number.

24 Q. Were you representing ResCap on
25 May 9th, 2012?

1 TIMOTHY DEVINE

2 Q. Okay. Did there come a time
3 when you learned who it was, what
4 individuals were negotiating a settlement
5 between ResCap and AFI?

6 A. Yes.

7 Q. Okay. When did you learn that?

8 A. I don't remember when I learned
9 that.

10 Q. Did you learn it before or after
11 the ResCap board gave its approval to the
12 settlement with Kathy Patrick?

13 A. I don't know.

14 Q. Okay. What individuals did you
15 come to learn negotiated the settlement
16 between AFI and ResCap?

17 A. Well, I may or may not be
18 correct but you are asking me for my
19 understanding. It was Mike Carpenter for
20 AFI with the independents of the ResCap
21 board.

22 Q. During the course of the
23 negotiations with Ms. Patrick, up until
24 May 9th, weren't you -- weren't you being
25 kept advised about the progress of

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TIMOTHY DEVINE

negotiations between AFI and ResCap?

A. For what time period, sorry?

Q. In April and May of -- of 2012,
while the negotiations with Kathy Patrick
were in the later stages, weren't you kept
apprised of the status of negotiations
between AFI and ResCap?

A. Periodically.

Q. Who was keeping you apprised?

A. I guess I would have heard from
Ally's counsel from time to time.

Q. Meaning who?

A. Or -- meaning Rick Cieri, Ray
Schrock. It could also be that I received
an update in connection with a larger
discussion with lawyers and clients.

Q. Give me the names of the people
you are talking about?

MR. BRYAN: Objection to form.

He just -- he did.

Q. Besides Mr. Schrock and
Mr. Cieri, who else?

A. The business clients at AFI.

Q. Meaning who?

1 TIMOTHY DEVINE

2 A. Mike Carpenter, Jeff Brown, Bill
3 Solomon.

4 Q. How closely were you kept
5 advised of the progress of those
6 negotiations between AFI and ResCap during
7 that period? Last half of April, first
8 couple of weeks in May.

9 A. As I say, it was periodic. I
10 was not -- I was not participating in the
11 negotiation of it. I certainly was not
12 privy to daily developments by any means.

13 Q. But when you say periodic, what
14 does that mean, every other day, every two
15 days, what?

16 MR. PRINCI: Objection as to
17 form.

18 A. Just sitting here today, I just
19 don't recall. Nobody -- nobody sent out a
20 schedule to keep me abreast of what was
21 going on on that negotiation.

22 Q. But you were kept abreast,
23 weren't you?

24 A. Periodically.

25 Q. Okay. You did know that if

1 TIMOTHY DEVINE

2 MR. KAUFMAN: Let's mark as the
3 next exhibit an e-mail from Mr. Devine
4 to Mr. Lee on May 9th, 2012. Bates
5 number RC 9019_00049196.

6 (9019 Exhibit 147, e-mail from
7 Mr. Devine to Mr. Lee on May 9th,
8 2012, Bates RC 9019_00049196, marked
9 for identification, as of this date.)

10 Q. Let me show you what we just
11 marked as Exhibit 147.

12 A. Thank you.

13 Q. Is that an e-mail you sent to
14 Mr. Lee at 9:03 a.m. on May 9th, 2012?

15 A. Well, it looks like an e-mail
16 that I sent to Gary Lee and cc'd Ray Cieri
17 and Ray Schrock. As I said, I'm not sure
18 about the time because some of these have
19 been produced with times that don't seem
20 to make sense to me.

21 Q. Do you have any reason to doubt
22 that this is an e-mail you sent?

23 A. No.

24 Q. Okay. You said to Mr. Lee,
25 "Gary, as I told you on the phone, Ally

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TIMOTHY DEVINE

will support the \$8.7 billion allowed claim. There is no new Ally money. Hard stop at 750 plus 200 plus 100. Thanks, Tim." Right?

A. Yes. That's what it says.

Q. At the time you sent this e-mail to Mr. Lee, had the amount of AFI's contribution to a settlement been agreed upon to your knowledge?

A. As I said before, I don't know when that amount was agreed upon.

Q. Had Mr. Lee been pressing you for a larger contribution from AFI?

A. Mr. Lee knew because I told him that I was not going to negotiate that number with him. That I didn't have authority to negotiate it for him -- with him and that I didn't intend to do so.

Q. But you did make clear to him, did you not, in this e-mail, that there was not going to be more Ally money, isn't that what you say?

A. The e-mail here does not refer to -- it does not constitute an e-mail

1 TIMOTHY DEVINE
2 from me to Gary Lee about the Ally and
3 ResCap settlement. It is about Gary and I
4 concluding what may have been perceived on
5 his part as an open issue as to the
6 resolution of the deals that he and I
7 actually were working on resolving, which
8 were the ResCap deal with Kathy Patrick
9 and the PSA that Kathy Patrick and ResCap
10 and Ally entered.

11 Q. Mr. Devine, you said hard stop
12 at 750 plus 200 plus 100. Isn't that the
13 amount that AFI was proposing to
14 contribute as part of the Kathy Patrick
15 settlement?

16 MR. PRINCI: Objection as to
17 form.

18 MR. BRYAN: Objection to form.

19 A. No, it's not. It's the amount
20 that Ally and ResCap were negotiating in
21 their settlement agreement and it became
22 of interest in the agreements between
23 ResCap and Kathy Patrick on the one hand
24 and the tripartite agreement between Kathy
25 Patrick's clients, ResCap and Ally as a

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TIMOTHY DEVINE

term among many in context in the -- in those two agreements. But it was not a negotiation in connection with those -- the resolution of those deals.

Q. So you say, Mr. Devine. But isn't it a fact that it was more than just of interest to Ms. Patrick what the amount Ally would be contributing as part of what her clients might share in under a plan? It was a key element of what her entire settlement was? You understood that, didn't you?

MR. PRINCI: Objection as to form.

MR. BRYAN: Objection as to form. And, Mr. Kaufman, you are entitled to your views but do not try to belittle the witness in your questioning. That commentary should stop.

Q. You understood that, didn't you?

MR. PRINCI: Objection as to form.

MR. BRYAN: Same objection.

1 TIMOTHY DEVINE

2 A. One of the features of the
3 settlement agreement that ResCap entered
4 with Kathy Patrick and then the settlement
5 agreement or the plan support agreement
6 between AFI, the ResCap entities and Kathy
7 Patrick involved the amount of cash that
8 Ally would put into the estate. That's
9 certainly correct. There's no question
10 about that.

11 Q. And you said there is no new
12 Ally money. How did you know that?

13 A. The question arose as to whether
14 or not Ally intended to put any additional
15 money into the Ally/ResCap settlement.
16 And the answer was no.

17 Q. Who gave you that information?

18 A. I don't recall who gave me that
19 information.

20 Q. So somebody at AFI told you by
21 May 9th at 9:03 a.m. that Ally wasn't
22 going to put anything more into the pot?

23 A. If by the pot you mean the Ally
24 and ResCap settlement agreement --

25 Q. Yes.

1 TIMOTHY DEVINE

2 A. -- that either was or wasn't
3 finalized by that point, the answer is
4 yes.

5 Q. Is it fair to say that you were
6 telling Mr. Lee in this e-mail as -- that
7 in effect he could take it or leave it?

8 MR. PRINCI: Objection as to
9 form.

10 A. No, that's not correct. As I
11 told you, I wasn't negotiating that figure
12 with him. This was more informational
13 than anything else.

14 Q. You said you -- Gary, as I told
15 you on the phone Ally will support the
16 \$8.7 billion allowed claim but there
17 wasn't going to be any more Ally money.
18 So what I'm asking you is, weren't you
19 telling Mr. Lee in effect you can get the
20 support from Ally for the \$8.7 billion
21 claim but not for any more money from AFI?

22 MR. BRYAN: Object to form.

23 MR. PRINCI: Objection as to
24 form.

25 Q. Isn't that what you were telling

1 TIMOTHY DEVINE

2 him?

3 A. No. In fact that's a fallacious
4 question. It's just not at all
5 characteristic of what kind of
6 conversation we were having.

7 Q. It's exactly what you said to
8 him?

9 MR. PRINCI: Objection to form.

10 MR. BRYAN: Objection to form.

11 A. No, it's not.

12 Q. You didn't tell him that AFI
13 would support the \$8.7 billion allowed
14 claim?

15 MR. PRINCI: Objection.

16 Argumentative.

17 A. I did in this note say, "Gary,
18 as I told you on the phone, Ally will
19 support the \$8.7 billion allowed claim."
20 And Ally did.

21 Q. Okay. But you also said there
22 is no new Ally money. Hard stop at 750
23 plus 200 plus 100. You also said that,
24 correct?

25 A. Yes, we -- I did say that.

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TIMOTHY DEVINE

You -- you are reading that correctly.

Q. And so the combination of the two things you were telling Gary was Ally will support the settlement at that number but not for any more money?

MR. BRYAN: Objection to form.

Q. Isn't that what you were saying?

MR. PRINCI: Objection as to form.

A. No. I think you are entirely wrong with your understanding of what the negotiation was. And I have said it three or four times and you continue to try to misconstrue it and it's -- it's frustrating.

Q. Okay. Did you think there was any risk in saying this to Mr. Lee that the settlement would fall apart as a result?

MR. PRINCI: Objection as to form?

A. Which settlement?

Q. The settlement you were discussing in this e-mail with Mr. Lee.

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TIMOTHY DEVINE

a great contribution from AFI, just yes,
you considered or no, you didn't?

MR. PRINCI: Objection as to
form.

MR. BRYAN: Objection to form.

A. I don't think I probably
considered it in consequence of that
e-mail because I didn't view that
communication as a negotiation with Gary
Lee.

Q. Okay.

MR. KAUFMAN: Let's take a
five-minute break.

THE VIDEOGRAPHER: The time is
4:08 p.m. and we are off the record.

(Whereupon, there is a recess in
the proceedings.)

THE VIDEOGRAPHER: The time is
4:23 p.m. and we are back on the
record.

MR. KAUFMAN: Let's mark as
Exhibit 148 an e-mail chain on
May 9th, 2012 Re: Talcott Franklin.
(9019 Exhibit 148, e-mail chain

1 TIMOTHY DEVINE

2 on May 9th, 2012 Re: Talcott
3 Franklin, marked for identification,
4 as of this date.)

5 Q. Directing your attention to the
6 e-mail at the bottom of this exhibit,
7 Mr. Devine, did you send this e-mail on
8 May 9th at 9:04 on two -- at two
9 thousand -- May 9, 2012, at 9:04?

10 A. That's what the e-mail
11 indicates.

12 Q. And you reported on a call you
13 had received from Talcott Franklin; is
14 that correct?

15 A. Just one moment, please.

16 Sorry, what was the question
17 again? Thanks, I have completed reading
18 the e-mail.

19 Q. You reported in your e-mail on a
20 call you had received from Mr. Franklin,
21 right?

22 A. Yes.

23 Q. And Mr. Franklin had told you he
24 was very favorably inclined to sign onto a
25 settlement an plan support agreement and

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TIMOTHY DEVINE

that he was confident his clients would go along, right?

A. As I read here, I'm trying to remember, there were a lot of the deals going on at that time. He was very favorably inclined to support and participate in what we are doing. And so at this stage, on Wednesday, May 9th, given the other e-mails we have seen, I very likely would have been fairly blunt and transparent with him with regard to the state of play. And so the fact that I'm reporting that he's very favorably inclined to support and participate in what we are doing, probably means that he would be inclined to enter an agreement like the one that Kathy Patrick was entering with ResCap and like the one the three parties were entering into in the PSA.

Q. Specifically a settlement agreement and a plan support agreement, right?

A. Yes.

1 TIMOTHY DEVINE

2 Q. In the next to last paragraph of
3 your e-mail you said "I think he would
4 like to sign something prepetition. I
5 certainly am not the right person to
6 negotiate that with him. As you recall,
7 we sent him a draft of the settlement
8 agreement and PSA early on."

9 Do you see that?

10 A. I do see that.

11 Q. Why did you think you weren't
12 the best person to negotiate those
13 agreements with Mr. Franklin?

14 A. I think because one of the
15 agreements, the settlement agreement
16 that's come to be called the RMBS
17 Settlement Agreement was an agreement that
18 was between ResCap or the ResCap entities
19 and the RMBS claimants. And so I would
20 not be in a position to negotiate that
21 with him. I didn't have the pen, so to
22 speak, nor did I actually have the pen
23 with regard to the PSA even though Ally
24 would be a party to that agreement.

25 And at this point because the

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TIMOTHY DEVINE

conversations were moving on from sort of rep and warrant general conversations to agreements that would take meaning within the concept of a bankruptcy, I was indicating that I am not bankruptcy expert and would not be the right person to negotiate terms of an agreement in that context.

I would have thought that given the population of the recipients of this e-mail I sent, that Gary Lee would have picked up the conversation with Talcott Franklin. And it looks like at the top of this Exhibit 148 that that's exactly what happened. That Gary Lee responded and said we can send him a revised agreement and PSA when we get next draft from KP.

MR. KAUFMAN: Let's mark as Exhibit 149 an e-mail chain on May 9th, 2012. Bates numbers RC 9019_00049216 and 9217.

(9019 Exhibit 149, e-mail chain on May 9th, 2012, Bates RC 9019_00049216 and 9217, marked for

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TIMOTHY DEVINE

favorable and fair to all concerned and I wanted to get the deal done as I understood we were on a certain timeline.

Q. Looking at the top e-mail in the chain from Mr. Lee to yourself, among others, at 10:54 a.m. on May 9th, did you receive that e-mail?

A. It looks like I did, yes.

Q. And Mr. Lee wrote, "We will be seeking ResCap board approval today. Does Ally's board need to approve as it is signing the PSA and ResCap is agreeing to settle a claim in excess of 25 million, which requires Ally approval under Ally's governance framework. Please let us know."

Did AFI's board need to approve?

A. I don't know.

Q. Did Mr. Lee, to your knowledge, receive a response to his inquiry?

A. I don't know.

Q. Does Mr. Lee's reference to the ResCap board -- his reference to seeking ResCap board approval today, meaning

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TIMOTHY DEVINE

May 9th, refresh your recollection of the timeline in relation to the e-mails that appear below that e-mail?

A. Yes, it does.

Q. In what way?

A. Well, it looks like that ResCap or at least Gary Lee at that point intended to bring the ResCap board, if I understand correctly what he was referring to, the RMBS -- proposed RMBS settlement agreement and the PSA, on that day.

MR. KAUFMAN: Let's mark as the next exhibit, which is 150 an e-mail chain on May 9th and May 10th, 2012, between Mr. Devine and Ms. Patrick.

(9019 Exhibit 150, e-mail chain dated May 9th and May 10th, 2012, marked for identification, as of this date.)

A. Thank you.

Q. Directing your attention to the e-mail at the bottom of the first page of this exhibit, and continuing over to the second page, which is an e-mail from

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TIMOTHY DEVINE

Ms. Patrick to you on May 9th at
10:52 p.m. Did you receive that e-mail?

A. It looks like I did.

Q. And Ms. Patrick wrote to you for
help regarding an apparent disagreement
she was having with Mr. Lee, correct?

A. I have just finished reading the
e-mail. What was the question? Sorry.

Q. Ms. Patrick wrote to you for
help regarding an apparent disagreement
she was having with Mr. Lee, correct?

A. I think that's probably a fair
summary of the e-mail.

Q. Mr. Lee was saying he thought
Ms. Patrick's clients would be released
from securities claims as well as PLS and
R&W claims and Ms. Patrick was saying the
opposite, right?

A. I don't know what you mean by
PLS and R&W claims. How are you using the
word PLS there?

Q. Put back claims?

A. As distinct from rep and warrant
claims.

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TIMOTHY DEVINE

Q. No. Put back and rep and warrant claims. Didn't you understand that Mr. Lee was saying he thought Ms. Patrick's clients would be -- would be releasing those claims as well as securities claims and Ms. Patrick was saying that there was no release of securities claims from her clients, isn't that the disagreement you understood?

A. The disagreement as I can read now and understand from reading the e-mail is that Gary was apparently telling Kathy that the release, and I assume they were talking about the release contained inside of the ResCap and Kathy Patrick RMBS settlement agreement, that that release should include securities claims by those claimants as well as everything else. And she was saying that no, the release would not include securities claims in its scope.

Q. Right. And Ms. Patrick was saying that her clients never offered or agreed to release securities claims

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TIMOTHY DEVINE

because they didn't own those claims,
right?

A. I don't see where it says she
didn't -- she claimed they didn't own the
claims.

Q. Okay. Ms. Patrick was saying
her clients hadn't offered to release
those claims because they weren't in a
position to release those claims, right?

A. Who does the they refer to?

Q. Her clients.

A. No, I don't understand her to
have said that.

Q. You didn't understand that
that's what her point was?

A. No.

Q. Why did you think Ms. Patrick
believed that her clients were not going
to be releasing securities claims as part
of their settlement with ResCap?

A. Because as Kathy Patrick told
ResCap from the beginning, her
representation of those clients did not
extend to issues relating to securities

1 TIMOTHY DEVINE

2 claims.

3 Q. Okay. And you wrote back to
4 Ms. Patrick at 10:27 p.m. that evening,
5 correct?

6 A. It looks like it.

7 Q. Okay. And you told her that you
8 would straighten everything out, right?

9 A. It says --

10 MR. PRINCI: Objection as to
11 form.

12 A. I assume this is -- again, I'm
13 not sure here, but I assume this is an
14 indication that on May 9th, 2012, at
15 10:27 p.m. that I wrote to Kathy Patrick,
16 "I'll try to straighten everything out. I
17 notice some strange questions coming from
18 Freddie's counsel this evening. Let me
19 work on it."

20 Q. Right. Did you receive
21 Ms. Patrick's response to that at the top
22 of the first page of this exhibit?

23 A. It looks like I did.

24 MR. KAUFMAN: Let's mark as the
25 next exhibit an e-mail chain on May

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TIMOTHY DEVINE

9th to May 10th, 2012, Bates numbers
RC 9019_00049486 through 49491.

(9019 Exhibit 151, e-mail chain
dated May 9th to May 10th, 2012, Bates
RC 9019_00049486 through 49491, marked
for identification, as of this date.)

Q. Let me show you what we have
marked as Exhibit 151. Let me direct your
attention in the first instance to the
e-mail from Gary Lee to Ms. Patrick at
11:08 p.m. on May 9th which appears on the
page of this exhibit ending in 49488.
It's the bottom two-thirds of that page.

Do you see that?

A. For 9488 from Gary S. Lee to
Kathy D. Patrick.

Q. Yes. You have that?

A. I see that.

Q. While you are not copied on that
e-mail, it was forwarded to you a little
bit later, was it not?

A. It looks like it was.

Q. Mr. Lee said there seems to be a
disagreement on a fundamental point and

1 TIMOTHY DEVINE

2 that he was working it -- sorry -- that he
3 was writing it down so it was clear. Do
4 you see where he said that?

5 A. I see he says in his e-mail to
6 Kathy Patrick, "There seems to be
7 disagreement based on our call with Ropes
8 on one fundamental point. So we are clear
9 I'm writing it down so you and I can
10 discuss." Yep, I see it.

11 Q. And the disagreement was over
12 whether securities claims were being
13 released as part of the settlement by
14 ResCap with Ms. Patrick, right?

15 A. That's what it appears to be,
16 yes.

17 Q. Mr. Lee was saying he believed
18 all securities claims were being released
19 under that settlement as were all other
20 claims for both wrapped and unwrapped
21 deals, right?

22 A. I guess that's right.

23 Q. And his reference to Ross was to
24 Ross Martin at Ropes & Gray, right?

25 A. I assume it was.

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TIMOTHY DEVINE

Q. In the next to last paragraph of his e-mail Mr. Lee said, "So when Ross tells me an unknown amount of securities claims comes on top of this, I get spooked because that renders a deal at \$8.7 billion illusory. And if you ask why I care, which is what Ross screamed at me this evening, beyond the fact that this is the deal I sold to our board and thought we had, it, A, gives everyone an incentive to manage attacks by other claimants to get into the class or attempt to get a bigger share and, B, it is consistent with the need to maintain recoveries for other constituents who are key to the success of the plan."

Did I read that correctly?

A. You read it correctly.

Q. Were you aware that at the ResCap board meeting earlier that day, May 9th, Mr. Lee had sold the deal with Ms. Patrick as including a full release of all securities claims from Kathy Patrick's clients and others similarly situated?

1 TIMOTHY DEVINE

2 MR. BRYAN: Object to form.

3 A. So if we are talking about the
4 page 3 of Exhibit 151, I think I
5 understand your question to be about a
6 conversation between Gary Lee and Ross
7 Martin recounted in an e-mail from Gary
8 Lee to Kathy Patrick that I wasn't copied
9 on?

10 Q. No. No.

11 A. Okay.

12 Q. I'm asking you whether you were
13 aware on May 9th that at the ResCap board
14 meeting that day Mr. Lee had sold the deal
15 to the board, had sold the deal with
16 Ms. Patrick, to the board as including a
17 full release of all securities claims?

18 MR. PRINCI: Objection as to
19 form.

20 Q. Yes, you were aware of that or
21 no, you weren't?

22 MR. BRYAN: Objection as to
23 form.

24 MR. PRINCI: Objection as to
25 form.

1 TIMOTHY DEVINE

2 A. I don't know what Mr. Lee told
3 the board. I -- I don't know what Mr. Lee
4 told the board.

5 Q. So is it your testimony that you
6 were not aware that he did that?

7 MR. PRINCI: Objection as to
8 form.

9 MR. BRYAN: Asked and answered.

10 A. I -- number one, in the series
11 of e-mails over those several days I have
12 no idea what I knew at one point or at
13 another. I'm trying my best to be
14 accurate here.

15 Second, I don't recall Gary Lee
16 ever telling me what he was or wasn't
17 going to tell to the ResCap board.

18 And third, I don't know if I
19 knew at that -- at that moment in time on
20 Wednesday at 8:24, whether or not Gary Lee
21 had sold or not sold or told or not told
22 something to his ResCap board.

23 Q. But you did receive his e-mail
24 on Wednesday evening at 11:26 p.m.,
25 correct?

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A. Well, I sent an e-mail to Gary Lee, Jamie Levitt, Noah Ornstein and John Ruckdaschel, cc'd Cieri and Schrock at 4:29.

Q. Right. And you sent that e-mail in response to Mr. Lee's e-mail at 4:26 on May 12th, didn't you?

A. Yeah, I'm not sure if it's in response but I did send him an e-mail a couple minutes later.

Q. And you wrote, "Got it. Had call with KP. We told her PSA support whole hog is drop dead." That's what you wrote, right?

A. That's what I wrote.

Q. And is that what you told Ms. Patrick?

A. I don't remember if I told her whole hog but if I read this sitting here now, it looks like I was communicating to that group that I told her that she had to support the PSAs in full. And that that was a provision that Ally would insist on to the extent Ally could insist on

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2 anything.

3 Q. And by using the phrase "drop
4 dead" you meant it was nonnegotiable from
5 Ally's perspective, right?

6 A. I meant that if she wanted our
7 participation in the PSA she needed to
8 support it.

9 MR. KAUFMAN: Let's mark as the
10 next exhibit an e-mail chain on
11 May 13, 2012 between Mr. Devine and
12 Talcott Franklin.

13 (9019 Exhibit 155, e-mail chain
14 dated May 13, 2012 between Mr. Devine
15 and Talcott Franklin, marked for
16 identification, as of this date.)

17 A. Okay.

18 Q. Looking at the first e-mail in
19 this chain which starts at the bottom of
20 the first page, did you send that e-mail
21 to Mr. Franklin at 12:16 p.m. on
22 May 13th -- I'm sorry -- at 1:28 p.m. on
23 May 12th?

24 A. It looks like I did. Again, I'm
25 not sure of the timing but it looks like I

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2 did.

3 Q. And Mr. Franklin responded for
4 you to call him, correct?

5 A. Yes. That looks right.

6 Q. And then you wrote back to
7 Mr. Franklin saying "I can try to call you
8 but on phone now with CEO and making range
9 of final decisions before 1:00 p.m. board
10 meeting. I can't expose Ally to any
11 claims however remote."

12 That's what you wrote, correct?

13 A. That's what that e-mail says.

14 Q. And were you referring to Mike
15 Carpenter when you referred to being on
16 the phone with the CEO?

17 A. I probably was, yeah.

18 Q. And were you referring to an AFI
19 board meeting in that e-mail?

20 A. I don't recall but that would --
21 that would make sense.

22 Q. When you said that you couldn't
23 expose Ally to any claims however remote,
24 what did you mean?

25 A. I just wanted to note on the

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2 timing here, I think my testimony was
3 probably incorrect earlier if I testified
4 that my e-mail to Talcott was at 1:28 p.m.
5 That might be an indication of his time
6 zone and not mine. Because if you see the
7 e-mail up the chain was sent Sunday at
8 12:35 p.m. I'm just not sure of the
9 timing. But inside that note, inside my
10 note to Talcott it says I can try to call
11 you but I'm on the phone right now with
12 CEO making range of final decisions before
13 1:00 p.m. board meeting. So I'm assuming
14 that the 12:35 was my time zone and that
15 the 1:00 p.m. was my time zone.

16 Q. In any event, Mr. Devine, when
17 you said you couldn't expose Ally to any
18 claims however remote, what did you mean?

19 A. So basically as I recall, and
20 there were a lot of moving parts at this
21 time, there were a lot of settlements
22 going on, there were a lot of
23 conversations but if I recall correctly,
24 the question was whether or not Talcott
25 Franklin could logistically accomplish

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2 getting authority from his clients to sign
3 the plan support agreement and I was
4 indicating to him in that last sentence, I
5 can't expose Ally to any claims however
6 remote, the importance of including all
7 claims of any type in the plan support
8 agreement. And the reference to however
9 remote was with regard to the frequent and
10 consistent communication I had -- had had
11 with Talcott Franklin and with Kathy
12 Patrick, for that matter, from the
13 beginning that rep and warrant claims as
14 against Ally are -- were not viable
15 legally or factually. And that we also
16 did not believe that there was exposure to
17 Ally in the securities claims.

18 Q. That was your position. But you
19 needed the same release provisions for
20 Mr. Franklin as you had with Ms. Patrick,
21 right?

22 MR. PRINCI: Objection as to
23 form.

24 A. When you say I needed them, what
25 did you mean.

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2 Q. That was nonnegotiable. If Ally
3 was going to support this plan --

4 A. Which plan?

5 Q. As you told Ms. Patrick, it was
6 drop dead. Isn't that what you were
7 telling Mr. Franklin too, that you needed
8 the same release provisions with him as
9 you had with Ms. Patrick, full releases as
10 to Ally?

11 MR. BRYAN: Object to form.

12 A. I think you are mixing up the
13 settlement agreements that we have been
14 talking about.

15 Q. Mr. Devine, isn't what you were
16 telling Mr. Franklin in that e-mail when
17 you said I can't expose Ally to any claims
18 however remote that you needed from him
19 the same release provisions as you had
20 demanded from Ms. Patrick?

21 MR. BRYAN: Objection to form.

22 A. So the -- the transaction that
23 is at issue in the e-mail that -- that we
24 are talking about, Exhibit 155, was an
25 agreement by Talcott Franklin on behalf of

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2 his clients to enter into a settlement
3 agreement with ResCap, releasing
4 essentially the same claims against ResCap
5 as the Kathy Patrick clients had and to
6 sign up to support a plan of
7 reorganization that the estate would file
8 and pursue which included a release by the
9 debtor of claims against Ally and a
10 third-party nonconsensual release. And
11 that's what we were negotiating there.

12 And I assume that I was
13 explaining to him that as part of Ally's
14 participation in the plan support
15 agreement, including a commitment by Ally
16 not to object to the \$8.7 billion allowed
17 claim, that his clients would have to sign
18 up to the plan as enunciated, which
19 included a debtor release and a
20 third-party nonconsensual release.

21 MR. KAUFMAN: Thank you,
22 Mr. Devine. I have nothing further.

23 MR. WYNNE: Why don't we take a
24 brief recess and we'll --

25 THE VIDEOGRAPHER: The time is

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2 5:30 p.m. and we are off the record.

3 (Whereupon, there is a recess in
4 the proceedings.)

5 THE VIDEOGRAPHER: The time is
6 5:37 p.m. and we are back on the
7 record.

8 EXAMINATION BY

9 MR. JURGENS:

10 Q. Good evening now, Mr. Devine.
11 My name is Jason Jurgens from the law firm
12 of Cadwalader, Wickersham & Taft, LLP on
13 behalf of MBIA Insurance Corp. I'd like
14 to ask you some questions, some of which
15 are going to be MBIA specific and some
16 have to do with your understanding of the
17 scope of the release in the settlement
18 agreement, the RMBS Settlement Agreement.

19 If we can turn back to
20 Exhibit 150, which Mr. Kaufman showed you
21 earlier. If you look at the chain where
22 the date is May 9, 2012, at 10:41 p.m.,
23 that part of the chain. Do you see that
24 section? It's the part Ms. Patrick sent
25 to you or so it appears from the e-mail.

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describe as the RMBS or put back litigation, and I'd include in that definition both the monoline claims that were in litigation and any put back claims that -- that might have been asserted?

A. The first substantial contact I had within my job duties with the mortgage business was in the summer of 2010 when the FHFA propounded 64 subpoenas across the industry and I was asked to coordinate the response to the subpoenas that were issued to the company.

Q. Did you supervise outside counsel with respect to the monoline litigation either MBIA or FGIC litigation?

A. Have I done that?

Q. Yes.

A. Yes.

Q. When you were representing AFI from the time of the October letter that Ms. Patrick sent to the signing of the settlement agreement, were you solely representing AFI or were you also representing ResCap during that time

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period from October forward?

A. Well, we should probably be careful with regard to what you mean by representing. The -- as I recall, the first communication from Kathy Patrick came in to Bill Solomon in his capacity as general counsel of Ally Financial, Inc. He responded by indicating to Ms. Patrick that Ally Financial, Inc. did not have exposure of the variety that she wanted to talk about settling. And referred her to Tammy Hamzephour, general counsel for ResCap.

What -- my participation in connection with meeting with Ms. Patrick, I think Mr. Sheeren was there at the first meeting in Minnesota, I don't recall exactly. But in any event, I was there in my capacity as chief counsel for litigation for ResCap, given that Ms. Patrick purported to represent clients who purported to have rep and warrant essentially contract claims against the contracting parties, all of whom were

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2 within the ResCap structure and none of
3 whom were within the Ally structure.

4 Q. So at that time in that meeting,
5 if I understand, it took place sometime
6 between October, November, December,
7 sometime in 2011, the last quarter?

8 A. I don't recall when it took
9 place. I think we have had some testimony
10 on it today. If there's a document we
11 could refer to it.

12 Q. I'm going to try to do this
13 without -- without taking the time to go
14 back to the documents.

15 A. Okay, thank you.

16 Q. So initially you were
17 representing ResCap in what I will call
18 the Kathy Patrick negotiations with
19 respect to her claims?

20 A. Well --

21 MR. BRYAN: Objection to form.

22 A. I -- I understand that you would
23 call them negotiations. So I think that
24 term is going to end up being understood
25 in a number of different ways. What --

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2 what went on for some period of time with
3 Kathy Patrick was an exchange of
4 communications designed to understand the
5 nature of her representation, who her
6 clients were, what kind of claims they
7 were purporting to make. And so to the
8 extent that that is a prelude to or a part
9 of or a type of negotiation, yes. So for
10 a period of time I was supporting those
11 discussions in my capacity in support of
12 the ResCap entities.

13 Q. You understood that Ms. Patrick
14 was asserting that ResCap owed her clients
15 a substantial amount of money?

16 A. Yes.

17 Q. So you -- did she at some
18 point -- what was the first, her first
19 demand or her first claim that she made
20 against ResCap, do you recall?

21 A. As I sit here today, I don't
22 recall her first demand.

23 Q. Did she ask for \$10 billion?

24 A. Now, you are talking about once
25 the discussions started to take place for

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a compromise of those claims within the context of a ResCap filing.

Q. At any point?

A. Yeah. So I believe that she did at one point in the negotiations but now this was within the context of a potential ResCap filing at which time I was not representing ResCap in connection with a potential resolution of claims against the ResCap estate.

Q. Okay. So if I understand your testimony correctly, you initially started out representing ResCap and then at some point you were no longer representing ResCap. Could you explain to me when your role and responsibility changed?

A. I think you've slightly misunderstood but I don't blame you. At some point -- because it wasn't entirely clear, right. At some point -- look, when we started the discussions with Kathy Patrick, I was representing the ResCap entities in connection with the assertion that they had -- that Kathy Patrick did

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2 represent clients who did or did not under
3 the relevant documents have contract
4 claims against ResCap. And that was
5 natural because I had been dealing with
6 that kind of assertion of claim, although
7 not by investors and trustees but rather
8 by the monolines against the ResCap
9 entities theretofore.

10 At some point ResCap began to
11 consider a Chapter 11 restructuring. I
12 did not represent ResCap at all in
13 connection with this Chapter 11
14 restructuring, unless you consider the
15 nature of our discussions according to the
16 common interest or joint defense privilege
17 in which case that's why I don't blame you
18 for misunderstanding the nature of what I
19 just talked about. But so, yes, I did
20 represent ResCap in connection with the
21 sort of bilateral claim of Kathy Patrick's
22 clients against the ResCap entities and
23 rep and warrant. Once the context of the
24 restructuring became a part of that
25 dialogue, ResCap was represented by Gary

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2 Lee of MoFo. I never represented ResCap
3 on a bankruptcy related resolution. At
4 least unless you -- as I say, I did
5 continue to advise ResCap in connection
6 with plain sort of legal analysis on rep
7 and warrant issues but not so much as
8 would be implicated in connection with the
9 filing.

10 Q. Thank you for that and let me
11 try to make sure I understand correctly.
12 To try to summarize. In the beginning of
13 from October for some period of time in
14 the initial stages that you've described
15 as essentially information gathering
16 stages, you were representing ResCap. By
17 the end, by the April and May time period
18 that we have looked at a variety of
19 e-mails by that time period you were no
20 longer representing ResCap, you would have
21 solely been representing AFI, is that
22 correct, am I bracketing the change in
23 role correctly?

24 A. No. I think you are missing one
25 part of it. But it's -- it's

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2 directionally correct. So first of all,
3 the difficulty with the word
4 "representing" given that there were no
5 pleadings in the matter, nobody appeared
6 as counsel of record, et cetera. So let's
7 for a moment agree that the term
8 "representing" is somewhat subject to a
9 variety of definitions and understandings.

10 Q. I would use representing as
11 representing in the context of the
12 negotiations. Representing a client, be
13 it AFI or ResCap, in dealing with
14 Ms. Patrick or the Talcott Franklin group
15 that came in at the end. If you
16 understand that.

17 A. Uh-hum. So there -- there were
18 certainly throughout the relevant period
19 transactions and discussions,
20 communications -- transactions meaning
21 information exchange, et cetera, between
22 the ResCap parties and Kathy Patrick on
23 the one hand or Talcott Franklin on the
24 other, which I assisted and advised ResCap
25 in accomplishing.

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2 At the same time I was
3 representing -- I was chief counsel to
4 Ally as well so of course I was advising
5 both ResCap and Ally in connection with
6 the -- the claims that Kathy Patrick
7 purported to make on behalf of those
8 clients.

9 Q. When you were representing
10 ResCap in the initial stages of this
11 discussions and negotiations with
12 Ms. Patrick, who did you report to at
13 ResCap?

14 A. I certainly included Tammy
15 Hamzephour in any discussions. She was
16 general counsel to the ResCap entities. I
17 had conversations with and gave advice to
18 and took input from a variety of business
19 clients.

20 Q. So in addition to Ms. Hamzephour
21 you spoke to other not -- not in-house
22 counsel but other business representatives
23 at ResCap?

24 A. Yes.

25 Q. Do you recall who that would be

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2 in the initial stages?

3 A. Sure. So but in what capacity,
4 as sort of an information source, as a --
5 as a normal business client or in sort of
6 a decision-making --

7 Q. In any capacity you were
8 representing them in the initial stages of
9 these discussions and negotiations with
10 Ms. Patrick.

11 A. I had communications with Tom
12 Marano, with Jim Whitlinger, with Jeff
13 Blashco (ph), Jeff Cancelliere. This was
14 my -- as in-house counsel I had naturally
15 the information and expertise relating to
16 the rep and warrant claims that Kathy
17 Patrick and her clients purport to make.
18 It was all contained within ResCap. That
19 was my resource base, that was my client
20 base, that's where the decision-making
21 authority with regard to whether or not to
22 engage in real settlement discussions or
23 not. That's -- that's where all that took
24 place with the ResCap client.

25 Q. Why was it decided at some point

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that you would no longer represent ResCap
and solely be representing AFI?

A. I'm going to answer your
question without revealing privileged
communications. At some point it was
determined that people performing
functions like the one I was performing,
which spanned across -- across the Ally,
the nondebtor to the debtor line, should
reorient so that they were aligned with
one or the other. And that was a process
that took place across the various
business units and functions to the extent
that there was any overlap.

Q. Do you know when that was?

A. With regard to my own role?

Q. Yes.

A. I don't know exactly when it
was. I understand you would think I would
have an exact date and hour. I don't.
But because -- the reason I don't is
because it's probably accurate to say that
in some measure I continued to be a
resource for the ResCap client even as

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they retained MoFo to represent them in connection with rep and warrant and in connection with rep and warrant in a bankruptcy context, simply because I had a great deal of experience in connection with the claims that were being asserted against the estate and because, as you know, many of us believed that we had a common interest in joint defense. And in fact at some point a document was executed to that effect.

So it's not a straight line, drop dead date after which I was no longer providing advice to either a client of sorts or a co, sort of a party subject to a common defense or joint defense agreement.

Q. I think I understand. To your knowledge, when did ResCap become insolvent, and I would define that on a balance sheet basis when its total assets were less than its total liabilities?

A. I don't know.

MR. BRYAN: Objection.