

1 IN THE CIRCUIT COURT OF THE
2 17th JUDICIAL CIRCUIT, IN AND FOR
3 BROWARD COUNTY, FLORIDA
4 CASE NO. 10-011709 CACE 07

5 COMPLEX LITIGATION DIVISION

6 CORUS CONSTRUCTION VENTURE, LLC,

7 Plaintiff,

8 vs.

9 SB HOTEL ASSOCIATES, LLC, a
10 Delaware Limited Liability company,
11 et al.,

12 Defendants.
13 _____

14
15 November 3, 2011
16 9:47 a.m. - 5:01 p.m.
17 201 South Biscayne Boulevard
18 Miami, Florida

19 DEPOSITION OF CORPORATE REPRESENTATIVE

20 (JOEL SOLOMON)

21 Taken on behalf of the SP Fort Lauderdale

22 Lender defendant before Michael J. D'Amato, RMR, Notary

23 Public in and for the State of Florida at Large,

24 pursuant to Notice of Taking Deposition in the above

25 cause.

2

1 APPEARANCES

2 _____

3 For the Plaintiff:

4

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1 THEREUPON:

2 JOEL SOLOMON,

3 being by me first duly sworn or affirmed to tell the

4 truth, the whole truth, and nothing but the truth, as

5 hereinafter certified, responded and testified as

6 follows:

7 THE WITNESS: I do.

8 DIRECT EXAMINATION

9 BY MR. GILLMAN:

10 Q. Mr. Solomon, I'm Steve Gillman and I think as

11 you know I represent SP Fort Lauderdale Lender, LLC. I

12 also represent SB Hotel Associates, LLC, but I am

13 taking this deposition as counsel for SP Fort

14 Lauderdale Lender, LLC only. Okay?

15 A. Yes.

16 Q. Have you ever given a deposition before?

17 A. No.

18 Q. Have you taken depositions?

19 A. Yes.

20 Q. And you've attended depositions?

21 A. Yes.

22 Q. Let me just go over a couple of things so that

23 the record is clear. During the course of the

24 deposition I will try to ask questions that are clear

25 and unambiguous. But if for any reason you don't

9

1 understand a question that I ask, I'm going to ask you

2 to tell me you don't understand and ask me to rephrase

3 or let me know what the problem is. Okay?

4 A. Yes.

5 Q. If you answer a question, then I and the

6 record are going to understand that you applied normal

7 English meaning and you understood the question. Okay?

8 A. Is that a question?

9 Q. Yes, it is. When I put okay and a question

10 inflection, that's a question.

11 A. Yes.

12 Q. During the course of the deposition -- you've

13 been pretty good at it so far -- I'm going to ask you

14 to give a verbal and word answers, yes or no, not an

15 uh-huh or aha. And will you do that for me?

16 A. Yes.

17 Q. And during the course of the deposition I will

18 try not to talk over you. I would ask you and all

19 counsel not to talk over each other. The court

20 reporter will appreciate it and we will have a better

21 record. Okay?

22 A. Yes.

23 Q. I will tell you for the purpose of this

24 deposition if I use the word "okay" or "correct" or "is

25 that right" at the end of a statement, that's a

10	<p>1 question. Okay?</p> <p>2 A. Yes.</p> <p>3 Q. You understand today you are under oath, same</p> <p>4 as if we were in court?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any reason, health, medication,</p> <p>7 anything that you feel would make it impossible for you</p> <p>8 to give a full and complete deposition?</p> <p>9 A. No.</p> <p>10 MR. GILLMAN: Let's have marked as Exhibit 1</p> <p>11 and Exhibit 2 and I'll hand it over to you. And I</p> <p>12 may or may not during the course of the deposition</p> <p>13 have enough copies for everybody but hopefully I</p> <p>14 will.</p> <p>15 (Exhibits 1 and 2 marked for identification)</p> <p>16 Q. Exhibit 1 is a document entitled Notice of</p> <p>17 Taking Rule 1.310(B)(6) Deposition of Corporate</p> <p>18 Representative of Corus Construction Venture, LLC, and</p> <p>19 Exhibit 2 is the Renotice of Taking Rule 1.310(B)(6)</p> <p>20 Deposition of Corporate Representative of Corus</p> <p>21 Construction Venture, LLC. Have you seen these</p> <p>22 documents before today?</p> <p>23 A. Yes.</p> <p>24 Q. Let's focus if we will on Exhibit 2. Before</p> <p>25 we do that why don't we get a little bit of background.</p>	12
11	<p>1 You are an attorney, is that right?</p> <p>2 A. Correct.</p> <p>3 Q. And if you could just give us, briefly, your</p> <p>4 educational background?</p> <p>5 A. I went to college, graduated from The Ohio</p> <p>6 State University, 1977, and graduated from Case Western</p> <p>7 Reserve Law School in Cleveland, Ohio in 1980.</p> <p>8 Q. Briefly your work history starting in 1980.</p> <p>9 A. I worked -- I took a job in Chicago working</p> <p>10 for a management labor law firm, and then in 1982 I</p> <p>11 started my own law firm. In 1997 I was offered the</p> <p>12 position at Corus Bank to be essentially general</p> <p>13 counsel --</p> <p>14 Q. Is that '87 or '97?</p> <p>15 A. '97 -- general counsel of the bank, not the</p> <p>16 bank shares and managed the legal matters.</p> <p>17 Approximately October of 2009 I became</p> <p>18 employed by Northwest Management, LLC.</p> <p>19 Q. In what capacity?</p> <p>20 A. As general counsel of ST Residential and</p> <p>21 general counsel of Northwest Investments.</p> <p>22 Q. ST Residential, is that its formal legal name?</p> <p>23 A. ST Residential, LLC.</p> <p>24 Q. And Northwest Management, LLC, are both of</p> <p>25 those companies sitused in Illinois or elsewhere?</p>	13

14	<p>1 work prior to Corus' insolvency had any involvement</p> <p>2 with the FDIC?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did any of the banks that you worked for or</p> <p>5 did work for as a client or as general counsel ever</p> <p>6 acquire any assets or liabilities from the FDIC in its</p> <p>7 capacity as receiver of any bank?</p> <p>8 A. Not to my knowledge. Not to my recollection.</p> <p>9 Q. And you have never worked for the Federal</p> <p>10 Deposit Insurance Corporation or any related</p> <p>11 governmental entity, correct?</p> <p>12 A. I may have briefly been on the payroll of the</p> <p>13 FDIC as receiver after 9/11/2009.</p> <p>14 Q. We'll spend a little bit more time on that in</p> <p>15 a moment. Right now I was just looking for background.</p> <p>16 So prior to the insolvency determination and the</p> <p>17 appointment of the FDIC as receiver of Corus Bank on</p> <p>18 September 11, 2009 you had never had any experience</p> <p>19 either as a client's attorney or as a bank's attorney</p> <p>20 with the FDIC, correct?</p> <p>21 A. Correct.</p> <p>22 Q. I would like you to go to Exhibit 2. Exhibit</p> <p>23 2, which is the renounce, have you seen it before</p> <p>24 today?</p> <p>25 A. Yes.</p>	16
15	<p>1 Q. Have you reviewed it?</p> <p>2 A. Yes.</p> <p>3 Q. And you, I understand, have been designated</p> <p>4 by, and I'm going to use the term CCV, but the</p> <p>5 plaintiff, Corus Construction Venture, LLC, you've been</p> <p>6 designated as the sole designee on each of the 16</p> <p>7 topics, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. Who designated you?</p> <p>10 A. As general counsel I conferred with outside</p> <p>11 counsel.</p> <p>12 Q. So you designated yourself --</p> <p>13 MR. TRENCH: Wait. Let him finish. He might</p> <p>14 not be done with the answer.</p> <p>15 Q. Had you finished?</p> <p>16 A. No.</p> <p>17 Q. If not, go ahead.</p> <p>18 A. As general counsel I conferred with outside</p> <p>19 counsel and we discussed the appropriate</p> <p>20 representative. I recommended to the asset manager</p> <p>21 that I be the corporate representative, and that's the</p> <p>22 end of my answer.</p> <p>23 Q. The asset manager, who is that person?</p> <p>24 A. Jim Dow.</p> <p>25 Q. Spell it please, the second name.</p>	17

18	<p>1 Q. Hang on.</p> <p>2 MR. GILLMAN: Let me have this marked as</p> <p>3 Exhibit 3.</p> <p>4 (Exhibit 3 marked for identification).</p> <p>5 Q. Let me give you what has been marked as</p> <p>6 Exhibit 3. It is a document that bears the Bates</p> <p>7 number of CCV PROD000238.</p> <p>8 MR. GILLMAN: From this point on if it is</p> <p>9 acceptable to you, David, when I designate Bates</p> <p>10 numbers I'll just use CCV and the numbers without</p> <p>11 the zeros and without the PROD. Is that okay?</p> <p>12 MR. TRENCH: That's fine with me.</p> <p>13 Q. Take a look at what has been marked as Exhibit</p> <p>14 3. Do you recognize this?</p> <p>15 A. Yes.</p> <p>16 Q. This has been represented to be the Corus</p> <p>17 Construction Venture, LLC organization chart. Is it</p> <p>18 accurate to date to the best of your knowledge?</p> <p>19 A. Yes.</p> <p>20 Q. Let's go down on this. There's a box that's</p> <p>21 not shaded that has a blank LLC, "the new property</p> <p>22 owner (wholly owned by Corus Construction Venture,</p> <p>23 LLC). Has such an entity been created?</p> <p>24 A. That is an example of the single purpose</p> <p>25 entities which are formed to own assets that have</p>	20	<p>1 hundred percent member of that entity?</p> <p>2 A. No.</p> <p>3 Q. So you were not involved in the creation of</p> <p>4 CCV, is that right?</p> <p>5 A. Correct.</p> <p>6 Q. You did not draft, negotiate, review or have</p> <p>7 any dealings with the documentation that created CCV,</p> <p>8 is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And you did not have anything to do with the</p> <p>11 initial operating agreement of CCV, is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Who's the person that would have knowledge as</p> <p>14 to the creation of CCV?</p> <p>15 A. Whoever worked on the transaction from the --</p> <p>16 Q. Do you know who that person is?</p> <p>17 A. I think there's a number of people.</p> <p>18 Q. Well, one of the designated topics,</p> <p>19 specifically designated topic 6 is the facts,</p> <p>20 circumstances and reasons for the formation of CCV.</p> <p>21 You are the person designated for that, right?</p> <p>22 A. Yes.</p> <p>23 Q. What, if anything, did you do to prepare</p> <p>24 yourself to give testimony on the facts, circumstances</p> <p>25 and reasons for the formation of CCV?</p>
19	<p>1 become owned by CCV. So there's a number of entities</p> <p>2 typically designated as something like 8255 Las Vegas</p> <p>3 Marketing LLC, would be an example.</p> <p>4 Q. With regard to the property that's at issue</p> <p>5 here, the SB Hotel loan property, has there been a</p> <p>6 single purpose subsidiary of Corus Construction Venture</p> <p>7 created as to that property, that loan?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. So then we have CCV and we have a 60 percent</p> <p>10 member interest FDIC as receiver. Is that still</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. When CCV was originally created the FDIC as</p> <p>14 receiver was the one hundred percent member, is that</p> <p>15 right?</p> <p>16 A. I believe so.</p> <p>17 Q. And when created, the FDIC as receiver was the</p> <p>18 sole managing member of Corus Construction Venture, is</p> <p>19 that right?</p> <p>20 A. I don't know if that's true or not.</p> <p>21 Q. We'll get some documents later. Were you</p> <p>22 associated -- let me ask this. Did you have any</p> <p>23 association with Corus Construction Venture during the</p> <p>24 time that the FDIC, and I'll use the term FDIC-R to</p> <p>25 designate it in its receivership capacity, was the one</p>	21	<p>1 A. Well, I think I know the facts, circumstances</p> <p>2 and reasons for the formation of CCV. I thought about</p> <p>3 it. I reviewed some notes on -- relating to the</p> <p>4 formation documents, and that was largely the extent of</p> <p>5 my preparation for that question.</p> <p>6 Q. Did you confer with anyone that is currently</p> <p>7 or formerly with FDIC-R with regard to the formation of</p> <p>8 CCV?</p> <p>9 A. No.</p> <p>10 Q. One of the issues or one of the designated</p> <p>11 topics is the terms of the loan contribution and sales</p> <p>12 agreement between the Federal Deposit Insurance</p> <p>13 Corporation as receiver for Corus Bank, NA and CCV.</p> <p>14 It's topic 8. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. You are the designated person on that?</p> <p>17 A. Yes.</p> <p>18 Q. What, if anything, do you know about that</p> <p>19 topic other than reading it? And by reading it, I'm</p> <p>20 talking about the loan contribution and sales</p> <p>21 agreement.</p> <p>22 A. I have the knowledge gained from working as an</p> <p>23 officer of ST Residential and routinely being involved</p> <p>24 in issues relating to the loan contribution and sale</p> <p>25 agreement for a period of approximately two years.</p>

22	<p>1 Q. So your knowledge is working with the document</p> <p>2 post-creation, is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Sometimes I may use the term LCSA. If I do</p> <p>5 that's the Loan Contribution and Sales Agreement</p> <p>6 between the FDIC-R and Corus Bank. Is that okay?</p> <p>7 A. Yes.</p> <p>8 Q. In your day-to-day do you refer to it as the</p> <p>9 LCSA?</p> <p>10 A. I use that term.</p> <p>11 Q. Who was the drafter of the LCSA?</p> <p>12 A. I don't know.</p> <p>13 Q. Who negotiated the document, if anyone?</p> <p>14 A. I don't know.</p> <p>15 Q. Who represented CCV in that negotiation?</p> <p>16 A. CCV?</p> <p>17 Q. Yes.</p> <p>18 A. Well, are you talking about the --</p> <p>19 Q. The LCSA.</p> <p>20 A. The attorneys for the FDIC.</p> <p>21 Q. Do you have knowledge as to who it was that</p> <p>22 represented CCV in the drafting, negotiation and</p> <p>23 agreement of the LCSA?</p> <p>24 A. Whoever represented the FDIC, since the FDIC</p> <p>25 owned a hundred percent of CCV at the time of the LCSA.</p>	24	<p>1 ambiguous.</p> <p>2 Q. Again, you used the "I don't" and that's fine.</p> <p>3 But you understand that when you say I, you mean CCV,</p> <p>4 because you are the designated representative, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you understand that the testimony that you</p> <p>7 give here today binds CCV in this litigation, correct?</p> <p>8 A. It seems like that's a legal conclusion but it</p> <p>9 seems like a correct conclusion.</p> <p>10 Q. You are also familiar with the Intercreditor</p> <p>11 Agreement between Corus Bank and SP Lender? That's the</p> <p>12 term I use for SP Fort Lauderdale, my client.</p> <p>13 A. I have looked at it.</p> <p>14 Q. Did you have any involvement in the drafting,</p> <p>15 negotiation or approval of the Intercreditor Agreement?</p> <p>16 A. I don't recall.</p> <p>17 MR. GILLMAN: Let's go ahead and mark as</p> <p>18 Exhibit 4, the Intercreditor Agreement.</p> <p>19 (Exhibit 4 marked for identification).</p> <p>20 MR. GILLMAN: Then we can mark as Exhibit 5</p> <p>21 the LCSA.</p> <p>22 (Exhibit 5 marked for identification)</p> <p>23 MR. GILLMAN: I'm going to go ahead and mark</p> <p>24 as Exhibit 6 the complaint and some other</p> <p>25 documents.</p>
23	<p>1 Q. Mr. Solomon, your answer is self-evident to me</p> <p>2 as well. But I think it appears that what your answer</p> <p>3 is based on is the fact that the FDIC as receiver</p> <p>4 created and was the one hundred percent member of CCV</p> <p>5 at the time the LCSA was negotiated and entered into,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. So the FDIC-R was negotiating with itself as</p> <p>9 CCV being the hundred percent member, right?</p> <p>10 A. Yes.</p> <p>11 Q. The LCSA, as the designated representative of</p> <p>12 CCV here today, is it clear and unambiguous in its</p> <p>13 terms?</p> <p>14 A. Which terms are you referring to?</p> <p>15 Q. Any terms. Is the totality of that document,</p> <p>16 the words used, the grammar, the context, is that</p> <p>17 document clear and unambiguous, speaking of the LCSA?</p> <p>18 A. I'd be hard-pressed to globally endorse any</p> <p>19 document as being perfectly unambiguous in totality.</p> <p>20 Q. Let me try it a different way. Are there any</p> <p>21 provisions that you as the designated representative of</p> <p>22 CCV, are there any provisions of the LCSA that CCV</p> <p>23 contends are ambiguous as they relate to issues in this</p> <p>24 case?</p> <p>25 A. I don't contend that any of the provisions are</p>	25	<p>1 MR. ALTSCHUL: Which one?</p> <p>2 MR. GILLMAN: I'm going to mark as Exhibit 6</p> <p>3 the lawsuit filed by Corus Construction. Exhibit 7</p> <p>4 will be the answer.</p> <p>5 (Exhibits 6 and 7 marked for identification)</p> <p>6 MR. GILLMAN: Exhibit 8 is plaintiff's Answer</p> <p>7 and Affirmative Defenses.</p> <p>8 (Exhibit 8 marked for identification)</p> <p>9 MR. GILLMAN: And Exhibit 9 is the reply.</p> <p>10 (Exhibit 9 marked for identification)</p> <p>11 BY MR. GILLMAN:</p> <p>12 Q. Let's try this. Exhibit 4, do you recognize</p> <p>13 that as the Subordination and Intercreditor Agreement</p> <p>14 by and between Corus Bank and SP Fort Lauderdale?</p> <p>15 A. Yes, it appears to be.</p> <p>16 Q. This is a document that is dated as of</p> <p>17 December 15, 2006, is that right?</p> <p>18 A. Yes.</p> <p>19 Q. You were at that time general counsel of Corus</p> <p>20 Bank?</p> <p>21 A. Yes.</p> <p>22 Q. Did you personally participate in December of</p> <p>23 2006 or earlier in the drafting, negotiation,</p> <p>24 execution, review of the Subordination and</p> <p>25 Intercreditor Agreement, Exhibit 4?</p>

26	<p>1 A. I don't recall its. It's possible that I was 2 involved but there were a lot of loans that were being 3 produced at that time, loans that number into the 4 billions of dollars per year. 5 Q. The Corus loan that's referenced -- I'm just 6 going to refer to this generically as the Subordination 7 Agreement, is that okay? 8 A. Yes. 9 Q. The loan referenced in the Subordination 10 Agreement on behalf of Corus was a \$137 million loan, 11 is that right? 12 A. Recital A indicates a \$139 million loan. 13 Q. In 2006 was this deemed to be a small loan for 14 Corus, medium, a large? 15 A. No, this would be a large loan at any time. 16 Q. Would it be one of the larger commercial 17 construction loans on behalf of Corus? 18 A. Yes. 19 Q. Who was the team for Corus on this loan? 20 A. The -- Keith Gibbons was primary loan officer. 21 I really don't recall who assisted him at that time. 22 I'm not sure which attorney on the legal staff, whether 23 it was myself or one of the other attorneys who worked 24 at the bank. 25 Q. How large was your legal staff in 2006? And</p>	28	<p>1 A. I do not. 2 Q. The Subordination Agreement, is it clear and 3 unambiguous? 4 A. Are you referring to Section 3? 5 Q. I'm referring to the document as a whole. 6 A. Subordination language appears to be well 7 drafted. Typically I think things are well drafted 8 when they are clear and unambiguous. 9 Q. You made reference to the subordination 10 language. I'm referring to the totality of the 11 Subordination Agreement. Let me refer to it slightly 12 different. 13 Is there any part of the subordination 14 agreement that CCV believes to be relevant or material 15 to this action that it contends is unclear or 16 ambiguous? 17 A. No prior to this document, which I note is 35 18 pages, approximately, long, has been brought to my 19 attention as being problematic in its clarity. 20 Q. Well, I'm asking it a little bit different. 21 Does CCV contend that any material part of the 22 Subordination Agreement is unclear or ambiguous? 23 A. When you say contend do you mean in our 24 pleadings? 25 Q. I mean in this litigation, in your pleadings,</p>
27	<p>1 I'm talking now about in house. 2 A. It was probably three attorneys. 3 Q. Including you or in addition to you? 4 A. Including me. There might have been four. 5 I'm not sure when different people -- 6 Q. So there was you and who else? 7 A. Pete Freund, Kari Sheinfeld, S-H-E-I-N-F-E-L-D 8 and that's all I recall at this time with regard to 9 December of '06. 10 Q. There is a reference on the first page to DLA 11 Piper. Were they Corus Bank's lawyer? 12 A. Yes. 13 Q. Did Corus Bank draft this subordination 14 agreement? 15 A. Well, it caused its attorneys to draft it. 16 Q. As agents for Corus Bank, correct? 17 A. Yes. 18 Q. So the drafters were Corus Bank through its 19 attorney agents, is that right? 20 A. Yes, although it should be noted that any 21 document like this receives significant review by the 22 counter party. 23 Q. But as to what review was done, you have no 24 recollection? When I say review I'm talking review by 25 the counter party?</p>	29	<p>1 in motions, in any aspect of CCV's prosecution of its 2 claims or defense of SP Lenders' claims. 3 A. To my knowledge that's never been raised as an 4 issue. 5 Q. So is it CCV's testimony that the material 6 terms of the subordination agreement are clear and 7 unambiguous? 8 A. Yes, with the caveat that I have not reread 9 the entire agreement recently. 10 Q. Well, this is my time to take the deposition 11 of the plaintiff and counter defendant. So I want you 12 to read whatever you need to read. I might suggest 13 that maybe you should have read it before, but be that 14 as it may, I want you to take whatever time you want. 15 I can't tell you what CCV contends is material 16 in this document. So I am saying to you any part of 17 this document, the Subordination Agreement that CCV 18 contends is material either to the prosecution of its 19 claims or the defense of SP Lenders, that's what I'm 20 referring to, does CCV agree that all such terms are 21 clear and unambiguous in the Subordination Agreement? 22 A. Yes. 23 Q. The Intercreditor Agreement, and I may have 24 used the term subordination agreement, I may have used 25 the term Intercreditor Agreement. The term I want to</p>

30	<p>1 use is Intercreditor Agreement from this point on, 2 okay, and it is referring to Exhibit 4? 3 A. Yes. 4 Q. The Intercreditor Agreement was entered on 5 December 15, 2006, right? 6 A. Yes. 7 Q. And that is the same day that Corus Bank's 8 loan to SB Hotel was made, is that right? 9 A. I believe so. 10 Q. Why don't you take a look at Exhibit 6, which 11 is the Complaint and look at Exhibit A. Exhibit A to 12 the -- let me go back a little bit. 13 Exhibit 6 is the Complaint that was filed by 14 Corus Construction Venture against SB Hotel, SP Fort 15 Lauderdale and a number of other defendants, is that 16 right? 17 A. I agree that the date of the construction loan 18 agreement is the same. The loan appears to have been 19 made on the same day. 20 Q. Let's do the second question. Do you 21 recognize Exhibit 6 as the complaint filed by CCV in 22 this case to foreclose on its mortgage and for other 23 relief? 24 A. Yes. 25 Q. And did you see the complaint before it was</p>	32	<p>1 Q. Was ST Residential, LLC the holder of 40 2 percent interest in CCV on that date? 3 A. Yes. 4 Q. We can go back, we are going to get into this 5 in a minute but let's go back to Exhibit 3 so we can 6 run through and complete that. We had been talking 7 about CCV and then going up we had FDIC as receiver, 60 8 percent member, is that right? 9 A. Yes. 10 Q. And when CCV was formed the FDIC as receiver 11 was the hundred percent member, correct? 12 A. Yes. 13 Q. Subsequently there was a sale and transfer of 14 40 percent of the FDIC's membership interest, correct? 15 A. Yes. 16 Q. And was that to a different entity than ST 17 Residential? 18 A. No, ST Residential was known at the time of 19 the transfer as CCV Managing Member, LLC and 20 subsequently amended its name. 21 Q. So ST Residential, LLC then known by a 22 different name acquired the 40 percent interest and 23 subsequently changed its name to ST Residential, is 24 that right? 25 A. Yes.</p>
31	<p>1 filed? 2 A. Yes. 3 Q. Did you review it for factual accuracy? 4 A. I don't recall. 5 Q. Did anyone else other than your counsel review 6 the complaint for factual accuracy before it was filed? 7 A. We -- someone provided the material amounts 8 due from our system, and I generally reviewed the 9 complaint. 10 Q. Did anyone else review the complaint? 11 A. Not to my recollection. 12 Q. Who authorized its filing? 13 A. I did. 14 Q. Was the FDIC-R consulted? 15 A. About this particular -- 16 Q. Yes, sir. 17 A. They may have been generally informed. 18 Q. Were they provided a copy before its filing? 19 A. No. 20 Q. At the time of this filing, March 11, 2010, 21 that's the date of the stamp on the first page, is that 22 right? 23 A. Yes. 24 Q. Who was the manager of CCV? 25 A. ST Residential, LLC.</p>	33	<p>1 Q. At the time that it acquired its interest, and 2 I'll refer to ST Residential as it and its former name, 3 okay? 4 A. Yes. 5 Q. It also became and acquired its interest as 6 the managing member, correct? 7 A. Yes. 8 Q. And the FDIC retained a 60 percent interest, 9 is that right? 10 A. Yes. 11 Q. So the FDIC will share in any revenues or 12 profits that ST Residential -- strike that, that CCV 13 obtains with regard to any of the assets? 14 A. Yes. 15 Q. And is that a 60 percent profit interest? 16 A. Generally. 17 Q. Is that a net profit interest? 18 A. Depending on how you define net. 19 Q. How would you define net? Better yet, what is 20 the interest that it would receive? 21 A. Well, you're grossly simplifying a very 22 complex structured transaction. Therefore I hesitate 23 to give simple conclusory answers about approximately 24 more than six complicated agreements. But generally 25 the FDIC is a 60 percent owner and will generally</p>

34	<p>1 receive 60 percent of net income.</p> <p>2 There's multiple loan facilities that are part</p> <p>3 of the transaction. There's issues as to proper</p> <p>4 allocation of expenses between the parties.</p> <p>5 Q. Have there been any distributions to date to</p> <p>6 the FDIC receiver from CCV?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Now, the 60 percent member currently is FDIC</p> <p>9 receiver, is that right?</p> <p>10 A. I'm not positive that it's FDIC as receiver or</p> <p>11 FDIC in its other capacity.</p> <p>12 Q. Its other capacity is in its corporate</p> <p>13 capacity, is that right?</p> <p>14 A. Corporate capacity.</p> <p>15 Q. Is the FDIC in its corporate capacity a</p> <p>16 guarantor of any of the former Corus loans that were</p> <p>17 transferred to CCV?</p> <p>18 A. A guarantor -- there are provisions under</p> <p>19 certain circumstances where a repurchase of a loan may</p> <p>20 be provided for.</p> <p>21 Q. You referenced 60 percent of net income.</p> <p>22 Would that also include sales proceeds?</p> <p>23 A. Sales proceeds are the typical form of income.</p> <p>24 Q. Well, to the extent that the property is</p> <p>25 operating, there would be operational income, correct?</p>	36	<p>1 Q. Would you spell the last name?</p> <p>2 A. H-U-N-D-L-E-Y.</p> <p>3 Q. Does Mr. Hundley have positions with any</p> <p>4 entity other than ST Residential, business positions?</p> <p>5 A. Not to my knowledge. He may be an officer of</p> <p>6 Northwest Investments.</p> <p>7 Q. You don't know?</p> <p>8 A. I don't know as I sit here today exactly what</p> <p>9 his officer designations are.</p> <p>10 Q. ST Residential, according to Exhibit 3, is a</p> <p>11 one hundred percent subsidiary of or is a hundred</p> <p>12 percent owned by Northwest Investments, LLC as the sole</p> <p>13 member, is that accurate?</p> <p>14 A. Yes.</p> <p>15 Q. And is that what it was at acquisition of the</p> <p>16 40 percent interest in CCV and correct through till</p> <p>17 today?</p> <p>18 A. Yes.</p> <p>19 Q. Going up from Northwest Investments, LLC it</p> <p>20 lists its membership, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And its membership are listed generically, is</p> <p>23 that right?</p> <p>24 A. Yes.</p> <p>25 Q. In Exhibit 3?</p>
35	<p>1 A. If the -- yes, there would be income if</p> <p>2 there's rental property.</p> <p>3 Q. The property that's at issue here, the SB</p> <p>4 Hotel condominium, if the CCV is successful in its</p> <p>5 foreclosure does it intend to operate or immediately</p> <p>6 sell the property?</p> <p>7 A. Operate.</p> <p>8 Q. Operate as a hotel?</p> <p>9 A. I don't think a final decision has been made.</p> <p>10 Q. Who will make that decision?</p> <p>11 A. The CEO with advice and consent from the board</p> <p>12 of directors.</p> <p>13 Q. And that would be the CEO of CCV or some other</p> <p>14 entity?</p> <p>15 A. ST Residential.</p> <p>16 Q. And the board of directors, would that be of</p> <p>17 CCV or some other entity?</p> <p>18 A. The board of directors of ST Residential sole</p> <p>19 member Northwest Investments.</p> <p>20 Q. Because LLCs don't have boards of directors,</p> <p>21 right, they have managers or boards of managers, right?</p> <p>22 A. I think they can have boards of directors.</p> <p>23 Q. So we were talking, the CEO of ST Residential,</p> <p>24 who is that?</p> <p>25 A. Wade Hundley.</p>	37	<p>1 A. There may be a box in between so that -- I'm</p> <p>2 not sure of this but I think there may be an owner of</p> <p>3 Northwest Investments that is then owned by the five</p> <p>4 affiliates that are described in the top tier.</p> <p>5 Q. Do you know that to be the case?</p> <p>6 A. I think it's the case.</p> <p>7 Q. Is there a reason that this diagram doesn't</p> <p>8 reflect the true state of ownership?</p> <p>9 A. The reason is someone didn't put it on the</p> <p>10 diagram, but it's a pass-through entity.</p> <p>11 Q. What's the name of that entity?</p> <p>12 A. It is something like CB VII.</p> <p>13 Q. CB7? VII?</p> <p>14 A. Right.</p> <p>15 Q. LLC?</p> <p>16 A. Yes.</p> <p>17 Q. And CB VII, LLC would be the one hundred</p> <p>18 percent member owner of Northwest Investments, LLC?</p> <p>19 A. Correct.</p> <p>20 Q. And then the entities generically listed on</p> <p>21 Exhibit 3 above Northwest would be the member owners of</p> <p>22 CB VII, LLC and the percentages reflected?</p> <p>23 A. Correct.</p> <p>24 Q. So the way that this lists on Exhibit 3, I</p> <p>25 want you to help me a little bit. The managing member</p>

38	<p>1 is an affiliate of Starwood Capital, is that right?</p> <p>2 A. Yes.</p> <p>3 Q. What's the name?</p> <p>4 A. I don't recall the name.</p> <p>5 Q. What is Starwood Capital?</p> <p>6 A. Starwood Capital is the typical name used for</p> <p>7 an amalgamation of Starwood Capital Enterprises.</p> <p>8 Q. Well, is Starwood Capital the hundred</p> <p>9 percent -- let me ask you first, are all of these</p> <p>10 owners, are they LLCs or some other form?</p> <p>11 A. I don't know if they are all LLCs. There</p> <p>12 could be an LLP in there. I don't know.</p> <p>13 Q. Would Starwood Capital be the hundred percent</p> <p>14 partner, shareholder or member of this affiliate of</p> <p>15 Starwood Capital that's the 39.61 percent member owner</p> <p>16 and manager of Northwest Investments?</p> <p>17 A. I don't know if -- I can't say with absolute</p> <p>18 certainty that the ultimate owner is Starwood Capital</p> <p>19 per se.</p> <p>20 Q. All right. It could be an intermediary entity</p> <p>21 or entities?</p> <p>22 A. I believe as the exhibit indicates, I believe</p> <p>23 that the ownership is all Starwood Capital affiliate</p> <p>24 entities.</p> <p>25 Q. And TPG is who?</p>	40	<p>1 A. Not to my knowledge.</p> <p>2 Q. Who is the owner of Starwood Capital, or CEO</p> <p>3 or anybody?</p> <p>4 A. The CEO whose name is commonly associated with</p> <p>5 Starwood Capital is Barry Sternlicht.</p> <p>6 Q. I want to go back to the acquisition of the 40</p> <p>7 percent interest in Corus Construction. That was done</p> <p>8 by the entity then called CCV Managing Member now known</p> <p>9 as ST Residential, correct?</p> <p>10 A. Yes.</p> <p>11 Q. At the time of that acquisition did it have</p> <p>12 any officers or directors, or was it at that time a</p> <p>13 paper entity only?</p> <p>14 A. It probably had officers.</p> <p>15 Q. But you don't know?</p> <p>16 A. I believe they had officers. I don't know who</p> <p>17 those officers were at that moment.</p> <p>18 Q. Who did the due diligence on the acquisition</p> <p>19 of the 40 percent interest?</p> <p>20 A. There was a team of people from the different</p> <p>21 entities that spread out across the country.</p> <p>22 Q. When you say a team of people from the</p> <p>23 different entities are you talking about a team of</p> <p>24 people from the ultimate ownership entities?</p> <p>25 A. Yes.</p>
39	<p>1 A. Rather large private equity company.</p> <p>2 Q. And Perry Capital?</p> <p>3 A. Private equity company.</p> <p>4 Q. And WLR LeFrak, L-E-F-R-A-K?</p> <p>5 A. That's an affiliate of -- it's Wilbur L. Ross</p> <p>6 and Richard LeFrak are the principal parties.</p> <p>7 Q. And they are hedge funds, is that right, or</p> <p>8 private equity funds?</p> <p>9 A. Their private equity.</p> <p>10 Q. And the box "management," what is that?</p> <p>11 A. I believe that's an ownership interest of</p> <p>12 management.</p> <p>13 Q. What do you mean by that?</p> <p>14 A. Management of ST Residential.</p> <p>15 Q. And management of ST Residential, does that</p> <p>16 include you?</p> <p>17 A. No.</p> <p>18 Q. Who is included in that management?</p> <p>19 A. Wade Hundley, who I believe is the only</p> <p>20 person.</p> <p>21 Q. Wade Hundley, does he have any association or</p> <p>22 affiliation with Starwood Capital?</p> <p>23 A. He's the CEO of ST Residential.</p> <p>24 Q. Not my question. Does he have any association</p> <p>25 or affiliation with Starwood Capital?</p>	41	<p>1 Q. So from Starwood Capital, TPG, Perry, Wilbur</p> <p>2 Ross and LeFrak, teams from those organizations did the</p> <p>3 due diligence, is that right?</p> <p>4 A. Yes. They generally looked at assets and</p> <p>5 divided up some of the work.</p> <p>6 Q. And the due diligence that was done with</p> <p>7 regard to the SB Hotel loan and the entirety of that</p> <p>8 issue, who did that?</p> <p>9 A. Based on recently acquired information it's my</p> <p>10 understanding that Starwood Capital was the affiliate</p> <p>11 reviewing this loan.</p> <p>12 Q. And Starwood Capital owns the affiliate that</p> <p>13 is the managing member of Northwest Investments,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And Northwest Investments owns and manages ST</p> <p>17 Residential, correct, it's the managing member?</p> <p>18 MR. TRENCH: Sole member it says.</p> <p>19 Q. Let me ask you, is ST Residential member</p> <p>20 managed or other managed?</p> <p>21 A. It's managed by its sole member.</p> <p>22 Q. So Northwest Investments is the manager of ST</p> <p>23 Residential, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And ST Residential is the managing member of</p>

42	<p>1 CCV, right?</p> <p>2 A. Yes.</p> <p>3 Q. Taking it the other way, Corus Construction</p> <p>4 CCV is managed by ST Residential, right?</p> <p>5 A. Yes.</p> <p>6 Q. ST Residential is managed by Northwest</p> <p>7 Investments, LLC?</p> <p>8 A. Yes.</p> <p>9 Q. And Northwest Investments, LLC is managed by</p> <p>10 the affiliate of Starwood Capital?</p> <p>11 A. Well, there's a board of directors for</p> <p>12 Northwest Investments.</p> <p>13 Q. I'm just looking at the chart, the wire</p> <p>14 diagram that was provided by CCV, and the affiliate of</p> <p>15 Starwood Capital generically listed here is the 39.61</p> <p>16 percent member owner of Northwest Investments and it is</p> <p>17 the managing member, correct?</p> <p>18 A. I don't know if that's correct. The board of</p> <p>19 directors of Northwest Investments generally manages ST</p> <p>20 Residential. Starwood Capital takes an active role. I</p> <p>21 don't know if managing member is absolutely correct as</p> <p>22 a matter of law.</p> <p>23 Q. Well, you are the only person that I have here</p> <p>24 today and the only document with regard to the</p> <p>25 corporate structure of CCV that was provided to me</p>	44	<p>1 actually the managing member of CB VII, LLC, is that</p> <p>2 right?</p> <p>3 A. I don't know.</p> <p>4 Q. Does CB stand for Corus Bank?</p> <p>5 A. I don't know.</p> <p>6 Q. The affiliate of Starwood Capital, it's owned</p> <p>7 by Starwood Capital and Starwood Capital did the due</p> <p>8 diligence on this loan and this property that's</p> <p>9 involved in the instant case, right?</p> <p>10 A. That appears to be the case.</p> <p>11 Q. What due diligence was done?</p> <p>12 A. The property was looked at. It looks like a</p> <p>13 law firm prepared a -- did a review of mechanic's</p> <p>14 liens. There's an Excel spreadsheet that I believe was</p> <p>15 sent to you yesterday that reflects the work of the</p> <p>16 firm of Pircher Nichols.</p> <p>17 MR. TRENCH: Joe, do you need a break?</p> <p>18 MR. GILLMAN: The one thing I didn't tell you</p> <p>19 is if you need a break, there's no question</p> <p>20 currently pending. We have been going for a little</p> <p>21 bit, if you want to take a break now is a good</p> <p>22 time.</p> <p>23 THE WITNESS: Take five minutes.</p> <p>24 (Recess taken in the proceedings)</p> <p>25 BY MR. GILLMAN:</p>
43	<p>1 other than obviously operating agreements and things</p> <p>2 like that is the Exhibit 3, which is CCV 238.</p> <p>3 Will you agree that it reflects that the</p> <p>4 affiliate of Starwood Capital is the managing member of</p> <p>5 Northwest Investments, LLC?</p> <p>6 A. Yes.</p> <p>7 MR. GILLMAN: David, if this is inaccurate can</p> <p>8 we get an accurate document?</p> <p>9 MR. TRENCH: I'm not sure if it is inaccurate.</p> <p>10 I think that your question went to who makes the</p> <p>11 decisions about how Northwest, what Northwest</p> <p>12 Investments did and he indicates a board of</p> <p>13 directors, which wouldn't necessarily show in this</p> <p>14 type of chart.</p> <p>15 MR. GILLMAN: That actually wasn't my</p> <p>16 question.</p> <p>17 MR. TRENCH: That's the way I understood it.</p> <p>18 MR. GILLMAN: No.</p> <p>19 Q. My question was Northwest Investments, LLC,</p> <p>20 and actually you are probably right because there's a</p> <p>21 CB VII, LLC in between Northwest Investments, LLC and</p> <p>22 that is the hundred percent member of Northwest</p> <p>23 Investments, correct?</p> <p>24 A. I believe so.</p> <p>25 Q. So the affiliate of Starwood Capital is</p>	45	<p>1 Q. During the break did you have any substantive</p> <p>2 discussion with regard to your deposition with anyone?</p> <p>3 A. No.</p> <p>4 Q. Shortly before your deposition we were talking</p> <p>5 about due diligence and we'll have marked in a little</p> <p>6 bit but you understand there was a document request</p> <p>7 that was served by my client, SP Lender, on CCV</p> <p>8 requesting due diligence materials, all documents</p> <p>9 relating to the due diligence performed with regard to</p> <p>10 the acquisition, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Prior to yesterday what, if anything, had you</p> <p>13 done or had CCV done to acquire the documentation with</p> <p>14 regard to that due diligence?</p> <p>15 A. I had extensive and multiple conversations</p> <p>16 with my outside legal counsel regarding how best to</p> <p>17 comply with the document production request. I caused</p> <p>18 a search of various databases to occur using a series</p> <p>19 of search terms, and also had my paralegal order the</p> <p>20 credit file from Trimont, which is a sub servicer of</p> <p>21 Corus Construction Venture, which was I believe</p> <p>22 produced.</p> <p>23 Q. Anything else?</p> <p>24 A. A few days ago, after you had filed motion to</p> <p>25 compel and after consultation again with legal counsel,</p>

46	<p>1 I sent an e-mail to various persons who I thought might</p> <p>2 have knowledge of due diligence that was conducted</p> <p>3 prior to ST Residential becoming the managing member</p> <p>4 asking them if they had, on a voluntary basis could</p> <p>5 advise me if they knew of any type of due diligence</p> <p>6 materials which were produced in the process of</p> <p>7 underwriting the purchase of the Northwest Investment</p> <p>8 interest.</p> <p>9 Q. You've completed your answer?</p> <p>10 A. Yes.</p> <p>11 Q. You indicated that you had done a search of</p> <p>12 databases. What databases did you search? And I'm</p> <p>13 talking about prior to two or three days ago.</p> <p>14 A. The CCV computer records and a hard drive that</p> <p>15 the FDIC transferred to ST which related to the loans</p> <p>16 that were part -- that comprised the assets which were</p> <p>17 the subject of the LCSA.</p> <p>18 Q. Anything else?</p> <p>19 A. I mentioned the loan files, the actual loan</p> <p>20 files from Trimont were produced. I didn't produce the</p> <p>21 draw records. That would typically be many, many</p> <p>22 banker boxes of construction draw requests with backup.</p> <p>23 I didn't think it was relevant to the questions that</p> <p>24 were requested.</p> <p>25 Q. Actually your answer is a little bit broader</p>	48	<p>1 A. I don't know. That sounds likely, that it was</p> <p>2 formed days before the transaction occurred.</p> <p>3 Q. Let me give you some documents and we'll get</p> <p>4 it into the record. We are going to be talking about</p> <p>5 exhibits a little out of order and we will fill them in</p> <p>6 a minute.</p> <p>7 (Exhibit 13 marked for identification)</p> <p>8 Q. Let me show you what has been marked as</p> <p>9 Exhibit 13. Do you recognize Exhibit 13 as the</p> <p>10 document determining the insolvency and appointing the</p> <p>11 FDIC as receiver of Corus Bank?</p> <p>12 A. Yes.</p> <p>13 (Exhibit 14 marked for identification)</p> <p>14 Q. Now I'm having marked as Exhibit 14, Exhibit</p> <p>15 14 is a document entitled Certificate of Formation of</p> <p>16 Corus Construction Venture. It's Bates number CCV</p> <p>17 2494. Do you recognize that document?</p> <p>18 A. Yes.</p> <p>19 Q. Who is Timothy Kruse?</p> <p>20 A. He's an official with the FDIC.</p> <p>21 Q. And this formation was at the time that the</p> <p>22 FDIC-R was the sole member, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And the date, the execution date is October 9,</p> <p>25 is that right, October 9, 2009?</p>
47	<p>1 than my question. I want to confine myself to a search</p> <p>2 for due diligence materials. And when I talk about due</p> <p>3 diligence material I'm talking about materials that</p> <p>4 were reviewed by the entity acquiring the 40 percent</p> <p>5 interest in CCV or its members and managers.</p> <p>6 And I understand -- let me ask you this. The</p> <p>7 transfer of the loan files, hard drive from the FDIC,</p> <p>8 was that transferred to all prospective bidders?</p> <p>9 A. No. That occurred after the purchase.</p> <p>10 Q. The CCV computer, was that transferred to or</p> <p>11 access made available to prospective bidders?</p> <p>12 A. No, that was created after the purchase.</p> <p>13 Q. And the loan files from Trimont, was that</p> <p>14 something that was available to and reviewed by</p> <p>15 prospective bidders?</p> <p>16 A. No, those were -- files were transferred to</p> <p>17 Trimont.</p> <p>18 Q. Let me back up and let's see if we can get a</p> <p>19 chronology working. Is it correct that a determination</p> <p>20 of receivership and appointment of the FDIC as receiver</p> <p>21 with regard to Corus Bank occurred on September 11,</p> <p>22 2009?</p> <p>23 A. Yes.</p> <p>24 Q. Is it accurate that a little under a month</p> <p>25 later CCV was formed on October 9, 2009?</p>	49	<p>1 A. Yes.</p> <p>2 Q. And the date filed with the Secretary of State</p> <p>3 in Delaware was October 12, 2009, is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And there was an operating agreement, is that</p> <p>6 right?</p> <p>7 A. I believe there was.</p> <p>8 Q. Let me give it to you.</p> <p>9 (Exhibit 15 marked for identification)</p> <p>10 Q. Showing you Exhibit 15. Do you recognize</p> <p>11 Exhibit 15 which is titled Limited Liability Company</p> <p>12 Operating Agreement Corus Construction Venture, LLC,</p> <p>13 CCV 5644 through 5656 as the operating agreement for</p> <p>14 CCV at its formation?</p> <p>15 A. I don't think I've ever looked at this before</p> <p>16 but I recognize it as an operating agreement for CCV.</p> <p>17 Q. I'd like you to turn if you will to the page</p> <p>18 that is CCV 5647. This operating agreement has an</p> <p>19 effective date of October 13, 2009, correct?</p> <p>20 A. October what?</p> <p>21 Q. October 13, 2009.</p> <p>22 A. Yes.</p> <p>23 Q. The FDIC-R was the sole member, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And it was vested with the exclusive</p>

50	<p>1 management, the FDIC-R, correct?</p> <p>2 A. Yes.</p> <p>3 Q. So we have Corus' -- Corus is determined to be</p> <p>4 insolvent September 11, 2009, the FDIC is appointed</p> <p>5 receiver that same day, correct?</p> <p>6 A. Yes.</p> <p>7 Q. There was no immediate transfer of any assets</p> <p>8 of Corus Bank on September 11, 2009, is that right?</p> <p>9 A. No.</p> <p>10 Q. That's wrong?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What assets were transferred on</p> <p>13 September 11, 2009?</p> <p>14 A. All of the assets.</p> <p>15 Q. All of the assets -- excuse me. There was a</p> <p>16 transfer of the assets to the FDIC-R, correct?</p> <p>17 A. Yes.</p> <p>18 Q. There was no transfer of any assets of Corus</p> <p>19 Bank by FDIC-R on September 11, is that right?</p> <p>20 A. No, I think they may have transferred the</p> <p>21 branch -- the bank branches to MB Financial.</p> <p>22 Q. So the branch bank assets and the deposit</p> <p>23 liabilities were transferred?</p> <p>24 A. I don't know the exact date but they could</p> <p>25 have been transferred as of the 11th. I know that when</p>	52	<p>1 A. I don't know.</p> <p>2 Q. Who would know?</p> <p>3 A. The FDIC-R.</p> <p>4 Q. Is it accurate that between approximately</p> <p>5 September 11 and October 16 there was a bid process in</p> <p>6 which prospective purchasers reviewed whatever they</p> <p>7 were going to review and made a decision and made a bid</p> <p>8 to the FDIC-R?</p> <p>9 A. I don't know. I think the bid process may</p> <p>10 have started before that.</p> <p>11 Q. So do you know whether it started before the</p> <p>12 insolvency determination or not?</p> <p>13 A. My understanding is that it did. I can't cite</p> <p>14 any hard evidence of that fact.</p> <p>15 Q. Was that done by request for bids, proposals?</p> <p>16 Do you know how that was done prior to the FDIC being</p> <p>17 appointed as receiver?</p> <p>18 A. No.</p> <p>19 Q. Do you know who issued the request for bids?</p> <p>20 A. No.</p> <p>21 Q. You are familiar that there was a bid process</p> <p>22 that culminated with the transfer to CCV and the</p> <p>23 acquisition of the 40 percent management interest by ST</p> <p>24 Residential, right?</p> <p>25 A. Yes.</p>
51	<p>1 I left the building that night they were putting up an</p> <p>2 MB Financial sign.</p> <p>3 Q. But the loan assets, those were not</p> <p>4 transferred on September 11, correct?</p> <p>5 MR. TRENCH: Not transferred by the FDIC-R you</p> <p>6 mean?</p> <p>7 Q. Not transferred by FDIC-R, correct?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. So then a month later CCV is formed?</p> <p>10 A. Yes.</p> <p>11 Q. By the FDIC as its sole member and manager,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. Then on October 16 you have the Loan</p> <p>15 Contribution and Sale Agreement, the LCSA, is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Were all of the loan assets transferred to CCV</p> <p>19 by the FDIC-R, or were there some that were retained or</p> <p>20 transferred to somebody else?</p> <p>21 A. I think there were small loans that were</p> <p>22 transferred to MB Financial.</p> <p>23 Q. Consumer loans?</p> <p>24 A. Consumer.</p> <p>25 Q. Did the FDIC-R retain any loans?</p>	53	<p>1 Q. There were other bidders, correct?</p> <p>2 A. That is the indication on the FDIC Web site.</p> <p>3 Q. I think you indicated that people or people</p> <p>4 affiliated with the top rung of owner manager of ST</p> <p>5 Residential were involved in the due diligence for the</p> <p>6 bidder that ultimately prevailed, right?</p> <p>7 A. Persons affiliated with the ultimate owners of</p> <p>8 Northwest Investments were involved in the bid due</p> <p>9 diligence.</p> <p>10 Q. Who put in that bid? In other words, was</p> <p>11 there a single entity or group of entities that put in</p> <p>12 the bid on behalf of what ultimately became ST</p> <p>13 Residential?</p> <p>14 A. I don't know.</p> <p>15 Q. Who would know that?</p> <p>16 A. There's probably several people associated</p> <p>17 with Starwood or TPG who would know.</p> <p>18 Q. Can you identify their names?</p> <p>19 A. Marcos Alverados.</p> <p>20 Q. Spell, is it Marcos?</p> <p>21 A. Marcos.</p> <p>22 Q. Spell the last name please.</p> <p>23 A. A-L-V-A-R-A-D-O-S. Dan Yih.</p> <p>24 Q. Dan?</p> <p>25 A. Yes.</p>

54	<p>1 Q. Can you spell it the last name?</p> <p>2 A. Y-I-H.</p> <p>3 Q. Mike Muscolino. Spell Muscolino, please.</p> <p>4 A. M-U-S-C-O-L-I-N-O.</p> <p>5 Q. Anyone else?</p> <p>6 A. There were a number of other people that were</p> <p>7 involved but I don't know whether they have detailed</p> <p>8 knowledge of the bid process.</p> <p>9 Q. The three that you identified, who were they</p> <p>10 employed with in 2009?</p> <p>11 A. I don't know who they were employed by, but</p> <p>12 Marcos and Dan Yih are affiliated with Starwood</p> <p>13 Capital. Mike Muscolino is affiliated with TPG.</p> <p>14 Q. And the two Starwood gentlemen are officed</p> <p>15 where?</p> <p>16 A. Greenwich, Connecticut.</p> <p>17 Q. And Mr. Muscolino?</p> <p>18 A. Muscolino, I don't know where his office is.</p> <p>19 Q. You indicated that initially you did a</p> <p>20 database search, but the database search that you</p> <p>21 searched by definition wouldn't have had any of the due</p> <p>22 diligence documents, right?</p> <p>23 A. Correct.</p> <p>24 Q. So you did no database search for due</p> <p>25 diligence documents up until, and you didn't do any</p>	56	<p>1 this bid were documents that he wanted and needed to</p> <p>2 prosecute or defend this case, they would give them to</p> <p>3 you, wouldn't they?</p> <p>4 A. I don't know. I could ask them.</p> <p>5 Q. You seriously don't believe that they would</p> <p>6 give you the documents if it was determined that you</p> <p>7 needed them to prosecute your case or defend the claims</p> <p>8 by SP?</p> <p>9 MR. TRENCH: I object to the form of the</p> <p>10 question.</p> <p>11 Q. You can answer.</p> <p>12 A. I didn't say that. I said I could ask them.</p> <p>13 Do you want me to speculate on what they would do? Is</p> <p>14 that the answer that you seek?</p> <p>15 Q. No, I don't want you to speculate but based on</p> <p>16 your experience ---</p> <p>17 A. You are asking me what I believe would happen.</p> <p>18 That seems like speculation.</p> <p>19 Q. I'll try more. Based on your experience and</p> <p>20 based on the work that you have done, would you expect</p> <p>21 that they would give you whatever documents you needed</p> <p>22 to prosecute or defend the claims and counterclaims in</p> <p>23 this case?</p> <p>24 A. Yes.</p> <p>25 Q. Now, prior to a couple of days, you didn't ask</p>
55	<p>1 search at all up until a couple days ago, right?</p> <p>2 A. For --</p> <p>3 Q. Due diligence documents.</p> <p>4 A. No.</p> <p>5 Q. Why not?</p> <p>6 A. We didn't have it.</p> <p>7 Q. Well, you understand that a document request</p> <p>8 requires the party to produce that which is in their</p> <p>9 possession, custody or control, right?</p> <p>10 A. That's my understanding.</p> <p>11 Q. CCV through ST Residential, its manager, has</p> <p>12 the ability to get the documents that it wants from its</p> <p>13 upstream managers, isn't that right?</p> <p>14 A. No.</p> <p>15 Q. No? If your counsel determined that those</p> <p>16 upstream documents would be helpful to his case that he</p> <p>17 needed them for his case, they would give them to you,</p> <p>18 isn't that right?</p> <p>19 A. I could ask them for them.</p> <p>20 Q. You can do more than ask. You have a \$139</p> <p>21 million plus foreclosure action that's pending, right?</p> <p>22 A. Yes.</p> <p>23 Q. If your counsel told you, hypothetically, that</p> <p>24 documents that Starwood had or the Starwood entity had,</p> <p>25 whoever it is that did the due diligence that led to</p>	57	<p>1 anybody for any due diligence documents, correct?</p> <p>2 A. More than a couple of days. A few days.</p> <p>3 Q. When you asked a couple of days ago did you</p> <p>4 ask the people that you have identified, the three</p> <p>5 people or anybody else?</p> <p>6 A. I asked them and some others.</p> <p>7 Q. Who else?</p> <p>8 A. Camille Douglas.</p> <p>9 Q. And who is she?</p> <p>10 A. She is in the LeFrak organization.</p> <p>11 Q. Anybody else?</p> <p>12 A. Sol Safeieh, S-A-F-D-I-E-H, who is in the</p> <p>13 Richard Perry Capital company. I think I asked Richard</p> <p>14 LeFrak.</p> <p>15 Q. Anybody else?</p> <p>16 A. I think that's it.</p> <p>17 Q. From the LeFrak organization and Richard Perry</p> <p>18 and your discussions with the Starwood and TPG people,</p> <p>19 is that how you learned that Starwood had conducted the</p> <p>20 due diligence with regard to the Fort Lauderdale hotel</p> <p>21 that's at issue here?</p> <p>22 A. Yes.</p> <p>23 Q. So I've put in front of you somewhere as</p> <p>24 Exhibit 10 the letter that Mr. Trench sent me</p> <p>25 yesterday.</p>

58	<p>1 (Exhibit 10 marked for identification)</p> <p>2 MR. TRENCH: You gave him a highlighted copy.</p> <p>3 Did you intend to do that?</p> <p>4 MR. GILLMAN: No.</p> <p>5 Q. Showing you has been marked as Exhibit 10, it</p> <p>6 does not -- the first is a cover letter dated November</p> <p>7 2, from Mr. Trench to myself, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And then the balance are Bates numbered CCV</p> <p>10 16536 through 16558, is that right?</p> <p>11 A. Yes.</p> <p>12 Q. From whom did you get those documents?</p> <p>13 A. Marcos Alvarado.</p> <p>14 Q. At Starwood or Starwood affiliate?</p> <p>15 A. Yes.</p> <p>16 Q. His e-mail is what?</p> <p>17 MR. TRENCH: His e-mail address you mean?</p> <p>18 MR. GILLMAN: Yes.</p> <p>19 A. I don't know. M. Alvarado. I'm not sure what</p> <p>20 the place is. I think it is Starwood. I think it's at</p> <p>21 Starwood.com.</p> <p>22 Q. And Mr. Alvarado sent you these pages,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. The letter that Mr. Trench sent said that</p>	60	<p>1 the insolvency of Corus, right?</p> <p>2 A. I believe it does.</p> <p>3 Q. This is a review and/or plan by Corus as to</p> <p>4 what to do if it foreclosed and received back the</p> <p>5 property, correct?</p> <p>6 A. I don't know for certain that Corus produced</p> <p>7 it, but the FDIC was directing a lot of the actions at</p> <p>8 Corus prior to the receivership and therefore may have</p> <p>9 in an effort to conduct their bid process have utilized</p> <p>10 certain bank-generated information to have available</p> <p>11 for prospective bidders.</p> <p>12 Q. You indicated that the FDIC was directing the</p> <p>13 actions of Corus Bank prior to September 11, 2009, is</p> <p>14 that right?</p> <p>15 A. Regulators. Either the FDIC or the OCC.</p> <p>16 There was a consent order that had been entered.</p> <p>17 Q. When was the consent order entered?</p> <p>18 A. I think the consent order was entered in March</p> <p>19 of '09. The consent order required certain steps be</p> <p>20 taken.</p> <p>21 Q. Did Corus Bank provide a copy of that consent</p> <p>22 order to its borrowers in March of 2009?</p> <p>23 A. It was public record.</p> <p>24 Q. I didn't ask that. Was a copy of the consent</p> <p>25 order provided to Corus's borrowers --</p>
59	<p>1 these may or may not be all due diligence documents.</p> <p>2 Do you know if there are other documents, due diligence</p> <p>3 documents at Starwood that have not been provided?</p> <p>4 A. My understanding is that these are the extent</p> <p>5 of the documents that they have.</p> <p>6 Q. And you have that understanding from who?</p> <p>7 A. From Marcos, and counsel for LeFrak advised me</p> <p>8 that they didn't have anything. Someone from Perry</p> <p>9 advised me that the only thing they had were these</p> <p>10 documents, and someone from TPG has advised me that</p> <p>11 they're 99 percent sure that they don't have anything</p> <p>12 different than these documents.</p> <p>13 Q. Anything else?</p> <p>14 A. No.</p> <p>15 Q. If you would turn to the second page. The</p> <p>16 second page 16536 through 16540, that was a Corus Bank</p> <p>17 document, correct?</p> <p>18 A. I don't know that.</p> <p>19 Q. What is Project Northwest?</p> <p>20 A. That was the name given by the consortium that</p> <p>21 was investigating this.</p> <p>22 Q. Let's go through this. By the way, have you</p> <p>23 read this document?</p> <p>24 A. Yes.</p> <p>25 Q. This is a document by its terms that predates</p>	61	<p>1 MR. TRENCH: I object --</p> <p>2 Q. -- specifically by Corus?</p> <p>3 MR. TRENCH: I object to the form of the</p> <p>4 question. If you mean did they actually deliver it</p> <p>5 as opposed to constructively giving notice, that</p> <p>6 might clarify the issue.</p> <p>7 Q. I think providing a copy would actually mean</p> <p>8 delivering.</p> <p>9 MR. TRENCH: Just want to make sure it's</p> <p>10 clear.</p> <p>11 A. Not to my recollection.</p> <p>12 Q. Now, on and after March of 2009 did the</p> <p>13 consent order limit the discretion of Corus Bank in any</p> <p>14 way with regard to existing loans?</p> <p>15 A. I would say that it did. I don't really -- I</p> <p>16 have not looked at the consent order for a long time,</p> <p>17 over two years.</p> <p>18 Q. So I think you indicated that -- by the way,</p> <p>19 was the consent order with the FDIC or the OCC, or</p> <p>20 both?</p> <p>21 A. I think it was with the OCC.</p> <p>22 Q. If we look at this, going back to Exhibit 10,</p> <p>23 there's reference to -- I would like to go down some of</p> <p>24 it. There's a basis number.</p> <p>25 MR. TRENCH: You are on page 16536, right?</p>

62	<p>1 MR. GILLMAN: Yes.</p> <p>2 Q. Let's sort of go through this. There's a</p> <p>3 section entitled Summary, a section entitled Project</p> <p>4 Ranking. Whose project ranking is that, Corus's, the</p> <p>5 OCC?</p> <p>6 A. I have no idea.</p> <p>7 Q. Collateral, the next box, it has an estimated</p> <p>8 completion and then it's got a February 9, 2009 receive</p> <p>9 TCO. Does that reflect that the property that was</p> <p>10 collateral for the loan had received its temporary</p> <p>11 certificate of occupancy on February 9, 2009?</p> <p>12 A. That would be my conclusion.</p> <p>13 Q. You previously indicated that the loan</p> <p>14 officer, the primary loan officer, was --</p> <p>15 A. Keith Gibbons.</p> <p>16 Q. Was Keith Gibbons. Is Keith Gibbons involved</p> <p>17 in any way with CCV?</p> <p>18 A. No.</p> <p>19 Q. Was he ever involved with CCV?</p> <p>20 A. He was employed until approximately December</p> <p>21 of '09. I don't think he was employed by CCV.</p> <p>22 Q. Do you know where Keith Gibbons is?</p> <p>23 A. He's in Chicago.</p> <p>24 Q. There's reference on the right side, there's</p> <p>25 certain documentation with regard to or information</p>	64	<p>1 Q. And then there's a site review and it says</p> <p>2 "SCG visited the site on 5/19/09." Who is SCG?</p> <p>3 A. That should be referring to Starwood Capital</p> <p>4 Group.</p> <p>5 Q. So Starwood Capital Group was visiting the SB</p> <p>6 Hotel property as early as May 19, 2009?</p> <p>7 A. That is the indication.</p> <p>8 Q. Do you know if that site visit was announced</p> <p>9 to the borrower?</p> <p>10 A. No, I have no knowledge.</p> <p>11 Q. Was Starwood Capital engaged in any loan</p> <p>12 acquisition discussions direct with Corus Bank in May</p> <p>13 of 2009?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. My question is a little bit beyond that. You</p> <p>16 are saying not to your knowledge. Do you know</p> <p>17 that that wasn't the case, or you don't know one way or</p> <p>18 the other?</p> <p>19 A. I would say I don't know one way or the other.</p> <p>20 There was a simultaneous process being run whereby</p> <p>21 Corus was seeking to be recapitalized by a third party</p> <p>22 investor and had an investment banker trying to raise</p> <p>23 capital.</p> <p>24 Q. Who was the third party --</p> <p>25 A. I'm sorry?</p>
63	<p>1 with regard to basis and then there's a capitalization</p> <p>2 and there's reference to remaining Corus loan funding</p> <p>3 of \$8,166,674, is that right?</p> <p>4 A. That's what it says.</p> <p>5 Q. And does that reflect that of the total loan</p> <p>6 amount, a little over \$8 million had not yet been</p> <p>7 funded?</p> <p>8 A. That would be the conclusion I would draw.</p> <p>9 Q. Had there been draw requests or requests for</p> <p>10 funding by the borrower on that amount, all or any</p> <p>11 part?</p> <p>12 A. I don't recall.</p> <p>13 Q. There's a loan summary and then there is a</p> <p>14 project description. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. If you go over to the next page it has "loan</p> <p>17 update." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. It references Corus is the sole senior lender?</p> <p>20 A. Yes.</p> <p>21 Q. And that there's a \$45.7 million mezzanine</p> <p>22 loan originated by CBRE, do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. That's the SP Lender mezzanine loan, correct?</p> <p>25 A. I believe it's an affiliate.</p>	65	<p>1 Q. -- that was looking to recapitalize, who was</p> <p>2 that third party?</p> <p>3 A. A number of institutions visited the bank,</p> <p>4 came in, looked through files. I'm sure they visited</p> <p>5 the sites of the assets, some of them.</p> <p>6 Q. One was Starwood?</p> <p>7 A. It could have been.</p> <p>8 Q. There's a specific reference here to a</p> <p>9 Starwood site visit, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And there is no reference to anyone else's, is</p> <p>12 that right, any other entity?</p> <p>13 A. Perhaps this was prepared by Starwood.</p> <p>14 Q. Do you know?</p> <p>15 A. No.</p> <p>16 Q. There's a reference at the bottom of that site</p> <p>17 review section that says "Corus's extensive legal</p> <p>18 review of the sales contracts leads them to believe</p> <p>19 that the loss of the Trump flag and the failure to open</p> <p>20 as a hotel does not release the buyers from their</p> <p>21 contracts." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Who was on that extensive legal review?</p> <p>24 A. I don't know. I don't know exactly what</p> <p>25 review they were referring to.</p>

66	<p>1 Q. You were the general counsel of Corus, right?</p> <p>2 A. Yes, but I didn't write this.</p> <p>3 Q. Well, you would have been aware if there was a</p> <p>4 review of the contract to determine whether or not the</p> <p>5 loss of the Trump flag and the failure to open as a</p> <p>6 hotel would or would not release the buyers from the</p> <p>7 contracts, right?</p> <p>8 A. Are you asking me as somebody that was</p> <p>9 employed at Corus in 2009?</p> <p>10 Q. Sure.</p> <p>11 A. I don't remember.</p> <p>12 Q. Not just somebody is that was employed but</p> <p>13 somebody that was employed as the general counsel.</p> <p>14 A. Correct. I don't recall. And extensive legal</p> <p>15 review could be quite different based on the views of</p> <p>16 the author of what constitutes an extensive legal</p> <p>17 review.</p> <p>18 Q. Those contracts were collateral for the loan,</p> <p>19 isn't that right?</p> <p>20 A. I believe they were collaterally assigned to</p> <p>21 support the loan obligation, the seller's interest in</p> <p>22 them.</p> <p>23 Q. The question as to whether or not there would</p> <p>24 be an obligation to close or not would be an important</p> <p>25 aspect of any collateral reviewed by Corus or anyone</p>	68	<p>1 MR. TRENCH: Object to the form of the</p> <p>2 question.</p> <p>3 A. The only business plan being effectuated at</p> <p>4 this time is foreclosure on the asset for, as a result</p> <p>5 of the various defaults.</p> <p>6 Q. There is a reference on the borrower's summary</p> <p>7 below to CBRE, which is SP Lender as the mezzanine</p> <p>8 lender with a \$45.8 million balance. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And the plan referenced here was to foreclose</p> <p>11 as part -- the plan as part of the due diligence was to</p> <p>12 foreclose that as well, is that correct?</p> <p>13 A. That's what it says.</p> <p>14 Q. There's then a summary of risks and</p> <p>15 opportunities, right?</p> <p>16 A. Yes.</p> <p>17 Q. And one of the risks is that in addition there</p> <p>18 is a sophisticated mezzanine lender, right?</p> <p>19 A. Where does it say that? Oh.</p> <p>20 Q. The second bullet point, the end of the second</p> <p>21 sentence.</p> <p>22 A. It says that, in addition there is a</p> <p>23 sophisticated mezzanine lender.</p> <p>24 Q. Do you agree with that?</p> <p>25 A. That CBRE is sophisticated?</p>
67	<p>1 intending to take over that loan, isn't that right?</p> <p>2 A. It would be relevant.</p> <p>3 Q. If you go to the next page, CCV 16538, there's</p> <p>4 a business plan, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know whose business plan this is? Is</p> <p>7 this Starwood's business plan?</p> <p>8 A. I would surmise that it is Starwood's business</p> <p>9 plan because it was produced by Marcos and request for</p> <p>10 any due diligence materials that they had. It's</p> <p>11 labeled Project Northwest.</p> <p>12 Q. This business plan actually is the business</p> <p>13 plan of CCV, isn't that right, with regard to the SB</p> <p>14 Hotel in Fort Lauderdale, Florida and the loan to SB</p> <p>15 Hotel?</p> <p>16 A. Is that a question?</p> <p>17 Q. Yes.</p> <p>18 A. I don't know. Do you mean business plan, the</p> <p>19 general approach of trying to capitalize on the project</p> <p>20 as an investment?</p> <p>21 Q. No. The question is, is this business plan</p> <p>22 that was produced to you by Starwood, is this the</p> <p>23 business plan being effectuated by ST Residential as</p> <p>24 the manager of CCV with regard to the SB Hotel</p> <p>25 property?</p>	69	<p>1 Q. Yes.</p> <p>2 A. I would say that they hired good counsel that</p> <p>3 indicates a certain level of sophistication.</p> <p>4 Q. Let the record reflect I'm blushing.</p> <p>5 Were the loan documents provided to Starwood</p> <p>6 Capital to conduct its due diligence review in the loan</p> <p>7 documents with regard to the SB Hotel loan?</p> <p>8 A. I don't know.</p> <p>9 Q. It is pretty impossible to do a due diligence</p> <p>10 without looking at the documents, isn't that right?</p> <p>11 A. The indications that I have received are that</p> <p>12 the loan documents were only spot checked.</p> <p>13 Q. In this interim period between the declaration</p> <p>14 of insolvency, September, and the culmination of the</p> <p>15 bid process in October, you were employed by the FDIC</p> <p>16 in its receivership capacity, right?</p> <p>17 A. For a very brief time, and then I was</p> <p>18 transferred to Starwood. Not Starwood but project --</p> <p>19 an entity, I suppose Northwest Management who I'm</p> <p>20 currently paid by.</p> <p>21 Q. Let's go back. I don't know that I got that.</p> <p>22 September 11, 2009, FDIC becomes the receiver</p> <p>23 of Corus?</p> <p>24 A. From September 11 until October 16 any salary</p> <p>25 I received was from a subcontractor, Impremus, of the</p>

70	<p>1 FDIC as receiver.</p> <p>2 Q. So you became employed by Northwest Capital</p> <p>3 upon ST becoming the manager member of CCV or some</p> <p>4 earlier time?</p> <p>5 A. It was after October 16.</p> <p>6 Q. So October 16 would have been the culmination</p> <p>7 of that bid process that we have been talking about,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. So there was a period of approximately a month</p> <p>11 when you were employed by the FDIC or a subcontractor</p> <p>12 of the FDIC prior your being employed by Northwest</p> <p>13 Capital, the ultimate winning bidder, right?</p> <p>14 MR. TRENCH: I guess it is Northwest</p> <p>15 Investments.</p> <p>16 Q. Northwest Investments. Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. During that time period and from before you</p> <p>19 were aware that there was an intercreditor agreement</p> <p>20 between Corus and SP Lender, right?</p> <p>21 A. I was aware that there were intercreditor</p> <p>22 agreements on dozens of loans.</p> <p>23 Q. And you were aware that there was a \$5 million</p> <p>24 owed in the event of an unapproved transfer, correct?</p> <p>25 A. I doubt it.</p>	72	<p>1 of remembering details of loan terms. There were a lot</p> <p>2 of complicated loans being produced.</p> <p>3 Q. This one was five percent of that total,</p> <p>4 right?</p> <p>5 A. I don't know.</p> <p>6 Q. A hundred some odd million, that's a big loan,</p> <p>7 right?</p> <p>8 A. It's a big loan.</p> <p>9 Q. Big loans get careful attention at Corus even</p> <p>10 in 2006, 2007 period, right?</p> <p>11 A. We tried to be prudent.</p> <p>12 Q. Do you know whether the due diligence</p> <p>13 conducted by or on behalf of the winning bidder</p> <p>14 included a review of the loan documents associated with</p> <p>15 the SB Hotel loan?</p> <p>16 A. None of this material indicates that the loan</p> <p>17 documents were reviewed because the legal review is</p> <p>18 reflected in the document that's Bates stamped as 16541</p> <p>19 through 16551.</p> <p>20 Q. That just reflects a lien review, correct?</p> <p>21 A. No. I was told that this was the product of a</p> <p>22 legal review by Pircher Nichols.</p> <p>23 Q. Right. But the only thing that seems to be</p> <p>24 reflected in here are issues with regard to liens or</p> <p>25 possibly lawsuits, right?</p>
71	<p>1 Q. Was that a standard provision in Corus</p> <p>2 intercreditor agreements?</p> <p>3 A. No, not at all.</p> <p>4 Q. So I think you've indicated that Corus was and</p> <p>5 its lawyers were at least the initial drafters, but you</p> <p>6 are aware that there is a \$5 million provision in the</p> <p>7 Intercreditor Agreement at issue in this case, right?</p> <p>8 A. I am aware that there's an issue in this case.</p> <p>9 Q. Was the approval of that \$5 million, did that</p> <p>10 have to be approved by somebody at Corus before it was</p> <p>11 agreed to?</p> <p>12 A. It would have probably have been approved by</p> <p>13 the loan committee.</p> <p>14 Q. Without any input from the general counsel's</p> <p>15 office?</p> <p>16 A. Well, it's a business term.</p> <p>17 Q. Well, general counsel doesn't review documents</p> <p>18 that have significant terms and provisions with regard</p> <p>19 to one of its largest loans by Corus Bank?</p> <p>20 A. Right.</p> <p>21 Q. Is that your testimony?</p> <p>22 A. Well, my testimony is that in it 2006 we</p> <p>23 originated I think 2 billion, maybe more. So to pick</p> <p>24 out a singular term of a single intercreditor agreement</p> <p>25 gives me more credit than I probably deserve in terms</p>	73	<p>1 A. Whatever it says.</p> <p>2 Q. This document doesn't reflect -- strike that.</p> <p>3 Is it fair to say this reflects a public</p> <p>4 record review?</p> <p>5 A. I don't know how they obtained the information</p> <p>6 that is summarized in this document.</p> <p>7 Q. If you look at page 2 of 11, which is CCV</p> <p>8 16542, that has the section involving the SB Hotel Fort</p> <p>9 Lauderdale loan, right?</p> <p>10 A. Yes.</p> <p>11 Q. And there's a reflection of lien and then</p> <p>12 there's a reflection of default final judgment and then</p> <p>13 no outstanding taxes. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. That's information that one obtains from a</p> <p>16 public record review, correct?</p> <p>17 A. I believe that that is a source for that</p> <p>18 information.</p> <p>19 Q. Do you know -- this particular review appears</p> <p>20 to be a public record, at least a public record search</p> <p>21 at least with regard to the SB Hotel loan, correct?</p> <p>22 A. It indicates information was summarized which</p> <p>23 is available in the public records.</p> <p>24 Q. This doesn't tell you whether or not the due</p> <p>25 diligence included a review of the loan documents</p>

74	<p>1 themselves, does it?</p> <p>2 A. It doesn't it will you -- no.</p> <p>3 Q. Let me make it simple. In preparation for</p> <p>4 your deposition did you inquire and make a</p> <p>5 determination whether or not Starwood or whoever was</p> <p>6 conducting the due diligence with regard to the SB</p> <p>7 Hotel loan reviewed the Loan Documents associated with</p> <p>8 that loan?</p> <p>9 A. Yes.</p> <p>10 Q. Who did you ask?</p> <p>11 A. Marcos.</p> <p>12 Q. And he told you what?</p> <p>13 A. Pritcher Nichols reviewed the loan documents.</p> <p>14 Q. So this report here doesn't reflect anything</p> <p>15 at all having to do with a review of the Loan</p> <p>16 Documents, does it?</p> <p>17 A. No, but he stated this was the report they</p> <p>18 received from Pritcher Nichols. This was their legal.</p> <p>19 Q. Have you ever conducted due diligence for any</p> <p>20 company with regard to the acquisition of significant</p> <p>21 assets?</p> <p>22 A. No.</p> <p>23 Q. Would it surprise you that it is a standard</p> <p>24 practice to review the loan documents, at least the</p> <p>25 large significant loan documents?</p>	76	<p>1 MR. TRENCH: Noted.</p> <p>2 MR. GILLMAN: I would ask you to see if you</p> <p>3 can find me a witness or if we take a lunch break</p> <p>4 maybe the witness can contact somebody and find</p> <p>5 out.</p> <p>6 I will tell you, I think right now I've got,</p> <p>7 I'm looking two, three hours, probably max, but I</p> <p>8 know Joe has some questions to do. Do you want to</p> <p>9 take a lunch break? We are at 12:15.</p> <p>10 MR. TRENCH: Whatever you guys want to do.</p> <p>11 (Recess taken in the proceedings)</p> <p>12 BY MR. GILLMAN:</p> <p>13 Q. Let me show you what has been marked as</p> <p>14 Exhibit 11 and 12.</p> <p>15 (Exhibits 11 and 12 marked for identification)</p> <p>16 Q. I've handed you what has been marked as</p> <p>17 Exhibit 11 and 12. Exhibit 11 is SP Fort Lauderdale</p> <p>18 Lenders First Request for Production of Documents and</p> <p>19 Electronically Stored Information to Plaintiff, and</p> <p>20 Exhibit 12 is Plaintiff CCV's response to that.</p> <p>21 Have you seen these documents before today?</p> <p>22 A. Yes.</p> <p>23 Q. Were you the person responsible for conducting</p> <p>24 the search to obtain the documents?</p> <p>25 A. Yes.</p>
75	<p>1 A. Well, it depends. In this transaction the --</p> <p>2 my understanding is that some loan docs were reviewed</p> <p>3 and they were found to be extremely well drafted and</p> <p>4 that they did not do extensive loan doc reviews of</p> <p>5 every single loan.</p> <p>6 Q. And who did you get that information from?</p> <p>7 A. I'm surmising that from a conversation I had</p> <p>8 with Richard Perry.</p> <p>9 Q. Richard Perry is associated with an entity</p> <p>10 that was not doing the due diligence on the SB Hotel</p> <p>11 loan, correct?</p> <p>12 A. Correct. It was a general conversation.</p> <p>13 Q. My question is with regard to the entity --</p> <p>14 well, let me ask you.</p> <p>15 Do you know whether or not there was a review</p> <p>16 of the Loan Documents associated with the SB Hotel loan</p> <p>17 by Starwood Capital or the parties doing the due</p> <p>18 diligence as to the bid which ultimately culminated in</p> <p>19 acquiring the 40 percent interest in CCV?</p> <p>20 A. Not conclusively, no.</p> <p>21 MR. GILLMAN: I think and I know you won't</p> <p>22 agree with me but just for the record think we have</p> <p>23 a right to know that, and I think there was an</p> <p>24 obligation to find that out in preparing for this</p> <p>25 corporate deposition.</p>	77	<p>1 Q. Did anyone assist you?</p> <p>2 A. Yes.</p> <p>3 Q. Who assisted you?</p> <p>4 A. My paralegal, Armisha Bell.</p> <p>5 Q. And that's a paralegal at --</p> <p>6 A. At ST.</p> <p>7 Q. Anybody else?</p> <p>8 A. Alberto Salgado, who's a tech assistant. He</p> <p>9 used the services of Forensicon in Chicago and Elephant</p> <p>10 Outlook, which is our server.</p> <p>11 Q. Anyone else?</p> <p>12 A. I also -- that's it.</p> <p>13 Q. You had previously given testimony about doing</p> <p>14 a database search using selected search terms.</p> <p>15 A. Yes.</p> <p>16 Q. And then doing a search of your subservicer</p> <p>17 Trimont, and also reviewing the documents that were in</p> <p>18 the FDIC-supplied external drive, is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And the documents that were located there,</p> <p>21 those documents would be documents related to the</p> <p>22 operation -- the documents that were sent over by Corus</p> <p>23 Bank through the FDIC, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Relating to the loan?</p>

78	<p>1 A. Yes.</p> <p>2 Q. And whatever operations had occurred at CCV</p> <p>3 after October of 2009, is that right?</p> <p>4 A. Presumably.</p> <p>5 Q. Other than documents that were withheld as a</p> <p>6 result of the privilege assertion, are you aware of any</p> <p>7 documents that were requested that were not produced?</p> <p>8 A. No.</p> <p>9 (Exhibit 16 marked for identification)</p> <p>10 Q. Show you what has been marked as Exhibit 16.</p> <p>11 Do you recognize this?</p> <p>12 A. This was prepared by my counsel.</p> <p>13 Q. Have you seen it before today?</p> <p>14 A. No.</p> <p>15 Q. I would like you to refer over to page 6. The</p> <p>16 second document from the bottom, CCV PRIV139, is a</p> <p>17 January 12, 2010 e-mail, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And the author is James Dow, right?</p> <p>20 A. Yes.</p> <p>21 Q. He's not an attorney, is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And the recipients are Mr. Hundley,</p> <p>24 Mr. Barkidjija, B-A-R-K-I-D-J-I-J-A and Mr. Alvarado,</p> <p>25 is that right?</p>	80	<p>1 A. No.</p> <p>2 Q. And you were copied with this document,</p> <p>3 correct?</p> <p>4 A. That's what it indicates.</p> <p>5 Q. Now, the address, the e-mail address is CCV</p> <p>6 partners.com. That's a CCV address?</p> <p>7 A. I think it's the address of ST Residential</p> <p>8 before ST Residential's name came into use.</p> <p>9 Q. Why is this attorney-client?</p> <p>10 A. I don't know.</p> <p>11 Q. You understand that just because an attorney</p> <p>12 gets copied on something doesn't mean that it is</p> <p>13 covered by the privilege, right?</p> <p>14 MR. TRENCH: Well --</p> <p>15 A. As a matter of law?</p> <p>16 Q. Sure. You're a lawyer.</p> <p>17 MR. TRENCH: Let me object to the form of the</p> <p>18 question. He didn't bring this out as privileged,</p> <p>19 and there are two privileged bases. One is</p> <p>20 attorney-client, the other is work product. And</p> <p>21 that was done by my office, not by Mr. Solomon. So</p> <p>22 to ask him facts about why it was placed there will</p> <p>23 result in him just referring to me.</p> <p>24 Q. What was James Dow's position in January of</p> <p>25 2010?</p>
79	<p>1 A. Yes, now you know how to spell it.</p> <p>2 Q. None of them are attorneys, right?</p> <p>3 A. John Barkidjija is a attorney.</p> <p>4 Q. He's got an e-mail address at Corus Bank on</p> <p>5 January 12, 2010. Do you know why that is?</p> <p>6 A. No.</p> <p>7 Q. He was a member of your general counsel team?</p> <p>8 A. No.</p> <p>9 Q. He was hired by who? Who did he work for?</p> <p>10 A. He was a loan officer at Corus Bank.</p> <p>11 Q. So he was an attorney at Corus Bank -- excuse</p> <p>12 me. He is an attorney but he was not a practicing</p> <p>13 attorney, is that right?</p> <p>14 A. Yes.</p> <p>15 Q. At Corus Bank he was a nonattorney loan</p> <p>16 officer?</p> <p>17 A. He was a loan officer who was an attorney.</p> <p>18 Q. And his role as a loan officer was not to give</p> <p>19 or receive legal advice, it was to perform the</p> <p>20 functions of a loan officer?</p> <p>21 A. Yes.</p> <p>22 Q. By the way, for yourself, where are you</p> <p>23 licensed?</p> <p>24 A. Illinois.</p> <p>25 Q. Anywhere else?</p>	81	<p>1 A. He was an asset manager.</p> <p>2 Q. Asset manager for who?</p> <p>3 A. ST Residential.</p> <p>4 Q. Did he have any responsibility for the SB</p> <p>5 Hotel loan?</p> <p>6 A. I don't know if that loan was assigned to him</p> <p>7 at that time.</p> <p>8 Q. Does he have responsibility now?</p> <p>9 A. Yes. I previously testified that he's the</p> <p>10 asset manager.</p> <p>11 Q. Do you have any understanding as to why this</p> <p>12 document from an asset manager to Mr. Hundley, et al.,</p> <p>13 why this is deemed privileged?</p> <p>14 A. No.</p> <p>15 Q. Are you an able to tell what it is about? It</p> <p>16 says "Miami workout update." Does that mean anything</p> <p>17 to you?</p> <p>18 A. It is an update on the Miami workout.</p> <p>19 Q. And that would be -- given the fact that this</p> <p>20 property is not in Miami, what does that mean?</p> <p>21 A. He may have been reporting about a group of</p> <p>22 assets that are in this area.</p> <p>23 Q. Mr. Barkidjija in January of 2010 was not</p> <p>24 employed by Corus Bank, right?</p> <p>25 A. No.</p>

82	<p>1 Q. And he was not employed by CCV?</p> <p>2 A. Yes, he was employed by ST Residential.</p> <p>3 Q. What was his duties at that time?</p> <p>4 A. He was an asset manager. I'm not sure if he</p> <p>5 had a special designation at that time or what his</p> <p>6 title was. It may have been senior vice president. He</p> <p>7 was a loan officer at Corus Bank.</p> <p>8 Q. If you would go on to page 9, the last two</p> <p>9 items on page 9, the author is Mr. Dow and he's sending</p> <p>10 an e-mail in May of 2010 to Jonathan Pertchik. Who is</p> <p>11 he?</p> <p>12 A. Chief operating officer.</p> <p>13 Q. Of?</p> <p>14 A. ST Residential.</p> <p>15 Q. Not a lawyer?</p> <p>16 A. No. Oh, yes, he's also a lawyer.</p> <p>17 Q. Is he a practicing lawyer?</p> <p>18 A. No.</p> <p>19 Q. This wasn't being sent for legal advice?</p> <p>20 A. No.</p> <p>21 Q. This was sent to advise him in his business</p> <p>22 capacity?</p> <p>23 A. Yes.</p> <p>24 Q. Mr. Hundley we have already talked about.</p> <p>25 Ballestas, who is V. Ballestas?</p>	84	<p>1 Q. Did you participate other than to get copied?</p> <p>2 A. I don't know. What does participate mean?</p> <p>3 Q. Well, you received a copy of the e-mail. Did</p> <p>4 you do anything as a result of receiving it?</p> <p>5 A. I read the e-mails that I get and I would</p> <p>6 think about them.</p> <p>7 Q. And other than reading and thinking about</p> <p>8 them, did you do anything else?</p> <p>9 A. Often I make phone calls after I receive an</p> <p>10 e-mail and talk to the people that sent the e-mail.</p> <p>11 Q. The next page, page 11, the first four items,</p> <p>12 can you take a look and satisfy yourself that the</p> <p>13 author and the recipient are business people getting</p> <p>14 and receiving business information?</p> <p>15 A. Yes.</p> <p>16 Q. You're copied, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Other than having been copied, do you recall</p> <p>19 doing anything in conjunction with those e-mails?</p> <p>20 A. Well, as I stated, I often did something in</p> <p>21 response to e-mails. But I cannot remember what I did</p> <p>22 on May 16, 2010 in response to this particular e-mail.</p> <p>23 Q. At page 21, all of the items on this page, the</p> <p>24 author and the recipient are business people receiving</p> <p>25 business information, is that right?</p>
83	<p>1 A. Victor.</p> <p>2 Q. B-A-L-L-E-S-T-A-S, who is that?</p> <p>3 A. He's an asset manager.</p> <p>4 Q. Not a lawyer?</p> <p>5 A. No.</p> <p>6 Q. And you are cc'd, correct?</p> <p>7 A. Yes.</p> <p>8 Q. There's reference to meetings with Stillman</p> <p>9 and Ferretti, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Ferretti?</p> <p>12 A. He was a principal on a project known as</p> <p>13 Artcity.</p> <p>14 Q. Known an as what?</p> <p>15 A. Artcity. It is in South Beach.</p> <p>16 Q. Spell it, A-R-T --</p> <p>17 A. A-R-T-E-C-I-T-Y. Art City some people say.</p> <p>18 Q. Go to the next page, page 10. If you look at</p> <p>19 all of the items before the last one, the author and</p> <p>20 the recipients are not lawyers, or at least not</p> <p>21 practicing lawyers giving or receiving legal advice,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. You were copied on those, correct?</p> <p>25 A. Yes.</p>	85	<p>1 A. No.</p> <p>2 Q. Who is not?</p> <p>3 A. Peter Freund is a attorney.</p> <p>4 Q. Where is that? Is that the middle -- the top</p> <p>5 one, Peter Freund with ST Residential?</p> <p>6 MR. TRENCH: He's actually on almost all of</p> <p>7 them or is on all of them.</p> <p>8 Q. What was his role in this?</p> <p>9 A. He's one --</p> <p>10 Q. Does he work for you?</p> <p>11 A. Yes.</p> <p>12 Q. Go to the next page. Okay. We're done with</p> <p>13 that exhibit. I would like you to go back if you will</p> <p>14 to the complaint, which is Exhibit 6. I'd like you to</p> <p>15 turn if you would to paragraph 17 at page 8. Paragraph</p> <p>16 17 says that the FDIC sold the Loan, and the loan is</p> <p>17 defined in this complaint to be the Loan to SB Hotel,</p> <p>18 okay? So it says the FDIC sold the Loan and Loan</p> <p>19 Documents to plaintiff, is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And that's the transaction in the LCSA, is</p> <p>22 that right?</p> <p>23 A. Yes.</p> <p>24 Q. And then it says the FDIC endorsed the note by</p> <p>25 Allong, is that correct?</p>

86	<p>1 A. Yes.</p> <p>2 Q. And then assigned the mortgage?</p> <p>3 A. Yes.</p> <p>4 Q. -- the ALR and other loan documents to</p> <p>5 plaintiff, CCV, by an assignment of mortgage and other</p> <p>6 loan documents, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And the Allong and assignment is composite</p> <p>9 Exhibit H. That's what it says, right?</p> <p>10 A. It says that.</p> <p>11 Q. Let's go to composite Exhibit 8. The first</p> <p>12 page is the Allong, right?</p> <p>13 A. Yes.</p> <p>14 Q. The second is a document entitled "Assignment</p> <p>15 of mortgage and other loan documents." Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. This says when is prepared and when recorded</p> <p>19 returned to Corus Construction Venture, LLC 591, West</p> <p>20 Putnam Avenue, Greenwich, Connecticut, Attention Eric</p> <p>21 Franklin, Esq. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Whose address is 591 West Putnam?</p> <p>24 A. Starwood Capital.</p> <p>25 Q. And Eric Franklin is a attorney for Starwood</p>	88	<p>1 A. Yes.</p> <p>2 Q. So included in the transfer from FDIC-R to CCV</p> <p>3 was the loan, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And that included the promissory note?</p> <p>6 A. Yes.</p> <p>7 Q. The mortgage?</p> <p>8 A. Yes.</p> <p>9 Q. And the Intercreditor Agreement between Corus</p> <p>10 Bank and SP Lender, right?</p> <p>11 A. Originally.</p> <p>12 Q. But as of the date of this transfer it was</p> <p>13 between FDIC Receiver and SP Lender, right?</p> <p>14 A. Yes.</p> <p>15 MR. TRENCH: Wait. Just -- you lost me on</p> <p>16 that one.</p> <p>17 MR. GILLMAN: I don't need to lose you.</p> <p>18 MR. TRENCH: I understand. I object to the</p> <p>19 form of the question. Would you repeat it or read</p> <p>20 it back.</p> <p>21 (Record read)</p> <p>22 MR. TRENCH: That's the question I don't</p> <p>23 understand. What were you asking was between FDIC</p> <p>24 and SP Lender?</p> <p>25 MR. GILLMAN: David, if and when I put you</p>
87	<p>1 Capital?</p> <p>2 A. I think he has a separate law firm but</p> <p>3 essentially works for Starwood Capital.</p> <p>4 Q. If you go down to the last paragraph on page</p> <p>5 1, and it says "Subject to the terms and conditions of</p> <p>6 the Loan Contribution Sale Agreement assignor," that's</p> <p>7 the FDIC receiver, correct --</p> <p>8 A. Yes.</p> <p>9 Q. -- "does hereby grant, bargain, sell, assign,</p> <p>10 transfer and set over to assignee," that's CCV,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. -- "its successors and assigns," correct?</p> <p>14 A. Yes.</p> <p>15 Q. -- "all of assignor's right, title and</p> <p>16 interest in and to the other recorded Loan Documents</p> <p>17 described on Exhibit A attached hereto," right?</p> <p>18 A. That's what it says.</p> <p>19 Q. And if you go to Exhibit A to the assignment</p> <p>20 included in the transferred and assigned documents is</p> <p>21 the Intercreditor Agreement, item 4, right?</p> <p>22 A. Yes.</p> <p>23 Q. And this reflects that that Intercreditor</p> <p>24 Agreement had previously been recorded in the public</p> <p>25 records at Broward County, is that right?</p>	89	<p>1 under oath and have your deposition --</p> <p>2 MR. TRENCH: Okay, I object to the form of the</p> <p>3 question.</p> <p>4 MR. GILLMAN: I understand that. The witness</p> <p>5 obviously understood and answered.</p> <p>6 MR. TRENCH: I don't know whether he obviously</p> <p>7 understood it or not.</p> <p>8 BY MR. GILLMAN:</p> <p>9 Q. Let's turn if we can for a moment to Exhibit</p> <p>10 4, which is the Intercreditor Agreement. Can you get</p> <p>11 that in front of you. Do you have it?</p> <p>12 A. Yes.</p> <p>13 Q. If you would go to the first page. We have</p> <p>14 already discussed that this is dated December 15, 2006,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Is it correct that there was a total lending</p> <p>18 to the borrower of approximately 180 some-odd million,</p> <p>19 139 of which was the loan from Corus and 45.7 million</p> <p>20 of which was from SP Lender?</p> <p>21 A. Yes.</p> <p>22 Q. And that was done on the same day, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And it was part of a unified financing to the</p> <p>25 borrower, correct?</p>

<p style="text-align: right;">90</p> <p>1 A. Unified?</p> <p>2 Q. Yes. What I mean by that is is it your</p> <p>3 understanding that the borrower required both loans in</p> <p>4 order to proceed with the project?</p> <p>5 A. I believe it was part of the budget.</p> <p>6 Q. So without the SP Lender loan Corus Bank</p> <p>7 wouldn't have closed its \$139 million loan, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And this Intercreditor Agreement was designed</p> <p>10 to and did establish the rights and obligations as</p> <p>11 between the party identified as the Senior Lender and</p> <p>12 SP Lender identified as the Junior Lender, is that</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. If you go to the second page it says that this</p> <p>16 is an agreement between Corus Bank, NA and its</p> <p>17 successors and assigns in its capacity as a lender,</p> <p>18 right? This is page 2 at the very beginning.</p> <p>19 A. Yes.</p> <p>20 Q. And the term "Senior Lender" is actually later</p> <p>21 defined if you go to page 7 of the agreement, and</p> <p>22 "Senior Lender as used in this intercreditor agreement</p> <p>23 is defined in the introductory paragraph to this</p> <p>24 agreement." Have I read that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">92</p> <p>1 disposition of either directly or indirectly by</p> <p>2 operation of law or otherwise." Have I read that</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you understood that to be the definition</p> <p>6 of the term transfer as used in the Intercreditor</p> <p>7 Agreement?</p> <p>8 A. Yes.</p> <p>9 Q. The Intercreditor Agreement I think you</p> <p>10 already indicated was recorded and there was provision</p> <p>11 for it to be recorded on page 12, right?</p> <p>12 A. Yes.</p> <p>13 Q. So anybody doing a review of the public record</p> <p>14 with regard to this Loan would find the Intercreditor</p> <p>15 Agreement and have it and its terms available for their</p> <p>16 review, is that right?</p> <p>17 A. It was there.</p> <p>18 Q. It and all of its terms, right?</p> <p>19 A. Yes.</p> <p>20 Q. Let's go over to page 18. Page 18 has a</p> <p>21 Section 8 entitled Senior Indebtedness, is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And subsection A is Limitation on Transfer, is</p> <p>24 that right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">91</p> <p>1 Q. So the defined term Senior Lender as used</p> <p>2 throughout this document is Corus Bank, NA, together</p> <p>3 with its successors and assigns in its capacity as a</p> <p>4 lender, right?</p> <p>5 A. Yes.</p> <p>6 Q. Under the Intercreditor Agreement there is</p> <p>7 actually a definition of the term Affiliate on 3,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And read through that. That's a standard</p> <p>11 definition of that term, correct, the term affiliate?</p> <p>12 A. Yes.</p> <p>13 Q. There's a definition of the term Control on</p> <p>14 page 4, and that's a typical and standard definition of</p> <p>15 the term control, right?</p> <p>16 A. It is a definition of control. I really don't</p> <p>17 know how control is always or typically defined.</p> <p>18 Q. But you agree that that is an accepted</p> <p>19 definition of the term control?</p> <p>20 A. I would say that it is a reasonable definition</p> <p>21 of control.</p> <p>22 Q. Go over to page 8. There's a definition of</p> <p>23 the defined term Transfer: "The assignment, pledge,</p> <p>24 conveyance, sale, transfer, mortgage, encumbrance,</p> <p>25 grant of the security interest, participation or other</p>	<p style="text-align: right;">93</p> <p>1 Q. And there is a limitation and what occurs if</p> <p>2 there is a transfer of the senior indebtedness or any</p> <p>3 of the Senior Loan Documents without the consent of the</p> <p>4 Junior Lender, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Included within the Senior Loan Documents</p> <p>7 would be the Intercreditor Agreement it itself, right?</p> <p>8 A. Yes.</p> <p>9 Q. And that would include the loan, the mortgage,</p> <p>10 all of the lien information, guarantees, et cetera, is</p> <p>11 that right?</p> <p>12 A. Uh-huh. Yes.</p> <p>13 Q. There has been a transfer of the SB Hotel</p> <p>14 loan, the Senior Loan and the Senior Loan Documents</p> <p>15 done without the consent of SP Lender, right?</p> <p>16 A. The transfer to the receiver was without</p> <p>17 consent.</p> <p>18 Q. And the transfer by the receiver to CCV was</p> <p>19 also without consent, right?</p> <p>20 A. I believe under federal statutes that consent</p> <p>21 is not required.</p> <p>22 Q. That's not my question. The issue isn't, and</p> <p>23 respectfully my question doesn't have anything to do</p> <p>24 whether consent was required or whether it was</p> <p>25 requested or not.</p>

94	<p>1 As the designee of CCV you agree that no</p> <p>2 consent was sought or obtained from SP Lender with</p> <p>3 regard to the transfer of he Senior Loan and the Senior</p> <p>4 Loan Documents to CCV?</p> <p>5 A. Yes.</p> <p>6 Q. Under the clear and unambiguous provision of</p> <p>7 Section 8A in the event of an unconsented or a</p> <p>8 nonconsented to transfer, SP Lender is entitled to</p> <p>9 receive \$5 million, right?</p> <p>10 A. From who?</p> <p>11 Q. I didn't ask that. Well, I will ask. From</p> <p>12 the Senior Lender. Would you agree with that?</p> <p>13 A. It says that, in the event of a transfer by</p> <p>14 the Senior Lender Senior Lender shall deliver \$5</p> <p>15 million to Junior Lender as Junior Lender's full</p> <p>16 liquidated damages for such transfer.</p> <p>17 Q. So would it be correct that in the event that</p> <p>18 there is a transfer of he Senior Loan and/or the Senior</p> <p>19 Loan Documents then Senior Lender is obligated to</p> <p>20 deliver \$5 million to the Junior Lender?</p> <p>21 A. Not always.</p> <p>22 Q. Tell me when it doesn't.</p> <p>23 A. When the transferee is the FDIC's receiver.</p> <p>24 Q. Well you are making a legal conclusion.</p> <p>25 A. I think you are asking me a legal question.</p>	96	<p>1 A. I don't know.</p> <p>2 Q. So you don't know one way or the other under</p> <p>3 those circumstances?</p> <p>4 A. I haven't reviewed general hornbook law for</p> <p>5 quite sometime.</p> <p>6 Q. You would agree that to the extent that</p> <p>7 general law would say that in the absence of a</p> <p>8 specified payment date where a payment is required it</p> <p>9 would be due within a reasonable time after the event</p> <p>10 causing the payment to be due, right?</p> <p>11 MR. TRENCH: Object to the form of the</p> <p>12 question.</p> <p>13 A. I think you are asking me to give a legal</p> <p>14 conclusion.</p> <p>15 Q. Go over to page 26. The agreement is clear</p> <p>16 that the agreement shall inure to the benefit of and</p> <p>17 shall be binding upon the parties and their respective</p> <p>18 successors and assigns, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you will agree that CCV is a successor to</p> <p>21 this Intercreditor Agreement, correct?</p> <p>22 A. Yes.</p> <p>23 MR. GILLMAN: Why don't we take a break.</p> <p>24 Lunch is here.</p> <p>25 (Recess taken in the proceedings)</p>
95	<p>1 Q. No. I'm asking you do you agree that's what</p> <p>2 the document says?</p> <p>3 A. I --</p> <p>4 Q. Let me try this way. The document, the</p> <p>5 Intercreditor Agreement, would you agree that it</p> <p>6 provides that in the event that he Senior Loan and/or</p> <p>7 the Senior Loan Documents are transferred without the</p> <p>8 consent of the Junior Lender, SP Lender, then the</p> <p>9 Senior Lender is obligated to deliver \$5 million to SP</p> <p>10 Lender? That's what the document says, right?</p> <p>11 A. That's what the document says.</p> <p>12 Q. And that's clear and unambiguous, right?</p> <p>13 A. In the document.</p> <p>14 Q. So it is a yes to my question? Yes, in the</p> <p>15 document, right?</p> <p>16 A. Yes, in the document it's clear and</p> <p>17 unambiguous.</p> <p>18 Q. All right. Now, when that \$5 million is</p> <p>19 required to be delivered is not specified, correct?</p> <p>20 A. I don't see a specification for when the funds</p> <p>21 should be delivered.</p> <p>22 Q. And you are familiar that as a matter of</p> <p>23 general hornbook law where there is a payment</p> <p>24 obligation but no specified date, then the payment is</p> <p>25 within a reasonable period of time, is that correct?</p>	97	<p>1 AFTERNOON SESSION</p> <p>2 (1:59 p.m.)</p> <p>3 JOEL SOLOMON, resumed.</p> <p>4 BY MR. GILLMAN:</p> <p>5 Q. Ready to start?</p> <p>6 A. Ready.</p> <p>7 Q. Mr. Solomon, you understand you are still</p> <p>8 under oath?</p> <p>9 A. Yes.</p> <p>10 Q. During the break did you have any substantive</p> <p>11 discussions with regard to your deposition with anyone?</p> <p>12 A. My attorney and I discussed the case</p> <p>13 generally. That's been it.</p> <p>14 Q. As a result of that discussion is there</p> <p>15 anything you want to change, any answer, or do you</p> <p>16 stand on your answers given this morning?</p> <p>17 A. I stand on my answers.</p> <p>18 Q. Let's turn if we will to Exhibit 5, which is</p> <p>19 the LCSA. I think we already established that you</p> <p>20 personally didn't have any participation in the</p> <p>21 drafting or the review or negotiation of Exhibit 5, the</p> <p>22 LCSA, is that right?</p> <p>23 A. Yes.</p> <p>24 Q. As the designee for CCV what, if anything,</p> <p>25 have you done to prepare you to testify with regard to</p>

98	<p>1 the LCSA?</p> <p>2 A. I've worked with it generally on and off for</p> <p>3 the last couple of years.</p> <p>4 Q. Have you had any conferences or discussions</p> <p>5 with anyone to prepare for your deposition specifically</p> <p>6 with regard to the LCSA?</p> <p>7 A. No.</p> <p>8 Q. The intent of the document you will agree is</p> <p>9 gleaned by the words used, right?</p> <p>10 A. Yes.</p> <p>11 Q. And this was drafted by sophisticated parties</p> <p>12 and their counsel and reviewed and approved, is that</p> <p>13 right?</p> <p>14 A. I would presume.</p> <p>15 Q. Do you have any reason to believe that it was</p> <p>16 not reviewed by counsel and sophisticated parties?</p> <p>17 A. I have no reason to believe that it was not.</p> <p>18 Q. The transaction here where the FDIC is</p> <p>19 appointed as receiver and a month goes by and the FDIC</p> <p>20 establishes a limited liability company and then the</p> <p>21 winner of the bid process comes in and buys all or a</p> <p>22 part of the LLC's membership interest, that's what</p> <p>23 happened here, in basic terms, is that right?</p> <p>24 A. In basic terms.</p> <p>25 Q. Do you have any information or knowledge as to</p>	100	<p>1 the redactions made by the FDIC on their Web site on</p> <p>2 the posting of this document on their Web site.</p> <p>3 Q. I'm unclear about one thing. This is an</p> <p>4 agreement between the FDIC as receiver and Corus</p> <p>5 Construction Venture, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Corus Construction Venture has an unredacted</p> <p>8 copy of this, correct?</p> <p>9 A. Yes.</p> <p>10 Q. My document request was to Corus Construction</p> <p>11 Venture. Do you know why an unredacted form was not</p> <p>12 provided?</p> <p>13 A. I would have to consult with counsel to see</p> <p>14 what --</p> <p>15 Q. I'm just asking if you know?</p> <p>16 A. I don't know.</p> <p>17 Q. Did you play any part in the decision to</p> <p>18 redact?</p> <p>19 A. I recall general discussions.</p> <p>20 Q. So why was this redacted?</p> <p>21 A. Again, I'd have to defer to counsel's</p> <p>22 decision.</p> <p>23 Q. No, I'm trying to find out the factual basis</p> <p>24 for it if you know. You said you had some</p> <p>25 participation. For example, the Section 4.16 there's a</p>
99	<p>1 whether or not that form of transaction has been used</p> <p>2 by the FDIC in any other situation or circumstance?</p> <p>3 A. Yes, I believe it has.</p> <p>4 Q. Do you know how many?</p> <p>5 A. No.</p> <p>6 Q. Can you give me an example?</p> <p>7 A. It's on their Web site. I think it is</p> <p>8 referred to as a structured transaction.</p> <p>9 Q. Was that on their Web site before or after the</p> <p>10 Corus? Do you know if it was the first one or if this</p> <p>11 was a transaction done after others had been completed?</p> <p>12 A. Others might have been done but information</p> <p>13 about it may not have been posted yet. This is kind of</p> <p>14 a ground-breaking approach on this scale.</p> <p>15 Q. If you turn to the first page, the first page</p> <p>16 is the title page reflecting what the document is and</p> <p>17 the date, correct?</p> <p>18 A. Yes.</p> <p>19 Q. There are certain redactions in this document</p> <p>20 including on the second page within the table of</p> <p>21 contents Section 4.16. What was redacted?</p> <p>22 A. I would have to look at the unredacted version</p> <p>23 to be able to tell you what was redacted.</p> <p>24 Q. Do you know why it was redacted?</p> <p>25 A. I think the redactions that were followed were</p>	101	<p>1 block out and then the word "Loan." Do you know why</p> <p>2 that was blocked out?</p> <p>3 MR. TRENCH: Let me mention something which</p> <p>4 may help clear this up. This is a document which</p> <p>5 we got off the Web site. If you look at</p> <p>6 Mr. Carver's filing on behalf of the FDIC, he</p> <p>7 attaches this as an exhibit, the unredacted version</p> <p>8 of this.</p> <p>9 MR. GILLMAN: Well, I'll go look at that.</p> <p>10 Q. My question is why CCV did not provide an</p> <p>11 unredacted -- if it was redacted because of some reason</p> <p>12 CCV has I'd like to know what it is.</p> <p>13 MR. GILLMAN: David, you are not telling me</p> <p>14 that CCV didn't have an unredacted copy, are you?</p> <p>15 MR. TRENCH: What I'm telling you is we got a</p> <p>16 package of materials and produced what we had. I</p> <p>17 didn't look for an unredacted copy. In fact I</p> <p>18 thought I saw an unredacted copy somewhere and it</p> <p>19 may have been in Chris Carver's attachment.</p> <p>20 MR. GILLMAN: We'll go on and deal with this.</p> <p>21 MR. TRENCH: These redactions were not done by</p> <p>22 us. They were done by -- when you go to the Web</p> <p>23 site and take it down, the FDIC had posted it with</p> <p>24 those redactions.</p> <p>25 BY MR. GILLMAN:</p>

102	<p>1 Q. Does CCV maintain its own files?</p> <p>2 A. Trimont maintains the files.</p> <p>3 Q. So Trimont would maintain execution copies of</p> <p>4 all these documents, right?</p> <p>5 A. No, we have copies of those documents.</p> <p>6 Q. So CCV, you, ST Residential, right?</p> <p>7 A. Yes.</p> <p>8 Q. ST Residential maintains execution copies of</p> <p>9 all of these documents?</p> <p>10 A. Yes.</p> <p>11 Q. And that would include an unredacted copy of</p> <p>12 the LCSA, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know why that wasn't provided?</p> <p>15 A. I do not.</p> <p>16 Q. Let's go to the first page after the table of</p> <p>17 contents, which is headed by the words Loan</p> <p>18 Contribution and Sale Agreement. At the time that this</p> <p>19 Loan Contribution and Sale Agreement was executed and</p> <p>20 effectuated the FDIC was still the sole member of CCV,</p> <p>21 right?</p> <p>22 A. Could you repeat the question.</p> <p>23 Q. At the time this LCSA was executed and the</p> <p>24 transfer occurred to CCV, the FDIC-R was still the</p> <p>25 initial and sole member of CCV, right?</p>	104	<p>1 Q. And included in that is the SB Hotel \$139</p> <p>2 million loan, mortgage and all the associated loan</p> <p>3 documents including the Intercreditor Agreement with SP</p> <p>4 Lender, is that right?</p> <p>5 A. Yes.</p> <p>6 Q. The third whereas says, "whereas after</p> <p>7 conducting a sealed bid sale for a membership</p> <p>8 interest" --</p> <p>9 MR. TRENCH: Fourth whereas.</p> <p>10 Q. The fourth, excuse me. "Whereas after</p> <p>11 conducting a sealed bid sale for membership interest in</p> <p>12 the company representing 40 percent of the total</p> <p>13 outstanding equity interest of the company," and it is</p> <p>14 called the tranferred LLC interest, "the receiver</p> <p>15 selected Northwest Investments, LLC, referred to as the</p> <p>16 sponsor as the successful bidder pursuant to the bid</p> <p>17 submitted by it and the sponsor has deposited</p> <p>18 \$53,440,000 with the FDIC receiver." Is that right?</p> <p>19 A. With the initial member.</p> <p>20 Q. Which is the FDIC receiver, correct?</p> <p>21 A. Yes.</p> <p>22 Q. The total purchase price bid was over a</p> <p>23 billion dollars, is that right?</p> <p>24 A. I don't know what total price means.</p> <p>25 Q. The total amount bid by what is referred to as</p>
103	<p>1 A. I believe that's correct.</p> <p>2 Q. If you go to the next page, the first full</p> <p>3 whereas on that page says "Whereas pursuant to the</p> <p>4 limited liability company interest sale and assignment</p> <p>5 agreement dated the same day, the initial member, the</p> <p>6 FDIC, agreed to sell and transfer 40 percent of its</p> <p>7 interest, correct?</p> <p>8 A. Yes.</p> <p>9 (Exhibit 17 marked for identification)</p> <p>10 Q. Showing you what has been marked as Exhibit 17</p> <p>11 and that's a document CCV 7393 through 7407. Is that</p> <p>12 the Limited Liability Company Interest and Assignment</p> <p>13 Agreement that we have just had reference to in the</p> <p>14 Loan Contribution and Sale Agreement?</p> <p>15 A. I believe it is.</p> <p>16 Q. Let's take a moment and look at this Limited</p> <p>17 Liability Company Interest and Assignment Agreement.</p> <p>18 So on October 16, 2009 there is a transaction</p> <p>19 in which through the LCSA the FDIC as receiver</p> <p>20 transfers and contributes a substantial number of loans</p> <p>21 and loan documents to CCV, right?</p> <p>22 A. Yes.</p> <p>23 Q. And these are the loans of the former Corus</p> <p>24 Bank, right?</p> <p>25 A. Right.</p>	105	<p>1 the sponsor, Northwest Investments, LLC, is that right?</p> <p>2 A. No, I don't think so.</p> <p>3 Q. What was the total bid?</p> <p>4 A. I think the bid was cash and then the number</p> <p>5 that you are positing you have to back into based on</p> <p>6 the debt portion of the deal and the percentage</p> <p>7 ownership that was being purchased.</p> <p>8 Q. The potential value to the sponsor was over a</p> <p>9 billion dollars, is that right?</p> <p>10 A. I don't know what that means.</p> <p>11 Q. What does the term sponsor mean?</p> <p>12 A. That depends on the context.</p> <p>13 Q. How about in the context here?</p> <p>14 A. Where's here?</p> <p>15 Q. In this Exhibit 17.</p> <p>16 A. What's the question?</p> <p>17 Q. The term sponsor, does it have any meaning</p> <p>18 other than just simply being a defined term meaning</p> <p>19 Northwest Investments?</p> <p>20 A. If it does I would have to review the entire</p> <p>21 document to glean any other meaning. Here it seems to</p> <p>22 be a defined term for Northwest Investments.</p> <p>23 Q. As part of this transfer of 40 percent the</p> <p>24 FDIC-R, the initial member, also transferred</p> <p>25 management, correct?</p>

106	<p>1 A. Yes.</p> <p>2 Q. Let's go back if we can to the LCSA, Exhibit</p> <p>3 5. On October 16, 2009 the FDIC-R transferred the SB</p> <p>4 Hotel Loan and all of the Loan Documents to CCV,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And is that is a defined term called the</p> <p>8 Closing Date, right?</p> <p>9 A. What was the defined date?</p> <p>10 Q. October 16, 2009?</p> <p>11 MR. TRENCH: Do you have that reference?</p> <p>12 Q. Go to page 4, Closing is a defined term</p> <p>13 meaning the consummation of the transactions</p> <p>14 contemplated in LLC Interest Sale Agreement, right?</p> <p>15 MR. TRENCH: Right.</p> <p>16 MR. GILLMAN: And if you go to the LLC</p> <p>17 interest sale agreement --</p> <p>18 Q. And if you go to the LLC Interest Sale</p> <p>19 Agreement, which we have marked as Exhibit 17, you will</p> <p>20 see that that date is October 16, 2009, correct?</p> <p>21 MR. TRENCH: It says it is made, that's right.</p> <p>22 MR. GILLMAN: Now I got your testimony. Let's</p> <p>23 get CCV's.</p> <p>24 MR. TRENCH: Okay.</p> <p>25 Q. Do you agree that the Closing Date, that</p>	108	<p>1 October 16, 2009 is FDIC-R transferred to CCV and CCV</p> <p>2 accepted all of the loans and the obligations</p> <p>3 associated with the loans subject to an exclusion of</p> <p>4 the defined term Excluded Liabilities?</p> <p>5 MR. TRENCH: Object to the form of the</p> <p>6 question.</p> <p>7 Q. As you're thinking I'm going to let the record</p> <p>8 reflect that during your thought process the witness</p> <p>9 has written in red ink on the original exhibit so that</p> <p>10 the marks that appear on the original exhibit in red</p> <p>11 are those of the witness, is that right?</p> <p>12 A. Yes. Sorry. I didn't realize this was the</p> <p>13 original exhibit.</p> <p>14 Q. That's fine. It is not an original document,</p> <p>15 it is just an original exhibit. That's okay.</p> <p>16 A. The red pen works better than the blue.</p> <p>17 Q. Do you recall the question?</p> <p>18 A. No.</p> <p>19 MR. GILLMAN: Would you read it back.</p> <p>20 (Question read by the court reporter)</p> <p>21 MR. TRENCH: And I objected to the form of the</p> <p>22 question.</p> <p>23 A. I don't know how to answer that question.</p> <p>24 Q. Yes or no would be helpful.</p> <p>25 A. Well, is it fair to say that what happened on</p>
107	<p>1 defined term within the LCSA, the Closing Date is</p> <p>2 October 16, 2009?</p> <p>3 A. Well, it says "the closing date shall mean the</p> <p>4 date on which the closing occurs."</p> <p>5 Q. And Closing shall mean the consummation of the</p> <p>6 transactions contemplated in the LLC Interest Sale</p> <p>7 Agreement, correct?</p> <p>8 A. It says that.</p> <p>9 Q. And the first page of the LLC interest Sale</p> <p>10 and Assignment Agreement defines Closing Date as</p> <p>11 10/16/09, correct?</p> <p>12 A. Yes.</p> <p>13 Q. So going through that process in the LCSA, the</p> <p>14 closing date is October 16, 2009, correct?</p> <p>15 MR. TRENCH: Object to the form of the</p> <p>16 question.</p> <p>17 Q. Having reviewed these documents, sir, what is</p> <p>18 the closing date as referenced in the LCSA?</p> <p>19 A. I believe the closing date is October 16,</p> <p>20 2009.</p> <p>21 Q. Go on to page 5, there's a term, Excluded</p> <p>22 Liabilities, and it has meaning given in Section 2.2,</p> <p>23 is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Is it fair to say that what happened on</p>	109	<p>1 October 16, 2009 --</p> <p>2 Q. I'll rephrase. By this transaction the LCSA,</p> <p>3 Loans, Loan Documents, Obligations of the FDIC-R that</p> <p>4 had been obligations of Corus were transferred to CCV</p> <p>5 subject to a carveout of Excluded Liabilities?</p> <p>6 MR. TRENCH: I object to the form of the</p> <p>7 question.</p> <p>8 Q. Is that right?</p> <p>9 A. No.</p> <p>10 Q. So what was done?</p> <p>11 A. Well, again it was a complex transaction. I</p> <p>12 think you're trying to distill a very lengthy legal</p> <p>13 agreement into a sentence and I don't think it's a fair</p> <p>14 characterization of everything that legally occurred on</p> <p>15 that date.</p> <p>16 Q. Well, then let's back down. I don't care</p> <p>17 about everything that happened on that date. Right now</p> <p>18 I'm focused on the LCSA, the Loan Contribution Sale</p> <p>19 Agreement. The Loan Contribution Sale Agreement</p> <p>20 pursuant to this, there was a transfer to CCV and an</p> <p>21 acceptance by CCV of certain things, is that right?</p> <p>22 A. Generally.</p> <p>23 Q. Those certain things included loans, loan</p> <p>24 documents, and related documents that had previously</p> <p>25 been owned by Corus Bank, correct?</p>

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<p>1 MR. TRENCH: I object to the form of the 2 question. The document speaks for itself but if 3 you can answer go ahead. 4 Q. Is that correct? 5 A. In a broad sense that's what occurred. 6 Q. Included in what was transferred to CCV was 7 the Loan and Obligations as defined with regard to the 8 SB Hotel loan and all of the Loan Documents and other 9 associated documents, correct? 10 MR. TRENCH: I object to the form of the 11 question. Specifically "as defined." 12 MR. GILLMAN: I don't need to know why. 13 A. You know, I don't think that it's reasonable 14 to -- for me to have to agree or disagree with your 15 summary statement of what was included and what was 16 transferred to CCV. The document has pages and pages 17 of definitions. On Section 2.2 it describes 18 liabilities assumed by the company, and it says "The 19 company hereby assumes and agrees to perform and pay 20 all of the Obligations." Obligations is a defined 21 term. 22 So -- 23 Q. All right, let's go through it. Let's try to 24 break this down. You've referenced Section 2.2, and 25 that's titled Liabilities Assumed by the Company. The</p>	<p>1 Q. So what is conveyed by the FDIC and accepted 2 by CCV is under Sub A, the Loans, right? 3 A. Yes. 4 Q. And Loans is a defined term, correct? 5 A. Yes. 6 Q. "Including without limitation all acquired 7 collateral equity and other interest in ownership 8 entities, REO property, notes," read it so far? 9 A. Yes. 10 Q. It also includes the other Loan Documents and 11 Related Agreements? 12 A. I lost you. 13 Q. In the parenthetical, "the loans including 14 without limitation all acquired collateral, equity and 15 other interest in other entities, REO property notes, 16 the other Loan documents and Related Agreements," 17 correct? 18 A. Yes. 19 Q. Loan Documents is a defined term, right? 20 A. Yes. 21 Q. Related Agreements is a defined term, right? 22 A. Yes. 23 Q. And then it says "including all future 24 advances made with respect thereto effective as of the 25 Closing Date and all rights in the collateral pursuant</p>
111	113
<p>1 company being CCV, right? 2 A. Yes. 3 Q. But before we get to liabilities we actually 4 have to have the contribution and sale, and that 5 occurred on 2.1, correct, Section 2.1? 6 A. Yes. 7 Q. So Section 2.1 provides: "Terms and 8 conditions. The initial member," that's FDIC-R, 9 correct? 10 A. Yes. 11 Q. "Hereby conveys to the company," that's CCV, 12 correct? 13 A. Yes. 14 Q. -- and "the company hereby acquires and 15 accepts from the initial member," CCV acquires and 16 accepts from FDIC-R, right -- 17 A. Yes. 18 Q. -- "without recourse by way of a sale to the 19 extent of the principal amount of the purchase money 20 notes and otherwise as a capital contribution in either 21 case without representation or warranty expressed or 22 implied, all right, title and interest of the initial 23 member of the FDIC whether held directly or indirectly 24 in and to" -- I've read it so far correctly, right? 25 A. Yes.</p>	<p>1 to the collateral documents," right? 2 A. Yes. 3 Q. We have already established that the closing 4 date is October 16, 2009, right? 5 A. Yes. 6 Q. So let's go take a look at the definition of 7 the term "The Loans." That appears on page 7, correct? 8 A. Yes. 9 Q. "Loan. Defined term shall mean any loan, loan 10 participation, ownership entity" and it goes on, and 11 please read it, and then it says "or other related 12 asset or any related agreement," correct? 13 A. Yes. 14 Q. And included in Related Agreements with regard 15 to the SB Hotel loan would be the Intercreditor 16 Agreement; that's a related agreement, right? 17 A. Yes. 18 Q. So then we have "Loan Documents shall mean all 19 documents, agreements, certificates, instruments and 20 other writings." Included within the Loan Documents is 21 the Intercreditor Agreement, right? 22 It is not a trick question so maybe I can help 23 you out. 24 (Exhibit 18 marked for identification) 25 Q. I'm going to give you what has been marked as</p>

114	<p>1 Exhibit 18. You've looked at this before because it is</p> <p>2 an exhibit to the complaint, but this is the Assignment</p> <p>3 of Mortgage and other Loan Documents. And if you will</p> <p>4 recall, and please look, that included within the loan</p> <p>5 documents that were assigned to and accepted by CCV,</p> <p>6 you go to Exhibit A is the Subordination and</p> <p>7 Intercreditor Agreement, right?</p> <p>8 A. Agreed.</p> <p>9 Q. This LCSA is the document by which the</p> <p>10 Intercreditor Agreement was transferred to CCV and CCV</p> <p>11 accepted, correct?</p> <p>12 A. Yes.</p> <p>13 Q. So now we were talking about what got</p> <p>14 transferred. So what gets transferred and what was</p> <p>15 accepted by CCV is the loans, the other loan documents,</p> <p>16 effective as of closing date, and that included the</p> <p>17 Intercreditor Agreement, right?</p> <p>18 A. Yes.</p> <p>19 Q. Now this goes on in Article 2 to have a</p> <p>20 separate section entitled, Section 2.2 "Liabilities</p> <p>21 assumed by the Company." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And that's liabilities assumed by CCV,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	116	<p>1 a result of a transfer that is made without the consent</p> <p>2 of SP Lender under the Intercreditor Agreement, right?</p> <p>3 A. Yes.</p> <p>4 Q. And that's a contractual commitment within the</p> <p>5 Intercreditor Agreement, right?</p> <p>6 A. Correct.</p> <p>7 Q. And that becomes due or payable after the</p> <p>8 closing date, right?</p> <p>9 A. No.</p> <p>10 Q. No? When does it become due or payable?</p> <p>11 A. On the closing date.</p> <p>12 Q. We have already established in the</p> <p>13 Intercreditor Agreement that there is no defined</p> <p>14 payment time, correct? We already went through that.</p> <p>15 A. Right.</p> <p>16 Q. And the issue is whether when there is no</p> <p>17 defined payment time the law will infer that it will be</p> <p>18 paid within a reasonable period of time, correct?</p> <p>19 MR. TRENCH: Object to the form of the</p> <p>20 question.</p> <p>21 MR. GILLMAN: I'll rephrase.</p> <p>22 Q. I want you to assume that where a contract</p> <p>23 does not provide a specific date for payment that the</p> <p>24 law will infer that payment will be made within a</p> <p>25 reasonable time of that date. I want you to assume</p>
115	<p>1 Q. It says "The company hereby assumes and agrees</p> <p>2 to perform and pay all of the Obligations," right?</p> <p>3 A. Yes.</p> <p>4 Q. Obligations is capitalized, it is a defined</p> <p>5 term, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Let's go back to, now, page 9. Page 9 defines</p> <p>8 the term Obligations, right?</p> <p>9 A. It does.</p> <p>10 Q. "Shall mean all obligations, commitments and</p> <p>11 liabilities relating to a loan." Have I read that</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. Including within the defined term Loan, as you</p> <p>15 have testified, is the Intercreditor Agreement, right?</p> <p>16 A. Yes.</p> <p>17 Q. And then it goes on to say or --</p> <p>18 MR. TRENCH: Well, you skipped a couple.</p> <p>19 Q. "All obligations, commitments and liabilities</p> <p>20 relating to a Loan and arising, or (solely with respect</p> <p>21 to contractual commitments becoming due or payable</p> <p>22 after the closing date in accordance with their terms)</p> <p>23 becoming due or payable after the closing date," right?</p> <p>24 A. It says that.</p> <p>25 Q. The obligation to pay the \$5 million arises as</p>	117	<p>1 that to be the case.</p> <p>2 A. Why?</p> <p>3 MR. TRENCH: I object.</p> <p>4 Q. Because I'm representing to you that that's</p> <p>5 what the law will be.</p> <p>6 MR. TRENCH: And I object to the form of the</p> <p>7 question.</p> <p>8 Q. I'll rephrase. If, if the law is that in the</p> <p>9 absence of a defined payment date that the required</p> <p>10 payment will be made within a reasonable time, you</p> <p>11 would agree, wouldn't you, that that payment would</p> <p>12 become due or payable after the closing date?</p> <p>13 MR. TRENCH: Object to the form of the</p> <p>14 question.</p> <p>15 A. No.</p> <p>16 Q. Why not?</p> <p>17 A. I believe that the payment became due on the</p> <p>18 closing date.</p> <p>19 Q. Based on what?</p> <p>20 A. Because the transfer occurred on the closing</p> <p>21 date, it became due.</p> <p>22 Q. Yes. But under the Intercreditor Agreement it</p> <p>23 doesn't say when the payment is required to be made;</p> <p>24 there is no specific time period, right?</p> <p>25 A. Right. So that term is -- you're asking me to</p>

118	<p>1 presume a legal conclusion --</p> <p>2 Q. No, I don't want you to do that. Let me try</p> <p>3 to do it this way.</p> <p>4 You are assuming that the payment became due</p> <p>5 on the date of the transfer, right?</p> <p>6 A. Yes.</p> <p>7 Q. You are also assuming that it became payable</p> <p>8 on the date of the transfer, correct?</p> <p>9 A. I believe it became payable on the date of the</p> <p>10 transfer.</p> <p>11 Q. And so \$5 million should have been handed on</p> <p>12 the date, correct?</p> <p>13 A. Well, but for the fact that -- no.</p> <p>14 Q. It would be paid a reasonable period of time</p> <p>15 after that date, right?</p> <p>16 MR. TRENCH: Object to form.</p> <p>17 A. I don't know when it would be paid.</p> <p>18 Q. Okay. Do you agree that the terms "arising"</p> <p>19 and "due or payable" are different?</p> <p>20 A. They are different words.</p> <p>21 Q. And you agree, don't you, that under standard</p> <p>22 contract interpretation different words have different</p> <p>23 meanings?</p> <p>24 MR. TRENCH: I object to the form of the</p> <p>25 question.</p>	120	<p>1 I would move to strike it. Let me see if I can get an</p> <p>2 answer to my question.</p> <p>3 Is it fair to say that as the designee of CCV</p> <p>4 you are not here prepared to give me those nuances and</p> <p>5 to define the terms used other than to the extent they</p> <p>6 are already defined in the document?</p> <p>7 A. Yes.</p> <p>8 Q. Where we got into that little problem had to</p> <p>9 do with the term "due or payable." The \$5 million is</p> <p>10 an amount that became due or payable as a result of the</p> <p>11 transfer, correct, under the Intercreditor Agreement?</p> <p>12 MR. TRENCH: Object to the form of the</p> <p>13 question to the extent you are referring to</p> <p>14 transfer. There were two.</p> <p>15 MR. GILLMAN: Do you want to testify, David?</p> <p>16 I'll put you under oath.</p> <p>17 MR. TRENCH: Okay, I'll be willing to do it.</p> <p>18 MR. GILLMAN: Otherwise don't do it again.</p> <p>19 Q. Do you recall the question?</p> <p>20 A. You are asking --</p> <p>21 Q. The \$5 million, under the Intercreditor</p> <p>22 Agreement where the Senior Lender transfers without the</p> <p>23 consent of the Junior Lender \$5 million is due,</p> <p>24 correct? That's what it says?</p> <p>25 A. Yeah. That "yeah" was to the first part, your</p>
119	<p>1 A. Again, you are asking me for a legal</p> <p>2 conclusion.</p> <p>3 Q. Let me ask you this a little different. Would</p> <p>4 you agree that the term "due or payable" that phrase is</p> <p>5 different than "due and payable"?</p> <p>6 MR. TRENCH: Object to the form of the</p> <p>7 question.</p> <p>8 A. I think that calls for a legal conclusion.</p> <p>9 Q. No, it actually calls, I think, more for the</p> <p>10 grammar and English language which you may feel</p> <p>11 uncomfortable with. But would you agree that due or</p> <p>12 payable is different than due and payable?</p> <p>13 MR. TRENCH: I object to the form of the</p> <p>14 question.</p> <p>15 A. Not necessarily.</p> <p>16 Q. As the designee of the counter party to this</p> <p>17 agreement you don't know what these terms mean, do you?</p> <p>18 MR. TRENCH: I object to the form of the</p> <p>19 question.</p> <p>20 A. I think that you're trying to construct a</p> <p>21 legal argument with your series of questions and</p> <p>22 basically asking for a series of legal conclusions</p> <p>23 about a very nuanced, potentially nuanced legal</p> <p>24 argument.</p> <p>25 Q. Respectfully that's an argumentative response.</p>	121	<p>1 predicate to ask me a question. It was not a response</p> <p>2 to a question.</p> <p>3 MR. GILLMAN: Could you read back my question</p> <p>4 and the answer.</p> <p>5 (Question read by the court reporter)</p> <p>6 Q. You previously testified that in reading the</p> <p>7 Intercreditor Agreement when there is a transfer by the</p> <p>8 senior creditor without the consent of the Junior</p> <p>9 Lender, Senior Lender without the consent of a Junior</p> <p>10 Lender, \$5 million is due, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you are not recanting that testimony, are</p> <p>13 you?</p> <p>14 A. No.</p> <p>15 Q. Section 2.2 of the LCSA goes on to say that</p> <p>16 notwithstanding anything to the contrary herein,</p> <p>17 notwithstanding the transfer and the assumption</p> <p>18 language that we have just been going through, it is</p> <p>19 understood and agreed that except for the obligations,</p> <p>20 and Obligations you have already testified includes the</p> <p>21 intercreditor obligations --</p> <p>22 MR. TRENCH: Objection.</p> <p>23 Q. "The initial member shall not assign and the</p> <p>24 company shall not assume or be liable for any of the</p> <p>25 following liabilities," and it is defined as the</p>

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<p>1 Excluded Liabilities. Do you see that?</p> <p>2 A. I don't think I testified that the transfer of</p> <p>3 the intercreditor was the obligations.</p> <p>4 Q. No, I think your testimony is what it is and</p> <p>5 whatever it is you are not recanting that testimony,</p> <p>6 right? I'll rephrase this question.</p> <p>7 MR. TRENCH: Objection to the</p> <p>8 characterization.</p> <p>9 MR. GILLMAN: Strike that.</p> <p>10 MR. TRENCH: Strike that.</p> <p>11 MR. GILLMAN: David, don't point your finger.</p> <p>12 You are getting testy.</p> <p>13 MR. TRENCH: You are being cranky too.</p> <p>14 MR. GILLMAN: No, I'm being sweet.</p> <p>15 MR. TRENCH: I hate to hear when he is grumpy.</p> <p>16 BY MR. GILLMAN:</p> <p>17 Q. Mr. Solomon, the testimony you have previously</p> <p>18 given with regard to the terms and circumstances, you</p> <p>19 are not recanting that testimony, are you?</p> <p>20 A. Well, if there was a misunderstanding by me in</p> <p>21 which I testified inadvertently that the transfer</p> <p>22 became the obligations as defined, then I'm recanting</p> <p>23 it. That's not my intent. I do not think that the</p> <p>24 transfer was becoming part of the obligations.</p> <p>25 Q. And you don't think it why?</p>	<p>1 Was the \$5 million required to be paid on the</p> <p>2 closing date?</p> <p>3 A. It was payable.</p> <p>4 Q. Was it required to be paid on the closing</p> <p>5 date?</p> <p>6 A. It was payable.</p> <p>7 Q. We are going to keep going till I get an</p> <p>8 answer. Do you want to hear my question again?</p> <p>9 A. It was due and it was payable. That's my</p> <p>10 answer.</p> <p>11 Q. Was the \$5 million required to be paid on</p> <p>12 October 16, 2009, the defined Closing Date?</p> <p>13 A. I believe it was payable.</p> <p>14 Q. Was it required to be paid on October 16,</p> <p>15 2009? And I'd like to get a yes or no or I'm going to</p> <p>16 the judge.</p> <p>17 MR. TRENCH: I object to the form of the</p> <p>18 question.</p> <p>19 A. Can you repeat the question.</p> <p>20 Q. Was the \$5 million required by any agreement</p> <p>21 to be paid on October 16, 2009?</p> <p>22 A. Yes.</p> <p>23 Q. What agreement?</p> <p>24 A. The Intercreditor Agreement.</p> <p>25 Q. Let's go back to the Intercreditor Agreement.</p>
123	125
<p>1 A. Because the definition of Obligations.</p> <p>2 Q. We already went through the definition of</p> <p>3 Obligations.</p> <p>4 A. Right. And --</p> <p>5 Q. So now you want to change it?</p> <p>6 A. No. I did not want to speculate or draw legal</p> <p>7 conclusions about the meaning of the words other than</p> <p>8 the meaning that is stated in the definition.</p> <p>9 Q. All right. And that's what you intended to do</p> <p>10 by your prior testimony. You weren't attributing it to</p> <p>11 a particular aspect, you were just giving your</p> <p>12 definition, your understanding of the definition of</p> <p>13 Obligations as it appears on page 9 of the LCSA, is</p> <p>14 that correct?</p> <p>15 A. No.</p> <p>16 Q. Okay. I'm going to -- I think your testimony</p> <p>17 is what it is. If you want to recant it please do so.</p> <p>18 But you gave some extensive testimony on the term</p> <p>19 Obligations. Do you mean to withdraw all of that?</p> <p>20 A. My testimony, if -- my intended testimony was,</p> <p>21 is that the \$5 million transfer, the transfer of the</p> <p>22 intercreditor became due and payable on the closing</p> <p>23 date.</p> <p>24 Q. Okay. And where do you get or what is the</p> <p>25 basis for your conclusion -- let me ask you this.</p>	<p>1 A. I understand the Intercreditor Agreement does</p> <p>2 not specify a date.</p> <p>3 Q. Time out. Well, the Intercreditor Agreement</p> <p>4 does not say that the \$5 million is payable and</p> <p>5 required to be paid on the day of the transfer, does</p> <p>6 it?</p> <p>7 MR. TRENCH: I object to the form of the</p> <p>8 question.</p> <p>9 A. We can go back to the intercreditor and review</p> <p>10 it.</p> <p>11 Q. We already did that at length before. Do you</p> <p>12 want to withdraw the testimony you gave earlier?</p> <p>13 A. No.</p> <p>14 Q. There's no date in the intercreditor for that</p> <p>15 payment, is there?</p> <p>16 A. There is --</p> <p>17 MR. TRENCH: Asked and answered. Objection.</p> <p>18 MR. GILLMAN: I agree but the witness seems to</p> <p>19 be wavering.</p> <p>20 MR. TRENCH: No, I don't think so.</p> <p>21 Q. Do you stand by your prior testimony with</p> <p>22 regard to there being dates, required dates, et cetera,</p> <p>23 in the intercreditor?</p> <p>24 MR. TRENCH: I object to the form of the</p> <p>25 question.</p>

126	<p>1 A. I believe it's payable on that date.</p> <p>2 Q. And where does it say that? Let's pull the</p> <p>3 Intercreditor Agreement out.</p> <p>4 A. If an obligation becomes due then it's</p> <p>5 payable.</p> <p>6 Q. Is there a difference between the word due and</p> <p>7 the word payable?</p> <p>8 MR. TRENCH: Object to the form of the</p> <p>9 question.</p> <p>10 A. They are two different words. Their</p> <p>11 definitions are probably different.</p> <p>12 Q. Let's go on because I think maybe we can</p> <p>13 provide you a little bit more clarity. We were talking</p> <p>14 about Section 2.2 and liabilities assumed by the</p> <p>15 company. And it provides that the company hereby</p> <p>16 assumes, agrees to perform and pay all of the</p> <p>17 obligations and we have had our discussion about what</p> <p>18 obligations are.</p> <p>19 Then it goes on to say, "notwithstanding</p> <p>20 anything to the contrary, it is understood and agreed</p> <p>21 that except for the obligations the FDIC-R, the Initial</p> <p>22 Member shall not assign and the Company shall not</p> <p>23 assume or be liable for any of the following</p> <p>24 liabilities," and they are called the Excluded</p> <p>25 Liabilities, right? This is page 15.</p>	128	<p>1 Q. Well, the FDIC was the successor, FDIC-R was</p> <p>2 the successor to Corus Bank, right?</p> <p>3 A. Yes.</p> <p>4 Q. If it wasn't, there wasn't a transfer, right?</p> <p>5 A. Right.</p> <p>6 Q. And the successor to Corus Bank is a defined</p> <p>7 term, Senior Lender, under the Intercreditor Agreement,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. There's nothing under -- and then the FDIC-R</p> <p>11 as Senior Lender transferred the SB Loan along with the</p> <p>12 Intercreditor Agreement to CCV on October 16, correct?</p> <p>13 A. Did you say as successor lender or as</p> <p>14 receiver?</p> <p>15 Q. It was by definition, as the successor to</p> <p>16 Corus Bank it was the Senior Lender, the defined term,</p> <p>17 under the Intercreditor Agreement, right?</p> <p>18 A. Yes, but it was the receiver that transferred</p> <p>19 the loan to CCV.</p> <p>20 Q. The receiver as the successor to Corus was the</p> <p>21 defined -- was within the defined term Senior Lender in</p> <p>22 the Intercreditor Agreement, right?</p> <p>23 A. But it was the receiver. My position would be</p> <p>24 that it was the receiver that transferred the loan.</p> <p>25 Q. That's a legal position and you are not</p>
127	<p>1 A. Yes.</p> <p>2 Q. And then the first one is "any liabilities or</p> <p>3 obligations of the initial member to the extent</p> <p>4 attributable to an act, omission or circumstance that</p> <p>5 occurred or existed prior to the Closing Date and that</p> <p>6 constitutes a breach or default under any contract, a</p> <p>7 tort, willful misconduct, fraud or a violation of law</p> <p>8 by the initial member or the failed bank." Do you see</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. Now, you have indicated and testified at some</p> <p>12 length that the obligation to pay the \$5 million became</p> <p>13 due and payable on October 16, 2009, the Closing Date,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. It clearly did not become due or payable</p> <p>17 before the Closing Date, right?</p> <p>18 A. Well, I think it became due and payable on</p> <p>19 September 11, 2009.</p> <p>20 Q. Okay. So there was -- when the FDIC came in</p> <p>21 you think that it was due and payable at that time?</p> <p>22 A. I think that was a transfer.</p> <p>23 Q. And then the FDIC became Senior Lender, right,</p> <p>24 by defined terms, correct?</p> <p>25 A. As a matter of -- I don't know the answer.</p>	129	<p>1 here --</p> <p>2 A. You are asking me a lot of legal questions.</p> <p>3 Q. No, I'm asking you contract documents. Under</p> <p>4 the contract agreement the FDIC is the successor to</p> <p>5 Corus Bank, right?</p> <p>6 MR. TRENCH: Object to the form of the</p> <p>7 question. It calls for a legal conclusion.</p> <p>8 MR. GILLMAN: You know something, rather than</p> <p>9 argue on this we will let the judge decide who is</p> <p>10 what on this.</p> <p>11 BY MR. GILLMAN:</p> <p>12 Q. Is there anything in the Intercreditor</p> <p>13 Agreement that says that if the Senior Lender as</p> <p>14 defined in the intercreditor makes a transfer there's</p> <p>15 \$5 million that's due to the junior creditor, right?</p> <p>16 MR. TRENCH: What's the question? I object.</p> <p>17 Q. The Intercreditor Agreement says that if the</p> <p>18 Senior Lender transfers the loan or any of the loan</p> <p>19 documents without the consent of the Junior Lender,</p> <p>20 then \$5 million is due, right?</p> <p>21 A. Yes.</p> <p>22 Q. Is there anything in the Intercreditor</p> <p>23 Agreement that says that if the Senior Lender transfers</p> <p>24 it the person who gets it, the transferee, then becomes</p> <p>25 the Senior Lender under the defined terms and if that</p>

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<p>1 Senior Lender makes another transfer is there anything 2 that says there is not another \$5 million due it? 3 A. I'm not sure if it is addressed for a 4 successive transfer. 5 Q. The Intercreditor Agreement, that was 6 transferred to CCV, right? 7 A. Yes. 8 Q. CCV accepted the transfer of the 9 intercreditor, right? 10 A. Yes. 11 Q. It accepted all of the rights and benefits 12 under the intercreditor, correct? 13 A. Yes, I believe so. 14 Q. I'd like to go back to this term Excluded 15 Liabilities because we sort of got off from it. The 16 Loan, the LCSA, has a specific group of specified 17 circumstances that do not create a liability to CCV, 18 they are defined as the Excluded Liabilities, right? 19 MR. TRENCH: Object to the form of the 20 question. Mischaracterizes the agreement. 21 Q. Is it fair to say that the term Excluded 22 Liabilities appears on page 15? 23 A. Yes. 24 Q. And then what follows after Excluded 25 Liabilities are what is defined as the excluded</p>	<p>1 contrary, "it is understood and agreed that except for 2 the Obligations, the Initial Member shall not assign 3 and and the company shall not assume or be liable for 4 any of the following liabilities." 5 Q. And those liabilities are called the Excluded 6 Liabilities, right? 7 A. They are. 8 Q. And they are specified in subparagraph 2.2A, B 9 and C, correct? 10 A. They are. 11 Q. And there's nothing in here that says the term 12 Excluded Liabilities includes anything else than that 13 defined term, Excluded Liabilities, right? 14 A. The A, B and C are the definitions following 15 Excluded Liabilities. 16 Q. All right. So under the LCSA the FDIC-R 17 transferred all of the Obligations as defined 18 associated with the Loan and the Loan Documents to CCV, 19 CCV accepted all of those Obligations with the 20 exception of those items specifically excluded under 21 the term Excluded Liabilities, correct? 22 A. No. 23 Q. How is that no? 24 A. Because if something was not an obligation 25 then it was never assumed --</p>
131	133
<p>1 liabilities, correct? 2 A. Yes. 3 Q. And other than what is written as 2.2A, B and 4 C, those are the defined Excluded Liabilities under the 5 LCSA, right? 6 A. I think that the implication that those are 7 the only things that are excluded as being an 8 obligation or a liability of CCV is not correct. 9 Q. Tell me where it says that -- there is a 10 defined term called Excluded Liabilities, right? 11 A. Yes. 12 Q. And the parties to this agreement, being CCV 13 and the FDIC as receiver, then set forth three things 14 that fell within the defined term Excluded Liabilities, 15 right? 16 A. Well, the first sentence of Section 2.2 says 17 the company hereby assumes and agrees to perform and 18 pay all of the obligations. 19 Q. And we have already had a long discussion 20 about what the defined term Obligations means? 21 A. Yes. 22 Q. Then the company assumed by assuming all of 23 the Obligations as defined, there is then Excluded 24 Liabilities, a defined term, right? 25 A. There's a -- notwithstanding anything to the</p>	<p>1 Q. I already excluded that in my question. 2 A. I'm sorry. 3 Q. My question is as follows. On October 16, 4 2009 the closing date of the LCSA, the FDIC-R 5 transferred to CCV and CCV accepted all things that 6 constitute Obligations as that term is defined in the 7 agreement, correct? 8 A. Yes. 9 Q. And we have already had a long discussion as 10 to what is included within the term Obligations. Okay? 11 A. Yes. 12 Q. Notwithstanding what is otherwise included 13 within the defined term Obligations which otherwise 14 would have been transferred and accepted as a liability 15 of CCV, these A, B and C defined as Excluded 16 Liabilities are excluded, right? 17 A. Yes. 18 MR. GILLMAN: Let me have a minute. I may be 19 done. 20 (Recess taken in the proceedings) 21 (Exhibit 19 marked for identification) 22 BY MR. GILLMAN: 23 Q. I'm going to give you what has been marked as 24 Exhibit 19. 25 (Exhibit 20 marked for identification).</p>

134	<p>1 Q. I'm going to give you Exhibit 20. 2 (Exhibit 21 marked for identification) 3 Q. I'm going to give you Exhibit 21. 4 (Exhibit 22 marked for identification) 5 Q. Here's Exhibit 22. 6 (Exhibit 23 marked for identification) 7 Q. And the last one I'm going to give you is 8 Exhibit 23. 9 Exhibit 19 is the document CCV 5637 to 5643 10 titled Limited Liability Company Agreement of CCV 11 Managing Member. Is this the agreement for CCV 12 Managing Member LLC? 13 A. I think -- I believe this is the original 14 agreement. 15 Q. Yes, as of October 16, 2009. Do you see that 16 on the first page? 17 A. Yes. 18 Q. And then Exhibit 20, if you would go to that. 19 This is now an Amended and Restated Limited Liability 20 Company Operating Agreement for Corus Construction 21 Venture dated as of October 16, 2009, correct? 22 A. Yes. 23 Q. Because at the end of October 16, 2009 you now 24 had what has since been renamed as ST Residential as 25 the 40 percent managing member of CCV, right?</p>	136	<p>1 on 2454, correct. There's an annex and other 2 things that are in there. 3 Q. One question, if you look at 2455, Mr. 4 Alvarado signed on behalf of CCV Managing Member, is 5 that right? 6 A. Yes. 7 Q. And he's somebody who works for Starwood, 8 Starwood Capital, right? 9 A. Yes. 10 Q. Next is Exhibit 21. Is that the First 11 Amendment to Limited Liability Company Agreement of CCV 12 Managing Member LLC consisting of CCV 2568 to 2569? 13 A. Yes. 14 Q. And the purpose of this was to change the 15 name? 16 A. Yes. 17 Q. To ST Residential, LLC? 18 A. Yes. 19 Q. Then Exhibit 22, this is a certificate of 20 amendment to the certificate of formation of CCV 21 Managing Member LLC Bates number CCV 2567, is that 22 right? 23 A. Yes. 24 Q. And this is now done by the owner, the member 25 that owned that entity, Northwest Investments, LLC,</p>
135	<p>1 A. I'm not sure what the question was. 2 Q. The question is, on October 16 you had the 3 sale of the 40 percent interest in CCV, membership 4 interest in CCV to the entity that then became ST 5 Residential, right? 6 A. That occurred after the Loan Contribution and 7 Sale Agreement. 8 Q. But on the same day? 9 A. On the same day. 10 Q. And this is the operating agreement for the 11 operation after the 40 percent sale, Exhibit 20, right? 12 A. It was made and effective October 16. 13 Q. And this was the operating agreement that was 14 intended to apply after CCV, after -- 15 A. ST Residential. 16 Q. -- after ST Residential became the 40 percent 17 member, correct? 18 A. Yes. 19 Q. And this document goes from CCV 2390 to 2492, 20 is that right? 21 MR. TRENCH: The one you gave me goes further 22 than that. 23 A. Mine goes to 2501. 24 MR. TRENCH: The signature page. 25 MR. GILLMAN: Actually signature pages start</p>	137	<p>1 right, to change the name? 2 A. Yes. 3 Q. Next, Exhibit 23 is an Amendment to Amended 4 and Restated Limited Liability Company Operating 5 Agreement dated as of March 16, 2010 and that's CCV 6 24995 to 2501? 7 A. Yes. 8 Q. The signature on 2501 for ST, whose signature 9 is that? 10 A. Rich Ryan. 11 Q. Spell the last name. 12 A. R-Y-A-N. 13 MR. GILLMAN: That's all I have. 14 CROSS-EXAMINATION 15 BY MR. ALTSCHUL: 16 Q. Mr. Solomon, my name is Joseph Altschul. I 17 represent a number of unit purchasers, contract 18 purchasers. I'm going to be asking you questions, some 19 in your capacity with CCV and some based on your having 20 been with Corus Bank at the time that the underlying 21 transaction was entered into. 22 MR. TRENCH: Just let me make a note for the 23 record, although he was with Corus Bank he was 24 noticed here as a CCV representative, so questions 25 you ask him I'll let him answer to the extent he</p>

138	<p>1 knows that, but he didn't come here with that as an 2 intention. 3 MR. ALTSCHUL: I can only expect him to answer 4 what he knows no matter what it said on the notice 5 to the deposition. 6 BY MR. ALTSCHUL: 7 Q. If you can't hear me at any point please let 8 me know. If I need to move closer I will. Usually I 9 speak loud enough so, hopefully, it won't be a problem. 10 A couple of follow-up questions before I get 11 into some additional documents. You said Keith Gibbons 12 still lives in Chicago, is that right? 13 A. To my knowledge he does. 14 Q. Do you know who he works for now? 15 A. I think he works for a company that's a 16 nursing home company. 17 Q. Do you know the name? 18 A. I don't know the name. 19 Q. Do you have his phone number? 20 A. I probably do. 21 Q. Can you check? You have a BlackBerry or some 22 kind of smart phone with you, right? 23 A. I would not feel comfortable giving out his 24 phone number today, but I could supply it. It is a 25 personal phone number. I don't think that would be</p>	140	<p>1 A. Yes. 2 Q. Do you know when this was prepared? 3 MR. TRENCH: Which one are you pointing to? 4 Q. Not the cover letter, but the rest. 5 A. No, other than what can be gleaned from the 6 documents themselves. 7 Q. I see on the bottom there is a date of 8 yesterday on there? 9 A. For the record there are three separate 10 documents. 11 Q. Let's start with the first one that says 12 Project Northwest. It is the first page after the 13 cover letter. 14 A. Yes. 15 Q. And it looks like, at least, there's a handful 16 of pages that go with this. Can you tell me what day 17 that document was prepared? 18 A. No. 19 Q. Can you give me an estimate of when that was 20 prepared? 21 A. No. Before 9/11/2009. 22 Q. Did you have opportunity to see all of the 23 documents that your attorney produced to Mr. Gillman 24 and to the other parties in this action? 25 A. No.</p>
139	<p>1 fair to him. 2 Q. That's what I'm asking for is a personal phone 3 number. 4 MR. TRENCH: As opposed to a business number? 5 Q. I'm asking for every phone number that you 6 have for him, actually. So you don't know the name of 7 the company that he works with, correct? 8 A. No. It's a company, the principal is Ricky 9 Rathner, affiliated with Brickyard Bank. 10 MR. STERN: What bank? 11 THE WITNESS: Brickyard. I think it is 12 Brickyard but it is a separate company. 13 Q. Do you know what he's doing for that company? 14 A. I think he's chief financial officer. 15 Q. Do you know, does he live in Chicago proper or 16 is he in one of the surrounding cities? 17 A. I think he's in Chicago. 18 Q. Do you have Exhibit 10 in front of you? 19 A. Yes. 20 Q. And if you answered this before I'll apologize 21 in advance. Aside from Mr. Trench's cover letter, the 22 documents that follow appear to be, I think you 23 testified they were the due diligence that was done 24 relating to this project and other projects, the Trump 25 project and other projects, correct?</p>	141	<p>1 Q. You haven't reviewed everything? 2 A. No. 3 Q. Are you familiar with the documents that have 4 the CCV Bates stamp that have been produced in a 5 general matter? 6 A. Generally. It was quite a number, quite a lot 7 of documents. 8 Q. Where did those documents come from? 9 A. From the searches of the data sources that we 10 had. 11 Q. Were all of those documents available to CCV 12 prior to September 11, 2009? 13 A. A lot of the documents I believe were 14 generated after September 11, 2009. 15 Q. For all of the documents that predated 16 September 11, 2009 would they have been available to 17 CCV for its due diligence? 18 A. CCV didn't really exist before September 11, 19 2009. 20 Q. Which entity did the due diligence, did you 21 say? 22 A. The entity that I previously testified to 23 having done due diligence was people that were 24 affiliated with Starwood Capital Group. 25 Q. What was the name of that entity?</p>

142	<p>1 A. Starwood Capital Group.</p> <p>2 Q. You said they were affiliated with, or it was</p> <p>3 Starwood who did the due diligence?</p> <p>4 A. Starwood Capital Group is a name of a</p> <p>5 different -- of different funds and companies that do</p> <p>6 different things and there's people that work in these</p> <p>7 different companies and they do things as requested for</p> <p>8 the general group.</p> <p>9 Q. Were all of the documents that predated</p> <p>10 September 11, 2009 that were produced by CCV in this</p> <p>11 case that bear the CCV Bates stamp available to</p> <p>12 Starwood Capital for its due diligence prior to the</p> <p>13 acquisition of the project that brings us all here</p> <p>14 today?</p> <p>15 A. No.</p> <p>16 Q. Which ones were not available?</p> <p>17 A. Probably most of them. I don't know which</p> <p>18 ones. The government, the FDIC, was deciding what</p> <p>19 documents were allowed to be viewed by potential</p> <p>20 buyers.</p> <p>21 Q. So it is your testimony that the FDIC did not</p> <p>22 make all of the documents that we have today that</p> <p>23 predated September 11, 2009 available to bidders for</p> <p>24 their due diligence?</p> <p>25 A. Yes.</p>	144
143	<p>1 Q. What is your understanding of Donald Trump's</p> <p>2 role in this project?</p> <p>3 A. He was a licensee or -- I'm not sure actually</p> <p>4 of the right term for his, the use of his name with</p> <p>5 respect to the project.</p> <p>6 Q. Were you finished?</p> <p>7 A. Just to say strike licensee. That's a loose</p> <p>8 use of the word.</p> <p>9 Q. Did you mean licensor?</p> <p>10 A. Yes, licensor but I'm not even sure</p> <p>11 technically if he was a licensor. I can't recall what</p> <p>12 type of agreement there was for his name to be used.</p> <p>13 Q. Did you understand him to be either a</p> <p>14 developer or owner of the project?</p> <p>15 A. As an officer at Corus Bank did I understand</p> <p>16 that?</p> <p>17 Q. Yeah, at any time. And if that's changed over</p> <p>18 time tell me that as well.</p> <p>19 A. The only knowledge I had of the project was as</p> <p>20 the subject matter of a loan that we had made, and when</p> <p>21 I worked on the loan I believe I knew that he was not a</p> <p>22 developer per se.</p> <p>23 Q. Did you work on the loan prior to December 15,</p> <p>24 2006 or afterwards, or both?</p> <p>25 A. I don't recall when I started working on the</p>	145

146	<p>1 The Bates stamp range is CCVPROD 612 through 642.</p> <p>2 And there are amendments to it. I see a second</p> <p>3 amendment to it. I see, it is through 641. That's</p> <p>4 fine.</p> <p>5 BY MR. ALTSCHUL:</p> <p>6 Q. I know you said that you have not done due</p> <p>7 diligence on projects yourself. Are you familiar with</p> <p>8 what due diligence was done by --</p> <p>9 A. I think I said in acquisition of a company.</p> <p>10 Q. My apology. Were you involved in due</p> <p>11 diligence on loan transactions?</p> <p>12 A. Not generally, no.</p> <p>13 Q. Were you involved or do you know what was done</p> <p>14 for due diligence by Corus Bank during 2006 on loans in</p> <p>15 the \$140 million range?</p> <p>16 A. In a very general way. The loan officers did</p> <p>17 the due diligence.</p> <p>18 Q. Explain to me what the due diligence consisted</p> <p>19 of, at least in the general way that you understood it.</p> <p>20 A. Due diligence is trying to understand the</p> <p>21 important aspects of a project in a way that would</p> <p>22 allow you to make a prudent loan.</p> <p>23 Q. So were there certain steps that were</p> <p>24 typically taken as part of that due diligence?</p> <p>25 A. Yes.</p>	148	<p>1 Q. I only want to know about Corus Bank, though.</p> <p>2 A. Corus Bank thought about the presales as part</p> <p>3 of its analysis.</p> <p>4 Q. So as an example, if you had about 200 presale</p> <p>5 contracts out of say 298 units would Corus Bank want to</p> <p>6 see proof that you actually had 200 presales as a</p> <p>7 consideration to making its loan?</p> <p>8 A. It might. I don't know if it did on this</p> <p>9 particular loan.</p> <p>10 (Exhibit 25 marked for identification).</p> <p>11 Q. Let me show you what is marked as Exhibit 25,</p> <p>12 entitled Hotel Preopening Agreement. Have you seen</p> <p>13 this Hotel Preopening Agreement before?</p> <p>14 A. Not that I recall.</p> <p>15 Q. You see that this was produced by CCV,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And would you agree that this would have come</p> <p>19 from Corus Bank's files?</p> <p>20 A. It's likely that it came from Corus Bank's</p> <p>21 files or we wouldn't have it.</p> <p>22 Q. And it is dated June 26, 2006, do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. And so is this document would have been</p>
147	<p>1 Q. Do you know what those were?</p> <p>2 A. Generally we requested the project plans,</p> <p>3 project budget, design information, information about</p> <p>4 sources of the equity investment, information about the</p> <p>5 real estate, about the entitlements, information about</p> <p>6 anything that would be relevant to underwriting the</p> <p>7 project.</p> <p>8 Q. Do you know whether due diligence included an</p> <p>9 examination of signed preconstruction purchase</p> <p>10 agreements?</p> <p>11 A. Presales would be considered. Whether</p> <p>12 individual agreements were reviewed might depend on the</p> <p>13 diligence or the time available to the parties making</p> <p>14 the loan, the loan officers.</p> <p>15 Q. Was generally -- strike that.</p> <p>16 When we talk about presale hotel condominium</p> <p>17 units, was the amount of presales a significant factor</p> <p>18 in making a loan?</p> <p>19 A. It was -- I would characterize it as material</p> <p>20 to the analysis.</p> <p>21 Q. And would the number of units that were sold</p> <p>22 in relation to the number of available units be a</p> <p>23 material fact for Corus Bank to consider?</p> <p>24 A. Any bank would think about the number of</p> <p>25 presales.</p>	149	<p>1 available to Corus Bank as part of its due diligence of</p> <p>2 this loan, isn't that correct?</p> <p>3 A. I don't know when it received this document.</p> <p>4 Q. So you don't know whether this document was</p> <p>5 available to Corus Bank for its due diligence prior to</p> <p>6 making the loan in December 2006?</p> <p>7 A. I don't know.</p> <p>8 Q. In deciding to make a loan would Corus Bank</p> <p>9 review or inspect the marketing materials that the</p> <p>10 developer had put together for the project?</p> <p>11 A. Probably not.</p> <p>12 Q. That's not something that the developer --</p> <p>13 strike that. That's not something that Corus Bank as</p> <p>14 the lender considered to be important?</p> <p>15 A. The bank tried to make sure the developer</p> <p>16 generally had a feasible project, but it didn't try to</p> <p>17 micromanage how it ran the business.</p> <p>18 Q. I don't think I asked you any questions about</p> <p>19 managing how it ran the business. What my question to</p> <p>20 you was, is reviewing marketing materials something</p> <p>21 that Corus Bank does -- did as part of its due</p> <p>22 diligence?</p> <p>23 A. It may have in some loans and it might not</p> <p>24 have for other loans.</p> <p>25 Q. Do you know whether it was done for this loan</p>

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<p>1 or not?</p> <p>2 A. I do not.</p> <p>3 Q. Do you know whether this document that we have</p> <p>4 marked as Exhibit 25 was available to the Starwood</p> <p>5 Capital Group as part of its due diligence?</p> <p>6 A. I don't know but I would be surprised if it</p> <p>7 was.</p> <p>8 Q. Why would you be surprised?</p> <p>9 A. I don't think the FDIC generally opened up the</p> <p>10 files of the bank to potential bidders.</p> <p>11 (Exhibit 26 marked for identification)</p> <p>12 Q. Showing you what I am marking as Exhibit 26, a</p> <p>13 document called Pledge of Profits Interest. This is a</p> <p>14 document dated December 15, as of December 15, 2006,</p> <p>15 the closing date, and Corus Bank is actually a party to</p> <p>16 this. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Is this the type of -- was this document</p> <p>19 prepared by Corus Bank?</p> <p>20 A. I can't tell.</p> <p>21 Q. Was a pledge of profits interest something</p> <p>22 that Corus Bank typically received in its loan</p> <p>23 transactions for either condominiums or hotel</p> <p>24 condominiums?</p> <p>25 A. No. Frankly, it is not a collateral agreement</p>	<p>1 benefit; this is an assignment of profits to them,</p> <p>2 correct?</p> <p>3 A. You know, I have not read this agreement</p> <p>4 carefully, so I am reluctant to characterize exactly</p> <p>5 what they received. It's likely to be a collateral</p> <p>6 position, not an actual present assignment.</p> <p>7 Q. A collateral position where they would</p> <p>8 ultimately be the recipient of profits in the event,</p> <p>9 whatever event is specified in the document occurred,</p> <p>10 correct?</p> <p>11 A. If they exercise remedies under the agreement.</p> <p>12 Q. If the conditions occurred and the bank</p> <p>13 exercised the remedies they would be the beneficiary of</p> <p>14 this pledge of profits, correct?</p> <p>15 A. I don't know what beneficiary means.</p> <p>16 Q. It would be the recipient of the profits that</p> <p>17 are being pledged, correct?</p> <p>18 A. I'd have to read the agreement to see if</p> <p>19 recipient of the profits agreement is the right way to</p> <p>20 characterize it.</p> <p>21 Q. Well, I'm not going to put you through that.</p> <p>22 A. Thank you.</p> <p>23 (Exhibit 27 marked for identification)</p> <p>24 Q. Let me pass you what we have marked as Exhibit</p> <p>25 27 and ask you to take a look at it. This is a</p>
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<p>1 that I recall seeing before.</p> <p>2 Q. You don't recall seeing this pledge of profits</p> <p>3 interest in any other transaction that you worked on?</p> <p>4 A. No.</p> <p>5 Q. Did you work on any other hotel condominium</p> <p>6 projects other than this one?</p> <p>7 A. Not too many.</p> <p>8 Q. Most of yours were straight condo?</p> <p>9 A. More typically, yes.</p> <p>10 Q. And in the other ones that you worked on that</p> <p>11 were hotel-condo, you don't recall seeing this type of</p> <p>12 pledge, correct?</p> <p>13 A. I don't recall it. It was quite a long time</p> <p>14 ago.</p> <p>15 Q. You would agree with me that this document</p> <p>16 again came from CCV -- strike that. You would agree</p> <p>17 that this document came from Corus Bank files, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you agree that Corus Bank is actually a</p> <p>20 party to this agreement, correct?</p> <p>21 A. They are the assignee.</p> <p>22 Q. So you would agree with me that Corus Bank is</p> <p>23 actually a party to the agreement, correct?</p> <p>24 A. Yes.</p> <p>25 Q. They, actually, as an assignee are receiving a</p>	<p>1 document called Hotel Management Agreement between SB</p> <p>2 Hotel Associates and Trump Florida Management LLC as of</p> <p>3 July 26, 2006. Do you recall ever seeing this document</p> <p>4 before?</p> <p>5 A. No.</p> <p>6 Q. You would agree that this document came from</p> <p>7 Corus Bank loan files, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know whether this document was</p> <p>10 available to Starwood in its due diligence?</p> <p>11 A. I don't know for a fact but I, again, don't</p> <p>12 think that the detailed underwriting documents were</p> <p>13 generally made available.</p> <p>14 MR. GILLMAN: Can we take a three minute</p> <p>15 break?</p> <p>16 MR. ALTSCHUL: Sure.</p> <p>17 (Recess taken in the proceedings)</p> <p>18 (Exhibit 28 marked for identification)</p> <p>19 BY MR. ALTSCHUL:</p> <p>20 Q. I'm going to show you what's marked as Exhibit</p> <p>21 28 and ask you to take a look at it please. Have you</p> <p>22 seen number 28 before?</p> <p>23 A. I don't know if I've seen it for this loan but</p> <p>24 I've seen this type of presentation.</p> <p>25 Q. If you would just describe for me what this</p>

154	<p>1 appears to be to you, Exhibit 28.</p> <p>2 A. It's a loan presentation, I believe.</p> <p>3 Q. Do you know who prepared this one?</p> <p>4 A. Keith Gibbons, perhaps working with a more</p> <p>5 junior person.</p> <p>6 Q. With who?</p> <p>7 A. A more junior person.</p> <p>8 Q. Do you know who was the more junior person</p> <p>9 that worked with Keith on this?</p> <p>10 A. On the last page it says, Supporting Loan</p> <p>11 Officer George Guattare.</p> <p>12 Q. Would he be the junior loan officer you just</p> <p>13 referred to?</p> <p>14 A. If he was the supporting loan officer that</p> <p>15 would be the junior person.</p> <p>16 Q. Do you know where George Guattare is today?</p> <p>17 A. I think he lives in Chicago and he works for a</p> <p>18 bank but I'm not sure what bank.</p> <p>19 Q. Are you still in contact with him as well?</p> <p>20 A. I haven't seen him for a long time but</p> <p>21 somebody I know had lunch with him.</p> <p>22 Q. Do you have his phone number?</p> <p>23 A. No.</p> <p>24 Q. This document was prepared by the loan officer</p> <p>25 on the file, correct?</p>	156	<p>1 Q. In December 2006?</p> <p>2 A. It would probably have been Bob Glickman,</p> <p>3 Michael Stein, and Terry Keenan would be my probable</p> <p>4 members.</p> <p>5 Q. And that's -- so it is a three-person loan</p> <p>6 committee, correct?</p> <p>7 A. Yes.</p> <p>8 Q. The loan officers are not part of the loan</p> <p>9 committee?</p> <p>10 A. No.</p> <p>11 Q. On the top of this document do you see there's</p> <p>12 handwriting and I'm not sure what it says. It looks</p> <p>13 like maybe Tina?</p> <p>14 A. Tina Dendrinis.</p> <p>15 Q. Who is that?</p> <p>16 A. She worked with the bank.</p> <p>17 Q. She worked with Corus Bank?</p> <p>18 A. Yes.</p> <p>19 Q. She was an employee of Corus Bank?</p> <p>20 A. Yes.</p> <p>21 Q. This document you would agree with me came out</p> <p>22 of Corus Bank files, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you would agree with me that the FDIC took</p> <p>25 possession of this document after September 11, 2009,</p>
155	<p>1 A. Yes.</p> <p>2 Q. This would have been prepared by Corus Bank's</p> <p>3 loan officer, Mr. Gibbons, right?</p> <p>4 A. Yes.</p> <p>5 Q. Would this document be circulated to a loan</p> <p>6 committee or how would this be used?</p> <p>7 A. It would be presented to a loan committee.</p> <p>8 Q. And the loan committee would consider this,</p> <p>9 what I would say, is a pretty extensive writeup in</p> <p>10 making a decision whether to make the loan or not?</p> <p>11 A. Yes.</p> <p>12 Q. This is the kind of document that's prepared</p> <p>13 before the loan is made, correct?</p> <p>14 A. Typically that's what I think it is.</p> <p>15 Q. You don't recall ever seeing this document</p> <p>16 before, correct?</p> <p>17 A. I don't recall the specific review of this</p> <p>18 document. It wasn't my job to review the loan</p> <p>19 presentations.</p> <p>20 Q. Did you sit on the loan committee?</p> <p>21 A. No.</p> <p>22 Q. Who was on the loan committee that approved</p> <p>23 this loan?</p> <p>24 A. I don't know who was on the loan committee at</p> <p>25 that time.</p>	157	<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 (Exhibit 29 marked for identification)</p> <p>4 Q. Let me show you what I have marked as Exhibit</p> <p>5 29 and ask you to take a look at that please. Can you</p> <p>6 identify Exhibit 29 please?</p> <p>7 A. It's titled Collateral Assignment of Purchase</p> <p>8 Agreements with an Irrevocable Power of Attorney.</p> <p>9 Q. Is this a document that you typically saw in</p> <p>10 condominium preconstruction loan transactions?</p> <p>11 A. There would be typically a collateral</p> <p>12 assignment of purchase agreements either individually</p> <p>13 like this or sometimes it was grouped with other</p> <p>14 developer interests. For instance, developer's</p> <p>15 interest in the plans and specs.</p> <p>16 Q. And this document was prepared by Corus Bank,</p> <p>17 correct?</p> <p>18 A. It would have been prepared by Corus's</p> <p>19 attorneys.</p> <p>20 Q. And that would have been prior to the closing</p> <p>21 on December 15, 2006, correct?</p> <p>22 A. Typically, yes.</p> <p>23 Q. And this document would have come from Corus</p> <p>24 loan files, correct?</p> <p>25 A. Yes.</p>

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1 Q. And this document would have been in the
 2 possession of the FDIC after September 11, 2009,
 3 correct?
 4 A. Yes.
 5 Q. Do you recall seeing this document yourself
 6 prior to today?
 7 A. No.
 8 Q. Would Corus typically undertake any type of
 9 analysis to determine whether representations that are
 10 being made to purchasers are consistent with what they
 11 are told about the loan prior to making the loan?
 12 A. No.
 13 Q. Would Corus typically look at a purchase
 14 agreement and actually review the purchase agreement to
 15 see if it was consistent with their understanding of
 16 the transaction?
 17 A. Again, I think it depends on the loan officer,
 18 how deep they went into things like that. They may
 19 just have superficially reviewed that the purchase
 20 agreements are actual and not fraudulent, not purported
 21 purchase agreements.
 22 Q. I'm sorry. Say that again.
 23 A. They would -- I think some officers would do a
 24 more superficial analysis to determine whether the
 25 purchase agreements were legitimate versus detailed

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1 analysis of what they say and what was promised. I
 2 don't think that was done.
 3 Q. Which type of loan officer -- which type of
 4 analysis did Mr. Gibbons typically do?
 5 A. I don't know.
 6 Q. You don't know whether he fell into the more
 7 superficial category or the more detailed category?
 8 A. Sometimes it depended on if you were working
 9 on one loan or six loans at the same time.
 10 (Exhibit 30 marked for identification)
 11 Q. Let me show you what I have marked as Exhibit
 12 30 and ask you to take a look at that please. Do you
 13 recall this document?
 14 A. Yes.
 15 Q. This is a Notice of Default from Trump Marks
 16 Fort Lauderdale LLC to SB Hotel Associates, correct?
 17 A. Yes, it appears to be.
 18 Q. And you see you are copied on this document,
 19 right?
 20 A. Yes.
 21 Q. Do you recall receiving this document in 2009?
 22 A. I vaguely recall that, yes.
 23 Q. Let me ask you. Prior to seeing this letter
 24 in 2009 were you aware of any fallout or disagreement
 25 between the Trump group and the Stillman group?

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1 MR. GILLMAN: Objection to the form.
 2 Q. You can answer.
 3 A. Can you repeat that question?
 4 Q. I'll try and rephrase it. Prior to receiving
 5 this default letter on May 5, 2009 where Trump told SB
 6 Hotel that SB Hotel was in default, were you aware of
 7 any fallout or breach in the relationship between these
 8 two entities?
 9 MR. GILLMAN: Same objection.
 10 Q. You can answer.
 11 A. I'm not sure what fallout is, but I think I
 12 was generally aware that nobody, none of the parties
 13 were happy with each other.
 14 Q. How were you aware of that and what was the
 15 reason that none of the parties were happy with each
 16 other?
 17 A. At that time Keith Gibbons was consulting with
 18 me, so I was generally being kept aware. I believe the
 19 loan was close to maturing, and it was like a lot of
 20 loans in 2009, it was stressed. It did not appear that
 21 it was going to be paid off at maturity.
 22 Q. And why did you think it was stressed or
 23 distressed? I'm not sure what you said.
 24 A. Stressed.
 25 Q. Why did you think it was stressed?

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1 A. Well, maturity was approaching. I don't
 2 really remember all of the underlying facts and
 3 circumstances, but it wasn't a loan at that time that
 4 was going well.
 5 Q. And what was not going well?
 6 A. There had been delay. I don't remember the
 7 budget issues. I'm sorry, I really don't have -- I
 8 didn't really prepare for and I don't have that strong
 9 a recollection.
 10 Q. You think the issues were generally delay and
 11 budget issues?
 12 A. You know, those are two items that I just
 13 mentioned, but --
 14 Q. Do you want to take a minute to review that
 15 letter and see if it refreshes your recollection?
 16 A. Sure.
 17 (Pause in the proceedings)
 18 Q. Before I come back to that I'm going to give
 19 you some more documents and let you just review a
 20 couple more letters to help refresh your recollection
 21 and then I'll come back and ask you questions on the
 22 group of them as opposed to one by one.
 23 (Exhibits 31 and 32 marked for identification)
 24 Q. Let me give you Exhibits 31 and 32 which are
 25 the amended complaints filed in the Abercrombie v. SB

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<p>1 Hotel, et al. and the Todd Fine v. SB Hotel, et al. 2 MR. ALTSCHUL: If you guys want copies, Steve 3 and David, I've got copies here. It is up to you. 4 MR. TRENCH: The pleadings? 5 MR. ALTSCHUL: Just pleadings. 6 Q. The only thing I want to ask you to look at, 7 and you can choose one of them, you don't need to look 8 at both, is if you turn to the very last two pages at 9 the very end you will see there's a May 13, 2009 10 letter. I'm going to ask you to review that letter. I 11 believe that's from Michelle Conte at SB Hotel 12 Associates. 13 (Pause in the proceedings) 14 A. Okay. 15 (Exhibit 33 marked for identification) 16 Q. I'm going to give you what's marked as Exhibit 17 33, which is a May 28, 2009 letter from Trump Marks to 18 Roy Stillman at SB Hotel Associates and ask you to go 19 ahead and read that as well. 20 (Exhibit 34 marked for identification) 21 A. Okay. 22 Q. Let me give you what's marked as Exhibit 34, a 23 May 29, 2009 letter from SB Hotel to Donald Trump at 24 The Trump Organization. 25 A. Okay.</p>	<p>1 Do these documents, these letters help refresh 2 your recollection of what was going on at that time? 3 A. Yes. 4 Q. Tell me what you recall then, please. 5 A. Well, I note that there's a series of 6 accusations by different parties to the loan, everybody 7 was accusing the other of wrongful conduct. It appears 8 that the hotel was not likely to be licensed as a 9 hotel. It was not finished at that point in time. And 10 apparently SB Hotel sent out a closing notice that said 11 that if we don't close 50 percent of the units you will 12 not be able to occupy your unit. 13 So -- 14 Q. Was Corus Bank consulted in regard to the 15 closing notice? 16 A. No. 17 Q. Corus Bank didn't learn about the closing 18 notice until after the fact? 19 A. Correct. 20 Q. Now, at some point there was an effort by at 21 least one unit owner to close, correct? 22 A. Yes. 23 Q. And Corus Bank did not agree to that closing, 24 correct? 25 A. Yes.</p>
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<p>1 (Exhibit 35 marked for identification) 2 Q. Let me hand you number 35 and ask you to take 3 a look at that please. This is a June 25, 2009 letter 4 from Corus Bank to SB Hotel Associates. 5 A. Okay. 6 (Exhibit 36 marked for identification) 7 Q. Number 36 is an August 11, 2009 letter from SB 8 to Keith Gibbons at Corus Bank. 9 MR. TRENCH: Are you going to ask him 10 questions about these? 11 MR. ALTSCHUL: I'm going to ask him questions 12 about them as a group and hoping that it will 13 refresh his recollection. 14 A. Okay. 15 Q. Last but not least, number 37, which is an 16 August 13, 2009 letter from Corus Bank to SB Hotel 17 Associates. 18 (Exhibit 37 marked for identification) 19 A. Okay. 20 Q. First, with respect to where we left off in 21 your testimony before I showed you the rest of the 22 exhibits I asked you, really I showed those to you to 23 see if it would refresh your recollection as to why the 24 loan wasn't going well, I think was what was your 25 testimony was.</p>	<p>1 Q. And Corus Bank essentially did not consent to 2 SB Hotel recording the condominium documents at that 3 time, correct? 4 A. I didn't see that. That may be true but I 5 don't recall specifically that we refused to consent to 6 the recording of the docs. We may have refused to sign 7 the subordination. I think the borrower can record the 8 condominium docs without our signing it, it is just not 9 subordinate to the mortgage in that case. 10 Q. You don't recall there being any provisions in 11 the loan agreement that the condo docs had to be 12 approved by Corus Bank? 13 A. That would be typical. 14 Q. And if Corus Bank didn't give that approval is 15 it your testimony that the borrower can go ahead and 16 record the condo docs anyway? 17 A. They could. It would be a default under the 18 loan, but there's going to be defaults under the loan 19 in any event. 20 Q. Is there any reason why Corus Bank couldn't 21 have just extended the loan? 22 A. There could be many reasons why they couldn't. 23 I mean, extending the loan is an independent credit 24 decision. 25 Q. Let me ask differently. Could Corus Bank have</p>

166	<p>1 extended the loan?</p> <p>2 A. I can't -- that would require me to speculate</p> <p>3 on what's conceivable, something that didn't happen,</p> <p>4 whether it is conceivable.</p> <p>5 Q. Was it considered at the time?</p> <p>6 A. I don't recall a discussion about extending</p> <p>7 the loan.</p> <p>8 Q. Do you recall SB Hotel asking for a loan</p> <p>9 extension?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. All the documents that I've given to you, all</p> <p>12 of these exhibits come from the Corus Bank loan files,</p> <p>13 correct?</p> <p>14 A. I believe so.</p> <p>15 Q. And all of these documents were in possession</p> <p>16 of the FDIC after September 11, 2009, correct?</p> <p>17 A. Yes to the -- I'll point out that the FDIC</p> <p>18 didn't know what they had in their files.</p> <p>19 Q. How do you know that?</p> <p>20 A. They came in, they had a thousand things to</p> <p>21 get their arms around. So --</p> <p>22 Q. Did the FDIC did not have enough resources to</p> <p>23 try and learn what they had?</p> <p>24 A. They had quite a number of resources, but</p> <p>25 there's a bank with billions of dollars in assets.</p>	168	<p>1 Q. And when in that process were the loan</p> <p>2 documents relating to this file sent to Atlanta?</p> <p>3 A. Oh, I have no idea. They were all in file</p> <p>4 rooms in the basement, and the basement was taken over</p> <p>5 by the FDIC and the files were systematically wrapped</p> <p>6 and shipped to Atlanta.</p> <p>7 Q. Did the FDIC do any review of documents in the</p> <p>8 basement?</p> <p>9 A. No, they were wrapping and shipping.</p> <p>10 Q. You don't know what order they wrapped and</p> <p>11 shipped?</p> <p>12 A. No.</p> <p>13 Q. Do you know what the review process was once</p> <p>14 they got to Atlanta?</p> <p>15 A. No.</p> <p>16 Q. Did you ever go to the operation in Atlanta</p> <p>17 and see how many people they assigned and what they</p> <p>18 were reviewing?</p> <p>19 A. No.</p> <p>20 Just fair notice, in 30 minutes I'm going to</p> <p>21 have to walk out the door.</p> <p>22 Q. If we are not done by then we will deal with</p> <p>23 that however we have to but I appreciate your fair</p> <p>24 notice.</p> <p>25 Do you know who Jim Petros is?</p>
167	<p>1 There's things you do first and there's things you do</p> <p>2 second.</p> <p>3 Q. You would agree that the FDIC had all of these</p> <p>4 documents, it was just a question of what priority they</p> <p>5 put on what they wanted to review, correct?</p> <p>6 A. I would agree that these documents were in the</p> <p>7 files, but I don't think they had an immediate</p> <p>8 designated file reader, but I could be wrong.</p> <p>9 Q. Where were you at that time, September 9,</p> <p>10 2009, were you still with Corus Bank?</p> <p>11 A. On the second floor.</p> <p>12 Q. And where were you on September 10, 2009?</p> <p>13 A. On the second floor.</p> <p>14 Q. So you stayed with Corus Bank until when?</p> <p>15 A. Until October 16, 2009.</p> <p>16 Q. Where was the physical possession of these</p> <p>17 documents after September 11, 2009?</p> <p>18 A. All, the vast majority of the documents were</p> <p>19 part of a big operation to be packaged in cellophane-</p> <p>20 surrounded boxes and shipped to Atlanta to Trimont.</p> <p>21 Q. And when did that happen, over what period of</p> <p>22 time?</p> <p>23 A. Immediately. That started happening --</p> <p>24 Q. About how long did that take?</p> <p>25 A. It took weeks.</p>	169	<p>1 A. No.</p> <p>2 Q. How about Jason Greenblatt?</p> <p>3 A. No.</p> <p>4 Q. Have you ever had any communication with</p> <p>5 anybody from The Trump Organization or anyone on behalf</p> <p>6 of Donald Trump relating to this project?</p> <p>7 A. I was involved in one phone call with Donald</p> <p>8 and Ivanka.</p> <p>9 Q. Approximately when was that?</p> <p>10 A. I don't remember.</p> <p>11 Q. Was it before September 11, 2009?</p> <p>12 A. Yes.</p> <p>13 Q. Was it before the loan was made in December of</p> <p>14 2006?</p> <p>15 A. No. It was closer to the end.</p> <p>16 Q. Tell me what you recall about that phone call.</p> <p>17 A. I recall Donald pitching the bank on, that</p> <p>18 they are creative thinkers and could provide some</p> <p>19 services.</p> <p>20 Q. Who was the they that you are referring to?</p> <p>21 A. His company.</p> <p>22 Q. The Trump Organization?</p> <p>23 A. Right.</p> <p>24 Q. So Donald was pitching The Trump Organization</p> <p>25 to the bank?</p>

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<p>1 A. It was a sales call.</p> <p>2 Q. For what?</p> <p>3 A. For whatever might come in the future.</p> <p>4 Q. It didn't relate to this project?</p> <p>5 A. Well, it related to this project generally</p> <p>6 saying, perhaps we can help.</p> <p>7 Q. How was Donald suggesting he could help?</p> <p>8 A. It was nothing specific. It was really</p> <p>9 salesmanship.</p> <p>10 Q. Was Donald suggesting that the bank should</p> <p>11 foreclose on the project and then turn it over to</p> <p>12 Donald?</p> <p>13 A. No, I don't remember anything specific like</p> <p>14 that.</p> <p>15 Q. What type of help were they offering? Were</p> <p>16 they offering to make the loan payments?</p> <p>17 A. Just that they were creative thinkers and good</p> <p>18 property managers.</p> <p>19 Q. Were they still interested in participating in</p> <p>20 the management of this project at that time?</p> <p>21 A. It really was not a detailed-type discussion.</p> <p>22 It was a marketing call.</p> <p>23 Q. So they certainly didn't tell you that they</p> <p>24 wanted out of the project at that point, did they?</p> <p>25 A. We didn't discuss the loan in a specific way.</p>	<p>1 that somebody showed up.</p> <p>2 Q. And what happened?</p> <p>3 A. Well, we sent the letter saying that we are</p> <p>4 not going to issue a release of our mortgage.</p> <p>5 Q. Prior to that time?</p> <p>6 A. No, I think it was, maybe it was right around</p> <p>7 that day. Let's see. It was five days before. We</p> <p>8 sent a letter on June 25 based on a request for a</p> <p>9 closing on June 30. And if I'm saying we, by that I</p> <p>10 mean Corus Bank.</p> <p>11 Q. I understand. Did you say in the letter that</p> <p>12 you weren't going to close, you weren't going to give</p> <p>13 the release?</p> <p>14 A. The letter states in the last paragraph,</p> <p>15 "Based on the probable loss that most of the contract</p> <p>16 purchasers and the potential loss of the Trump flag for</p> <p>17 the hotel, the bank intends to carefully study the</p> <p>18 possible approaches" -- that was the wrong part.</p> <p>19 Didn't specifically say that.</p> <p>20 We said, "In view of the simple facts</p> <p>21 described in this letter it is the bank's business</p> <p>22 judgment that allowing one closing and thus investing a</p> <p>23 single contract purchaser with irrevocable rights of</p> <p>24 ownership in a minute fraction of the project the day</p> <p>25 prior to loan maturity is not a prudent business</p>
171	173
<p>1 Q. Let me ask my question again. They didn't</p> <p>2 tell you they wanted out of the project at that time,</p> <p>3 true?</p> <p>4 A. I really don't remember whether it was before</p> <p>5 or after they had sent their notice regarding the</p> <p>6 revocation of their license.</p> <p>7 Q. So you don't recall whether the idea of The</p> <p>8 Trump Organization and Donald Trump leaving the project</p> <p>9 was discussed during your phone call with Donald and</p> <p>10 Ivanka, correct?</p> <p>11 A. Well, if it was after they had sent the letter</p> <p>12 revoking the license I just don't remember that being</p> <p>13 part of the conversation.</p> <p>14 Q. Do you recall in those letters that you saw an</p> <p>15 issue of, I think you said you remembered a minute ago</p> <p>16 somebody who wanted to close, do you recall that?</p> <p>17 A. Yes.</p> <p>18 Q. That was unit 1412?</p> <p>19 A. That's what I was told.</p> <p>20 Q. What do you recall about that?</p> <p>21 A. I recall that somebody wanted to close on the</p> <p>22 last day of the loan term.</p> <p>23 Q. Do you know whether the buyer showed up at the</p> <p>24 offices of the closing agent?</p> <p>25 A. I don't have any actual knowledge but I'm told</p>	<p>1 decision. It will not materially reduce the amounts</p> <p>2 due to the bank and it will not adversely affect the</p> <p>3 borrower or the Junior Lender. In addition, we believe</p> <p>4 it is legally improper to close on a unit when you are</p> <p>5 not prepared to deliver the product, a functioning</p> <p>6 hotel, promised in the offering material."</p> <p>7 Q. What are you reading from, which letter, which</p> <p>8 exhibit?</p> <p>9 A. The letter that is marked as Exhibit 35, the</p> <p>10 second to the last paragraph.</p> <p>11 Q. So back to the purchaser who wanted to close.</p> <p>12 You understood he showed up at the closing office,</p> <p>13 correct?</p> <p>14 A. Hearsay. I heard. Actually I don't know.</p> <p>15 Q. Do you know what happened with that guy?</p> <p>16 A. I do not know.</p> <p>17 Q. Do you know whether he was given his money</p> <p>18 back?</p> <p>19 A. I do not know.</p> <p>20 Q. Who would know that?</p> <p>21 A. Whoever was at the office, at the closing</p> <p>22 office if the person showed up.</p> <p>23 Q. The closing agent?</p> <p>24 A. Title offices. Whoever was there.</p> <p>25 Q. Was somebody from Corus Bank part of the title</p>

174	<p>1 office, one of the title officers for that project?</p> <p>2 A. No.</p> <p>3 Q. You see on there in the series of letters</p> <p>4 there's discussions about problems with the</p> <p>5 construction loan and financing. Did Corus Bank ever</p> <p>6 deny financing or construction draws to SB Hotel?</p> <p>7 A. I don't recall.</p> <p>8 Q. Is it your understanding that Corus Bank fully</p> <p>9 performed its obligations under the construction loan?</p> <p>10 A. It typically did fulfill its obligations but I</p> <p>11 don't recall on this loan. Oftentimes in construction</p> <p>12 loans you get a draw request from a borrower which does</p> <p>13 not meet the requirements of the loan agreement and</p> <p>14 there is delay while certain things are, requirements</p> <p>15 are met.</p> <p>16 Q. Do you know whether the construction loan was</p> <p>17 supposed to pay for the buildout of the spa and the</p> <p>18 restaurant at the project?</p> <p>19 A. I do not know.</p> <p>20 Q. You were asked some questions by Mr. Gillman</p> <p>21 about the current intent of the owner -- of the lender</p> <p>22 upon successful foreclosure and I believe you said that</p> <p>23 the lender, the owner of the loan now, will operate the</p> <p>24 project, correct?</p> <p>25 A. Most likely.</p>	176	<p>1 claims they may have for an interest in the building?</p> <p>2 A. Both.</p> <p>3 Q. Are you sure about that?</p> <p>4 A. No.</p> <p>5 Q. In Exhibit 36 you saw SB Hotel claiming --</p> <p>6 A. Let me correct that.</p> <p>7 Q. Go ahead.</p> <p>8 A. Whatever rights the purchasers have against</p> <p>9 the original borrower remain. We are trying to</p> <p>10 foreclose their interest in the property.</p> <p>11 Q. Let me ask you with respect to Exhibit 36, the</p> <p>12 SB letter to Corus Bank that claims a series of</p> <p>13 defaults. It is August 11, 2009.</p> <p>14 A. Yes.</p> <p>15 Q. Any of those allegations true?</p> <p>16 A. I doubt it.</p> <p>17 Q. So you think that SB Hotel is wrong in making</p> <p>18 all those allegations against Corus Bank?</p> <p>19 A. I think that this letter was prepared as</p> <p>20 posturing a position for expected future litigation.</p> <p>21 Q. Did anybody ever tell you that from SB Hotel?</p> <p>22 A. No.</p> <p>23 Q. That's just your opinion based on reading the</p> <p>24 letter?</p> <p>25 A. Yes.</p>
175	<p>1 Q. In what manner are they considering operating</p> <p>2 the project?</p> <p>3 A. I think that right now the focus is on</p> <p>4 completing the enforcement action that's ongoing, and</p> <p>5 the business people are thinking about what future uses</p> <p>6 might be productive.</p> <p>7 Q. Are they considering going forward as a hotel</p> <p>8 condominium?</p> <p>9 A. I'm sure they are considering all possible</p> <p>10 uses of the property.</p> <p>11 Q. Do you know whether that is being considered</p> <p>12 as one of the possible uses of the property?</p> <p>13 A. I would think that it is being considered as a</p> <p>14 possible use of the property.</p> <p>15 Q. Has CCV decided whether it is willing to close</p> <p>16 if purchasers came along today and said, Hey, I want to</p> <p>17 buy a unit?</p> <p>18 A. At this time we are foreclosing the contracts.</p> <p>19 Q. That part I understand. That's why we are</p> <p>20 here today.</p> <p>21 A. Right. So the answer would be no, based on</p> <p>22 the fact that we are foreclosing out the purchasers'</p> <p>23 rights under the contracts.</p> <p>24 Q. You are foreclosing out the purchasers' rights</p> <p>25 under the contracts or you are trying to foreclose any</p>	177	<p>1 Q. Why isn't anything being done currently to</p> <p>2 build out the restaurant or the spa?</p> <p>3 A. Because we don't own the property, we being</p> <p>4 Corus Construction Venture, the lender that's</p> <p>5 foreclosing on it.</p> <p>6 Q. Has there been any discussions with the</p> <p>7 current owner about taking steps to complete the</p> <p>8 project over, say, the last two years while this</p> <p>9 building has been sitting there empty?</p> <p>10 A. Any discussions we have had with the borrower</p> <p>11 are confidential pursuant to a mediation that took</p> <p>12 place.</p> <p>13 Q. I'm not asking about the mediation agreement.</p> <p>14 Other than the mediation agreement, any discussions</p> <p>15 with the current owner of the property over the last</p> <p>16 two years about building out the spa or the restaurant</p> <p>17 and completing the project?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Are you aware of any current discussions with</p> <p>20 Trump or The Trump Organization about becoming involved</p> <p>21 with the project once again?</p> <p>22 A. No.</p> <p>23 Q. Any discussions during the last two years to</p> <p>24 that extent?</p> <p>25 A. No.</p>

178	<p>1 Q. One question that I said earlier and I think I</p> <p>2 stated it incorrectly. With respect to all the</p> <p>3 exhibits that we have seen that have the CCV Bates</p> <p>4 stamp, all of those documents came from Corus Bank</p> <p>5 files and went to the FDIC, correct?</p> <p>6 A. If Corus Construction Venture has possession</p> <p>7 of them now they had to have been transferred to Corus</p> <p>8 Construction Venture by the FDIC as receiver.</p> <p>9 Q. Who would have received those documents from</p> <p>10 Corus Bank, correct?</p> <p>11 A. When it took over Corus Bank.</p> <p>12 Q. So the answer was yes, correct?</p> <p>13 A. Yes.</p> <p>14 MR. ALTSCHUL: Let's take about a three minute</p> <p>15 break. I might be done. Let me review my notes</p> <p>16 and see if we are done.</p> <p>17 (Recess taken in the proceedings)</p> <p>18 MR. ALTSCHUL: Back on.</p> <p>19 (Exhibit 38 marked for identification)</p> <p>20 BY MR. ALTSCHUL:</p> <p>21 Q. Let me show to you what I have marked as</p> <p>22 Exhibit 38. And this will be a composite exhibit.</p> <p>23 This is a composite of letters from my law firm to</p> <p>24 Sheila Bair, Thomas Curry, Martin Greenberg, and</p> <p>25 Mitchell Glassman. They are all dated August 31, 2009.</p>	180	<p>1 A. I doubt it.</p> <p>2 Q. Well, the FDIC had employed you, correct?</p> <p>3 A. Yes.</p> <p>4 Q. The FDIC had employed the Corus loan officer</p> <p>5 with regard to the SB loan, correct?</p> <p>6 A. Yes, through a subcontractor.</p> <p>7 Q. And the loan officer was clearly aware of the</p> <p>8 Intercreditor Agreement and its terms and requirements,</p> <p>9 right?</p> <p>10 A. I can't speak to what the loan officer knew</p> <p>11 about the Intercreditor Agreement.</p> <p>12 Q. The Intercreditor Agreement was specifically</p> <p>13 referenced and assigned to CCV by FDIC-R on October 16,</p> <p>14 2009, correct?</p> <p>15 A. Yes.</p> <p>16 Q. So that document was fully available for</p> <p>17 whatever review and examination FDIC or CCV wanted to</p> <p>18 make of it, correct?</p> <p>19 A. It was in the files.</p> <p>20 Q. You were asked questions about Exhibit 35.</p> <p>21 Could you pull that up in front of you. Exhibit 35 is</p> <p>22 a letter that was sent to SB Hotel Associates on June</p> <p>23 25, 2009, is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Who authored this letter?</p>
179	<p>1 Are you familiar with these letters, sir?</p> <p>2 A. No.</p> <p>3 Q. Never seen them before?</p> <p>4 A. I see one letter --</p> <p>5 Q. After the exhibits then you will see the</p> <p>6 second, third and fourth letter.</p> <p>7 A. I don't recall sees these letters. It's</p> <p>8 possible that I did, though, and was asked to respond.</p> <p>9 MR. ALTSCHUL: I don't have any further</p> <p>10 questions.</p> <p>11 REDIRECT EXAMINATION</p> <p>12 BY MR. GILLMAN:</p> <p>13 Q. I have a couple and we'll get you out of here.</p> <p>14 You were asked some questions with regard to what</p> <p>15 information Starwood had. I want to go back to the</p> <p>16 issue of what information CCV and the FDIC had.</p> <p>17 It's correct, isn't it, that specifically with</p> <p>18 regard to the SB Loan Documents and the Intercreditor</p> <p>19 Agreement, CCV was well aware of the Intercreditor</p> <p>20 Agreement prior to October 16, 2009, correct?</p> <p>21 A. CCV didn't exist before October 16.</p> <p>22 Q. Actually it did. It existed on October 13,</p> <p>23 but be that as it may. As of the date of its existence</p> <p>24 the FDIC was well aware of the Intercreditor Agreement,</p> <p>25 correct?</p>	181	<p>1 A. Keith Gibbons.</p> <p>2 Q. Keith Gibbons signed it. Who authored it?</p> <p>3 A. I played a role in advising on the contents of</p> <p>4 the letter.</p> <p>5 Q. In this letter you or Mr. Gibbons or whoever</p> <p>6 participated on behalf of Corus says at the end of the</p> <p>7 first page, "in addition we believe it legally" --</p> <p>8 MR. TRENCH: Which page are you on?</p> <p>9 MR. GILLMAN: The end of the second over to</p> <p>10 the second.</p> <p>11 Q. "In addition, we believe it is legally</p> <p>12 improper to close on a unit when you are not prepared</p> <p>13 to deliver the product, a functioning hotel, promised</p> <p>14 in the offering materials." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. I would like you to get in front of you again</p> <p>17 Exhibit 10 and go to the site review and go to the</p> <p>18 bottom. There's a statement there with regard to</p> <p>19 extensive legal analysis by Corus Bank to the</p> <p>20 conclusion that the loss of the Trump flag or the</p> <p>21 inability to open as a hotel did not release the</p> <p>22 contract purchasers from any obligations under the</p> <p>23 contracts, right?</p> <p>24 A. It says --</p> <p>25 Q. Why don't you read into the record what it</p>

182	<p>1 says?</p> <p>2 A. It says "Corus's extensive legal review of the</p> <p>3 sales contracts leads them to believe that the loss of</p> <p>4 the Trump flag and the failure to open as a hotel does</p> <p>5 not release the buyers from their contracts."</p> <p>6 Q. So as of 2009, at least, sometime prior to</p> <p>7 October 16, 2009, a statement by the Starwood due</p> <p>8 diligence people that the extensive legal analysis by</p> <p>9 Corus Bank had caused them to conclude that the loss of</p> <p>10 the Trump flag or the failure to open as a hotel would</p> <p>11 not release the contract purchasers from their</p> <p>12 obligations, right? That's what it says?</p> <p>13 A. It says that.</p> <p>14 Q. Where did that information come from?</p> <p>15 A. I don't know.</p> <p>16 Q. Who at Corus did that legal analysis?</p> <p>17 A. I don't know if it was done by Corus.</p> <p>18 Q. Well, doesn't it say Corus's extensive legal</p> <p>19 analysis?</p> <p>20 A. Yes.</p> <p>21 Q. So can you tell me why Corus had done</p> <p>22 extensive legal analysis that wouldn't be a default or</p> <p>23 impairment to the contracts but in the letter sent by</p> <p>24 Corus to SB it says that it would?</p> <p>25 MR. TRENCH: Object to form.</p>	184	<p>1 inspection based on the language in one of these</p> <p>2 documents which says they reviewed the property but</p> <p>3 couldn't get inside.</p> <p>4 MR. GILLMAN: Subject to, and as I said</p> <p>5 before, I don't think I've gotten a response or an</p> <p>6 answer as to whether I have gotten all the due</p> <p>7 diligence material. I do believe that it is within</p> <p>8 the possession, custody or control of CCV through</p> <p>9 its managing member, and so I'm adjourning subject</p> <p>10 to that and whatever documents may come in relating</p> <p>11 to that.</p> <p>12 MR. ALTSCHUL: The only thing I would add is I</p> <p>13 had asked about Mr. Gibbons' phone number. I hope</p> <p>14 I don't have to take it to the court to get it. I</p> <p>15 think I'm entitled to it and I don't think you have</p> <p>16 a basis for not providing it. Nevertheless I'll</p> <p>17 extend the courtesy of you making whatever phone</p> <p>18 call you need to make and hopefully it won't have</p> <p>19 to be brought to the court.</p> <p>20 MR. TRENCH: Before we --</p> <p>21 MR. GILLMAN: Off the record. Do you have any</p> <p>22 questions?</p> <p>23 MR. TRENCH: No.</p> <p>24 MR. GILLMAN: This is being ordered so you</p> <p>25 will be afforded the right to read or you can waive</p>
183	<p>1 A. First of all, I don't know if this is a true</p> <p>2 statement in Exhibit 10. I don't know this statement</p> <p>3 was made by the author.</p> <p>4 Q. That statement was made by your -- your</p> <p>5 assumption is that it was made by a Starwood due</p> <p>6 diligence person, right?</p> <p>7 A. Yes, but they were not in contact with people</p> <p>8 at Corus Bank.</p> <p>9 Q. Well, sure they were.</p> <p>10 A. Not prior to October 16.</p> <p>11 Q. All right. Somewhere somehow this person</p> <p>12 reports this extensive legal analysis. Do you have any</p> <p>13 idea where it came from?</p> <p>14 A. No. It could have come from somebody reading</p> <p>15 summaries of that were posted by the FDIC.</p> <p>16 Q. We also note --</p> <p>17 A. Surmising or extrapolating beyond what was</p> <p>18 true.</p> <p>19 Q. Well, it doesn't say that, does it?</p> <p>20 A. It doesn't say that.</p> <p>21 Q. You indicated that there was a site visit by</p> <p>22 Starwood earlier in 2009, correct?</p> <p>23 MR. TRENCH: Object to the form.</p> <p>24 Q. Correct?</p> <p>25 A. I indicated, I believe, that there was a site</p>	185	<p>1 that.</p> <p>2 MR. TRENCH: He'll read and I'll get a copy.</p> <p>3 MR. GILLMAN: I would like to get a rough.</p> <p>4 MR. ALTSCHUL: We'll take a copy as well.</p> <p>5 MR. TRENCH: I'll take a copy of whatever he</p> <p>6 gets.</p> <p>7 MR. ALTSCHUL: And mini and electronic.</p> <p>8 (Deposition concluded 5:01 p.m.)</p> <p>9 (Reading and signing not waived)</p>

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