IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN, Defendants.	Civil Action No. 1:18-cv-5587 Judge John Z. Lee Magistrate Judge Young B. Kim

EXHIBIT A TO BC57, LLC'S MOTION TO COMPEL RECEIVER DEPOSITION [Dkt. 1191]

BC57, LLC, pursuant to the Magistrate Judge's Order of this date [Dkt. 1192], files the following Exhibit A to BC57, LLC's Motion to Compel Receiver Deposition [Dkt. 1191]:

- Motion Hearing Transcript of November 18, 2021

BC57, LLC

/s/David E. Hart
David E. Hart
Robert M. Horwitz
Maddin Hauser Roth & Heller, PC
28400 Northwestern Drive, 2nd Floor
Southfield, MI 48034
(248) 827-1884
dhart@maddinhauser.com
rhorwitz@maddinhauser.com
Attorneys for BC57, LLC

Dated: February 22, 2022

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, I caused the foregoing Exhibit A to BC57' s Motion to Compel Receiver Deposition to be electronically filed with the Clerk of Court through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record, and e-mailed to ebgroup1service@rdaplaw.net, which is designed to send electronic notification of such filing to all parties involved in Group 1.

/s/ David E. Hart
David E. Hart

Exhibit “A”

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	Docket No. 18 C 5587
Plaintiffs,	)	
vs.	)	
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, AND SHAUN D. COHEN,	)	Chicago, Illinois November 18, 2021
Defendants.	)	3:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - VIDEOCONFERENCE MOTIONS
BEFORE THE HONORABLE JOHN Z. LEE

VIDEOCONFERENCE APPEARANCES:

For the Plaintiff:	U.S. SECURITIES & EXCHANGE COMMISSION BY: MR. BENJAMIN J. HANAUER 175 W. Jackson Blvd., Suite 900 Chicago, Illinois 60604
For the Receiver:	RACHLIS, DUFF, PEEL & KAPLAN, LLC BY: MR. MICHAEL RACHLIS MS. JODI ROSEN WINE 542 South Dearborn, Suite 900 Chicago, Illinois 60605
Federal Home Loan Mortgage Corporation, Wilmington Trust, Citibank, Federal National Mortgage Assoc., U.S. Bank, Sabal TL, Midland Loan Svcs., BC57, and UBS AG:,	DYKEMA GOSSETT, PLLC BY: MR. TODD GALE 10 South Wacker Drive, Suite 2300 Chicago, Illinois 60606

APPEARANCES (Cont'd):

For U.S. Bank as Trustee:	FOLEY & LARDNER, LLP BY: MR. ANDREW T. McCLAIN 321 N. Clark St., Suite 2800 Chicago, Illinois 60654
For Midland Loan Svcs.:	AKERMAN, LLP BY: MR. MICHAEL D. NAPOLI 2001 Ross Avenue, Suite 3600 Dallas, Texas 75201
For Intervening Investors:	BOODELL & DOMANSKIS, LLC BY: MR. MAX A. STEIN 1 North Franklin, Suite 1200 Chicago, Illinois 60606
Also Present:	MR. KEVIN B. DUFF, Receiver
Court Reporter:	MR. JOSEPH RICKHOFF Official Court Reporter 219 S. Dearborn St., Suite 2128 Chicago, Illinois 60604 (312) 435-5562

* * * * * * * * * * * * * * * * * * *

PROCEEDINGS RECORDED BY
MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

(Proceedings had via videoconference:)

THE CLERK: 18 CV 5587, SEC vs. Equitybuild.

THE COURT: Good afternoon.

Who is appearing on behalf of the SEC?

MR. HANAUER: Good afternoon, your Honor, Ben Hanauer for the SEC.

THE COURT: Who is appearing on behalf of the receiver?

MR. RACHLIS: Good afternoon, your Honor, Michael Rachlis and Jody Rosen Wine on behalf of the receiver. The receiver Kevin Duff is also on the line, as well.

THE COURT: Good afternoon.

So, there are a number of other attorneys who are joining us for this videoconference who have motions up. Can you go ahead and identify yourselves for the record, please.

MR. STEIN: Good afternoon, your Honor, Max Stein on behalf of certain individual investor lenders.

MR. McCLAIN: Good afternoon, your Honor, Andrew McClain on behalf of U.S. Bank as trustee.

MR. GALE: Good afternoon, your Honor, Todd Gale. I represent a number of institutional investors, including in Group 1 BC57, LLC.

THE COURT: Anyone else?

(No response.)

THE COURT: Okay.

So, as I said, there are a couple of motions that I want to address today. The first one is the motion for leave to include an expert witness disclosure in the position statement. I have reviewed the briefs, and I wondered if the -- I was trying to determine what exactly the particular witness would have to say with regard to these matters.

And I take it that it's about the reasonableness of relying on particular types of disclosures as opposed to others; is that correct?

MR. GALE: Yes, your Honor.

Todd Gale.

And that is correct.

THE COURT: And, so, can you tell me from the institutional lenders' standpoint what exactly the argument is that the expert will be trying to address.

MR. GALE: Your Honor, the expert Bush Nielson has written the manuals that are used by title examiners and title readers so that they can determine what sorts of documentation they should rely upon, including things like payoff statements and release deeds.

In this case, we anticipate that the receiver and/or the SEC and/or certain individual lenders will make the argument that it was not rely- -- it was not reasonable for the title examiners here to rely upon the documents upon which they relied. Because Mr. Nielson is in a very good position

to understand exactly what sort of documents those people would rely upon -- and we would, of course, anticipate that in his report he would discuss his background, so that the Court would be in a position to determine whether or not his testimony would assist the Court in making these determinations -- we think that Mr. Nielson should be allowed to testify on those things.

And, as we understand it, your Honor has already granted the motion so that we can include his expert report with our position paper when it is filed on December 9th.

We are well aware of the comments that have been made, including those that were excerpted by the SEC in their statement regarding your Honor having granted our motion for leave to include Mr. Nielson's report. We are not going to have him testify as an expert on what the law is or is not. We are very aware that that is your Honor's province and it's not the place of an expert witness to come in and testify about.

THE COURT: To what the industry norms and practices were with regard to what information that people in the industry would rely on when making these determinations?

MR. GALE: Correct.

THE COURT: Mr. Rachlis, Mr. Hanauer?

MR. HANAUER: Yes. Thank you, your Honor. This is Ben Hanauer for the SEC.

Without seeing a report, it's very difficult to say whether it would comport with the Court's previous statements about not wanting real estate lawyers to be expert witnesses.

I can say that the positions that the institutional lenders have taken to date have been that the -- their reliance is based on provisions of the Illinois Mortgage Act. And I would think that we would not need a real estate lawyer to come in and say industry custom and practice is to follow the Mortgage Act.

So, the question of whether there should be an expert in the first place, the Court said what it said, but it's harder to say in a vacuum. I think the more important point the SEC was trying to make having not said the report, is that it would make sense for all the claimants, including a large number of pro se investors, to have the opportunity to see the report, either take the deposition or sit in on other claimants taking the deposition before everyone is putting pen to paper on their position papers and putting things in that may not be based on a complete evidentiary record, and especially given that these are -- most of the claimants appear to be pro se today.

THE COURT: And, Mr. Hanauer, the -- do you agree with the general proposition that the industry standard and norms as to what people reviewing such documents relied upon, that that is relevant to or may be relevant to the claims and

defenses asserted with regard to these properties?

MR. HANAUER: It could be. I mean, the evidence we've seen to date suggests the Court may not even have to get to that question based on what's in these purported releases, which I think just all the more suggests that if there is going to be an expert report, first of all, it should comply with Rule 26(a)(2); and, second, all the other claimants should have a chance to depose the expert and probe the basis of his opinions.

THE COURT: Okay.

Mr. Rachlis, do you have anything to add to that?

MR. RACHLIS: Yes, your Honor. Thank you.

I fully agree with Mr. Hanauer's points that he's raised. But I think as to your Honor's question about whether or not this may be relevant to the inquiries that may be made here, I think the answer is it may be relevant.

The reasonableness of their -- of what they reviewed and what occurred after that review, whether it was followed up in any way or not, does address -- at least may be related to issues of their own reasonable reliance, as well as inquiry notice questions. And as such, I certainly can understand why and how this may be relevant to those concerns.

But I also agree with Mr. Hanauer's points that have been raised and how it does impact the schedule and what the -- what all of the claimants may need to do as a result of

having this expert now part of this process.

THE COURT: So, talk to me about, Mr. Hanauer, kind of how you see -- or, Mr. Rachlis, rather -- how you see this disclosure and expert discovery process impacting the schedule.

MR. RACHLIS: Your Honor, there was discussion on this issue amongst representatives of the claimants -- Mr. Stein representing certain individual investors; Mr. Hanauer; Mr. Gale; the receiver's representatives -- in an effort to try and discuss these issues, and that led to a motion being submitted within the last week to ten days.

And in there, it basically, in very broad-based summary, extended the schedule approximately 45, 50 days. And the reason for that is, as Mr. Hanauer alluded to, it would allow the claimants the opportunity to depose -- well, one, to see this expert report, which is due on December 9th as part of their initial disclosure from the claimants. It allows the deposition to then occur. It allows all of the stakeholders, if you will, in this Group 1 process the opportunity to evaluate those statements, to possibly come up with their own rebuttal if necessary.

And, then, I think as contemplated originally through this process, we get through the entire period of discovery and, then, go ahead and put pen to paper and proceed forward with position statements, disclosures, and things of that

nature.

So, it was within the confines of thinking about those -- the impact -- you know, basically, extending discovery to allow these issues to be addressed before the claimants -- before the stakeholders are, basically, ready to write things out. Basically, completing the discovery process and then proceeding forward with those submissions.

When you take that all into account, the schedule that was proposed allowed for approximately another 45, 50 days. So, rather than concluding as originally anticipated on January 13th with responsive statements from claimants and the SEC, that would be extended to March 3rd, of the new year, 2022.

So, I'd suggest it's not a large amount of time, but I think it certainly adds degrees of fairness to all participants that would allow them to see this and be prepared in a better way to allow them to see all the discovery.

THE COURT: Are there any objections to the proposed schedule that would incorporate expert discovery?

MR. GALE: Yes, your Honor.

Todd Gale representing BC57.

We did, in fact, have conversations; and we were, I thought, close to agreement. The one -- but where it appeared to go off the rails was the receiver asked for additional time within which to disclose any avoidance claims that he might

bring. As all on the call know, those avoidance claims were to be disclosed today.

We did not see -- and we tried to engage in a discussion to determine and better understand -- how those avoidance claims would be impacted, if at all, by the proposed report of our expert Mr. Nielson. I asked for that. And I'll just be candid. I couldn't understand what receiver's counsel was trying to communicate to us on that. And, so, that's where it fell apart.

Most of the rest of what they proposed was not troublesome to us. In fact, what they had originally proposed to us was that Mr. Nielson's report would be due on December 9th; that there would be discovery, including a deposition of Mr. Nielson. We did not oppose that. We did not oppose the idea that his report would have to comply with Federal Rules of -- with the Federal Rule of Civil Procedure 26, that deals with expert disclosures.

But we did not understand, nor as we talk today do we understand now, why anything that Mr. Nielson would have to say about industry standards and practices and the reasonableness of reliance on certain documents, such as payoff statements and release deeds, have anything whatsoever to do with purported avoidance claims that might be asserted by the receiver that are due today. That's where the discussions fell down.

THE COURT: All right. Very good.

MR. STEIN: Your Honor --

THE COURT: So --

MR. STEIN: I'm sorry, your Honor. This is Max Stein.

There was actually one other area of disagreement on the motion that I filed. And just to be clear, the motion was denied by the magistrate judge. So, we'll just need to clean that up if there's movement, as it appears that there is.

But the other aspect that was not agreed on is we had requested that the costs of deposition -- pardon me, the costs of an expert's time and expenses in sitting for a deposition be covered by the party disclosing the expert. And we made that request because we believed, both as an equitable matter and as an administrative matter, that was a better way to do it, so that the parties taking the deposition didn't have to pay unknown costs to an expert they did not choose. And equitably -- administratively, pardon me -- this meant that each party would only ever have to pay the cost of one expert's deposition time, whereas if it were done strictly according to the rules, which your Honor has previously indicated are not being strictly adhered to, the parties deposing the experts might have to end up paying for multiple expert depositions.

THE COURT: All right.

Mr. Gale?

MR. GALE: We do disagree with that, your Honor. We think that the Federal Rules which make clear that only if manifest injustice would occur, then the party should -- who is taking the discovery, the deposition of the expert, that party should pay for the expert's time and, also, whatever time the expert needed to prepare for the deposition.

We see no reason to steer away from that here, because we do not think it would be manifestly unjust for them to pay for the time -- for our expert's time.

And for what it's worth -- and I guess the other parties don't know this yet because this would be part of Mr. Nielson's disclosure -- Mr. Nielson's hourly rate is $375 an hour. So, it's not at the very high end of some of the rates that we've seen from experts -- at least I have -- in my practice over the years.

THE COURT: All right.

So, with regard to the items in dispute, I will agree that the various deadlines, starting with the receiver's disclosure of avoidance claims, can be extended by 45 days. Given the fact that we're going to have additional discovery, I don't see any need to have the disclosure of avoidance claims be submitted any sooner than that.

With regard to the expert fees, given that this is a summary proceeding, I do think that it makes sense to have the

proponent of the expert be responsible to pay the expert fees and costs for sitting at a deposition. So, that request is granted, as well. I think it's just more equitable that way. If a party wants to retain an expert, then they can do so, but it's at their own cost all the way through.

The expert disclosures all do need to comply with Rule 26(a)(2). And to the extent that Magistrate Judge Kim's prior order is inconsistent with this one, it is vacated.

MR. STEIN: As a matter of clarification, the motion was Document 1085, and it includes an entirely new schedule that's laid out in the motion. Some of the days may be 45 days, some of the days may be slightly off of that, because as -- per your Honor's suggestions, we were going in multiples of seven. So, it might be simplest to review that schedule in the motion and enter a new order based on those dates.

THE COURT: All right.

Mr. Rachlis, why don't you submit a proposed order to my Proposed Order Inbox with the new dates.

MR. RACHLIS: We will do that, your Honor. Thank you.

THE COURT: Is there anything else that I need to address with regard to experts, then?

MR. GALE: Can I ask for one point of clarification? Because I think I understand one thing, your Honor, but I want to be sure before we move on to the next topic.

THE COURT: Okay.

MR. GALE: When you say moving the date by 45 days, does that include all parties' position papers that as we -- before this call started today would otherwise have been due on December 9th? I just want to make sure we're shooting for the right date on our end.

THE COURT: That's correct.

MR. GALE: Okay. Good. Thank you.

THE COURT: Now I want to move to the joint motion to determine claims process for single-claim properties.

Obviously, Mr. Rachlis will be speaking on behalf of the receiver. Who is going to be addressing this motion on behalf of the other movants?

MR. McCLAIN: Your Honor, that's myself, Andrew McClain; and Michael Napoli is also on the video.

THE COURT: All right.

So, Mr. Rachlis, I think I understand, but can you explain why if a property only is subject to a single claim, the receiver should -- why there's any need for any proceedings if it's just a single claim, like just at the basic level.

MR. RACHLIS: Okay. Your Honor, in this context, in looking at -- there is going to be a further inquiry into the validity of the claim. Right? So, as the receiver goes ahead and looks at what has been submitted, even when there's no --

theoretically, there's only one claim that's been submitted. As to that claim, for example, here there would be some discovery that would be looked at, and it would take two forms. First is the submissions from the single-lien claimant --

THE COURT: No, I understand, Mr. Rachlis. I'm sorry to interrupt you.

If the single claim is considered -- is invalidated, right, is voided, then what happens to the property and the assets associated with that property?

MR. RACHLIS: So, if the single-lien claimant is found, for example, should have been on inquiry notice and, therefore, their secured claim is found -- is turned into an unsecured one, the proceeds from the sale of the property that that claimant was claiming the secured interest in, those proceeds would go to -- would become funds that would be used for unsecured claimants.

THE COURT: Unsecured claimants on that property or unsecured claimants generally?

MR. RACHLIS: Unsecured claimants generally.

I should -- you know, to be fair, now, if there are other claimants on that property -- for example, there could be a -- some other type of trade creditor or something to that effect -- I imagine that they may have some right to those proceeds.

So, putting those issues aside, generally, the claim -- the monies would then -- generally speaking, would turn into unsecured funds that would be then utilized for general purposes for the unsecured claimants.

THE COURT: And, so, the dispute --

Anyway, Mr. McClain, anything you would like to add to that?

MR. McCLAIN: Yeah, your Honor.

I mean, I understand the point that Mr. Rachlis is making. But I would defer to Mr. Napoli if he wants to elaborate on that, as well. I can get into the points about the discovery that Mr. Rachlis was alluding to, but I would defer to Mr. Napoli if he wanted to elaborate.

THE COURT: Mr. Napoli?

MR. McCLAIN: I think you're on mute.

THE COURT: We can't hear you, Mr. Napoli, for some reason.

(Brief pause.)

MR. NAPOLI: Is this better, your Honor?

THE COURT: It is. Thank you.

MR. NAPOLI: Okay.

Your Honor, I would tend to agree with Mr. Rachlis that if the only secured claim is avoided, then the proceeds would go to the estate. I obviously dispute -- and it's not really the place here -- of the basis on which he suggests it

might be avoided.

But the purpose of the process, as we understand it, is to get that potential objection out, whether it's going to be made or not made, so that we can then litigate it and move forward. Because if he's not going to make that claim, then we should just get paid.

THE COURT: Right. Okay.

So, then I think the dispute becomes the timing of that particular, for lack of a better word, battle. Right? When should the receiver be required to disclose or to inform me and the claimants that the receiver does not oppose or does oppose that particular claim, and what sort of information should the parties be required to exchange in advance of that or as part of that determination?

And as I see it from the motion, the receiver is -- I know that there are various kind of details, but one of the main -- one of the overall reasons that the receiver gave is that the receiver obviously is very busy now with regard to the properties in the first tranche and reviewing those.

Mr. Rachlis, what sort of -- it seems, though, that, as the secured lenders have noted, that you already have -- the receiver does have a ton of information about the claims, this property. What other information would the receiver require to make a determination as to whether or not it is going to oppose the single claim on a particular property?

MR. RACHLIS: In addition to what has been provided -- which I note in follow-up to what is Footnote 3 of the joint motion on this issue, where it is noted that the -- that not all the documents have been submitted by all of these single-lien claimants; that one has indicated that it has provided all, the other has just indicated the majority of them have been provided.

So, I note that sort of as a starting point. But the bottom line here is we all need to complete -- make sure we have all of those documents.

Number two, like the standard discovery issues that all of the claimants are involved with in this -- in the claims process, there are some select document requests and interrogatories, most of them dealing with due diligence types of issues, which we would expect to be answered.

We then expect to get subpoenas -- done jointly, actually, between these stakeholders -- in the sense -- with going to the loan originators and the title companies.

If that information is collected and if we all can work together to get that to those entities -- we'll get that all done at one shot, at one time -- that collection of information would be complete and allow a determination -- allow a review and determination -- that would lead to either disclosure of an avoidance on these, on the issue of inquiry notice, or it will lead to a notice that there are -- there

will not be any such challenge.

So, it is that collection -- it is that remaining collection -- of documents combined with a review of them in order to make that determination. That's the upfront work that would need to be done.

THE COURT: And, Mr. McClain, I looked at Exhibit A and Exhibit B to the motion. One is the claimants' proposed schedule and the other one is the receiver's proposed schedule. Why should I adopt the claimants' proposed schedule over the receiver's proposed schedule?

MR. McCLAIN: Your Honor, I will answer your question. I just wanted to address one point that Mr. Rachlis made when he cited Footnote 3, indicating that one of the claimants has not provided all the information. That's kind of a mischaracterization of the facts.

What Footnote 3 is referring to is all the documents requested by the standard discovery requests. U.S. Bank has, in fact, provided all documents that were part of the proof of claim, and additional documents were provided at the outset of the case in September 2018, which was the majority of the underwriting files.

So, the receiver has in his possession all of the documents that he requested as part of the claims process that he identified as the necessary documents to evaluate and determine the validity of these claims. I just wanted to

clarify that point.

Going to your point about why the Court should adopt our process over the receiver's process, well, your Honor, I think there's a couple fundamental differences between our process and the receiver's process. One of the biggest sticking points that we ran into over the past few months in negotiation is the discovery. And our position is there's no need for additional discovery at this point right now.

The receiver's had in his possession our documents for over two years that were submitted as part of the claims process. In addition to that, he has all of the documents that are the Equitybuild documents. So, presumably, any documents that he is seeking from us as part of this discovery is part of the Equitybuild documents that he already has.

So, we just believe fundamentally it would be inequitable, a waste of resources to engage in discovery now, before there's an actual determination or disclosure by Mr. Rachlis that he's -- or excuse me, Mr. Duff -- that he's challenging our lien.

Compare that to the contested claims process where it's known that there's a current dispute so you can just jump right in to doing discovery. Here, we don't even know if there is a dispute. So, we don't believe that we should engage in additional discovery until the receiver takes the time to review the documents he already has in his possession

to determine if he has a good-faith basis to challenge our claims.

So, that's kind of one of the biggest framing issues that led to discussion and the negotiations and kind of the divide.

There's also other nuanced issues; for instance, the holdback of fees. But it was really the discovery that was a large issue and, then, the holdback of fees.

I'll pause here to see if you want me to discuss anything specifically or if Mr. Napoli wants to supplement.

THE COURT: Mr. Rachlis, I guess, can you respond to Mr. McClain's argument that the receiver doesn't need any additional discovery, at least to make the preliminary assessment of whether or not it's going to contest the claims.

MR. RACHLIS: Yeah.

That's based on the proposition that the receivership has all the documents that had been identified. And Mr. McClain cites to the EB library that's been set up, but the EB library does not have the loan origination documents from the loan originator that was working with these lenders, nor does it have the title company documents. Those are -- that's exactly the type of discovery that's being requested from -- essentially, from -- the standard discovery that's been contemplated for all of the groups.

So, that is part and parcel of the standard inquiry

that is being done for everyone, and that doesn't escape hereto. And, in part, it doesn't escape because we don't have those documents.

So, in order to understand and make the proper evaluation, which we hope can be done -- I mean, there's a smaller universe of documents. That's clearly true. Because there's not, like there is in Group 1, 170 different claimants.

On the other hand, there are documents and materials necessary to understand if there are going to be these avoidance claims -- particularly, say, on reasonable reliance or inquiry notice types of issues -- that are not in our possession.

And, indeed -- and another point here, they recognize -- I think as recognized by the participants on this, as well, because at the back end, while they've put it, you know, in the second half, if you will, after the notice is sent out, they realized that that type of discovery from the loan originators and title companies would be necessary. We're saying do that up front and let's get that done, you know, as quickly as we can, as early as we can, because that's necessary for the review.

They're trying -- we don't have the documents, so it would be difficult for us to be able to say that we've done that review when we don't have them. And we do think it's

relevant to that inquiry.

MR. McCLAIN: Your Honor, I think the gating issue for us is the disclosure by the receiver that he is, in fact, going to contest the claim. He has in his possession all of the documents that he wanted as part of the proof of claim. And, so, now he's asking for more as a basis of a dispute, which is backwards in how normal litigation goes. You file your complaint -- and, again, we're not -- we understand we're working in summary proceedings, we're not dealing with complaints here; but here it's a disclosure that you're challenging the lien -- and, then, you engage in the discovery. That's how a normal litigation dispute progresses.

THE COURT: Mr. Hanauer, does the SEC take a position on this issue?

MR. HANAUER: Thank you, your Honor.

For the most part, no. There are no investors involved, so the SEC does not want to -- we'd rather not be involved. We would just make the request that the procedures employed for these single-claims properties be as efficient as possible to keep costs down and with the least disruption as possible to the investor claims process.

THE COURT: Let's talk about timing.

Mr. Rachlis, given the timing of the first grouping and then the schedule for those other -- for the multi-claim -- properties involving multiple claims, what sort

of timing do you envision or do you anticipate for a claims resolution process with regard to the single-claim properties to take place.

MR. RACHLIS: So, the proposal that we have included, in summary form, would: One, we'd attempt to work on this. So, if your Honor were to consider this a group, if you will, this single-lien group, we would begin work on that if the process was approved, you know, simultaneously with Group 1, but making sure that we're not interfering with the completion of the Group 1 process.

And what we would do in that context is: One, the first -- and try and quickly with the -- working with the other -- with the institutional lenders that are involved here, try and get these subpoenas out quickly to the loan originators and to the title companies. That's the -- that's Point One.

Probably that's a 30-day process, but we would hope that that could -- in other words, 30 -- not to get that out in 30 days, but try and get responses back in some capacity, you know, in a 30-day window or so.

We would want to then look at that information, as well as the information that's been provided by these claimants, and come back to your Honor, at this point, I would say sometime in January, maybe January -- towards the end of the month -- and give you a status report and these claimants

a report, in order to let them know where we're at in terms of getting responses from these subpoenas and getting through the process of reviewing these claimant -- the materials that have been provided.

We think that if we are able to do that, we'd be in a position to be able to tell your Honor how soon thereafter we'd be in a position to provide either notices of no dispute or notices of avoidance that would trigger what we propose to be, you know, a 60-day -- based on the these single-lien claimants' request, I think there's no disagreement that they look at a 60-day process for purposes of going through contested claims. And, then, it's twenty -- and then the same sort of process for position statements and things of that nature.

So, it is an effort to: One, work in parallel with the Group 1 process; an effort to work cooperatively, quickly with the single-lien institutional investors; and to report back, you know, in the -- call it in approximately 45 days or so, but it would be sometime by mid-January.

I think we can make progress in that regard. That will give enough time to get subpoena answers, we believe, as well as to go through -- at least get a better handle on the documents, and then be in a position to inform the Court.

So, it's within that balance that we think that we are prepared to do that and devote, you know -- without trying

to -- and we also want the Court to know if we believe that this has created more of a problem, if going through this has either elicited to -- you know, there are 28 different properties here.

So, in going through those, if there's an issue, we want to flag it. We want the Court to know and the lenders to know that, you know, it's taking longer or not.

But we do think that would be a -- basically, a good way to keep everyone abreast of those efforts while still focusing on Group 1.

So, that is our general effort and proposal here to try and get this group of properties moving and moving, essentially, you know, right away through the kind of joint issuance of these.

THE COURT: All right.

And do you anticipate needing the claimants to answer some of the standard discovery requests?

MR. RACHLIS: Yes. We did specifically identify those in our proposal. There's very few -- not all of them, but three or four different requests or one or two interrogatories that, basically, we would want to be addressed during this time that we are getting the subpoenas answered and beginning the reviews of the -- of what is intimated on the claims. So, the answer is, yes, in a modified form.

THE COURT: Mr. McClain?

MR. McCLAIN: Your Honor --

THE COURT: Talk to me about timing.

MR. McCLAIN: This is why we believe that our proposed process is a better solution, is it's more streamlined. Right now, it sets the deadline of 28 days after your Honor approves our process of the receiver then having to review the documents he's had in his possession for over two years and determine whether he does have a good-faith basis to challenge our liens. And, then, if he discloses that, then, your Honor, we believe that there's discovery that the receiver can take based on that disclosure.

And, so, we would propose the timing to be how we set -- and the format -- how we set forth in our proposal.

In terms of addressing the proposal that Mr. Rachlis just laid out, your Honor, we're concerned that there's just going to be continuous delay here. This is exactly the process that was proposed by the receiver in the joint motion, which is we're going to endeavor to do this, we're going to endeavor to do this as quickly as we can, and then we're going to come back to the Court and report on our progress.

Your Honor, we need to get these two matters moving along. And, so, we would request, if the Court is going to honor the structure that the receiver is going to propose, which we hope it doesn't, that there be much shorter time frames here so we can get to a quicker resolution. I think

that's in all the -- our claimants', as well as the estate's, interest to resolve this as quickly as possible.

THE COURT: Okay.

MR. McCLAIN: I ask Mr. Napoli to supplement if he wants to.

MR. NAPOLI: Michael Napoli, your Honor.

One of the things that we're concerned about is there is no deadline. It's, well, it will be two months; and, then, we'll do a report; it may be another 60 days. We really believe that there needs to be a hard deadline, otherwise, you know, the work will consume whatever time it's allotted to.

As Mr. McClain notes, we submitted our proof-of-claim documents in July of 2019, more than two years ago. And these are the documents the receiver told us he needed in order to make this type of determination. And now we're being told that we're going to have to wait another 60, 120 days, while he gathers more documents, which I don't understand because if it's notice -- really bad evidence, if he thinks we're on notice of anything or we have knowledge of anything ought to be -- evidence of that would be in our files, not in some other file. I mean, what a loan originator or title agent might know is not anywhere near the same thing as to what we would know or we would have evidence of.

I would point out for both my client and Mr. McClain's client, that we are several steps assignees down in

securitization trusts. We had no contact with loan originators or title companies.

So, we're being asked to hold up on things that would not in the ordinary course ever make it to us, which I just think we need to have a deadline that needs to be stuck to so Mr. Duff and Mr. Rachlis can make whatever claims they are, and we can litigate those as necessary.

MR. RACHLIS: Your Honor, may I make a few points in response?

THE COURT: Go ahead.

MR. RACHLIS: Your Honor, in terms of discovery, we originally, back when we had proposed that we would review all the claims -- and, you know, that was going to take a year or longer than that -- these same institutional investors had gone around and said, no, that's not right. We had sought a stay. Judge Kim entered a stay. Then we entered into lengthy discussions about a claims process that would involve discovery. Because during that -- during the period of time that the receiver originally would look at these issues, they could -- the receiver has the right, if not the obligation, to seek discovery on various issues that it deems relevant.

So, the proof of claim is not the end of the story. The discovery was to occur during the claims process.

These claims are part of the claims process. They may have -- they may be not of the same number of claimants,

but they are still part of a process that always engendered there would be discovery.

As to the issues that are being identified here, if it is, as stated by Mr. Napoli, that the correspondence and other information from the loan originators is as said, then certainly that would be relevant to a decision that would be made. We don't have that information. We don't know that that is accurate or complete in terms of what is in the loan origination files or in the title company files, which is why that process is probably -- that's set forth as part of this process as a whole. We've set forth that title companies would be subject to subpoenas. It's one of the one items that are out there. Loan originators are the same type.

So, here, the type of discovery would always be contemplated. We recognized that through this claims process we've gone through, you know, detailed types of discussions in order to somehow set forth how these claim disputed process would go. It was never to sacrifice there would be a need for discovery. There was always going to be, during the claims process, based on the way this has come out, some discovery.

So, we do think it's relevant. Well, it was always contemplated and would be relevant to trying to get to the conclusion, even on these claims, as well. So, I don't know exactly that those are strong arguments in support of the process that's being advocated by the claimants.

In terms of the idea of timing, you know, it is difficult. Because we have the current Group 1 activity, we certainly recognize that there is a lot going on that we want to address.

We thought that having a date out there of sometime in the latter part of January is a date. It's a date of relevance that does provide both the Court, these institutional investors and the receiver a target date for purposes of getting the discovery completed and looked at, and updating the Court in that regard. So, I don't think that -- it's not fair to characterize us as without any date.

And as we indicated, we are hoping that this would all be completed in conjunction with and parallel to the completion of the Group 1 -- the group -- the process for Group 1 claimants. So, those dates are present. Those dates have been articulated.

I do think that there are some exigencies that we don't control, that we thought would be -- allow us to be able to report on this in the later January time period and, then, come with a more precise date that would allow for the completion of that proceeds. So, we do think that there are more firm dates than are being characterized here.

THE COURT: All right. Thank you.

So, with regard to the properties identified in the joint motion to determine claims process for single-claim

properties, that's Document 1073, I'm opening up the process officially. Start your engines. It's open as of today. And this is how it's going to go: By no later than November 30th, I want the receiver, in conjunction with the claimants, to send out third-party subpoenas to the title companies and loan originators.

The claimant, I want them to answer the Request Nos. 6, 7 and 8 and Interrogatory 5 of the standard discovery by December 10th.

We will have a status hearing on January 28th at 10:00 a.m. via videoconference.

From that date forward, there will be -- to the extent necessary, there will be 60 days of discovery, again, to the extent necessary.

During those 60 days, discovery shall be as set forth in the Federal Rules, except -- and here I'm reading from Page 4 of Exhibit B, but I'm going to modify it -- each party will be limited to five additional interrogatories. Each party will be limited to three additional requests for production. I am going to allow requests for admission up to 12, without subparts. Each party will be limited to three depositions. There will be no third-party discovery, except for title companies and loan originators without leave of Court. Neither the receiver, nor any Rule 30(b)(6) representative of the estate may be deposed, because I don't think that's going

to provide any sort of relevant information -- relevant factual information anyway. No expert discovery will be permitted without leave of Court.

I'm going to set April 29th as the deadline for the receiver's position paper with regard to its position with regard to the claims that are at issue with regard to the properties.

And, then, after that, once that is done, we will have another status hearing in May, immediately after the submission of that report, May 6th at 9:00 a.m., by videoconference. And at that point, I think we'll have -- all of us will have -- an idea as to how many of these claims will be disputed, on what grounds and what sort of schedule needs to be set forth going forward.

I think that while it does mean that Mr. Rachlis and the people in his firm will be incredibly busy during this time, I think that that should be enough time for them to do the work.

And I see that Ms. Wine and Mr. Duff are on the line and they're not -- they haven't fainted yet. So, I think that that seems workable.

(Laughter.)

THE COURT: That way, we do have a date by which the claimants will have an idea as to whether or not the receiver actually will object or will not object. And it gives the

receiver some discovery. The discovery that it needs to make sure that he is satisfying his duties to the estate. And it keeps the case moving forward with regard to those single claims.

MR. RACHLIS: Your Honor, may I ask for one clarification?

THE COURT: Yes.

MR. RACHLIS: We had -- part of -- I think all of the proposals had asked that there be a referral to Judge Kim for purposes of discovery and settlement on this grouping. Would your Honor's order also make that referral at this point in time?

THE COURT: I will. I'll go ahead and refer this. Basically, all of discovery in this case generally has been referred to Magistrate Judge Kim, who has graciously agreed to oversee the discovery in this case -- I will have to explain to him why I'm vacating one of his prior orders, but I'll take care of that -- and for settlement, as well.

MR. RACHLIS: Excellent. Thank you, your Honor.

THE COURT: Is there anything else that I can address for the parties today?

MR. McCLAIN: Your Honor, I just want to clarify, what format is the position paper supposed to be in from the receiver?

THE COURT: To the extent that the receiver is not

going to oppose -- object to the claim, it will be one line that receiver does not object to the claim. To the extent the receiver objects to the claim, it will set forth the basis for the receiver's objection.

MR. McCLAIN: So, factual and legal basis?

THE COURT: Yes.

MR. McCLAIN: Thank you, your Honor.

THE COURT: Very good. Thank you.

MR. STEIN: Your Honor?

THE COURT: Yes.

MR. STEIN: My apologies. Max Stein on behalf of certain of the individual investors.

I wondered if it might make sense to schedule another status like this one for late January. I was going to suggest around January 20th. Under the new schedule, that will be around when we would be completing expert discovery, and that way there would be a date at which any new issues -- I'm not anticipating any, but I've now been in this case long enough to know that there may be some -- could be raised with your Honor.

And I further suggest that they be raised through a joint status report, the respective positions, as opposed to through a motion that then inadvertently gets addressed in the way the Court would normally address them and create some confusion.

THE COURT: All right. Well, I've already set a status for January 28th, right, at 10:00 a.m. So, we'll do that.

And, then, I think that's a good idea, Mr. Stein. I'd like the parties who are involved in Group 1 to submit a joint status report to me by January 25th.

MR. STEIN: Thank you, your Honor.

THE COURT: All right. Thank you. Have a very good Thanksgiving, everyone.

MR. RACHLIS: You too. Thank you, your Honor.

MR. GALE: Thank you, your Honor.

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Joseph Rickhoff November 23, 2021
Official Court Reporter