

IN THE SUPREME COURT OF OHIO

IN RE: GUARDIANSHIP
OF BESSIE SANTRUCEK

CASE NO. 2007-1545

On Appeal from the Court of
Appeals of Licking County
Ohio, Fifth Appellate District
(No. 06 CA 130)

REPLY BRIEF OF APPELLANT JENNIE HULL

William G. Porter, II (0017296)
(COUNSEL OF RECORD)
Michael J. Hendershot (0081842)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
Telephone: 614-464-5448
Facsimile: 614-719-4911
wgporter@vssp.com

Kevin R. McDermott (0019256)
(COUNSEL OF RECORD)
Schottenstein, Zox, & Dunn Co., LPA
250 West St.
Columbus, Ohio 43215
Telephone: 614-462-5001
Facsimile: 614-222-3464
kmcdermott@szd.com

and

Paul D. Harmon (0023932)
964-A North 21st Street
Newark, Ohio 43055
Telephone: 740-366-7446
Facsimile: 740-366-1194
harmonatty@alltel.net

William D. Lowe (0030106)
36 North Second Street
Newark, Ohio 43055
Telephone: 740-345-3431
Facsimile: 740-345-7302
dlowe@rpdn.com

COUNSEL FOR APPELLANT,
JENNIE HULL

COUNSEL FOR APPELLEE,
VICTORIA WELLINGTON

Troy A. Reed (0061282)
(COUNSEL OF RECORD)
3860 Raccoon Valley Road NW
Alexandria, Ohio 43001
Tel: 740-670-5998

GUARDIAN AD LITEM

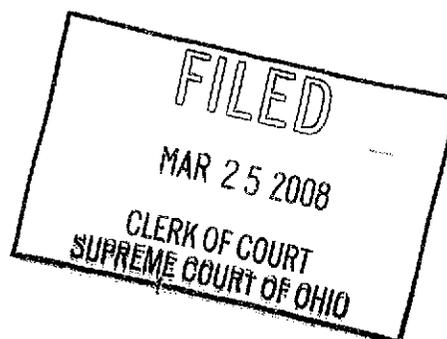


TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION.....	1
ARGUMENT.....	2
I. Jennie noted that appellate standing turns on whether an appellant is aggrieved, but Victoria responded by arguing about third-party standing	2
II. Jennie explained that the probate court’s judgment aggrieves her because R.C. 2109.21(C) prohibits her from being her mother’s guardian if the case remains in Ohio, but Victoria responded that the statute leaves Jennie with no interest in the litigation	6
III. In her opening brief, Jennie demonstrated that sound judicial policy would confer appellate standing to challenge the probate court’s jurisdiction, but Victoria responded by arguing about the legislative policy of restricting out-of-state guardians.....	9
CONCLUSION.....	10
CERTIFICATE OF SERVICE	12
APPENDIX	

Appx. Page

UNREPORTED CASE

In re Guardianship of Miller (Ohio App. Aug. 3, 1998),
12th Dist. Nos. CA97-09-045, CA97-10-049, 1998 WL 438807

1

TABLE OF AUTHORITIES

Page

CASES

<i>In re Edwards</i> (Ohio App. March 19, 1998), 8 th Dist. No. 72473, 1998 WL 122360.....	7, 9
<i>In re Guardianship of Bissmeyer</i> (1988), 49 Ohio App.3d 42, 550 N.E.2d 210	7, 8, 9
<i>In re Guardianship of Coller</i> (1991), 74 Ohio App.3d 386, 599 N.E.2d 292.....	5, 6
<i>In re Guardianship of Love</i> (1969), 19 Ohio St.2d 111, 249 N.E.2d 794.....	3, 7
<i>In re Guardianship of Meucci</i> (Dec. 26, 2000), 12 th Dist. No. CA2000-03-046, 2000 WL 1875737	4, 5
<i>In re Guardianship of Miller</i> (Ohio App. Aug. 3, 1998), 12 th Dist. Nos. CA97-09-045, CA97-10-049, 1998 WL 438807	7, 8
<i>In re Guardianship of Rudy</i> , (Ohio App. Sept. 30, 1993), 11 th Dist. No. 93-T-4851, 1993 WL 407333	4, 5
<i>In re Lee</i> , 2 nd Dist. No. 02CA3, 2002-Ohio-6194.....	4, 5
<i>State ex rel. Ohio Democratic Party v. Blackwell</i> , 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188, at ¶8	10

STATUTES

R.C. 2109.21(C).....	6
R.C. 2111.02(A).....	8

Introduction

Victoria Wellington has responded to Jennie Hull's merit brief largely by trumpeting an issue that is not implicated in this appeal. Ms. Wellington's refrain in her response is that Jennie Hull cannot assert the rights of another party (her mother, Bessie Santrucek) on appeal. Jennie agrees. In this appeal, Jennie Hull is asserting her own right to have an appellate court review the Licking County Probate Court's subject matter jurisdiction. Jennie has that right because the probate court's decision to exercise subject-matter jurisdiction prevents Jennie from applying to be her mother's guardian in states that do not—as does Ohio—limit guardians to in-state residents.

Jennie's argument is that she has standing to contest a decision adverse to *her* because the Licking County court's exercise of jurisdiction prevents her from applying to be her mother's guardian. Properly understood, Jennie's argument rebuts another theme in Ms. Wellington's response brief—that Jennie has no standing to appeal *because* she cannot apply to be Bessie's guardian in Ohio. Jennie agrees that the statutory ban on her guardianship in Ohio is significant to this appeal, but disagrees about the conclusion this Court should draw from the statute. Victoria argues that, because the statute prevents Jennie from being a guardian in Ohio, Jennie has no right to challenge the probate court's decision about jurisdiction. Victoria's argument focuses only on the *Ohio* litigation. Jennie urges a broader view. What matters is Jennie's ability to serve as her mother's guardian, not whether she can serve as her mother's guardian *in Ohio*. It is precisely because the statute makes Ohio a hostile forum for Jennie to litigate about guardianship that this Court should direct the Fifth District to review the Licking County court's judgment.

Jennie is not litigating the rights of her mother. She is litigating her own right to challenge an erroneous jurisdictional decision of an Ohio trial court. That court's decision to exercise jurisdiction has significant consequences because an Ohio statute bans Jennie from applying to be a guardian to her mother. Jennie does not challenge the statute itself. Instead, she challenges a judge-made doctrine that prevents her from appealing a decision that eliminates her own right to serve as her mother's guardian in a state that does not limit guardians to in-state residents.

Argument

Jennie advanced three main points in her merit brief, 1) that the key to appellate standing is whether the appellant is aggrieved, 2) that the probate court's exercise of jurisdiction aggrieves her because it prevents her from serving her mother as her guardian, and 3) that judicial policy should not burden interstate litigation. Victoria responded by first reciting facts about the *merits* of the trial court's decision that Victoria concedes are irrelevant to this appeal¹ and then raising matters that do not respond to Jennie's arguments. Victoria has not confronted Jennie's arguments head on. Jennie's straightforward argument in her opening brief explained why the Fifth District's ruling about appellate standing is incorrect and must be reversed. Victoria has decided to obscure rather than address Jennie's uncomplicated argument.

I. Jennie noted that appellate standing turns on whether an appellant is aggrieved, but Victoria responded by arguing about third-party standing

Jennie is aggrieved by the trial court's ruling because that ruling prevents her from serving as her mother's guardian. Victoria responded that Jennie cannot assert the

¹ See App'ee Br. at 3 n.2.

rights of a third party because only a ward has the right to appeal a probate court's judgment. [App'ee Br. at 9] Indeed, Victoria claims that "[t]he guardianship process itself protected the rights [Jennie] seeks to assert on behalf of Ms. Santrucek." [Id. at 12] This mischaracterizes the appeal. Jennie asserts only her own right to challenge the probate court's jurisdictional decision. While the jurisdictional decision does have an effect on Ms. Santrucek (the ward), it is the effect on Jennie that is the primary subject of this appeal. Ignoring the effect the trial court's judgment has on Jennie, Victoria interprets the relevant law to prohibit appeals from guardianship proceedings unless the ward appeals: "where the judgment does not cause the ward to appeal, a third party has no right to appeal." [App'ee Br. at 9] This narrow view is not supported by the caselaw.

When this Court decided that a guardian had no standing to appeal a decision restoring a ward to competency, the critical factor was that the guardian had no legitimate interest in seeing the ward remain a ward. *In re Guardianship of Love* (1969), 19 Ohio St.2d 111, 249 N.E.2d 794. The focus was whether the *guardian* had an interest in the appeal. This Court's summary of the decision offered no rule resembling Victoria's suggestion that there can be no appeal unless the ward appeals. The key to the *Love* holding is that a guardian is not aggrieved by an order restoring a ward to competency. As the Court said, the record "fail[s] to show that [the] guardian has been aggrieved in any manner by the order." *Id.* at 115. *Love* stands for the proposition that Jennie advocates—appellate standing in guardianship cases depends on whether the appealing party was aggrieved. *Love* uses that principle to hold that a guardian is not aggrieved when a ward ceases to be a ward.

Jennie elaborated on this rule in her opening brief by citing several decisions recognizing that an appellant can appeal decisions even if the ward does not. For example, in *In re Guardianship of Rudy*, (Ohio App. Sept. 30, 1993), 11th Dist. No. 93-T-4851, 1993 WL 407333, the heirs to the ward's estate appealed a decision that affected *them* even though the ward did not appeal. If Victoria is right that no appeal by the ward means no appeal is allowed by anyone else, the beneficiaries in *Rudy* could not have appealed. By Victoria's reasoning, the ward's decision not to appeal a judgment that affected her interests should have barred an appeal by the beneficiaries even though the judgment also affected their interests.²

Likewise, in *In re Guardianship of Meucci* (Dec. 26, 2000), 12th Dist. No. CA2000-03-046, 2000 WL 1875737, the only appellant was a relative who contested—among other matters—the probate court's jurisdiction. If the rule were as Victoria says it is, the appeal should have been dismissed without considering the merits because the ward did not appeal.

Perhaps the most instructive statement rebutting Victoria's suggested reading of Ohio law is in the Second District's decision in *In re Lee*, 2nd Dist. No. 02CA3, 2002-Ohio-6194. While the Second District held that a relative had no standing to appeal a guardianship appointment when he did not himself apply to be the guardian, the court observed that the relative “would have standing to complain that the court erred . . . had he filed an application for appointment.” *Id.* at ¶8. If Victoria is right that potential

² Victoria's proposed rule would be especially harsh in this case because Victoria *invited* Jennie's participation in the probate court by notifying her about the application for guardianship. [App'ee Br. at 2] Jennie's full participation in the probate court highlights the problem of Victoria's proposed rule that there can be no appeal unless the ward appeals.

guardians can appeal only if the ward appeals, the Second District's statement would be in error. *Lee*, and decisions like *Meucci* and *Rudy* show that the error is Victoria's.

Victoria's error is most starkly revealed by the irony that her statement of the standing rule would prevent most appeals contesting the very policy she lauds—Ohio's ban on out-of-state guardians. Victoria praises the “significant policy reasons” that justify the residency requirement. [App'ee Br. at 16] Yet her version of the appellate standing rule would eliminate the very appeals that have enforced that policy by removing out-of-state guardians. Indeed, the case Victoria cites when discussing that policy was prosecuted by a guardian without a ward's separate appeal. See *In re Guardianship of Coller* (1991), 74 Ohio App.3d 386, 393, 599 N.E.2d 292 (one guardian challenged probate court's decision not to remove second, out-of-state guardian). If Victoria is right that a guardian “has no right to appeal” when the ward does not, the “significant policy” of barring out-of-state guardians would be underenforced.

Despite statements that an appellant has no standing unless the ward appeals (e.g., App'ee Br. at 9, 10), Victoria also states that “the effect of the judgment on the ward is the absolute key to determining who may appeal.” *Id.* at 9. Even this less aggressive statement of Ohio law does not rebut Jennie's argument. First, the statement that the effect on the ward is “key” is imprecise. Any probate court judgment has *some* effect on the ward. Second, there can be no doubt that the Licking County court's decision that it has jurisdiction over Bessie Santrucek had an effect on her. It determined which court would adjudicate her competency and prevented one of her daughters from applying to serve as a guardian. Moreover, as the Sixth District held in *Coller*, questions about

whether a probate court “exceeded [its] authority” affect the “best interest of the ward.”

In re: Guardianship of Collier (1991), 74 Ohio App.3d 386, 391, 599 N.E.2d 292.

Neither of Victoria’s suggestions for a rule of appellate standing in guardianship cases undercuts Jennie’s argument. If the rule is that an aggrieved party may never appeal unless the ward appeals, many Ohio appellate decisions have been wrongly decided and many future trial court errors will go uncorrected. If the rule is that an aggrieved party may appeal if the decision has an effect on the ward, errors of jurisdiction—as in this case—should top the list of appealable orders. Jennie is aggrieved because the probate court’s order prevents her from serving as her mother’s guardian. That is a decision that Jennie should be able to challenge, both because of its effect on her and its effect on her mother.

II. Jennie explained that the probate court’s judgment aggrieves her because R.C. 2109.21(C) prohibits her from being her mother’s guardian if the case remains in Ohio, but Victoria responded that the statute leaves Jennie with no interest in the litigation

Shifting tactics, Victoria next argues *within* the framework Jennie laid out in her merit brief and contends that Jennie is not aggrieved by the probate court’s decision because Jennie could never be appointed guardian in Ohio. Jennie and Victoria disagree about the effect of R.C. 2109.21(C) on Jennie’s appellate standing. Jennie points out that the statute gives extra weight to the probate court’s judgment because the statute prevents her from being her mother’s guardian if the case stays in Ohio. Victoria says that the statute shows Jennie has no interest in the litigation because Jennie could never be their mother’s guardian. Victoria *assumes* that Ohio is the proper forum for the dispute. That is the very point Jennie contests. Jennie has an interest in the litigation because she claims that Ohio lacks subject matter jurisdiction over the proceedings and she would

have a right to be her mother's guardian in other states (such as Michigan or Arizona).

Victoria's argument is an unbreakable tautology: Jennie cannot contest application of the Ohio statute because an Ohio statute says she has no interest in contesting it. This cannot be the law.

Beyond the statute, Victoria supports her argument that Jennie has no interest in the litigation by citing *Love, In re Edwards* (Ohio App. March 19, 1998), 8th Dist. No. 72473, 1998 WL 122360, *In re Guardianship of Bissmeyer* (1988), 49 Ohio App.3d 42, 550 N.E.2d 210 and *In re Guardianship of Miller* (Ohio App. Aug. 3, 1998), 12th Dist. Nos. CA97-09-045, CA97-10-049, 1998 WL 438807. None of these cases stand for the proposition that a potential guardian has no right to appeal a jurisdictional decision adverse to them. Indeed, *Edwards* and *Bissmeyer* show that Ohio's appellate courts routinely consider challenges by out-of-state relatives to probate decisions even though the out-of-state relative could not be appointed a guardian in Ohio.

First, as explained above, *Love* holds only that a former guardian has no interest in contesting a decision restoring a ward to competency. *Love* does not stand for the proposition that potential guardians have no general right to appeal. Victoria reads *Love* as limiting to wards alone the right to appeal guardianship decisions. That reading is not supported by the almost 40 years of decisions since *Love* was decided.

Victoria similarly reads too much into *Edwards*, *Bissmeyer*, and *Miller*. In *Edwards*, the Eighth District held only that an appellant could not challenge a guardianship appointment on the basis that he received no notice when the statute conferred no right to notice. In contrast, Jennie challenges the probate court's jurisdiction. No statute prevents that challenge. The appellant in *Edwards* challenged a

judgment on the very grounds barred by statute. Jennie challenges jurisdiction based on a statutorily *recognized* basis—that Ohio courts only have jurisdiction if the ward “is a resident of the county or has a legal settlement in the county.” R.C. 2111.02(A).

Bissmeyer involved a constitutional challenge to the notice provisions of the guardianship statutes. The First District rejected the constitutional challenge, but did not question the next of kin’s standing to raise the challenges. Victoria is right that, when a next of kin raises *constitutional* questions, “if the substantive rights of the wards are not affected, the substantive rights of the next of kin are not affected.” [App’ee Br. at 14] But the same cannot be said for issues of appellate standing. *Bissmeyer* rejected a next of kin’s substantive argument, but did not reject the next of kin’s *standing* to raise that argument.

Finally, Victoria’s citation to *Miller* shows that she fails to distinguish between particular *issues* that are appealable and chooses to paint with a broad brush and claim that particular *parties* may not appeal. In *Miller*, the Twelfth District considered next of kins’ challenges to a probate decision not to remove the exiting guardian, but rejected the next of kins’ standing to challenge the guardian’s particular care decisions. *Miller* illustrates well what Jennie explained in her opening brief—appellate standing “attaches to discrete rulings and issues.” [Aplt. Br. at 9 (citation omitted)] Jennie challenges a discrete issue—the probate court’s jurisdiction.

Victoria contends that Ohio’s ban on out-of-state guardians should bar out-of-state relatives from appealing rulings that affect them. The statute certainly does not command that result. Nor does appellate practice in Ohio command that result. Instead, the decisions that Victoria cites show that Ohio’s appellate courts carefully distinguish

appealable from unappealable rulings based on whether the appealing party has been aggrieved. Here, Jennie Hull is aggrieved because the probate court's exercise of jurisdiction—which Jennie claims was wrongful—aggrieves her interest in being her mother's guardian. Because Ohio's statute does not disable Jennie from being her mother's guardian in any state other than Ohio, Victoria is wrong to point to the statute as a reason justifying the Fifth District's judgment that Jennie has no appellate standing to challenge that ruling.

III. In her opening brief, Jennie demonstrated that sound judicial policy would confer appellate standing to challenge the probate court's jurisdiction, but Victoria responded by arguing about the legislative policy of restricting out-of-state guardians

Once again, Victoria's response to Jennie's merit brief misses the point. Jennie explained that sound *judicial* policy would permit her to challenge the Licking County Probate Court's jurisdiction because the *legislative* policy of Ohio restricts Jennie's ability to serve as her mother's guardian. Jennie further pointed out that—because other states are less restrictive about who can serve as a guardian—a judicial policy eliminating appellate standing for out-of-state relatives further sets Ohio outside the mainstream of interstate probate litigation. Victoria's response is that Jennie's arguments “fly in the face” of Ohio's legislative policy. [App'ee Br. at 16]

Jennie has never contested the legislative policy that forbids her from being a guardian in Ohio. Unlike the litigants in *Bissmeyer* or *Edwards*, she has not mounted a constitutional challenge to the statutory preferences of the General Assembly. Jennie agrees with Victoria that Ohio may reasonably determine that “close geographic proximity is needed between the ward, the guardian, and the court.” [Id.] Jennie disagrees that she has no right to challenge *which* court should exercise jurisdiction (and

therefore which court should be proximate to the ward and the guardian). It is hard to grasp how advocating for a right of review of a decision that forever determines who is eligible to be her mother's guardian "flies in the face of" Ohio's legislative policy.

Victoria's contention only makes sense if we assume that Ohio is the right forum for this dispute. But that assumption is exactly what Jennie has contested from day one. Jennie's challenge is not to Ohio's policy, but only to the effect of that policy when coupled with an erroneous holding about appellate standing.

Conclusion

Victoria's argument rests on the assumption that Ohio is the proper forum to litigate the guardianship of Bessie Santrucek. Without that assumption, her contention that Jennie has no basis to object to the probate court's jurisdiction falls away. Jennie has a personal stake in the jurisdictional decision because the decision about jurisdiction will determine whether she is ever eligible to be her mother's guardian. The probate court's jurisdiction—its power to decide the case—is significant enough in its own right to merit appellate review. As this Court has noted, "Jurisdiction means the courts' statutory or constitutional power to adjudicate the case. . . . It is a condition precedent to the court's ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void." *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 247-248, 2006-Ohio-5202, 855 N.E.2d 1188, at ¶8. (citations and internal quotation marks omitted) Here, Jennie has challenged the probate court's "power to adjudicate." That power is infused with even greater significance because, if Ohio has jurisdiction, Jennie will be barred from serving as her mother's guardian. All Jennie asks is that an appellate court review the merits of the probate court's exercise of jurisdiction. That

request is supported by Ohio precedent and Ohio's participation in a system of co-equal states. The Fifth District's judgment denying Jennie appellate standing is counter to those considerations and must be reversed.

Respectfully submitted,

Wm. G. Porter, II (by Mike Hendershot)

William G. Porter, II (0017296)

(COUNSEL OF RECORD)

Michael J. Hendershot (0081842)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street, P.O. Box 1008

Columbus, Ohio 43216-1008

Telephone: 614-464-5448

Facsimile: 614-719-4911

wgporter@vssp.com

and

Paul D. Harmon (0023932)

964-A North 21st Street

Newark, Ohio 43055

Telephone: 740-366-7446

Facsimile: 740-366-1194

harmonatty@alltel.net

COUNSEL FOR APPELLANT,
JENNIE HULL

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served by regular U.S. mail on the following this 25th day of March, 2008:

Kevin R. McDermott (0019256)
(COUNSEL OF RECORD)
Schottenstein, Zox, & Dunn Co., LPA
250 West St.
Columbus, Ohio 43215

and

William D. Lowe (0030106)
36 North Second Street
Newark, Ohio 43055

COUNSEL FOR VICTORIA WELLINGTON

Troy A. Reed (0061282)
(COUNSEL OF RECORD)
3860 Raccoon Valley Road NW
Alexandria, Ohio 43001

GUARDIAN AD LITEM



Michael J. Hendershot (0081842)

APPENDIX

C

Guardianship of Miller

Ohio App. 12 Dist., 1998.

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE
PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR
WITHDRAWAL.

Court of Appeals of Ohio, Twelfth District, Madison County.

In the Matter of: Guardianship of Mary G. MILLER.

Nos. CA97-09-045, CA97-10-049.

Aug. 3, 1998.

Tanner, Mathewson & Hansgen, Shirley C. Hansgen, 2 South Main Street, London, Ohio
43140, for appellants/cross-appellees.

Martin, Browne, Hull & Harper, Austin P. Wildman and Steven J. McCready, 26 E. Fourth
Street, London, Ohio 43140, for appellee/ cross-appellant.

OPINION

KOEHLER, J.

*1 Plaintiffs-appellants, Gertie Headings and Edna Lengacher, next of kin of Mary G. Miller,
appeal a decision of the Madison County Court of Common Pleas, Probate Division, denying
motions to replace Miller's current guardian and to move Miller to another care facility.

In November 1995, Miller was found incompetent and her friend, Simon Beachy, was appoin-
ted guardian. Due to conflict, Beachy resigned as guardian and defendant-appellee, Austin P.

Wildman, was appointed successor guardian. On November 14, 1996, appellants filed a motion for a hearing, stating the following:

Now comes the Gertie Headings and Edna Lengacher, the sisters of the ward, Mary G. Miller, and move the Court for a review hearing of the Guardianship pursuant to O.R.C. 2111.44. The family has not been allowed to have any contact with the ward. Those not allowed to contact Mary have been Chauncy and Gertie Headings, sister and brother-in-law, Edna Lengacher, and Mr. and Mrs. Edwin Yutzy, nephew and niece-in-law. These facts were made known to the guardian. Communications from the care giver, Betty Porter, who is openly antagonistic toward the family, were also made known to the guardian. * * * Therefore, the family requests a review hearing.

Appellee filed a memorandum in opposition arguing that "Section 2111.44 Ohio Revised Code ("Sale of Lands of Foreign Wards") cited by the movant is totally inapplicable and irrelevant to the matters this movant wishes to bring before the court." Notwithstanding this objection, the court scheduled a hearing on appellants' motion.

The hearing commenced on November 14, 1996 and was continued until January 9, 1997. At the conclusion of the hearing, appellants requested that Miller be removed from her present care facility and that the court appoint a member of the family to be Miller's guardian. On January 27, 1997, the court denied appellants' motion to remove Wildman as Miller's guardian and also denied appellants' motion to move Miller to a different care facility.

Appellants' sole assignment of error contends that the trial court's decision denying their motion to move Miller was against the manifest weight of the evidence. Appellants did not appeal the trial court's decision not to replace the guardian. Appellee filed a cross-appeal asserting that appellants could not appeal the probate court's denial of appellants' request to move Miller because appellants lack standing.

Appellants had standing to petition the court to replace Wildman as Miller's guardian. In conjunction with this motion, appellants requested that the court move Miller from her current care facility. Both of these motions were denied. Appellants did not raise on appeal the issue of whether the probate court properly denied their motion to remove Wildman as guardian. However, in the interest of justice, we will address this issue as if it was properly raised. A review of the record supports the trial court's decision not to remove Wildman as Miller's guardian.

*2 The probate court is the superior guardian of the person and property of an incompetent, while the guardian, as an officer or agent of the court, is subject always to the court's control, direction and supervision. *In re Kreppner* (Jan. 28, 1988), Cuyahoga App. No. 54419, unreported, at 4. The specific statutory authorization for removal of a guardian is supplied by R.C. 2109.24, which provides in pertinent part:

The court may remove any such fiduciary, after giving such fiduciary not less than ten days' notice, for habitual drunkenness, neglect of duty, incompetency, fraudulent conduct, because the interest of the trust demands it, or for any other cause authorized by law.

Removal of a guardian is within the sound discretion of the court and is subject to reversal only in the event of a clear abuse of discretion. *In re: Estate of Jarvis* (1980), 67 Ohio App.2d 94, 425 N.E.2d 939.

Appellants claim that the guardian and Miller's caregiver, Betty Porter, restricted their access to Miller by "brainwashing" Miller. For this reason, appellants requested that the trial court appoint a family member as Miller's guardian. The trial court described the situation as follows: The ward, herein, Mary G. Miller, is an eighty-eight year old lady, who appears to feel that she is being unduly pressed by others, including family members. Her feelings do not appear to be altogether unjustified. Family members have secretly tape recorded her conversations,

attempted to have the home where she stays closed by the state authorities, caused her choice of guardian to be replaced, filed other motions in this matter seeking strategic advantage, and now attempt to have her guardian replaced again and to have her moved to a residence where she does not wish to be.

The trial court found that Miller “wishes to visit with her relatives upon her own terms, when and where she chooses. That fact that she does not wish visitation, does not, in and of itself, establish the allegation that she has been ‘brainwashed,’ as some of the parties herein appear to believe.” The trial court further found that “Mrs. Miller was free to visit whomever she chose, and that the guardian would facilitate such visitation. The evidence further reflected that the home where she lives is clean, healthful, and sanitary. Even more significantly, the evidence reflects that her current environment has led to an improvement in her mental and physical condition, and that she appears to be contented and happy.” Based upon the foregoing, this court finds no abuse of discretion in the trial court’s decision to retain appellee as Miller’s guardian.

We now turn to the issue raised on appeal, whether the trial court properly denied appellants’ motion to remove Miller from her present care facility. However, before we address appellants’ assignment of error, we will consider appellee’s assignment of error on cross-appeal that appellants lack standing to bring the instant appeal.

*3 “It is fundamental that appeal lies only on behalf of a party aggrieved. Unless an appellant can show that *his rights* have been invaded, no error is shown to have been committed by the court or body which entered the final order.” (Emphasis *sic.*) *Ohio Contract Carriers Ass’n., Inc. v. Public Utilities Commission* (1942), 140 Ohio St. 160, 42 N.E.2d 758. The party appealing must have an interest in the subject matter of the litigation. *Id.* “His interest must be immediate and pecuniary, and not a remote consequence of the judgment; a future, contingent or speculative interest is not sufficient.” *Id.* Furthermore, the interest sought to be protected

must be within the realm of interests regulated or protected by statute or constitutional right. *Franklin Cty. v. Schregardus* (1992), 84 Ohio App.3d 591, 599, 617 N.E.2d 761.

In the instant case, appellants have not been adversely affected by the trial court's denial of the motion to move Miller to a different care facility. Appellants claim that Miller's caregiver, Betty Porter, restricted their access to Miller. For this reason, appellants requested that Miller be moved to a different care facility. However, the record reveals that Miller made a decision to only see certain family members. Through her guardian and her caregiver, Miller may limit her visitors to only those persons with whom she chooses to visit.

While appellants may wish to visit with Miller, they have no constitutional or statutory right to force Miller to visit with them. Accordingly, while appellants properly exercised their statutory right to petition for removal of the guardian in the probate court, appellants lack standing to challenge the decision of the guardian and the probate court not to move Miller to a different care facility. Appellee's assignment of error on cross-appeal is well-taken and is sustained. Furthermore, because appellants lack standing to bring the instant appeal, it is not necessary to address their assignment of error.

Appeal dismissed and cross-appeal sustained.

POWELL, P.J., and WALSH, J., concur.

Ohio App. 12 Dist., 1998.

Guardianship of Miller

Not Reported in N.E.2d, 1998 WL 438807 (Ohio App. 12 Dist.)

END OF DOCUMENT

CINCINNATI BAR ASSOCIATION

In re: John S. Brooking : CBA File No. 06-2887
: :

Deposition of: JOHN S. BROOKING
Taken: By Cincinnati Bar Association
Pursuant to notice
Date: Monday, February 5, 2007
Time: Commencing at 12:55 PM
Place: Cincinnati Bar Association
The Cincinnati Bar Center
225 East Sixth Street
Cincinnati, Ohio 45202-3209
Before: Luke T. Lavin, RDR, CRR
Notary Public - State of Ohio

FILED
DEC - 3 2007
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

ORIGINAL

1 APPEARANCES:

2 On behalf of Cincinnati Bar Association:

3 Richard L. Creighton, Jr., Esq.
4 Keating, Muething & Klekamp
5 One East Fourth Street
6 Suite 1400
7 Cincinnati, Ohio 45202-3752
8 Phone: (513) 579-6400

9 John G. Slauson, Esq.
10 119 East Court Street
11 Cincinnati, Ohio 45202
12 Phone: (513) 632-5315

13 On behalf of John S. Brooking, Brian P. Halloran
14 and Patrick E. Moeves:

15 Geoffrey Stern, Esq.
16 Kegler, Brown, Hill & Ritter
17 Capitol Square, Suite 1800
18 65 East State Street
19 Columbus, Ohio 43215-4294
20 Phone: (614) 462-5457

21 On behalf of Darren Mullaney:

22 John J. Mueller, Esq.
23 800 The Provident Building
24 632 Vine Street
25 Cincinnati, Ohio 45202-2441
Phone: (513) 621-3636

20 I N D E X

21	Cross-Examination by:	Page
22	Mr. Creighton	3

1 JOHN S. BROOKING

2 being by me first duly cautioned and sworn, deposes
3 and says as follows:

4 CROSS-EXAMINATION

5 BY MR. CREIGHTON:

6 Q. Mr. Halloran, we've been introduced.
7 I'm Rich Creighton --

8 MR. SLAUSON: John Slauson.

9 Q. -- and John Slauson, and we're here to
10 examine you here today in a proceeding. As an
11 attorney you know the drill, so I'll get right into
12 it. I'll try to get you out of here quickly.

13 Would you state your name for the
14 record, please.

15 A. John Sampson Brooking.

16 Q. I understand you go by the nickname
17 Brook?

18 A. Yes.

19 Q. Okay.

20 A. That was my father's father's nickname
21 which I took on to try to distinguish between two
22 Johns, and unfortunately it just made matters more
23 confusing over the years.

24 Q. When were you admitted to the Bar?

25 A. Kentucky or Ohio?

1 Q. Let's take Kentucky first.

2 A. 1990.

3 Q. And how about Ohio?

4 A. 1991.

5 Q. What's your law school background?

6 A. Graduated from Salmon P. Chase in
7 1990.

8 Q. And your working history from 1990 to
9 the present, in brief?

10 A. The law firm at the time I believe was
11 already known as Adams, Brooking, Stepner, Woltermann
12 and Dusing. And I worked there as an associate until
13 the spring of 1999, so from '90 to '99.

14 My dad and I made the decision to go
15 out on our own, joined up with a third attorney, and
16 the name of the firm was Brooking, Brooking and Ken-
17 drick, K-e-n-d-r-i-c-k. And that ran through July of
18 2004.

19 Craig Kendrick made the decision to go
20 on his own, due to no issues within the firm, so my
21 dad and I spent several months trying to determine
22 exactly what we would do. So I guess technically
23 there was about a month that we were known as Brook-
24 ing and Brooking, without Mr. Kendrick being a part
25 of it.

1 And then effective September 1st,
2 2004, my father and I merged in with what was then
3 Moeves and Halloran, and the firm became, effective
4 September 1st, 2004, Brooking, Moeves and Halloran,
5 which is where I am obviously still today.

6 Q. What is the form of the law firm as
7 far as legally?

8 A. Professional limited liability com-
9 pany.

10 Q. And you are one of the principals,
11 then?

12 A. Yes, sir.

13 Q. We're here to talk about basically
14 the relationship between the firm and yourself on the
15 one hand and Foreclosure Solutions on the other. Can
16 you tell me, Brook, what your first recollection of
17 association with Foreclosure Solutions was.

18 A. When my dad and I joined or merged in
19 with Moeves and Halloran, I was aware that the firm
20 accepted referrals from a group known as Foreclosure
21 Solutions.

22 That referral system and our, being
23 BMH's, procedural system was in place and functioning
24 before my dad and I joined the firm. So I was only
25 aware of it and had absolutely no involvement with

1 it, "it" being the awareness of Foreclosure Solu-
2 tions.

3 Q. The business relationship between the
4 firm that you were merging with at that time, was
5 that any part of the decision to join --

6 A. No.

7 Q. -- with those fellows?

8 A. No, it wasn't.

9 Q. It was just something that you were
10 aware of existed?

11 A. That's right. Actually, there were --
12 my business is substantially --

13 And my dad's. If you knew him, you'll
14 know this.

15 -- was substantially, is substantially
16 business transactional law, you know, corporate,
17 employment law, banking, business stuff, as opposed
18 to what I call handholding, the domestic, criminal,
19 personal injury.

20 And there was some hope and expecta-
21 tion that we, "we" being BMH, might be able to land a
22 couple of large corporate clients. That was the
23 hope. I think that possibility was a motivation for
24 all of us to talk, because that fell right in my
25 wheelhouse.

1 Q. Okay.

2 A. As well as my dad's.

3 Q. Since the merger back in 2004, what
4 role have you played personally with respect to
5 Foreclosure Solutions?

6 A. Almost nonexistent through the
7 entirety of 2004 and the entirety of 2005 and up
8 through the spring, probably, of 2006. When I say
9 almost nonexistent, the system was in place and
10 operating before I came on board, so I did my own
11 thing, my dad did his own thing, and we just con-
12 tinued to operate our law practices.

13 However, within a law practice, as you
14 are well aware, if a phone call needs to be taken, if
15 a court appearance needs to occur, whatever it might
16 be, there's a constant source of coverage.

17 Those things may have happened on a
18 most rare occasion, and if you asked me to say
19 definitively that it occurred in that roughly year
20 and a half or more time frame, I couldn't even tell
21 you that.

22 Q. So your best recollection is that you
23 may have answered some phone calls, you may have made
24 a couple of court appearances?

25 A. No, I don't recall making a court

1 appearance, but some of these status conferences or
2 scheduling conferences or things of that nature might
3 occur by phone, and it may be that I participated
4 only to cover someone else during one of those
5 telephone conferences.

6 Q. Okay. Now, in the previous proceeding
7 we talked about the fact that the firm was doing work
8 in at least three or four Ohio counties: Cuyahoga,
9 Summit, Hamilton. I believe the other one was
10 Warren. It doesn't make any difference in partic-
11 ular. But were you doing any work in Ohio on these
12 referrals from Foreclosure Solutions personally, that
13 you can think of?

14 A. At what time frame? In the initial
15 time frame I was just discussing?

16 Q. Let's do the initial time frame.

17 A. Yes. Up through the spring of 2006 --
18 and that is an approximate time frame, and that time
19 frame actually matches the time frame when Darren
20 Mullaney left the firm to pursue another option of
21 legal practice.

22 Up until that time frame it is possi-
23 ble that I might have taken a phone call. It is
24 possible that I might have, probably did on one or
25 more occasion, sit in on one of those telephone

1 conferences.

2 I seem to remember one time it hap-
3 pened. And I was -- it was a fairly new process to
4 me, and I got specific instructions as to what I was
5 supposed to do as to what occurred in these.

6 And I've been licensed in Ohio for
7 whatever, 15, going on 16 years, so I understand the
8 court process, but I just had no prior involvement
9 with this referral, these referrals of foreclosure
10 clients.

11 Q. Did you ever enter an appearance in
12 any cases in Ohio prior to the spring of '06?

13 A. I don't recall having done that.

14 Q. Okay. Let's talk about the time after
15 Mr. Mullaney leaves the firm. What changed, as to
16 your role?

17 A. Well, at that point Darren was an Ohio
18 licensed attorney. When he left, we now had two Ohio
19 licensed attorneys within our office. One was my
20 dad -- who wasn't going to make court appearances or
21 take phone conferences; he was a part-time lawyer at
22 that point -- and then me.

23 And so to the extent, after Darren
24 left, that there was -- well, if there were pleadings
25 to be filed and Darren was no longer with our office,

1 those pleadings were filed under my signature.

2 If there were any court appearances to
3 be made at that point in time, unless someone else
4 from our office had been granted pro hac status, the
5 court appearances would have been by me. Only on an
6 as-needed basis.

7 And I can't tell you that it happened
8 all that much as far as court appearances, but I can
9 tell you that my involvement with the communication
10 and pleading side of it increased.

11 And your records will probably show
12 the duration, after Darren Mullaney left and Jessica
13 Nielsen came on board, and that's that limited amount
14 of time that I was involved in these. And then once
15 Jessica was on board, I went back to handling what I
16 had been handling before.

17 Q. Okay. So for a very limited period of
18 time in 2006 you would have had heavier involvement,
19 and when Jessica Nielsen came on board, then you
20 reverted to your basically prior role that you've
21 already described?

22 (Mr. Patrick E. Moeves enters the
23 deposition hearing room.)

24 A. Availability for coverage purposes.
25 And then there is yet another time frame that obvi-

1 ously we're getting to.

2 Q. Okay.

3 A. Because Jessica didn't stay very long.
4 And bottom line, when the issues that form the sub-
5 ject matter of why we're here today began, Jessica no
6 longer had comfort level to put her name on anything.
7 And that's when I stepped back in, and that has
8 remained the case through the present date.

9 Q. Okay. So presently you are filing
10 appearances in Ohio courts on these foreclosure
11 referrals?

12 A. That's correct.

13 Q. And along with those appearances you
14 are doing whatever is necessary, in your opinion, to
15 represent these referral clients in these fore-
16 closures as their Ohio attorney?

17 A. I am, along with the rest of the
18 attorneys in our office and office staff.

19 Q. Okay. As a practical matter, do you
20 make many personal appearances?

21 A. No. As a practical matter, we've got
22 an associate who joined our firm whenever the time
23 frame was that a new Ohio attorney is licensed, who's
24 licensed only in Ohio, who makes most of the appear-
25 ances on the Ohio matters.

1 Q. And that's James Hart?

2 A. That's correct.

3 Q. Would you then describe your role as
4 supervising Mr. Hart in his Ohio practice?

5 A. Myself as well as my partners, most
6 definitely.

7 Q. Is it fair to say that Mr. Moeves is
8 the one who has the primary relationship with Fore-
9 closure Solutions?

10 A. Just so it's clear, Moeves is the
11 pronouncement.

12 Q. Okay.

13 A. And I would say that it's safe to say
14 that Pat Moeves has the primary responsibility for
15 overseeing our representation of foreclosure clients
16 that come to our firm through referrals from Fore-
17 closure Solutions. I'm not willing to say that he's
18 got the primary relationship with the entity Fore-
19 closure Solutions.

20 Q. Okay.

21 A. I'm not willing to say that any of us
22 have an actual formal relationship with that entity.

23 Q. Okay. But the client contact or the
24 business contact came through Patrick. Correct?

25 A. I believe that's correct. Remember,

1 that occurred before I was with the firm.

2 Q. Okay. And on a daily basis today, is
3 that still the case? That relationship, personal
4 relationship, the business relationship, is more with
5 Patrick than with anybody else?

6 A. I can't tell you what the ongoing
7 relationship is on a personal level, because that's
8 outside the purview of our law firm. On a business
9 level, I don't know what degree of relationship he
10 had, because the communication back and forth between
11 the entity Foreclosure Solutions and their employees
12 and Brooking, Moeves and Halloran is limited.

13 Q. When those communications are had, do
14 you participate in them personally?

15 A. No. And those only occur -- our
16 client in this deal, or clients, are the defendants
17 in foreclosure matters, and as a result of that, we
18 have an attorney-client privilege that's limited to
19 those clients.

20 Only when those clients have specifi-
21 cally authorized us to discuss aspects of their case
22 with Foreclosure Solutions and signed a waiver, I
23 believe, of attorney-client privilege do we then
24 discuss their case, the specifics of their case, with
25 Foreclosure Solutions.

1 Q. Is it your understanding that the
2 selection of counsel for these foreclosure matters is
3 being done by Foreclosure Solutions as opposed to the
4 clients directly?

5 A. That is my understanding.

6 Q. And that's pursuant to a power of
7 attorney?

8 A. Yes.

9 Q. Have you --

10 A. Power of attorney signed by the ulti-
11 mate clients authorizing Foreclosure Solutions to do
12 just that.

13 Q. Have you personally examined that
14 power of attorney?

15 A. No.

16 Q. Or those powers of attorney?

17 A. No, sir.

18 Q. Have you ever looked at them?

19 A. No.

20 Q. Okay.

21 A. Well, I take it back. As a blank
22 power of attorney, I have never taken a look at --
23 I've never taken a look at their form power of
24 attorney and reviewed it for its substance or
25 reviewed it with the purpose of criticizing or

1 suggesting changes to it.

2 The executed powers of attorney, yes.
3 And I couldn't possibly quantify how many, but that
4 document comes with the other file materials each
5 time we get a referred client. So I have seen those
6 on a number of occasions, already executed. I jumped
7 the gun on your question.

8 Q. That's all right. Walk me through, if
9 you will -- today a file comes in from Foreclosure
10 Solutions. Walk me through what happens at your
11 place.

12 A. The file comes in, among others, and
13 there is a process that is gone through that includes
14 reviewing the information that's been provided, which
15 is that power of attorney and other information that
16 is completed by our client at the time that they have
17 met with someone from Foreclosure Solutions.

18 And that information that the power of
19 attorney will show us, the clients have authorized
20 Foreclosure Solutions to refer the legal aspect to an
21 attorney. So we cover that and make sure that's
22 done.

23 And then the other information that's
24 provided is more fact-based information, and it will
25 tell us specific contact information and detailed

1 information about the clients.

2 It will tell us if a foreclosure
3 action has already been commenced or just threatened;
4 if the foreclosure action has been commenced, has
5 service been obtained; if service has been obtained,
6 has --

7 It doesn't really tell you that
8 they're in default, but if it's gone to that point
9 where service has been obtained and the day for
10 Answer has come and gone, it will tell you --

11 I just dealt with one a couple of
12 weeks ago that said hearing on motion for default
13 pending. It gives you the necessary information that
14 you need to set your file up with and tells you what
15 to do first and foremost.

16 If there is a time-sensitive matter
17 where an Answer deadline is fast approaching or right
18 on top of you or, God forbid, it's passed already
19 and, hopefully, there's no motion for default already
20 pending --

21 That's kind of an extreme case.

22 -- then that urgency dictates what we
23 do first, which may very well be file the entry of
24 appearance, get the Answer filed, communicate with
25 the court so that we are protecting the client's

1 interests.

2 Q. Let me back up in the process here.
3 So what happens, I'm assuming, is that you get a
4 physical file sent over in the mail or by hand
5 delivery from Foreclosure Solutions.

6 A. Uh-huh.

7 Q. And in that file --

8 A. I'm sorry. Yes.

9 Q. And in that file are some documents,
10 one of which would be the power of attorney, a copy
11 of that or the original, some kind of a form that has
12 information that you need, for example, contact
13 information for the clients, which would be names,
14 addresses, telephone numbers, that type of thing.
15 Correct?

16 A. Yes.

17 Q. And then also there would be copies,
18 perhaps, of pleadings, a Complaint, a motion if
19 anything had been filed, maybe a copy of the summons,
20 et cetera.

21 A. That's correct. It's not always
22 there. And if it's not, then it's necessary to
23 immediately get on the court docket, computerized
24 court docket for that particular jurisdiction and
25 county, and determine what the status is fairly

1 quickly, since a lot of these do come to us time
2 sensitive.

3 Q. Okay. Now, when this packet of
4 materials comes in, how is it handled at your office,
5 by whom? In other words, who receives that and how
6 do they check it in?

7 A. There is a system in place that
8 includes multiple people that do multiple tasks. I
9 think that there are -- to my observation, there's
10 one of three people that are setting these files up.
11 That whole process I'll call setting the file up.

12 And there was a girl at our front desk
13 who does it. There's a girl who is doing it because
14 the girl at the front desk is pregnant and is not
15 going to be there for a while. There's a paralegal
16 within our office that does it. I'm aware of those
17 three people that do the setup process.

18 Q. And these are all nonlawyers?

19 A. Yes.

20 Q. All right.

21 A. One's a paralegal, but they're all
22 nonlawyers.

23 Q. And once the file has been taken in
24 and run through the process that you've set up, how
25 does it then get assigned to a particular attorney

1 within the office?

2 A. It goes to -- I guess technically it's
3 within and under the purview of primarily Pat, since
4 this system originated from a contact to him, as
5 we've discussed. And then it goes to, as a matter of
6 course, Jamie Hart, the associate, who we've also
7 discussed.

8 Q. Now, we have been speaking in generic
9 terms about defining where this file related to, and
10 let's say that today you're doing this for both
11 Kentucky clients and Ohio clients. Correct?

12 A. That's correct.

13 Q. And no other states?

14 A. Not to my knowledge.

15 Q. Okay.

16 A. I don't think we have anyone licensed
17 in any other state at this point.

18 Q. And so as part of the initial intake,
19 I assume that one of the first determinations is
20 where is this, Kentucky or Ohio. Correct?

21 A. Right. And I say that all cases go
22 the direction of Jamie, with Pat's overview, and of
23 course, if Pat's not available, all of the partners'
24 overview. I'm only talking about Ohio cases.

25 Q. Okay. That's part of the reason for

1 my question.

2 A. Right.

3 Q. What do you do if it's a Kentucky
4 case?

5 A. The Kentucky cases, as I understand
6 it, are handled primarily, again with Pat as over-
7 view, by a different associate within our office by
8 the name of Crystal Ford. And I couldn't tell you a
9 single Kentucky foreclosure client that I've had any
10 involvement with.

11 Q. What percentage of your practice would
12 you say is related to Ohio as opposed to Kentucky?

13 A. Generally and not with respect to
14 foreclosure?

15 Q. Generally.

16 A. That's varied over the years, depend-
17 ing upon how much referral work I'm getting from
18 which sources. I'm going to say it's 70 percent
19 Kentucky, 30 percent Ohio.

20 For a time frame I had a relationship,
21 I still do, with group called the Real Estate Inves-
22 tors Association of Cincinnati, where I was the only
23 attorney listed within their newsletter. And a lot
24 of these folks were setting up entities for asset
25 protection purposes, and at that point in time I

1 would have been willing to say it was higher.

2 Now, we have some corporate clients
3 who require additional work at times who are Ohio-
4 based clients, and so sometimes if that's required,
5 that percentage might go up. But I'm mostly a
6 Kentucky lawyer that you guys let come across the
7 river every once in a while.

8 Q. All right. And then with respect to
9 the Foreclosure Solutions-referred clients, it's
10 almost a hundred percent Ohio at this time?

11 A. I don't know what that percentage is.

12 Q. Well, I don't mean in the office.
13 You. You handling.

14 A. Oh. Right. If I'm handling a fore-
15 closure matter, which, as we said at the beginning,
16 it truly remains more of oversight and coverage, I
17 don't believe I'm doing any in Kentucky. It's all on
18 Ohio foreclosure matters.

19 Q. All right. So the file comes in. If
20 it's an Ohio matter, it goes to Mr. Hart today.
21 Before that, at one point it was Jessica Nielsen.
22 Before that, it was Mr. Mullaney. Correct?

23 A. Yes. Subject to a continuum of over-
24 sight primarily by Pat Moeves, but including Pat
25 Moeves, Brian Halloran and, to a lesser extent, me

1 until the time frame we discussed.

2 Q. Okay. Now, after it gets assigned to
3 Mr. Hart today, and let's say it's an Ohio matter,
4 what would be your involvement in an Ohio matter
5 today on a typical basis, if any?

6 A. Hands on, very little. Like I said,
7 the procedure hasn't changed over time. It's been in
8 place for two and a half years. The procedure works.

9 There are people that do intake and
10 set up the file. There are people that oversee
11 calcula-- you know, determining whether there's any
12 apparent defenses, what pleading needs to be filed,
13 is there a motion that needs to be filed. There are
14 people that handle the correspondence and communica-
15 tion aspect.

16 And that system is in place and works.
17 And, obviously, I have not altered anything since I
18 became more involved with that.

19 At this point the involvement would be
20 oversight, primarily oversight of letters and plead-
21 ings. And my name is on the pleadings on all Ohio
22 matters at this point.

23 Q. All Ohio matters?

24 A. (Nodding.)

25 Q. Why is that?

1 A. Because I'm the Ohio counsel within
2 the firm. I am unaware, unless your all's rules have
3 changed, that anyone can file a pleading without
4 being licensed in the state of Ohio, until that
5 person has potentially been admitted pro hac vice.

6 Q. What about Mr. Hart? Is he also on
7 the pleading?

8 A. No, not at this time.

9 Q. Am I correct in my understanding that
10 the reason Mr. Hart is not going on the pleadings at
11 this time is in part the concern over what we're here
12 about today?

13 A. I'd say that's accurate.

14 Q. Is it fair to say, Brook, that you
15 don't have any knowledge of how it is that Fore-
16 closure Solutions communicates with the people who
17 become clients of the firm through that referral
18 service as far as what the fee will be, what the
19 basis of the fee will be?

20 A. That's correct. That's fair to say.

21 Q. And is it also fair to say that in
22 your case personally, you do not have conversations
23 with or discussions with those referral clients, when
24 they come in, about the fee that's going to be
25 charged, either the amount or the basis of it?

1 A. At the time they come in to Foreclo-
2 sure Solutions?

3 Q. No. At the time they become a client
4 of the firm.

5 A. No. That is fair to say, correct.

6 Q. Now, Patrick described a system in
7 which, in most instances or as part of the routine,
8 you do send out a letter asking people to basically
9 confirm what the fee will be. Are you familiar with
10 that?

11 A. I am. I believe we provided, during
12 our informal investigation, a sample of that letter
13 to this committee.

14 Q. Patrick also said, I believe, that
15 while those are routinely sent out or at least
16 intended to be sent out with every file, that the
17 rate of return has not been all that great, that
18 people simply do not sign off and send those back.
19 Has that been your experience as well?

20 A. That's right.

21 Q. Now, let me ask you, in the case of a
22 file in which you have communicated by letter with
23 the clients and they have not returned the letter, is
24 there anything further done as a routine, in other
25 words, as part of the procedure, to encourage them to

1 return that letter?

2 A. Other than, on every single case,
3 multiple letters and multiple phone calls in an
4 effort to communicate to the client, every single
5 file, multiple efforts to reach the client, to
6 communicate with the client, to make everything as --
7 and copies of all pleadings, copies of everything are
8 provided to the client, and all phone calls are
9 returned when they come in.

10 It is a very big effort that requires,
11 at this point, not counting the attorneys, probably
12 ten people within our office that contribute towards
13 that, plus the three -- plus -- not counting the
14 three partners who you're asking today. And plus the
15 three of us.

16 Q. Okay. But going to my specific ques-
17 tion, you're not aware of any effort by the firm in
18 particular to recommunicate specifically, to have
19 people sign that acknowledgement of the fee arrange-
20 ment and return it if they don't return the first
21 one?

22 A. I'm not aware that that does or does
23 not happen. It may very well be that during the
24 course of telephone communication that occurs after
25 this letter is sent, that those folks are requested

1 to send that back in. I don't know.

2 Q. Okay. But you're not saying that
3 that's part of the routine; you just simply don't
4 know one way or the other?

5 A. That's correct. And let me -- I need
6 to go back and add one other thing to a prior answer.

7 Q. Sure.

8 A. You were asking about this procedure
9 when the file comes in.

10 Q. Yes.

11 A. It's that our acceptance of a prospec-
12 tive client is not automatic for every file. So
13 there is a decision-making process in place to
14 determine whether or not to accept a referral on a
15 particular case, and that decision is made on a
16 case-by-case basis.

17 Q. Okay. Tell me about how that. How do
18 you do that?

19 A. I'll give you an exact example. I had
20 to appear in Clermont County. And God forgive me.
21 Time seems a little fuzzy to me right now because I'm
22 not quite over my dad's passing, but I think it was
23 the beginning of last week.

24 I had to appear in Clermont County on
25 a matter on a file that came in that wasn't checked

1 closely enough to determine that the very situation I
2 spoke of earlier had occurred.

3 The defendants had been served. The
4 Answer time frame had come and gone. The clients,
5 defendants, were in default. A motion for default
6 had been filed and a hearing had been set.

7 That's not the kind of case where we
8 want to say to a client there's much that we can do
9 for you at this point, because they're beyond that
10 point in most cases.

11 However, in that case, and to make
12 matters worse, the judge that it was assigned to
13 said -- I mean, the entry of appearance went in, the
14 motion for leave to plead went in with an order
15 attached granting us an extension of time to file an
16 Answer, and the judge said: I am not going to sign
17 your order and you need to be here on the hearing on
18 this motion for default judgment.

19 And, in fact, I went to that hearing,
20 appeared before the judge magistrate --

21 I guess the magistrate, they call
22 them.

23 -- and was able to get the judge to
24 make a determination of excusable neglect on the part
25 of the defendants, overrule the motion for default

1 judgment and grant our motion for leave to file an
2 Answer and, in fact, file an Answer on that date.

3 That worked out, and that was a situa-
4 tion where we got the client more than the client
5 could have ever expected, because they were already
6 in default and were going to lose their case. And we
7 got it for them.

8 However, that was one that under
9 normal circumstances we probably would not have
10 accepted, because here's someone who is in this
11 situation already.

12 And that's an example of a case like
13 that. There could be many other types of cases where
14 you view it as being too late. And the only way you
15 know that is based upon the information that is
16 contained in this sheet that's filled out that comes
17 with the packet of the file, and in going to the
18 computer or court docket to determine.

19 Q. Who makes that judgment call, that
20 decision that you won't take this matter, you will
21 take another one?

22 A. I'm going to call that a decision by
23 committee. It may very well be a situation where the
24 person who is setting the file up and checking the
25 court docket says this falls within the parameters or

1 one of the parameters we've discussed previously, I
2 don't think this is one we want, bring it to, poten-
3 tially, James Hart's attention. Jamie may say we
4 don't want this one, talk to Pat about it. And Pat
5 may say, yes, I agree.

6 But we kind of have some that are
7 problem matters where they have been referred to us
8 and we say, no, these are the cases we just aren't
9 going to take, because there's no reason for us to
10 get involved at this point. And the person brings it
11 to the right person's attention and that decision
12 gets made.

13 Q. Okay. Now let's --

14 A. I wanted you to be clear on that,
15 though, from my prior answer.

16 Q. Okay. I appreciate that. Now, let's
17 assume that you have one of those instances where you
18 decline to take the representation. That decision,
19 to whom is that communicated?

20 A. That file is sent back to Foreclosure
21 Solutions, presumably in the same manner that it was
22 received by us, which is hand delivery, with a return
23 of the fee that was paid for that and the indication
24 that we are not taking this referral.

25 Q. Is any effort made under those circum-

1 stances to communicate directly to the involved indi-
2 viduals, the people who are being foreclosed?

3 A. Not to my knowledge. And there
4 wouldn't be. They're not our client and it's not our
5 responsibility or right to communicate with that
6 potential client at that point in time.

7 And one further step. The clients
8 don't necessarily a hundred percent of the time
9 accept the referral, and there have been occasions
10 where the client has said: I'm going to get someone
11 else.

12 Q. All right. Now, you mentioned some-
13 thing that I hadn't thought of yet. When the file
14 comes initially, hand delivery from Foreclosure
15 Solutions, are you saying that typically the \$150 fee
16 comes with it, in other words, a check attached or
17 one check for, you know, five, ten files, whatever it
18 might be?

19 A. The latter. That's correct, one check
20 for however many number of files are included within
21 the packet for that day.

22 Q. So if, let's say, you had -- make it
23 simple -- ten files come over in a day and you for
24 some reason made the decision to decline representa-
25 tion on one of them, then a check would be cut back

1 from the firm to Foreclosure Solutions for just the
2 one file?

3 A. That's my understanding, correct.

4 Q. I take it that you don't involve your-
5 self personally in all that paperwork?

6 A. I don't. As a matter of fact, I
7 rarely write any checks in the firm. I happen to
8 know where the checks are, but that's about as far as
9 it goes.

10 Q. Now let's focus on one you get
11 involved in because it's an Ohio matter at the
12 current time. Is it safe to say that you do not have
13 any conversations with the clients about the fee,
14 either as to its amount or how it's determined, after
15 the representation is accepted?

16 A. I can't recall ever having had that
17 conversation personally with a client. I can't tell
18 you whether or not that conversation with other of
19 our attorneys or staff has or has not occurred.

20 Q. Okay. Again, I'm only asking for your
21 knowledge --

22 A. Right.

23 Q. -- of what you've been involved in.

24 A. I can't tell you that it is our policy
25 not to discuss what the amount of the fee is with our

1 client; I can't tell you that it is our policy to
2 discuss what the amount of our fee is. I can only
3 tell you that I don't ever recall having had that
4 particular discussion with any foreclosure clients.

5 Q. Did you play any role in the determi-
6 nation of what the fee, flat fee, should be?

7 A. No.

8 Q. Is that something that Patrick was
9 responsible for?

10 A. I don't think even he was. I think we
11 were told what the amount would be, without negoti-
12 ation or input, and it was just stated as a matter of
13 fact.

14 Q. Well, Brook, you'd agree with me that
15 somebody had to make a decision even if someone puts
16 it to you that, "This is what I'll pay, no negotia-
17 tion whatsoever, 125 or 150," somebody still has to
18 make the decision to accept that offer?

19 A. Yes, I'm sure that occurred. And
20 obviously what you're getting at is it would have
21 been -- that decision would have occurred before I
22 was a member of the firm.

23 Q. Okay. So you didn't have any role in
24 that acceptance of that number?

25 A. No.

1 Q. And, therefore, I assume you wouldn't
2 have any knowledge of what considerations were taken
3 into account in making that decision to accept?

4 A. That's correct. I would not.

5 Q. Can you recall ever having what I'll
6 call a fee dispute with any of the Ohio clients?

7 A. No. I know there have been occasions
8 where Ohio foreclosure clients have wanted to pay our
9 firm additional fees for the work we've done and the
10 result we've obtained, and it's my understanding that
11 that has occurred on more than one occasion.

12 Those offers have routinely been
13 rejected. We've never accepted any additional ten-
14 ders of additional fees from any of those clients.

15 Q. Is it fair to say that in some cases
16 the amount of time being devoted by the people in
17 your firm -- yourself, other attorneys and the
18 paraprofessional staff -- can be far, far greater
19 than any time consideration would allow you to bill
20 if you were billing hourly rates?

21 A. Yes. I just gave you an example of
22 one.

23 Q. Okay. And are there other examples at
24 the other extreme, where the case, the matter goes
25 through in a very routine manner, and you don't spend

1 as much time as the fee would indicate, \$150?

2 A. No. In my opinion, no.

3 Q. So if Patrick characterized the deci-
4 sion to take these kind of cases as, I'll use the
5 word somewhat guardedly, charity or feeling that the
6 firm should do this out of a sense of obligation to
7 the public, would that be a fair characterization, in
8 your view?

9 A. We just established that I wasn't a
10 part of the decision-making or acceptance process of
11 starting the system up, so I can't address what the
12 idea or thought process was at the time when I wasn't
13 there. If Pat characterized it in a particular way,
14 I'll accept his characterization, from his point of
15 view, of course.

16 Q. Well, would you agree that today, as a
17 principal in the firm, that it appears to be this is
18 not a very good financial arrangement for the firm?

19 A. No, I would not agree with that.

20 Q. Okay.

21 A. I would agree that on a file-by-file
22 basis that what we do on the simplest files, on the
23 simplest matters, eats up the \$150 every single time.
24 That's my belief.

25 And never do we, never have we or do

1 we or will we, stop our representation of a partic-
2 ular client because that 150 is eaten up. How-
3 ever -- so I do believe --

4 I have a system of determining whether
5 something's profitable or not that's a little bit
6 different from other people. If my hourly rate is
7 \$180 an hour and I get \$200 on a case and I spend
8 less than an hour working it, I've just made money.

9 Because if I'm worth \$180 an hour and
10 the work's there but I make more than that in an
11 hour, I've made money. If I make less than that in
12 an hour, I've lost money.

13 It's the whole concept of what's
14 your profit margin on the work you do. There's no
15 question that doing one, five, ten files of these
16 foreclosure matters at \$150 a file would not be
17 profitable.

18 It's just like with collection work.
19 You don't make money doing collections doing one,
20 five or ten collections. You do it because you have
21 a lot of collections. And because you have a lot of
22 collections, even though your profit margin is lower,
23 you still make money because of the bulk amount of
24 collections.

25 So your question was would I agree

1 that representation of these foreclosure clients is
2 financially detrimental, and I would not.

3 Q. Okay.

4 A. I can't tell you that our profit
5 margin on those cases is as good as my sitting down
6 and preparing a new LLC for someone. As a matter of
7 fact, I can tell you that it's absolutely not. But
8 that doesn't mean it's financially detrimental to us.

9 Q. Okay. Let me turn to a slightly
10 different subject here. One of the things that the
11 firm and you do for these clients in Ohio is to
12 engage in discussions with the lenders to see if
13 there is some way of resolving the foreclosure in a
14 way other than the loss of someone's home. Correct?

15 A. That's correct, except I'd say it
16 would be with lender's counsel. But yes, that's
17 correct.

18 Q. Or lender's counsel?

19 A. Typically if they hire an attorney,
20 they're going to let that person figure it out.

21 Q. Okay. What percentage of the time is
22 that process of negotiations or discussion going on
23 between the firm or yourself and the counsel for the
24 lenders versus Foreclosure Solutions doing that?

25 (Mr. Moeves leaves the deposition

1 hearing room.)

2 A. I don't have any clue the extent to
3 which Foreclosure Solutions does that. So from our
4 perspective, our negotiation, "ours" being BMH, our
5 negotiation is 100 percent of the time trying to work
6 it out.

7 And I think we need to remember what
8 we're dealing with here. We're talking about a fore-
9 closure case that is based upon, in every situation,
10 a promissory note. And there is, to my knowledge,
11 one defense to a promissory note, and that defense is
12 you didn't sign it.

13 And there may be issues of fraud that
14 you can determine, there may be issues of usury, the
15 interest's rates too high. However, we're dealing
16 with commercial lenders here, we're dealing with
17 large lenders typically, who aren't going to get into
18 the area of usury.

19 So we are dealing with customers,
20 clients who typically have very little defense to a
21 foreclosure. There may be issues like the mortgage
22 payments were misapplied, the note payments, or not
23 applied at all or other mistakes.

24 There is a case involving fraud that
25 our firm will be trying up in Cuyahoga County --

1 I don't even know when it's set, but I
2 know that it's set and will go forward.

3 -- where during our investigation
4 fraud was uncovered. However, the lion's share of
5 these cases, when we investigate it, we're not going
6 to find a defense.

7 When you don't find a defense, rather
8 than filing frivolous pleadings, frivolous discovery,
9 rather than belaboring a case that there don't appear
10 to be any defenses to the claim, in which event we
11 have drug this out for our clients and in the mean-
12 time increased dramatically the plaintiff's attor-
13 ney's fees, which are recoverable in every fore-
14 closure matter, instead of doing that, our energies
15 change to trying to get this matter worked out.

16 I apologize for going on and on.

17 Q. That's all right.

18 A. But I was trying to explain it. Your
19 question was what percentage do we work out versus
20 Foreclosure Solutions. I have no clue or concept if
21 Foreclosure Solutions tries to work out any of these,
22 but I know that we do in every case that we have. So
23 my answer would be, to my knowledge, a hundred per-
24 cent.

25 Q. Okay. Let me show you what was marked

1 in a prior deposition as Exhibit C. It's a document
2 called "The Nuts and Bolts of an Ohio Foreclosure."
3 Did you have any role in the preparation of this
4 document?

5 A. No.

6 Q. What is your understanding as to what
7 this document is and how it's used?

8 A. My understanding is that this document
9 is provided to every client that we accept via refer-
10 ral from Foreclosure Solutions, to explain the entire
11 foreclosure process from start to finish.

12 Q. So it's something that's sent as a
13 matter of course after the intake of the file that
14 you described before?

15 A. That's correct. And I'm assuming, and
16 I'm sure you can verify, that this is a form that we
17 actually provided to Mr. Slauson postinterview, in
18 our office, presumably.

19 Q. As a matter of course, again, as far
20 as you know, if that document, Exhibit C, is sent to
21 a particular client at the beginning of that intake
22 process when you accept it --

23 You accept it. Now you're going to
24 send a letter.

25 -- would a copy of that be kept in

1 your file?

2 A. I don't know that. I just don't know.

3 Q. Okay. When one of these files comes
4 in and it's an Ohio file and you've accepted and you
5 are going to be signing the pleadings because it's
6 the current time, and let's assume it's Hamilton
7 County, do you as a matter of course get that file
8 and personally review it?

9 A. Sometimes, but not as a matter of
10 course.

11 Q. All right. So if you're going to be
12 filing, let's say, an Answer in that case, how is it
13 that you determine that everything is the way it
14 should be for the filing of that Answer, in other
15 words, that you're filing a proper Answer to that
16 particular Complaint?

17 A. The Complaint sets out the allega-
18 tions, and just as there are -- bottom line, every
19 foreclosure Complaint is substantially the same
20 Complaint.

21 I've done foreclosure plaintiff work.
22 I did it for a couple of years for Fifth Third Bank,
23 and you can routinely take out one bit of information
24 and put in the next bit of information within the
25 body of a foreclosure Complaint and it will be almost

1 ready to go.

2 The Answer process is the same. As I
3 said to you, there are very few defenses that can be
4 raised to a foreclosure action. And typically at the
5 time that we get these in, these Complaints, we are
6 into a distress situation with time-sensitive mat-
7 ters.

8 So there may not be enough time to
9 investigate on the front side, and it may be a matter
10 of filing an Answer, which the client is obviously
11 entitled to do, to protect that client's interest
12 before being able to conduct a full investigation.

13 And that happens quite a bit, where
14 you file an Answer to protect the client's interest,
15 you do your investigation, you speak with a client
16 and determine that there are no apparent defenses,
17 there are no -- that they did sign the note, they did
18 miss their payments, that the amount that the plain-
19 tiff has stated appears to be correct, where you
20 don't have anything.

21 And in those situations the best
22 advice to give to the client is we need to try to get
23 this worked out, because we are not going to defend
24 against it.

25 Q. Let me go back to Exhibit C there for

1 a second. If one of these documents, The Nuts and
2 Bolts of an Ohio Foreclosure, was not for some reason
3 sent to a client as a matter of due course, how would
4 the client know what kind of defenses they might have
5 to a foreclosure action?

6 A. That would be explained to them
7 through multiple communications on every single file.

8 Q. By an attorney?

9 A. By an attorney. Mostly by an attor-
10 ney. If it was discussing legal rights, it would
11 definitely be by an attorney within our office,
12 because all of our staff have been advised not to
13 discuss legal issues with foreclosure clients.

14 Q. All right. Well, let's go back to the
15 intake process for a second. A file comes in.
16 You've decided to accept it. A letter goes out to
17 the clients. And let's say that that letter contains
18 the proposed or the actual Answer that's being filed
19 but doesn't have The Nuts and Bolts document in it.
20 That's possible to go in that fashion. Correct?

21 A. I --

22 Q. I mean, it could happen in that
23 sequence?

24 A. I'm sorry. I may have missed it. Say
25 your sequence again. I might have missed it.

1 MR. CREIGHTON: Hey, Luke, help me out
2 here.

3 THE WITNESS: Thank you.

4 Sorry about that.

5 (Question read.)

6 A. I think you said that could happen in
7 that sequence. My belief is that even if there is a
8 time-sensitive urgent pleading that needs to be
9 filed, that the initial letter that is sent out that
10 you've referenced previously and clearly you have a
11 version of, with which this Nuts and Bolts descrip-
12 tion is included, goes out. I don't believe that
13 there are any cases, to my knowledge, where a plead-
14 ing -- where a letter enclosing a pleading goes when
15 a letter with a Nuts and Bolts doesn't either accom-
16 pany it or precede it.

17 Q. But it may or may not appear in the
18 file? In other words, a copy of The Nuts and Bolts
19 may or may not?

20 A. If I get to looking in a file, I don't
21 need to go back to square one of our correspondence,
22 although I have had occasion to look at a file and
23 wonder how many times we have spoken with a client.

24 Another case that occurred, we were
25 the victim of a forged power of attorney. It was a

1 husband and wife. The husband and wife were
2 estranged. This was up in Bowling Green, Ohio, which
3 I know that drive well because my wife's family is
4 from Toledo and it's two hours and 45 minutes away.

5 And this case progressed through its
6 normal process. No apparent defenses. All of our
7 communications were addressed to the right address,
8 addressed to husband and wife, and the wife had
9 forged the -- we have come to find out the wife had
10 forged the husband's signature on the power of attor-
11 ney.

12 I think there was seven letters to the
13 correct address, addressed to both people. There
14 were multiple phone conversations with the wife,
15 multiple messages left at the residence.

16 And it had gone all the way to a sale
17 date, I believe was the status, when we were con-
18 tacted and advised by another attorney up in the
19 Bowling Green area that his client never -- he didn't
20 even know about the representation and what's going
21 on. And we showed him a copy of the POA, and the
22 answer was: That's not our signature.

23 So what we did in that situation was
24 two of us traveled to Bowling Green on a Monday, for
25 a Monday morning hearing, and appeared with the new

1 counsel for the husband and appeared with the judge,
2 and verified to the judge that, given what the hus-
3 band's attorney was saying, we had no way to dispute
4 that and did not dispute it.

5 We accepted it as stated and we
6 endorsed the husband's motion to set aside the sale
7 date. And at that time, being a victim of fraud
8 ourselves, perjury, we asked the court to allow us to
9 withdraw, which the court did do.

10 In that kind of a case I read through
11 the entirety of the file to see how many times we had
12 written and where were the letters sent and how was
13 it this problem could have arisen. That's a case
14 where I would.

15 You know, our standard operating
16 procedure is this is sent to every single client that
17 we ever represent, "this" being Exhibit C, The Nuts
18 and Bolts. I just --

19 I don't know if routinely it's copied
20 and put in the file. It wouldn't surprise me to
21 learn that we have made the decision not to copy
22 every single time a document that we know goes with
23 every one of those initial letters.

24 (Mr. Moeves returns to the deposition
25 hearing room.)

1 Q. Let me hand you what was previously
2 marked as Exhibit H. And I will represent to you
3 that the testimony on that was this is the initial
4 letter that went out to this particular husband and
5 wife client, the Godfreys, on or about March 31st,
6 2006, and was executed and forwarded by Mr. Mullaney.
7 It's an Ohio matter, apparently.

8 The testimony on this, as I recollect,
9 was --

10 A. This is by Pat?

11 Q. Yes. Patrick testified that he
12 believes that to be the first letter that went out,
13 that it appears that that's the first letter that
14 went to the clients. Okay?

15 I don't see a reference in there to
16 The Nuts and Bolts being one of the enclosures. As
17 you read through that, do you disagree with that in
18 any way?

19 A. That this letter does not reflect a
20 reference to The Nuts and Bolts enclosure?

21 Q. Yes.

22 A. Obviously this document speaks for
23 itself, but it does not appear to include that refer-
24 ence.

25 Q. And there's nothing in that letter

1 that would indicate to you that The Nuts and Bolts
2 was, in fact, sent out, other than what you under-
3 stand to be your office's standard operating proce-
4 dure?

5 A. Right. And I agree with you there's
6 nothing in this letter that references The Nuts and
7 Bolts. It may be that the procedure you described
8 can occur upon occasion.

9 This is a matter at a point in time
10 where I wasn't involved at all, except for coverage
11 purposes. So I can't tell you what happened in this
12 specific case. But I agree that there's no reference
13 to that document, The Nuts and Bolts document, within
14 this letter.

15 Q. All right.

16 A. And no indication that it was sent
17 with this letter.

18 Q. When a file comes over from Fore-
19 closure Solutions, do they give you any kind of
20 summary as to what the status of discussions are or
21 have been with the lender or lender's counsel?

22 A. I'm not aware of that.

23 Q. How would you know, in the normal
24 course, what Foreclosure Solutions has done or failed
25 to do in any given specific situation? Take the

1 Godfreys, for example, when this file would have come
2 over. How would you know, if you looked at the file,
3 what had Foreclosure Solutions done or not done?

4 A. Other than the information that is
5 included within the -- it's handwritten typically.
6 It's what's called an intake sheet, for lack of a
7 better word, kind of like what you might fill out in
8 an emergency room.

9 It's a handwritten preprinted that
10 comes with the files we get, and that's got some
11 client specific information on there that may give us
12 additional information above and beyond --

13 In fact, it looks like you may be
14 pulling one out there. That's got information on it.
15 Beyond that --

16 Q. Let me hand you --

17 A. Do you want me to stop while you --

18 Q. Yes. Let me hand you Exhibit F here.
19 Is this an intake sheet?

20 A. My phrase, first of all. Let's be
21 clear. I just use that phrase. I've never heard
22 anything where --

23 Q. Okay.

24 A. This sheet, though, is what I'm talk-
25 ing about: the preprinted handwritten form.

1 Q. And whose writing would be on here, on
2 this? It's obviously a form sheet.

3 A. I don't know whose that is.

4 Q. Well, the question's not quite that
5 specific. Would this be handwritten in here by Fore-
6 closure Solutions people before they send it, or is
7 this handwritten by people in your office after you
8 get the file?

9 A. This is handwritten when we receive
10 the file. Our office doesn't insert this handwritten
11 information. I don't know who handwrites it on the
12 front end of it.

13 Q. So it comes already filled out, if you
14 will?

15 A. Correct. Other than that, which has,
16 like I said, some client specific information -- what
17 exhibit number was that?

18 Q. F?

19 A. Exhibit F. Other than that Exhibit F,
20 and of course the pleading that comes along with it,
21 our involvement is directly related and limited to
22 the clients.

23 Q. Okay. The second page of this Exhibit
24 F is called "Lead Report." And I assumed from read-
25 ing it that this was a document that was prepared --

1 First of all, it's a form that is not
2 generated by your office. It appears to be generated
3 by Foreclosure Solutions and, secondly, filled out by
4 someone at Foreclosure Solutions, not at your office.
5 Is that your understanding?

6 A. It is my understanding that this is a
7 form that was not prepared by our office, nor was it
8 completed by our office. I don't know who prepared
9 this form, nor do I know who filled this form out.

10 Q. Okay. But this would be an example of
11 what is delivered to you with the intake of a file?

12 A. That's correct.

13 Q. So, for example, under Notes where we
14 see the notation he is intense about saving his home,
15 does not want to move again, this would have been
16 information garnered in an interview that no one in
17 your firm was a participant in?

18 A. That would appear to be the case. Who
19 was a part of that interview, I don't know.

20 Q. Okay.

21 A. Our investigation from our end will
22 start fresh and proceed on its own without that
23 information.

24 MR. STERN: Do you want to take a
25 break?

1 MR. CREIGHTON: Yes.

2 Off the record.

3 (Discussion off the record.)

4 (Recess taken: 2:00 PM - 2:45 PM.)

5 Q. We were asking you about Exhibit F, I
6 believe. So Exhibit F, just to clarify and make sure
7 we get back on track here, is a document that typi-
8 cally -- and I don't mean this particular one for
9 every case, but a form like this comes in with the
10 file at intake?

11 A. In our office, yes.

12 Q. Now, in what percentage of the cases
13 that you've been involved in did you actually have
14 any telephone or personal contact with the clients?

15 A. I can't give you an estimate of per-
16 centage, but I'll just say it's low, a low percent-
17 age.

18 Q. So most of it's handled by the written
19 communications, the exchange of letters?

20 A. Oh, I'm sorry. You said me.

21 Q. Yes, sir.

22 A. I would say -- would you ask the
23 question again. I thought you were just talking
24 about me versus the rest of the firm.

25 Q. I am. In those cases that you have

1 been listed as the counsel and you have entered an
2 appearance in an Ohio court, I'm asking, just in a
3 rough form, in about what percentage of those cases
4 have you had either telephonic or direct communica-
5 tion, meetings, with the clients?

6 A. Me personally in those cases?

7 Q. Yes.

8 A. A very low percentage. Our office,
9 someone from our office, whether it be Jamie Hart,
10 myself, Pat, Brian, Crystal, one or two paralegals,
11 three or four law clerks, in that case I would say
12 the predominant percentage is they're actually
13 telephone contact.

14 Most cases there is actually telephone
15 communication between someone from our office and the
16 client. In-person meetings is a much lower percent-
17 age.

18 Q. Okay. Now, with respect to those
19 contacts, on kind of an average basis, what are the
20 contacts concerning when you would have telephone
21 conversations with the client?

22 A. The same matters addressed in the
23 various correspondence back and forth: the circum-
24 stances of a particular case, the facts of a partic-
25 ular case, whether or not there are any defenses,

1 discussing through whether there are any defenses,
2 any impending important dates that are coming up, the
3 consequence of any hearings, the impending results of
4 a particular case, important dates, if it's going for
5 a judgment, if a summary judgment has been filed, if
6 it's going to where a judgment's going to be entered,
7 if the property is going to sale. A communication on
8 a case-by-case basis on the particulars of that case.

9 Q. How often have you actually gone to an
10 Ohio court and entered an appearance, on a physical
11 basis? For example, let's take Cuyahoga County.
12 Have you gone up there?

13 A. No.

14 Q. Those were handled primarily by who,
15 Mr. Mullaney and now Mr. Hart?

16 A. Yeah, and presumably Pat Moeves as
17 well. But I don't know of any particular instances.
18 I know Darren was up there and I'm fairly sure that
19 Jamie has been up there, and I believe Pat's been up
20 there. And I was almost there this week, but we were
21 able to handle something by telephone.

22 Q. And I think you mentioned an appear-
23 ance in Clermont County recently?

24 A. Yes, sir.

25 Q. So you do get across the river and

1 actually make physical appearances in courts on
2 occasion?

3 A. Hamilton County, Clermont County,
4 Brown County, but I can't recall -- multiple times,
5 but I can't recall the exact circumstances of that
6 appearance. But the answer is yes to your question.

7 Q. Does the firm, to your knowledge, ever
8 make a refund of any fee paid?

9 A. It's my understanding that has
10 occurred. How many times and the circumstances of
11 that, I can't describe.

12 Q. Is that subject, possible refund of
13 money, is that covered in the letter that goes out?

14 A. I don't recall. You've got all the
15 letters. I'm sure that you've probably looked
16 through them and can show me the specific letters.

17 Q. Okay. I will tell you, unless I
18 missed it here, I'm not aware of any of those.

19 A. Honestly, I'm not being cute about it.
20 I just don't know without looking at the Answers. If
21 you were to tell me that you couldn't find anything
22 in the letters that addresses a possible refund of
23 money, then I would have no reason to dispute that.

24 Q. What I was clarifying for you, I'm not
25 aware of having seen the form letter, if it is a form

1 letter, regarding the fee arrangement.

2 A. I doubt there is one.

3 Q. Okay.

4 A. My understanding, which probably Pat
5 verified during his deposition, was that we gave you
6 a sampling of all documents that we use in every
7 case.

8 Q. So your understanding today is that
9 there may not be a form letter as it relates to fee?

10 A. There may not be, that's correct.

11 Q. Okay. Do you consider the fee earned
12 at the time that it is received from Foreclosure
13 Solutions?

14 A. I guess that depends upon a number of
15 circumstances, including the occurrence where we
16 refund money may happen. But to my consideration,
17 yes, I do. It's a flat fee to handle the foreclosure
18 litigation as counsel for the foreclosure defendants,
19 from entry of appearance, Answer, to final resolu-
20 tion.

21 Q. As I understand it, and please correct
22 me if I'm wrong, the basics of the relationship, in
23 other words, what you're going to be doing and for
24 how much, in other words, what your fee is going to
25 be, that was a matter that was an understanding

1 between Foreclosure Solutions as the attorney, acting
2 as an attorney-in-fact for the client, and your firm?
3 In other words, it doesn't have a direct communica-
4 tion with the client but, rather, with its attorney?

5 A. I don't know the extent to which Fore-
6 closure Solutions has a conversation with the client
7 as to fee or what that amount might be. I don't know
8 that and can't address it.

9 As we discussed previously, though I
10 wasn't here at the time when that occurred, obviously
11 someone, presumably Pat, or Pat and Brian, consented
12 to the fee of \$150 per referral.

13 Q. And is it your understanding that, as
14 a part of that, the agreement was, whatever it took
15 to represent these people in a foreclosure action on
16 any particular referral, you'd stay with it through
17 the end, the firm would stay with it?

18 A. I have no clue whether that particular
19 issue was discussed at the time that the referrals
20 started coming in for 150 per. I can tell you as an
21 absolute matter of fact that that's the way represen-
22 tation of these clients has been handled for as long
23 as I've known about it, that once we get in, we stay
24 in.

25 If Foreclosure Solutions drops the

1 client for whatever reason, that's up to them. We
2 don't get out. You know, the only way we get out of
3 a case is if the client says, I want you out, I'm
4 going to hire somebody else and I'm going in a
5 different direction, I don't need your services
6 anymore, you're out. Otherwise, we go forward.

7 Q. Okay.

8 A. So that would be my understanding. I
9 don't know, though, if it was discussed with Fore-
10 closure Solutions.

11 Q. Okay. And I assume that the bank-
12 ruptcy representation is a separate matter that you
13 refer out. Is that correct?

14 A. That's right. We don't handle --
15 never have handled and have no intention of handling
16 any aspect of bankruptcy. Who gets that, I suppose,
17 is who's available and willing to take the referral
18 for a bankruptcy.

19 And what fee they get paid by that
20 client is up to the bankruptcy attorney. We don't
21 get any portion of that and we never -- once we get
22 to 150, that's it. We refer it to bankruptcy and we
23 don't get any portion of it. We don't do the bank-
24 ruptcies.

25 Q. With respect to the cases in which

1 you've been involved, have you had any occasions
2 where you were personally calling Foreclosure Solu-
3 tions to discuss the client?

4 A. No. I've never spoken with anyone
5 from Foreclosure Solutions about any aspect of any
6 case. I have not even -- I've met Tim Buckley upon
7 occasion. I don't even know who any of the other
8 people there are.

9 Q. Are you aware of any situation in
10 which Foreclosure Solutions has asked the firm to
11 stop representing a client?

12 A. I am not personally aware that that's
13 occurred, though I guess it's possible, if you have
14 other information.

15 Q. No. It wasn't a question of knowl-
16 edge.

17 A. I don't think, quite frankly, that
18 Foreclosure Solutions has any authority to request
19 or suggest that we discontinue representation of
20 a client with whom we have the attorney-client
21 relationship. So I would doubt very seriously that
22 that's ever occurred.

23 Q. Well, I'm curious about one thing,
24 then. In Exhibit E, in this power of attorney that's
25 used by Foreclosure Solutions, it says that one of

1 the things that the power of attorney covers is the
2 ability to hire and engage counsel. Do you see that?

3 A. Oh. I see that, yes.

4 Q. Okay. Would you assume, then, that if
5 they have the power to engage, that they have the
6 power to terminate?

7 A. No.

8 Q. Okay. So once --

9 A. The answer is no, I would not assume
10 that. I think once that relationship is established
11 with a client, no one can come in and discontinue
12 that.

13 MR. CREIGHTON: Would you give me just
14 a minute here.

15 THE WITNESS: Of course.

16 (Recess taken: 2:58 PM - 3:00 PM.)

17 Q. Mr. Halloran, would you read this
18 paragraph here to yourself for a second, and then I
19 have a question about it. And I'm referring to
20 Exhibit C, the second page, the third full paragraph.

21 A. Okay.

22 Q. Okay. And just so we're on the same
23 book and page here, I've asked you to read the
24 paragraph beginning "Between the judgment date."
25 Correct?

1 A. Yes.

2 Q. Is it your understanding that that is
3 a true statement, specifically where it says "the
4 person and/or entity you hired to represent your
5 financial interest in the foreclosure action will
6 continue to work frantically to get the mortgage
7 company to accept payment, reinstate your loan," et
8 cetera?

9 A. I would say that's correct. That is
10 what we do.

11 Q. Okay. When you say "what we do," is
12 it your understanding that that refers -- "the person
13 and/or entity you hired to represent," is that you
14 guys?

15 A. That's how I would read that, yes.

16 Q. You don't read that as being Fore-
17 closure Solutions?

18 A. No. I mean, as I understand it, this
19 is a nuts and bolts description of the foreclosure
20 process, A to Z. As I read this. And this is, in
21 fact, exactly what we do. And as I explained to you
22 earlier, it's the predominant number of cases that go
23 this route.

24 Q. Solution?

25 A. Solution.

1 Q. Okay.

2 A. Workout, reinstatement, forbearance
3 package, short sale, whatever it might be, than in
4 which you actually find a --

5 And you may not be successful, but you
6 try any way you can.

7 -- than in cases where you find a
8 valid defense and actually defend against it.

9 Q. But, in fact, the people that you're
10 sending this Nuts and Bolts document to, in fact, had
11 hired Foreclosure Solutions to represent their finan-
12 cial interest in the foreclosure action. Correct?

13 A. I don't know the nature of the con-
14 tract between the client and Foreclosure Solutions.
15 I don't know what they hired them to do. And I don't
16 care, from my end. We're hired pursuant to the power
17 of attorney and authorization from the client to
18 represent their interest as defendants in a fore-
19 closure action, and that's what we do.

20 Q. But you --

21 A. You know, this document, again, this
22 is a document that existed prior to my coming to the
23 firm and has continued to be used. When I read it, I
24 interpret it as a generic explanation, and this is
25 what we, in fact, do.

1 Q. Is it possible that there are two
2 entities or groups of people working on parallel
3 paths, Foreclosure Solutions on one hand and your
4 firm on the other, on behalf of the same people?

5 A. I suppose it's possible. I don't know
6 what Foreclosure Solutions is doing on their end. I
7 just know what we're doing on ours.

8 Q. Can I then safely assume that you
9 don't in any way attempt to supervise or monitor what
10 Foreclosure Solutions is either doing or not doing
11 with respect to communicating on behalf of the
12 client, your clients, with the lenders?

13 A. No, although our communications with
14 the client might include the suggestion that the
15 client limit their communications and dealings on the
16 case with their attorney, which is a standard thing
17 that you suggest to your clients.

18 Likewise, our communication to
19 lender's counsel might be the same: we represent
20 this party; you communicate with us. But we don't
21 supervise nor do we direct or criticize what Fore-
22 closure Solutions does in their communication with
23 anyone.

24 Q. Have you become aware, as you were
25 doing your work for a client, that Foreclosure Solu-

1 tions was continuing, in any case, to communicate on
2 behalf of their customer, your client, with the
3 lender?

4 A. On no case that I've been involved
5 with. I am aware that --

6 Actually, no, no case that I've been
7 involved with. I was going to say I'm aware that
8 might occur, because the client will get authoriza-
9 tion from Foreclosure Solutions for us to talk to
10 them, but that's between us and Foreclosure Solu-
11 tions.

12 So I apologize. My answer is no, I'm
13 not aware that that's ever occurred.

14 Q. Okay. What is your understanding of
15 how Foreclosure Solutions obtains the business that
16 they are then referring to you?

17 A. I don't have any specific knowledge as
18 to how they obtain that business.

19 Q. Do you know, for example, whether they
20 come through notices of the filing of suits in the
21 various courts?

22 A. I don't know. I don't know how they
23 come upon the clients that are referred to us as
24 prospective clients.

25 Q. Is it, in general, true that by the

1 time you're seeing the file for the very first time
2 on the intake that a foreclosure has already been
3 filed against the people that become your client?

4 A. I would say that that is the case more
5 often than not.

6 Q. What consideration is given at that
7 time of intake to the issue of whether these clients
8 should consider bankruptcy law as a remedy for their
9 problem at that time rather than later down the road?

10 A. At the point in time that they come to
11 our office?

12 Q. Yes.

13 A. I would say that bankruptcy considera-
14 tion is always in your mind.

15 If we start with the premise that most
16 of these there is no defense to and you move on to
17 the next premise that you are at the mercy of the
18 lender as to whether or not you are going to be able
19 to work out an arrangement, whether it is through
20 reinstatement, forbearance, short sale, whatever it
21 might be, and that the foreclosure sale remains a
22 very distinct possibility, I think bankruptcy is
23 always a consideration, probably from the get-go.

24 Q. Well, how do you evaluate, then -- I
25 mean, what's the process of evaluating with these

1 files that come at the clip of maybe five to ten a
2 day, what process do you go through to evaluate
3 whether this file we really ought to consider bank-
4 ruptcy and this file no?

5 A. Well, I think if you determine that a
6 valid defense exists to a lawsuit, then considering
7 bankruptcy at that time would be malpractice.

8 You would obviously assess the merits
9 of each given case, discussions with a client, review
10 of the Complaint, discussions with lender's counsel,
11 informal discovery, review of note, mortgage, what-
12 ever other documents there might be, assess the case
13 and determine at that point whether or not there are
14 any defenses to the case.

15 You may find one like this case up in
16 Cuyahoga County where there's a fraud and there's
17 going to be a trial. If you don't find any defenses,
18 then you focus your effort on the workout portion.
19 And, obviously, pretty early on you are going to know
20 how receptive to workout the lender or lender's
21 counsel are.

22 And at some point in time if it
23 becomes apparent that this matter is going forward
24 and you're not going to be able to save your client's
25 house through a workout, then bankruptcy is an option

1 and presumably needs to be at some point in time
2 communicated to the client.

3 Q. You mentioned that one particular,
4 I'll call it fraud case, up in Cuyahoga County a
5 couple of times.

6 A. Uh-huh.

7 Q. Are you personally involved in that?

8 A. No.

9 Q. So anything you know about it came
10 through Patrick or others?

11 A. Second- or third-hand, yes, sir.

12 Q. Do you happen to know from that
13 second- or third-hand information how it was that the
14 fraud was discovered in that particular case?

15 A. I do not. I only heard that it was
16 discovered through the investigation and, as a
17 result, that a defense is being pursued.

18 MR. CREIGHTON: Okay. I have nothing
19 further.

20 MR. STERN: Thank you.

21 We'll read, please.

22
23 
24 John S. Brooking

25
Signed by reporter pursuant to Civil Rule 30(e).
Reason: Deposition not signed by witness within the allotted time.

(Deposition concluded at 3:10 PM.)

- - -

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

C E R T I F I C A T E

1
2 STATE OF OHIO :
3 COUNTY OF HAMILTON : SS:

4 I, Luke T. Lavin, a duly qualified and commis-
5 sioned notary public in and for the State of Ohio,
6 do hereby certify that prior to the giving of his
7 deposition, the within named John S. Brooking was by
8 me first duly sworn to testify the truth; that the
9 foregoing pages constitute a true and correct tran-
10 script of testimony given at said time and place by
11 said deponent; that said deposition was taken by me
12 in stenotypy and transcribed under my supervision;
13 that I am neither a relative of nor attorney for any
14 of the parties to this litigation, nor relative of
15 nor employee of any of their counsel, and have no
16 interest whatsoever in the result of this litigation.
17 I further certify that I am not, nor is the court
18 reporting firm with which I am affiliated, under a
19 contract as defined in Civil Rule 28 (D).

20 IN WITNESS WHEREOF, I hereunto set my hand and
21 official seal of office, at Cincinnati, Ohio, this
22 8th day of February, 2007.

23
24 MY COMMISSION EXPIRES:
25 APRIL 26, 2010.

Luke T. Lavin

LUKE T. LAVIN, RDR-CRR
NOTARY PUBLIC, STATE OF OHIO

CINCINNATI BAR ASSOCIATION

In re: Patrick E. Moeves : CBA File No. 06-2888
: :

Deposition of: PATRICK E. MOEVES
Taken: By Cincinnati Bar Association
Pursuant to notice
Date: Monday, February 5, 2007
Time: Commencing at 9:35 AM
Place: Cincinnati Bar Association
The Cincinnati Bar Center
225 East Sixth Street
Cincinnati, Ohio 45202-3209
Before: Luke T. Lavin, RDR, CRR
Notary Public - State of Ohio

FILED

DEC - 3 2007

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

ORIGINAL

1 APPEARANCES:

2 On behalf of Cincinnati Bar Association:

3 Rosemary D. Welsh, Esq.
4 Vorys, Sater, Seymour & Pease
5 Suite 2000, Atrium Two
6 221 East Fourth Street
7 P.O. Box 0236
8 Cincinnati, Ohio 45201-0236
9 Phone: (513) 723-400010 Richard L. Creighton, Jr., Esq.
11 Keating, Muething & Klekamp
12 One East Fourth Street
13 Suite 1400
14 Cincinnati, Ohio 45202-3752
15 Phone: (513) 579-640016 John G. Slauson, Esq.
17 119 East Court Street
18 Cincinnati, Ohio 45202
19 Phone: (513) 632-531520 On behalf of John S. Brooking, Brian P. Halloran
21 and Patrick E. Moeves:22 Geoffrey Stern, Esq.
23 Kegler, Brown, Hill & Ritter
24 Capitol Square, Suite 1800
25 65 East State Street
Columbus, Ohio 43215-4294
Phone: (614) 462-5457

On behalf of Darren Mullaney:

John J. Mueller, Esq.
800 The Provident Building
632 Vine Street
Cincinnati, Ohio 45202-2441
Phone: (513) 621-3636

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Cross-Examination by:	Page
Ms. Welsh	5

- - -

E X H I B I T S

Exhibit No.	Description	Marked
A	Series of three Notices of Deposition Duces Tecum, the first in CBA File No. 06-2888	47
B	Seven-page series of documents, the first being a letter dated September 29, 2006, numbered 011	53
C	Two-page document headed "The Nuts and Bolts of an Ohio Foreclosure," numbered 001 through 002	62
D	Documents numbered 017 and 016, the first page headed "Authorization"	69
E	Two-page Limited Power of Attorney of Richard and Karen Godfrey, dated March 15, 2006, numbered 035 through 036	73
F	Documents numbered 033 and 034, the first page beginning with the entry "Date: 3/13/06"	79
G	Two-page Foreclosure Solutions LLC Work Agreement, dated March 15, 2006, numbered 031 through 032	82
H	Multipage series of documents, the first being a letter dated March 31, 2006, to Richard & Karen Godfrey, from Darren Mullaney, numbered 037	100

1	Exhibit No.	Description	Marked
2	I	Multipage series of documents numbered 074 through 103, the first being a Motion of Plaintiff, Wells Fargo Bank, N.A. Successor by Merger to Wells Fargo Home Mortgage, Inc. for Summary Judgment, Case No. A0602133, Court of Common Pleas, Hamilton County, Ohio	113
3			
4			
5			
6			
7	J	Notice of Motion for Summary Judgment Hearing, Case No. A0602133, Court of Common Pleas, Hamilton County, Ohio, numbered 104 through 105	114
8			
9			
10	K	Magistrate's Decision in Case No. A0602133, Court of Common Pleas, Hamilton County, Ohio, numbered 106 through 110	114
11			
12			
13	L	Copy of postcard notice of journalized judgment in Case No. A0602133, Hamilton County Common Pleas Court, numbered 112	115
14			
15	M	Notice of Sheriff's Sale, Case No. A0602133, Court of Common Pleas, Hamilton County, Ohio, numbered 113 through 114	120
16			
17			
18	N	Order of Dismissal, Case No. A0602133, Court of Common Pleas, Hamilton County, Ohio, numbered 115	120
19			
20	O	Four-page letter dated December 18, 2006, to John G. Slauson, Rosemary D. Welsh and Richard L. Creighton, Jr., Esq., from Geoffrey Stern, together with enclosures	121
21			
22			
23		- - -	
24			
25			

1 PATRICK E. MOEVES

2 being by me first duly cautioned and sworn, deposes
3 and says as follows:

4 CROSS-EXAMINATION

5 BY MS. WELSH:

6 Q. Good morning.

7 A. Good morning.

8 Q. I'm Rosemary Welsh on behalf of the
9 Cincinnati Bar Association. Would you state your
10 name for the record, please.

11 A. Certainly. Patrick E. Moeves. It's
12 M-o-e-v-, as in Victor, -e-s.

13 Q. Mr. Moeves, have you ever had your
14 deposition taken before?

15 A. No.

16 Q. Just to go over the ground rules, so
17 that our court reporter can take the testimony as
18 accurately as possible, I will do my best to let you
19 finish your answer before I start the next question,
20 and by the same token I will ask that you let me
21 finish the question before you start your answer.
22 Okay?

23 A. Yes, ma'am.

24 Q. And so that Luke can transcribe the
25 testimony accurately, I'd ask you to make your

1 response verbal rather than a shrug of the shoulders
2 or a shake of the head. Okay?

3 A. Yes, ma'am.

4 Q. If at any time you need to take a
5 break during the course of the deposition, that's
6 certainly fine. I would simply request that you ask
7 for a break after answering the question rather than
8 when a question is pending. Is that agreeable to
9 you?

10 A. Yes, ma'am.

11 Q. Okay. Mr. Moeves, could you tell me
12 something about your background, and let's start with
13 high school. Where did you go to school?

14 A. I went to Saint Henry High School from
15 1983 to 1987. That's located in Erlanger, Kentucky.
16 I received a full merit scholarship to go to high
17 school there.

18 I received a Presidential Scholarship,
19 full academic ride, to Northern Kentucky University.
20 I was the Enid Henry Award winner there, which is the
21 outstanding graduate in political science, a double
22 major at NKU. And then I was awarded a Commonwealth
23 Scholarship to Salmon P. Chase College of Law.

24 Background would have been 1987
25 finished high school; '87 to '91, Northern Kentucky

1 University; and '91 to '94, Salmon P. Chase College
2 of Law.

3 Q. Did you take the Bar in Kentucky?

4 A. I did. I was admitted in 1995.

5 Q. Okay. Are you admitted to practice in
6 any other state?

7 A. I am admitted in the federal courts of
8 Kentucky, and I am admitted under pro hac motions
9 currently in the state of Ohio.

10 Q. In what counties in Ohio are you
11 admitted pro hac?

12 A. And again I will preface this. I
13 would say Summit --

14 When I'm prefacing, I'm trying to
15 recall and I don't know in what order.

16 -- Summit County, Ohio; Stark County,
17 Ohio; Hamilton County, Ohio. And I will point out in
18 Hamilton County most of them are non-Foreclosure
19 referral related. And also Cuyahoga County.

20 Q. Okay.

21 A. So to summarize my answer, if I may,
22 for you in terms of what this referral system would
23 be, is the subject matter, my understanding, that I'm
24 here today voluntarily appearing, it would basically
25 be Stark, Summit and Cuyahoga and Hamilton maybe,

1 just one or two instances, as we're talking about
2 here today.

3 Q. Can you give me a reasonable approxi-
4 mation of the number of cases in which you are
5 admitted pro hac vice in Summit County?

6 A. Summit County, it's hard to say. I
7 would say approximately five to seven.

8 Q. And Stark County?

9 A. I would say approximately the same
10 number.

11 Q. And Cuyahoga?

12 A. Probably five to seven.

13 Q. And you indicated that in Hamilton
14 those are mostly non-Foreclosure Solutions cases?

15 A. Related referral, yes, ma'am.

16 Q. And about how many of those cases are
17 there?

18 A. Are we talking non?

19 Q. Yes, non.

20 A. I would probably say five to six.

21 Q. Okay. And are you admitted pro hac
22 vice in Hamilton County for any cases involving
23 Foreclosure Solutions?

24 A. The referral system, I'm probably, I
25 would say, two to three.

1 Q. Okay.

2 A. And my numbers, what I'm trying to --
3 and I apologize, but active cases --

4 Q. I understand.

5 A. -- is what I would be referring to.

6 Q. I understand. Once you graduated from
7 Salmon P. Chase and were admitted to the Bar in 1995,
8 what was your first job as a lawyer?

9 A. I was in solo practice: Patrick E.
10 Moeves, Attorney at Law. Unfortunately, my mother
11 passed away suddenly in 1996 at the age of 46. At
12 that point Judge Douglas M. Stephens invited me --
13 who was a Kenton County Circuit judge for 31 years --
14 invited me to be a staff attorney.

15 And I served as Kenton County staff
16 attorney, Circuit Court level, from 1996 to 1998 for
17 Douglas M. Stephens, S-t-e-p-h-e-n-s, and Judge
18 Patricia M. Summe, S-u-m-m-e.

19 Q. And what did you do after that in
20 1998?

21 A. In 1998 I went to work for Wolnitzek,
22 Rowekamp and Bonar, W-o-l-n-i-t-z-e-k, Rowekamp,
23 R-o-w-e-k-a-m-p, and Bonar, B-o-n-a-r, PSC.

24 Q. How long did you work for them?

25 A. I worked there approximately from July

1 or August of 1998 up and through April-May of 2000.

2 Q. And why did you decide to end your
3 association with the Wolnitzek firm?

4 A. I was given a better pay offer,
5 increase, in the community. I had basically done
6 corporate tax, and another firm lured me away.

7 Q. What other firm was that?

8 A. It was Eric C. Deters and Associates.

9 Q. Okay.

10 A. At that point we had 13 attorneys.
11 And I stayed there approximately nine months due to
12 some interoffice issues and left there and started my
13 own firm.

14 Q. Okay. What was the name of your own
15 firm?

16 A. The firm originally took the name of
17 Moeves, Richardson and Scott.

18 Q. Okay. And that was in 2001 or so?

19 A. Fall -- I apologize. Fall of 2001,
20 yes, ma'am.

21 Q. Okay. How long did you have your own
22 firm?

23 A. Basically that firm or a variety
24 thereof existed until 2004. Mr. Richardson left the
25 practice of law. Then it was myself and Mr. Scott.

1 And then Mr. Scott had left the practice of law for a
2 short time. So it went from Moeves, Richardson,
3 Scott to Moeves and Scott to Moeves and Associates
4 from November of 2001 up and through March of 2004.

5 Q. Okay. What was your next employment?

6 A. It was -- the name of the firm was
7 Moeves and Halloran, PLLC.

8 Q. Okay.

9 A. And those were all PLLCs.

10 Q. All right. Where was Moeves and
11 Halloran located?

12 A. Fort Wright, Kentucky.

13 Q. Okay.

14 A. To be specific, 1717 Dixie Highway,
15 Suite 920, Fort Wright, Kentucky 41011.

16 Q. How long did you and Mr. Halloran
17 practice together as a PLLC?

18 A. We practiced together until Labor Day
19 of 2004.

20 Q. Okay.

21 A. And that firm then became Brooking,
22 Moeves and Halloran, PLLC.

23 Q. Okay.

24 A. And that firm currently exists.

25 Q. Has the organization of the firm and

1 the members of the firm stayed the same from 2004 to
2 the present?

3 A. No, ma'am, it has not. In 2004 the
4 initial firm of Moeves and Halloran comprised Patrick
5 E. Moeves; Brian P. Halloran, H-a-l-l-o-r-a-n;
6 Crystal L. Ford, F-o-r-d; and Darren J. Mullaney,
7 M-u-l-l-a-n-e-y.

8 When Mr. Brooking became involved in
9 the firm, it was John R. S. Brooking, who passed away
10 December 4th of 2006; Brook, John "Brook" Brooking,
11 who is my partner; then myself; Brian P. Halloran;
12 Crystal L. Ford; Darren Mullaney.

13 And Mr. Mullaney maintained in the
14 practice until probably the spring of 2006, and at
15 that point the members then -- and additionally we
16 did have an of-counsel role with Richard Snyder from
17 Ohio, all through this process.

18 When Mr. Mullaney left in 2006, all of
19 the members remained the same except he was replaced
20 for a three-month period with Jessica Nielsen.

21 Q. Could you give me again the starting
22 and the ending dates of Mr. Mullaney's employment?

23 A. I would probably -- again, vaguely, it
24 was March of 2004 --

25 And when I'm saying that, it's either

1 March or April of 2004.

2 -- through the spring of 2006.

3 Q. So he was employed by Moeves and
4 Halloran before the firm became Brooking, Moeves and
5 Halloran?

6 A. Yeah. Moeves (pronouncing).

7 Q. Is that correct?

8 A. That is correct, yes, ma'am.

9 Q. When did you personally start doing
10 work for Foreclosure Solutions, you personally or
11 your firm?

12 A. Ohio or Kentucky referrals?

13 Q. Well, let's start with Kentucky.

14 A. It would have been November of 2003.

15 Q. Okay. And how did that contact come
16 about?

17 A. The contact came about is that I had
18 dinner at Walt's Hitching Post in 2001 with my wife,
19 Dawn Moeves; my son, Andrew Moeves, who is currently
20 four and a half; and a lifelong client of mine:
21 Elsie Colby, who is 96 years old.

22 At that dinner engagement, a gentleman
23 was sitting across the table by the name of Tim Buck-
24 ley. Struck up a rapport with him. I think he was
25 talking to my son, he and his date --

1 My son at that point probably was, you
2 know, just two to three months old, I guess at that
3 point.

4 -- and struck up a conversation. He
5 said: My nephew went to Chase. He asked me what I
6 did. And then I didn't hear from him for two years.
7 Gave him my card and, lo and behold, he called in
8 November of 2003.

9 Q. When you first spoke with him in
10 2001 --

11 A. Strike that. I think it's 2002. My
12 apologies. My son was born in 2002. So it would
13 have been 2002. And my apologies for the recollec-
14 tion of the year, but it would have been --

15 You know, three or four months, so it
16 probably would have been -- Andrew was born in April.
17 So it probably would have been July or August, this
18 dinner engagement. My apologies for the clarifica-
19 tion on the year.

20 Q. Okay.

21 A. Okay.

22 Q. When you spoke with Mr. Buckley in
23 2002, did you talk about his business: Foreclosure
24 Solutions?

25 A. No, ma'am, I did not. It was a dinner

1 setting. I just handed my card. It was more along
2 the lines that I went to law school with his nephew:
3 Mr. Frooman.

4 Q. What was your next contact with Mr.
5 Buckley?

6 A. As I stated, November of 2003.

7 Q. Okay. And what happened at that time?

8 A. He had expressed interest in referring
9 me business in terms of Kentucky foreclosures.

10 Q. Okay.

11 A. People involved in that process.

12 Q. Do you recall how that contact was
13 made by Mr. Buckley to you?

14 A. I believe Mr. Buckley had called my
15 phone number off of my card.

16 Q. As of November 2003, what was your
17 understanding of Mr. Buckley's business?

18 A. He would have clients of his -- and I
19 did not know at that point anything that -- this
20 phone call that we're talking about. He would have
21 clients of his sign a power of attorney, and then
22 that power of attorney would be presented to the --
23 not drawn up by my office. The power of attorney
24 would be drawn up by an independent legal counsel.

25 And at that point, once a particular

1 person would be in need of our services, he would
2 pick and choose which attorney he would assign a
3 particular file to. I would receive the file and
4 proceed forward in defending them in a foreclosure
5 action in the Commonwealth of Kentucky.

6 Q. Is it fair to say that from the time
7 you first began receiving referrals from Mr. Buckley
8 and Foreclosure Solutions, all of the clients
9 referred to you were already party to a pending suit?

10 A. I would say that's fair, yes.

11 Q. Okay. I understand that he would
12 refer the legal work to you. What was your under-
13 standing of the services that Foreclosure Solutions
14 provided?

15 A. My understanding was they were a help
16 program that provided people or attempted to provide
17 people some type of economics solution. But in terms
18 of that particular area, we never had any discussions
19 on, you know, the nature of the program and the
20 intricacies of such.

21 Q. Did you develop an understanding as to
22 how he obtained his clients?

23 A. It was never directly brought up to
24 me, but, you know, I do feel it was through advertis-
25 ing and mailings.

1 Q. Okay. Did you ever see any advertis-
2 ing at any time from Foreclosure Solutions?

3 A. I don't believe I saw any advertising.
4 I believe I may have saw some mailings that were
5 extraneous information, but I never advised upon it.

6 Q. Okay.

7 A. It was already in place after I had
8 seen it.

9 Q. When you were talking with him about
10 his business, did you ever ask to see any of the
11 letters that he would send to prospective clients?

12 A. No, ma'am, not at that time.

13 Q. At any time did you ever ask to see
14 letters?

15 A. No, ma'am. I mean, I would see them
16 if my client had signed an authorization, or if my
17 client, Jane Doe, John Doe, would send me copies of
18 information, then I would see information like that.

19 Q. Did you at any point develop an under-
20 standing that Foreclosure Solutions obtained lists of
21 persons who had been sued for foreclosure, from the
22 courts?

23 A. I'm not aware of how they -- I mean, I
24 could speculate.

25 Q. Okay.

1 A. But I am not specifically aware of how
2 they maintained or receive their client base.

3 MR. STERN: Don't speculate.

4 Q. Did you ever have any conversations
5 with Mr. Buckley about what his employees did to
6 assist with your clients?

7 A. I think at some point he had given me
8 an overview of what they did, but I did not, you
9 know, comment upon that. He did not ask for advice
10 upon that.

11 Q. Okay. Can you tell me what that
12 overview was?

13 A. The overview was they attempted to
14 provide an economic solution to the situation facing
15 the particular client.

16 Q. Okay. What was that economic solu-
17 tion?

18 A. I believe it involved some type of
19 savings plan.

20 Q. Do you know how the savings plan
21 worked?

22 A. No, ma'am.

23 Q. Do you know how much, what percentage
24 of the indebtedness, for instance, that Foreclosure
25 Solutions asked the clients to save?

1 A. No, ma'am. I mean, they would be
2 asked to save a portion of something, but I don't
3 know the exact figures or the mathematical formula
4 that arrived at what Foreclosure Solutions would
5 dictate to that person.

6 Q. When Mr. Buckley came to you and asked
7 if he could refer cases to you, what was your under-
8 standing of the services that you and your law firm
9 would provide?

10 A. The referral system would be a signed
11 power of attorney that would at that point allow me
12 to represent that individual. My office would
13 immediately contact them via letter and via phone,
14 for introduction purposes only.

15 In that case explain to them, via a
16 document called "The Nuts and Bolts of Foreclosures,"
17 a legal analysis of what they could foresee in the
18 future going through. That would be explained to
19 them, what a Complaint is, what an Answer is,
20 statutory times, defenses, so on and so forth.

21 And then I would provide them legal
22 services based upon the particular problem they found
23 themselves in, in this case, having not paid their
24 mortgage payments for a period of time.

25 Q. What financial arrangements did you

1 make with Foreclosure Solutions for you to be compen-
2 sated for your services?

3 A. My understanding at that point is that
4 we were given a fixed sum of \$125 from the client
5 pursuant to the breakdown on the power of attorney,
6 which was later codified in some cases, and I can't
7 say all, with a written flat fee agreement between my
8 entity --

9 In that case it would have been Moeves
10 and Associates, PLLC in November of 2003.

11 -- and ask them to sign that contract.

12 Q. Okay. Now, when you say that there
13 was \$125 from the client, did the client write the
14 check directly to your law firm?

15 A. Not in all cases, no, ma'am. In most
16 cases not.

17 Q. Okay. Who did they write the check
18 to?

19 A. I believe they would have written the
20 check to Mr. Buckley's entity.

21 Q. Okay. Who paid you?

22 A. The check would have come from Mr.
23 Buckley's entity in most cases.

24 Q. How much did the client pay Mr. Buck-
25 ley in total for the services?

1 A. I'm not aware of that.

2 Q. You don't have any idea?

3 A. I mean, my understanding was it was
4 a -- that the fee has evolved over time, but, you
5 know, I couldn't say if it was -- I couldn't say the
6 specific parameters on the fee. You know, I would
7 have clients say a thousand dollars, I would have
8 clients say \$700.

9 Q. During when you were talking to Mr.
10 Buckley about receiving the referrals from him, did
11 you ask him how much the clients would be paying
12 Foreclosure Solutions?

13 A. No, ma'am, at that point I did not.
14 The first step I did was contact the Commonwealth of
15 Kentucky's attorney general to see if there was any
16 problems pending with his entity, and there were not.

17 Q. And what did you learn? Nothing?

18 A. Nothing.

19 Q. Okay. Did you attempt to negotiate a
20 higher fee with Mr. Buckley?

21 A. No, ma'am. That was something that he
22 had worked out with that person, and "that person"
23 being the client, is who the person I'm referring to.

24 Q. Okay.

25 A. And what they agreed to pay as legal

1 fees, I agreed to accept that as a flat fee.

2 Q. And so it was your understanding that
3 the client knew how much they were paying for legal
4 services, and that was the \$125?

5 A. At that point, yes, ma'am.

6 Q. Has that amount changed during the
7 course of your doing business with Foreclosure Solu-
8 tions?

9 A. The referral from Foreclosure Solu-
10 tions, the fee generated, that has changed, yes.

11 Q. What is the current fee that you
12 receive?

13 A. \$150 for Kentucky --

14 Q. Okay.

15 A. -- or Ohio.

16 Q. You indicated that Foreclosure Solu-
17 tions writes a check to your law firm to pay that
18 legal fee. Is that right?

19 A. That is correct, yes, ma'am, in most
20 cases.

21 Q. And when Foreclosure Solutions writes
22 a check to the law firm, is that generally to pay you
23 for multiple referrals?

24 A. Yes, ma'am.

25 Q. So that you might get a check for,

1 let's say, \$750, covering three or five cases. Is
2 that right?

3 A. If at the 150, your math would be
4 accurate, yes, ma'am.

5 Q. Okay. You've described that initially
6 your conversation related to referrals to cover fore-
7 closures in Kentucky.

8 A. Yes, ma'am, that's correct.

9 Q. Did the business initially start out
10 with respect to foreclosures only in Kentucky?

11 A. Yes, ma'am, that's correct.

12 Q. At some point did you also start doing
13 work in Ohio?

14 A. Yes, ma'am, that's correct.

15 Q. When did that occur?

16 A. That occurred from February to April
17 of 2004. I mean beginning point. I don't have the
18 exact date. I know it was mentioned in February of
19 '04, but when we would have received the first Ohio
20 file, it would have been within that time frame.

21 Q. What prompted that new business to
22 come your way?

23 A. My understanding is that he was refer-
24 ring matters to several attorneys in the Ohio Bar,
25 and for a variety of reasons unbeknownst to me at

1 that time, he wanted to add me to the referral
2 system.

3 Q. Did you later develop an understanding
4 of what those reasons were?

5 A. Yes, I did.

6 Q. And what was that understanding?

7 A. My understanding is that --

8 And this was later, much later.

9 -- a gentleman that he was referring
10 cases to had come under scrutiny on a particular
11 Answer that was filed because he didn't properly
12 investigate the situation, and he became under
13 scrutiny by the Bar.

14 Q. Do you have any understanding as to
15 what the outcome of that scrutiny was?

16 A. My understanding as we sit here today
17 is that that attorney worked out a -- and to clarify,
18 not at that time I did not have an understanding, but
19 as we sit here today, and this has been garnered per-
20 haps in the last couple of months, that that attorney
21 received an agreement with the Bar Association that
22 if he no longer did any type of referral work that
23 that would suffice, that he would not have any fur-
24 ther inquiries with his license, and stop doing the
25 work.

1 Q. So to summarize, you were aware that a
2 lawyer that had formerly done work in Ohio for Fore-
3 closure Solutions had come under scrutiny by the Bar
4 Association?

5 A. Not at that time.

6 Q. At some point you became aware?

7 A. Yes, ma'am; yes, ma'am.

8 Q. What I'm trying to get, what was the
9 chronology? When did you become aware of it?

10 MR. STERN: Go ahead and answer it
11 again.

12 He has answered it.

13 A. I'm not really aware of the specific
14 time. It was after that point of the initial incep-
15 tion of my firm taking on the referrals. I really
16 can't pinpoint. But it was definitely not, I can
17 affirmatively say, between February and April of
18 2004.

19 Q. Okay. At the time that you started
20 doing the Ohio business for Foreclosure Solutions,
21 were you the only law firm receiving those referrals?

22 A. I can't speak to that. My under-
23 standing was there were other attorneys receiving
24 referrals at \$125 a file, and a lot of it was
25 geographically dependent on where the county stood

1 in Ohio in relationship to Pennsylvania and other
2 things.

3 Q. Between February and April of 2004
4 what attorneys in your law firm were licensed to
5 practice in Ohio?

6 A. Darren J. Mullaney.

7 Q. Was he the only one at that time?

8 A. Yes, ma'am.

9 Q. And did Darren then do all of the
10 Foreclosure Solutions' work in Ohio?

11 A. All that I was not subject to a pro
12 hac motion on.

13 Q. And you've indicated that at present
14 you've been pro haced in maybe five or seven cases in
15 each of these counties?

16 A. I did clarify that, I believe. Active
17 cases is my understanding of that at this point.

18 Q. Maybe you should tell me what you mean
19 by an active case.

20 A. An active case that has not been
21 resolved where we have reached an agreement for the
22 client where they have kept their home via a forbear-
23 ance agreement that a matter has been, you know,
24 satisfied with the court, dismissed with prejudice,
25 so on and so forth, or if the house has been resolved

1 in another way.

2 Q. And so, then, an inactive case --

3 A. Would be a closed case in the eyes of
4 the courts.

5 Q. A closed case, okay.

6 A. In the eyes of the court, being dis-
7 missed. And it wouldn't be -- you know, no case is
8 ever closed with our office under those parameters.
9 It would be through the court's, you know, order.

10 Q. Now, you've described to me a power of
11 attorney that is provided to the client by Fore-
12 closure Solutions. As I understand it, that was not
13 drafted by you or your office?

14 A. Never has, no, ma'am, or anybody
15 associated with my office. When you say "you," I
16 take that as singular. Nobody associated with my
17 office.

18 Q. You've also mentioned a document
19 called "The Nuts and Bolts of an Ohio Foreclosure."
20 Is that document drafted by you or anyone associated
21 with you?

22 A. Yes, ma'am. That was solely drafted
23 at my sole discretion, for Kentucky originally,
24 because we took the Kentucky business first.

25 Q. Okay.

1 A. And then as Mr. Mullaney came on
2 board, we tailored it, because the Answer dates and
3 rules under the Ohio Rules of Civil Procedure are
4 different than that of the Commonwealth of Kentucky,
5 and we outlined a specific document. In fact, Ohio's
6 is actually longer than Kentucky's.

7 Q. Okay.

8 A. But that was drafted pursuant to my
9 specific instructions to Mr. Mullaney for Ohio, and
10 he had worked off the document that I had drafted for
11 Kentucky.

12 Q. Is it fair to say that that document,
13 The Nuts and Bolts of Foreclosure, reflects your
14 understanding of the business services that Fore-
15 closure Solutions provided as well as the legal
16 services that your law firm provided?

17 A. Ma'am, it has nothing to do with what
18 Foreclosure Solutions -- The Nuts and Bolts of Fore-
19 closure practice has: you have been served with a
20 Complaint. As a result of that, we are going to be
21 filing an Answer. This is your statutory defense.
22 This is what a motion to dismiss is.

23 Q. Okay.

24 A. This is what a motion for summary
25 judgment is. This is a motion to hold in abeyance.

1 It briefly explained the nature of
2 bankruptcy proceedings at some point. It explained
3 what dismissal with prejudice was, dismissal without
4 prejudice, so on and so forth.

5 But it had absolutely no interplay.
6 It was a legal analysis of the document they received
7 via sheriff's service or via certified mail, to give
8 them the nuts and bolts of that proceeding.

9 Q. Are there cases that Foreclosure Solu-
10 tions handles completely independent of any legal
11 assistance, to your knowledge?

12 A. I can't speak to that. I don't know
13 that.

14 Q. Speaking just of the cases that you
15 have handled for Foreclosure Solutions --

16 And let's limit this to Ohio.

17 A. Yes, ma'am.

18 Q. It's 2004 since you've started dealing
19 with these Ohio cases.

20 A. Yes, ma'am.

21 Q. -- can you give me a reasonable
22 approximation of the number of cases in which the
23 loans have been reinstated on behalf of the client?

24 A. That would be hard to say, but I would
25 approximate 60 to 65.

1 Q. Okay.

2 A. But, again, that's an approximation.

3 Q. Have you ever calculated that sta-
4 tistic?

5 A. No, ma'am, I have not.

6 Q. And can you give me --

7 A. And when I speak to that statistic,
8 that would be only what my firm has done for a
9 particular file for a particular client. It was
10 resolved by my office.

11 Q. And I understand that you only know
12 about the cases that you handle.

13 A. Yes, ma'am.

14 Q. And similarly, can you give me a
15 reasonable approximation of the number of Ohio cases
16 that you've handled in which the foreclosure has been
17 completed and the home is sold by sheriff's sale?

18 A. That would require, I think, a two-
19 prong answer. If it gets to the point where we feel
20 there is not a viable legal solution, that the lend-
21 ing entity is not coming up with a reasonable for-
22 bearance agreement, we refer them to a bankruptcy
23 attorney.

24 We do not do any of the bankruptcies.
25 We do not receive any type of referral fee, this or

1 that. We refer them to a local bankruptcy attorney
2 in their area. If they call us and ask for a partic-
3 ular one, we look up for them the local Bar Associa-
4 tion, who would then make that recommendation to
5 them.

6 But as you know, a stay in the bank-
7 ruptcy can change the proceedings. A stay can be
8 lifted. Once that stay is lifted, my firm re-enters
9 the picture and then we do try a last-ditch effort in
10 terms of potentially a short sale, which we previ-
11 ously discussed when I voluntarily met with you, or
12 we try to work out some type of economic package at
13 that last minute, keeping in mind that banks aren't
14 really in the landlord business.

15 So in the overall scheme of things, I
16 think at the bankruptcy level some are worked out.
17 And I would not have any control over that, because
18 I'm not the bankruptcy attorney.

19 The ones that aren't worked out -- I
20 don't think, again -- if I can tell you we save 60 or
21 65, I can't say, well, then that other number's 35 or
22 40, because of the interplay of bankruptcy.

23 I would say approximately, then, homes
24 lost in the actual foreclosure, 20 percent.

25 Q. Okay.

1 A. And I apologize about being long-
2 winded, but I'm trying to explain how I arrived at
3 that position, with the interplay of the bankruptcy,
4 which I would have no control over what would go on
5 there.

6 Q. Do you know what form of business
7 Foreclosure Solutions operates under?

8 A. Currently, no.

9 Q. You don't know if it's an LLC or a
10 corporation or anything like that?

11 A. Not at this point I don't know, ma'am.

12 Q. At any point did you know?

13 A. At some point I saw some Secretary of
14 State documents that I believe it was an LLC.

15 Q. Okay.

16 A. But as we sit here today, I do not
17 know how it operates.

18 Q. Have you had any contact with any
19 other personnel of Foreclosure Solutions besides Tim
20 Buckley?

21 A. Yes, ma'am, I have.

22 Q. Who?

23 A. Pat Earlywine.

24 Q. Okay. Who is Pat Earlywine?

25 A. I don't know her specific title. I

1 don't know the structure. But I would refer to her
2 generically as a comptroller.

3 Q. Okay.

4 A. And Pat is a female, but she goes by
5 Pat.

6 Q. And in what circumstance would you
7 contact Pat or would you be in touch with Pat?

8 A. If I have an authorization from the
9 client in the file and I was not getting a response
10 to my client's questions from their people that
11 worked in their assistance area. She would be con-
12 sidered, I guess, their direct supervisor.

13 Q. Okay.

14 A. So I would light a fire that way to
15 get an answer for my client.

16 Q. You've mentioned the assistance area.
17 What's that?

18 A. The assistance area, my understanding
19 is they have people do the economic concerns for the
20 people in foreclosure. And those people would be, at
21 this point, Lisa Latscha and Jesse, and I don't know
22 his last name.

23 Q. What do you mean by economic concerns,
24 economic area, economic assistance area?

25 A. That's a term that I use. My under-

1 standing, they're trying to provide or do something
2 for these clients from an economic issue of saving
3 money.

4 Q. To help them save money? Is that a
5 fair statement?

6 A. That's my understanding. I mean, you
7 know, I don't know what they do on a daily basis.

8 Q. Okay. Can you tell me, when you first
9 started getting cases, Kentucky cases, about how many
10 would you get a week from Foreclosure Solutions?

11 A. Probably five to six.

12 Q. Has that number stayed consistent?

13 A. For Kentucky it's probably eight to
14 ten a week.

15 Q. So it's gone up over the time?

16 A. Well, by two or three cases, but
17 that's -- I'd say up, yes, ma'am.

18 Q. How about for Ohio? When you first
19 started in 2004, how many cases would you get a week?

20 A. It was not as many. I would probably
21 say somewhere -- I'm sorry. It was more than Ken-
22 tucky but not as many. 15 to 25.

23 Q. Okay. And now, as of February of
24 2007, what is the caseload per week of new referrals
25 from Foreclosure Solutions?

1 A. 30 to 45.

2 Q. Okay. Speaking now just of Ohio, what
3 is the caseload, the average caseload of pending
4 cases from Ohio from Foreclosure Solutions, given
5 that you get maybe 30 to 45 new cases a week?

6 A. I don't have my case management system
7 here today. I couldn't even begin to speculate, but
8 the work is amongst the two associates, myself and
9 the three partners, because there are so many
10 different stages. I can only speculate. I'm sorry.

11 Q. Well, let's see if we can --

12 A. I mean, I was doing the math in my
13 head in the different stages. But, you know, to be
14 quite honest, the way it works, with me not a
15 licensed attorney in Ohio, I get involved in the
16 problematic situations and try to, with my level of
17 experience, deal with opposing counsel and the
18 courts.

19 But in terms of that, I think that
20 would be more suited for my associates to answer. I
21 apologize, but I just don't have a good grasp on the
22 numbers.

23 Q. Well, let's see if we can try and put
24 at least a little bit of a framework on it.

25 A. Sure.

1 Q. If we assume that you get maybe 40
2 cases a week --

3 A. 180 a month.

4 Q. So that that might be about 2,000 new
5 cases a year in Ohio. Is that fair?

6 A. I think that would be a fair calcula-
7 tion, based upon the numbers I've given you here
8 today.

9 Q. So that you might have 2,000 cases
10 pending, in round numbers?

11 A. I think that would be fair, correct.

12 Q. Okay. In your experience, what is the
13 length of time it normally takes from the filing of a
14 Complaint to the resolution, either by foreclosure,
15 by a forbearance agreement, by a short sale, some-
16 thing? The length of time from the filing of the
17 Complaint to the resolution.

18 A. I mean, prefacing my answer, each
19 county has their local rules on how they deal with
20 foreclosures, and, for instance, Summit County has a
21 mandated mediation program, which we attend. So
22 those numbers then, if you flow them in, the average
23 would be extreme out there, higher, higher, higher.

24 Cuyahoga County, Hamilton County,
25 traditionally slower counties in terms of the nature

1 of the procedural steps of foreclosure. If you
2 wanted me to encompass the whole state of Ohio, I
3 would say, on an average, eight to ten months.

4 Q. Okay. We've talked a little bit about
5 the employment of Darren Mullaney with the firm, and
6 you've mentioned also Jessica Nielsen. Can you tell
7 me when Jessica's employment began?

8 A. Jessica's employment lasted about
9 three months. She would have been hired two to four
10 weeks after Mr. Mullaney's departure and would have
11 lasted, you know, three months from there.

12 Q. Okay.

13 A. So she would have started the middle
14 of May of 2006.

15 Q. Okay.

16 A. Probably more along the lines of four
17 months, then.

18 Q. June, July, August?

19 A. August, right.

20 Q. Okay.

21 A. I'm thinking from the middle of May to
22 Labor Day. I think her last day may have been a
23 little before Labor Day or a little after, so --

24 Q. And was Ms. Nielsen's work exclusively
25 the Foreclosure Solutions' cases?

1 A. No, ma'am.

2 Q. Can you give me a reasonable approxi-
3 mation of her time that she spent on Foreclosure
4 Solutions cases?

5 A. I gave her other things personally to
6 do in my Ohio litigation. But what an attorney
7 spent, I would probably say 70 percent of her prac-
8 tice was referrals from Foreclosure Solutions.

9 Q. Okay. And what about for Mr. Mullaney
10 during the time, the two years or so that he was
11 employed?

12 A. Mr. Mullaney's work ethic was differ-
13 ent from Ms. Nielsen. Mr. Mullaney would work hours
14 that I couldn't even begin to compensate him for.
15 But I also had a very active Ohio caseload and Darren
16 was very proactive in those cases. So his hours
17 worked were much, much more than Ms. Nielsen, but I
18 think his percentages probably would have been 70/30,
19 also.

20 Q. 70 percent for Foreclosure Solutions
21 and 30 percent other?

22 A. (Nodding.)

23 Q. At any time during the period that Mr.
24 Mullaney was employed by your law firm, did you ever
25 receive any complaints about his handling of any

1 Foreclosure Solutions cases?

2 A. I did not have any specific complaints
3 from any clients.

4 Q. Okay.

5 A. There was never an inquiry. Darren
6 Mullaney had -- his first employment was with my
7 office, and Mr. Mullaney is one of the most conscien-
8 tious, good human beings I've had ever the ability to
9 encounter.

10 Darren is the type that would work
11 from sunrise to sunset. He was that dedicated. And
12 I never had -- I mean, you would have people voicing,
13 you know, in terms of explanation on the cases and so
14 on, but never a complaint that I'm aware of.

15 Q. Now, you specifically said that you
16 don't recall complaints from clients. During the
17 time he worked for you, were there complaints from
18 any source?

19 A. Not to my knowledge, no, ma'am.

20 Q. Subsequent to his employment with you,
21 have you become aware of any complaints regarding
22 Darren Mullaney's handling of the work he did while
23 employed at your firm?

24 A. I believe one case out of Cuyahoga
25 County.

1 Q. And what was that?

2 A. I'm sorry. I don't know the name of
3 that case.

4 Q. What was the nature of the complaint?

5 A. The nature of the complaint, my
6 understanding, there was an article written in the
7 Cleveland Scene or the Scene. I read that. I read
8 that article that there was a commentator from the
9 Bar that questioned some type of too many cases or
10 something like that.

11 But when a gentleman is working sun-
12 rise to sunset, I feel that he was certainly handling
13 them, with his work ethic, his due diligence and so
14 on and so forth. And that's how I became aware of
15 it.

16 Q. Is it fair to say that that article
17 did not cause you particular concern?

18 A. Anytime your name is put out in public
19 where somebody is alleging that you were perhaps
20 doing something incorrect, that definitely causes me
21 concern.

22 It caused me concern because of my
23 friendship and what I thought about Mr. Mullaney,
24 and I began to look to see if I had done something
25 intentionally or unintentionally that would have

1 caused this problem for him.

2 But certainly it caused me concern,
3 but after evaluating the matter, I found it was not
4 meritorious and merely -- not subject to further
5 action.

6 Q. What I was trying to do is pursue what
7 you had indicated: that you felt that, given Mr.
8 Mullaney's work ethic and long hours he worked, the
9 number of cases was not inordinate. That's the point
10 I was trying to make. Was that your conclusion?

11 A. My conclusion is he provided more than
12 adequate legal service on that particular file and
13 all of his files.

14 Q. And after reviewing and making your
15 evaluation and your finding it was not meritorious,
16 did you make any changes in the way the Foreclosure
17 Solutions cases were handled by the law firm?

18 A. My firm is always evaluating policies,
19 like any good law firm would. In terms of that, I
20 think we looked at our authorizations a little more
21 closely. I don't think the authorization language
22 was really tweaked, but we did look at the authori-
23 zation language that we have from the client.

24 We looked at our filing system to make
25 sure of all -- my policy is every piece of paper I

1 touch, my client touches. So they get a copy of
2 every court proceeding, anything that comes into my
3 office.

4 I also instruct all of my attorneys to
5 save every phone message or every contact they have
6 come with the client. So that system was personally
7 reviewed by me to make sure those things were getting
8 into the files properly.

9 And to let you know, I do have an
10 evening person that works on this referral system.
11 In terms of that, I have weekend filers that take
12 care of nothing but this particular referral system.

13 So I did look at those things, trying
14 to be more conscientious and trying to make sure that
15 nothing was being missed.

16 Q. Are you the person within the law firm
17 that has primary responsibility for managing the
18 business relationship with Foreclosure Solutions?

19 A. I would say that's an accurate state-
20 ment.

21 Q. Was there a specific client mentioned
22 in the article on the Cleveland Scene?

23 A. I believe there was, but I don't
24 recall her name as we sit here today.

25 Q. Did you make any effort to contact

1 that client?

2 A. I believe a letter was sent out, pur-
3 suant to the attorney-client relationship.

4 Q. Do the attorneys who work in your law
5 firm keep time records?

6 A. We don't have a firm policy in terms
7 of our hiring practice or billable hours, but I do
8 instruct them to keep time records on, naturally,
9 hourly clients.

10 If it's a flat-fee client, I do want
11 them to keep track of what they're doing. But that's
12 usually handled internally of what goes into the
13 client's file, to document I talked to this client 15
14 minutes on this day, this was the nature of the
15 conversation.

16 Q. Are there time records of the amount
17 of time that your firm's lawyers have spent on each
18 particular client for Foreclosure Solutions?

19 A. I don't think there would be a time
20 record for each particular client, no, ma'am.

21 Q. What are these time records that
22 you're describing?

23 A. I mean, certainly in terms of the way
24 I instructed the associates in terms of meritorious
25 bonuses and raises, that I would need to see, natur-

1 ally, what you were doing, and I think some associ-
2 ates were more conscious of putting down their time
3 on a particular time sheet than others.

4 And against the backdrop of this being
5 a flat-fee client, if -- you know, I can't speak to
6 how each person handled their busy day, but I don't
7 think that I can sit here and tell you today that
8 every ounce of work on a referral for Foreclosure
9 Solutions would be codified on a time sheet. I don't
10 think that's accurate.

11 Q. And is it fair to say that you did not
12 require that of your associates?

13 A. That is fair to say, yes, ma'am.

14 Q. A while ago your firm provided us
15 voluntarily cumulative copies of various documents.

16 A. Yes, ma'am, I recall that.

17 Q. These included copies of Foreclosure
18 Solutions documents and also copies of file materials
19 from the Godfreys, and I have numbered these docu-
20 ments with Bates numbers in the lower right-hand
21 corner, for ease of identification.

22 A. Okay.

23 Q. I have marked some of them as exhibits
24 that we're going to be talking about today.

25 A. Yes, ma'am.

1 Q. But first I'd like you to just take a
2 look at this. And maybe you can show that to your
3 attorney first. Take a look at those documents and
4 tell me if those appear to be the documents that you
5 have produced to us in the context of this investiga-
6 tion.

7 A. For time-stamped page 1 and 2, Nuts
8 and Bolts of an Ohio Foreclosure, that was volun-
9 tarily produced to you and Mr. Slauson by my office,
10 and it appears to be a duplicate of what we would
11 have had on the originals.

12 Q. Okay.

13 A. The third time-stamped document is a
14 letter, redacted of the client's name in terms of a
15 standard letter, in terms of a motion. It's page 3,
16 I believe.

17 Q. Mr. Moeves, I don't want to interrupt
18 you, but I know I'm going to be asking you specific
19 questions about documents. What I just really kind
20 of want you to do is take a quick look through here
21 and give me an impression as to whether you believe
22 that these are the documents that you produced, with
23 the caution that as we review them individually and
24 in detail, at that time you let me know if there is
25 anything that you think was not produced by your

1 office. Is that okay?

2 MR. STERN: Can I clarify something.
3 The documents that you mentioned you're
4 going to use as exhibits, are they Bates
5 stamped and included in this pile --

6 MS. WELSH: Exactly.

7 MR. STERN: -- or are they in addition
8 to?

9 MS. WELSH: They are taken from that
10 pile. This is the general production I
11 just wanted to review.

12 A. Pursuant to Counselor's instructions
13 to the deponent, I have taken a brief time to review
14 the documents from page 1 to page 115. They appeared
15 what we would have produced in terms of a generic
16 request -- mind you, voluntarily -- in terms of the
17 overview of the nature of the referral system and
18 also specific as to the Godrey file.

19 Q. Okay. You can give those back to me.

20 A. Certainly (handing documents).

21 Q. Thank you.

22 A. Yes, ma'am.

23 Q. Have you had a chance to review the
24 notice of deposition for today's deposition?

25 A. Certainly. Yes, ma'am.

1 (Deposition Exhibit A
2 was marked for identi-
3 fication.)

4 Q. All right. I am going to show you an
5 unsigned copy that we have marked as Exhibit A.
6 Exhibit A is compiled of all three notices, and I
7 would like you to specifically to look at the third
8 page of Exhibit A that requests you to bring any and
9 all documents related to Foreclosure Solutions,
10 agreements, contracts, correspondence and so on. Did
11 you bring with you any documents today in response to
12 this notice of deposition?

13 A. No, ma'am, I did not.

14 Q. Okay. Do you have any documents
15 related to Foreclosure Solutions other than the ones
16 that you've previously produced?

17 A. Could I address -- do you want me to
18 address Exhibit A?

19 Q. Yes, yes.

20 A. Exhibit A, "Any and all documents
21 relating to Foreclosure Solutions," I believe that
22 was complied with at our voluntary meeting that we
23 appeared at.

24 Subsequent to that meeting -- I
25 believe we may even have produced some documents at
that meeting. And then there was a situation, I

1 believe you and Mr. Slauson, you know, just said to
2 mail it or transmit it to your offices, which I
3 believe we did in a timely fashion.

4 The second prong of Exhibit A is
5 entitled "Any and all agreements or contracts with
6 Foreclosure Solutions." None exists in terms of that
7 prong.

8 And "Any and all correspondence with
9 Foreclosure Solutions," my understanding, you're
10 aware that we had drafted a handbook -- Mr. Halloran
11 specifically -- at my office for Foreclosure Solu-
12 tions.

13 To this date we have not received a
14 waiver from that client allowing us to transmit that
15 document to you. But to my knowledge, that's really
16 the only document that you would have requested that
17 perhaps is not here today.

18 Q. Okay. Let's talk about that handbook.

19 A. Yes, ma'am.

20 Q. That was an employment handbook?

21 A. Yes, ma'am.

22 Q. And in order to draft that employment
23 handbook, did lawyers in your office have to gather
24 information about the nature of the work done by
25 Foreclosure Solutions?

1 A. I think it was more a situation of
2 what was the employer-employee rights as it would
3 apply to a handbook, not specific to the nature of
4 the business and what was conducted on a day-to-day
5 basis.

6 Q. Okay. Did that handbook include job
7 descriptions?

8 A. You would have to refer that question
9 to Mr. Halloran.

10 Q. Can you give me a time frame for the
11 drafting of the handbook?

12 A. Fall of 2006, summer-fall of 2006.

13 Q. So fairly recently?

14 A. I believe so, yes, ma'am.

15 Q. Okay. And that, you had an attorney-
16 client relationship with Foreclosure Solutions to do
17 that work. Is that right?

18 A. Correct. I believe there was a sepa-
19 rate signed contract, also, saying this is the scope
20 of our work and this is the flat fee that we're doing
21 it for.

22 Q. Okay. So you had a contract for the
23 employment handbook, but there has been no signed
24 agreement for the foreclosure work for Foreclosure
25 Solutions?

1 A. The referrals, no, ma'am, there is no
2 agreement whatsoever.

3 Q. Have you represented Foreclosure Solu-
4 tions in any other matter besides the handbook?

5 A. I believe Mr. Halloran did so briefly
6 on a couple of issues involving the corporation back
7 in May of 2004. And that was very brief, and then it
8 was decided sometime after that, as a firm decision,
9 that that would no longer occur.

10 Q. And why was that?

11 A. I felt that with the nature of the
12 referrals, even though it was, I think, a separate
13 and distinct issue, I preferred not to have any
14 further entanglement there any terms of any issues.
15 I wanted clear delineation.

16 Q. If you can share, what was the basis
17 for your analysis?

18 A. The basis for the analysis is that
19 even though it was a separate issue not involving any
20 matters dealing with the referral system, I did not
21 want to have any appearances, to be quite frank, that
22 there was something more to this. And that was my
23 decision.

24 Q. With respect to the employment hand-
25 book, did you have any similar concerns about that

1 business?

2 A. No, ma'am, I did not, because that
3 would not involve any type of courtroom interplay or
4 litigation where appearances would be made. And an
5 employee handbook, my humble opinion --

6 That's the area of law that I pri-
7 marily do.

8 -- would not have anything to do with
9 the referral system and there couldn't be any appear-
10 ance in that case of anything.

11 Q. By appearances, do you mean appearance
12 of a conflict of interest?

13 A. Yes, ma'am. I think, unfortunately, I
14 was -- part of my humble opinions, why we're here
15 today is because of that very appearance. There
16 appears to be appearance of something. That was my
17 thought process in 2004 at least.

18 Q. Okay. And just to summarize, for
19 Exhibit A --

20 A. Yes, ma'am.

21 Q. -- other than the documents that you
22 have already produced, your law firm has no other
23 documents related to Foreclosure Solutions besides
24 the employment law handbook that you've related to
25 us. Is that right?

1 A. I believe that's correct, yes, ma'am.

2 Q. And you described to us the agreement
3 or a contract to produce the employment law handbook
4 that does exist but that was not produced. Is that
5 correct?

6 A. I believe -- my recollection of that
7 is that I instructed Mr. Halloran to -- I filled it
8 out. Whether it was signed or not, I don't know.

9 Q. Okay. With respect to correspondence
10 with Foreclosure Solutions, it's your testimony that
11 you do not maintain correspondence going back and
12 forth to Foreclosure Solutions?

13 A. If a client would authorize us to get
14 a document that they sent to Foreclosure Solutions
15 that they no longer retained a copy of, there may be
16 an e-mail back and forth, something to that effect,
17 requesting that, but nothing at this point of the
18 practice saying this is -- because they're nothing to
19 do with each other. We don't send them a copy of
20 pleadings, attorney notes, anything of that nature.

21 Q. And no correspondence going back and
22 forth with respect to simply the business relation-
23 ship between the law firm and Foreclosure Solutions?

24 A. No, ma'am.

25 Q. Okay.

1 produced by the law firm, that you will let me know.

2 Is that fair?

3 A. Yes, ma'am, that's fair.

4 Q. All right. Now, you've indicated
5 earlier, when you started describing what these
6 documents were, that this is a letter to a client
7 that has been redacted so that the body of the letter
8 is left. Is that right?

9 A. That's my understanding, yes, ma'am.

10 Q. Is this what you would say is a rou-
11 tine correspondence, the kind of letter that would be
12 saved on the firm's computer system and sent out to
13 various clients at an early stage in the proceeding?

14 A. Each case is an individual case, but
15 for the most part, I would feel this would be a
16 standard initial correspondence to a client.

17 Q. Okay. In the course of this letter,
18 the law firm explains that they are entering their
19 appearance pursuant to the client's arrangement with
20 Foreclosure Solutions, to let the client know that
21 the law firm now represents them. Is that right?

22 A. That's correct.

23 Q. Before sending this letter on a
24 routine basis, would there have been any other
25 contact with the client?

1 A. At times there would be phone calls,
2 depending on the nature of a potential Answer date or
3 a court's decision on the agreed order of extension
4 to file that Answer.

5 Q. So there might be; there might not be.
6 Is that fair?

7 A. That's correct. That's accurate, yes,
8 ma'am.

9 Q. In the second paragraph, the letter
10 states "I have been informed that you do not dispute
11 that you are currently in default of your existing
12 mortgage loan obligations."

13 Is that information that your law firm
14 receives from Foreclosure Solutions?

15 A. That's information that is transmitted
16 from Foreclosure Solutions at times in an initial
17 packet, but it's relayed by Mr. and Mrs. Smith, Mr.
18 and Mrs. John Doe, to my knowledge.

19 Q. To Foreclosure Solutions?

20 A. Correct, at that point.

21 Q. Okay. And then the letter cautions
22 the client "If you believe that you have any defenses
23 to the existing foreclosure proceedings, it will be
24 necessary for you to immediately contact me so I can
25 take appropriate steps in filing the Answer."

1 Is that typical instructions that you
2 would give to the client?

3 A. That is typical, yes, ma'am.

4 Q. Okay.

5 A. We're looking at, you know, a bait and
6 switch on the interest rate, we're looking at
7 consumer protection violations. Because as all of
8 us, being counselors, know, there are at times
9 limited defenses to a foreclosure action in the note
10 itself.

11 So we make sure that we're looking
12 into things that would fit outside the norm in terms
13 of, you know, predatory lending, compliance with the
14 Fair Debt Collection Practices Act, all of those
15 things that I have instructed my attorneys to be on
16 the lookout for that would be beyond the scope of a
17 normal note situation.

18 Q. And that by sending out the letter,
19 you are soliciting a response, then, from the client.
20 Is that the idea?

21 A. I believe that's accurate, yes, ma'am.

22 Q. Okay. And this letter --

23 A. As far as soliciting, we're not --
24 soliciting an answer, just so I'm clear.

25 Q. Asking. That's right.

1 A. Okay.

2 Q. And in the last paragraph you mention
3 The Nuts and Bolts of an Ohio Foreclosure. Is this
4 the transmittal letter that they would normally
5 include The Nuts and Bolts with? Is that correct?

6 A. That is correct, yes, ma'am.

7 Q. Then you reference an authorization
8 form. And is that the authorization form that you
9 testified earlier to give you the authority to talk
10 with --

11 A. Any third party who would be
12 involved: a real estate agent; a lending institu-
13 tion; a family member that may know particular
14 aspects of the case, that isn't named in the suit.
15 You know, we limit it to as it pertains to their
16 foreclosure.

17 Q. Then I'd like you to look at the next
18 page, which is Bates numbered 13. And similarly,
19 here does this represent or is this a representative
20 letter transmitting the Answer to the Complaint to
21 the client?

22 A. That is correct. That normally would
23 be the second or third letter, depending on a given
24 case and the status.

25 Q. And that repeats the information that

1 the law firm understands they don't dispute the law
2 and again asks to contact you if they have any
3 defenses. Right?

4 A. That is similar. Again, we recodify
5 what was sent in the first letter.

6 Q. Okay. And the next page, which is
7 numbered in the lower right-hand corner Bates number
8 4, this again is a transmittal and it looks like
9 transmittal for a motion. Would this normally be the
10 transmittal letter if a motion for summary judgment
11 were filed?

12 A. No, ma'am. The summary judgment
13 letter would be much more specific.

14 Q. Okay.

15 A. This would be more a generic letter
16 that would describe, let's say, a third-party motion
17 for default.

18 Q. Okay.

19 A. Something to that effect. The summary
20 judgment Answer would be much more -- or summary
21 judgment motion would outline what defenses are and
22 so on and so forth.

23 Q. Okay. Then let's look at the next
24 page, numbered 7. What would this letter normally be
25 used to transmit to the client?

1 A. That would just be a generic letter in
2 terms of a sheriff's sale or an order or judgment
3 from the court that is normally followed up or -- and
4 again, this is just a generic form as an overall view
5 of these things. But normally it would be followed
6 up with a more specific analysis in terms of what
7 would need to be undertaken if there was an order of
8 sale or judgment from the court.

9 Q. And that's why there's a reference in
10 this letter to contact you if there are any appeal-
11 able issues?

12 A. Yeah. But there is also another
13 letter that would be more in depth. This is just a
14 notification -- with the time-sensitive nature of
15 foreclosures, this would be a prompt notification and
16 then a detailed analysis, depending on if we've
17 communicated with the client via phone. I mean, each
18 client is different.

19 Q. Okay.

20 A. If we have a good phone relationship,
21 then we would explain on phone and then codify it
22 back in writing.

23 Q. Then let's look at page number 8.
24 Could you tell me at what stage in the proceeding
25 this letter might be sent out.

1 A. That would also be akin to the letter
2 that you referred to in stamped 07, would be if there
3 was an order of sale or a notice for sheriff's sale.
4 So it could be the judgment or it could be the notice
5 of the sheriff's sale. So we would forward, natur-
6 ally, the order or whatever we received from the
7 court, along with the letter.

8 Q. In this letter there is a statement,
9 "As such, pleased be advised to contact a bankruptcy
10 attorney in your area as soon as possible."

11 And as I understand it, this advice
12 would be given at the time there is notice of a
13 sheriff's sale, for instance?

14 A. At that time, along with appealable
15 issues. If we feel that the judge -- if there was
16 an inconsistency in the numbers, anything that was
17 reflective in the judgment, two minds working
18 together are better than one.

19 But if there are no other legal
20 avenues to advance in terms of what, you know, I can
21 do for a particular person, since my firm or myself
22 do not do any bankruptcy, then that would be the next
23 prudent legal step to take: advise them of that.

24 Q. Is it fair to say that the notice to
25 contact a bankruptcy attorney or the suggestion comes

1 fairly late in the proceedings?

2 A. I believe that's fair to say, yes,
3 ma'am.

4 Q. Okay. Then let's look at the page
5 numbered 06.

6 A. Yes, ma'am.

7 Q. Could you tell me the use of a letter
8 such as this.

9 A. That would be primarily when the sher-
10 iff's sale has been scheduled. It will tell them the
11 notice of the sale date, the time of that date and
12 where it's going to take place. The copy of the
13 notice is there.

14 If I feel it is a particular court-
15 house that they may not have had access to, then I
16 will enclose directions for them to go there, and
17 then we will --

18 And some-- because of the local rules,
19 the master commissioner's proceedings are different
20 in terms of who can bid on a house, so on and so
21 forth. Sometimes that would be included in a letter
22 such as this.

23 But this would be the generic letter
24 absent the enclosures, of telling them where, when
25 and where their sheriff's sale was.

1 Q. Okay. And then page number 14.

2 A. Yes, ma'am.

3 Q. And this appears to be to transmit an
4 entry of dismissal?

5 A. Yes, ma'am. And then I would normally
6 on a letter such as this write, you know, this is
7 good news, so on and so forth, but, you know, the
8 dismissal is without prejudice, and try to explain
9 that, referring back to The Nuts and Bolts.

10 Q. Okay.

11 A. But that's a more stylistic approach
12 from me than --

13 Q. Okay. And if we could, once we've
14 finished with the exhibits --

15 A. Yes, ma'am.

16 Q. -- if you want to just set them over
17 there to give them to Luke.

18 A. Yes, ma'am.

19 (Deposition Exhibit C
20 was marked for identi-
21 fication.)

22 Q. Now let's go forward with Exhibit C.
23 Can you identify Exhibit C?

24 A. Exhibit C is what my office volun-
25 tarily gave to you and Mr. Slauson in terms of that
meeting that was held in my office. It's called "The

1 Nuts and Bolts of an Ohio Foreclosure."

2 Q. Okay. And as I understood your ear-
3 lier testimony, Mr. Mullaney revised this document
4 based on one that had previously been drafted for
5 Kentucky. Is that right?

6 A. I believe that would be accurate, but
7 I would have assisted Darren in that initial process.
8 I would just be asking him in that process, on the
9 Rules of Civil Procedure in Ohio, being different
10 from Kentucky, to make sure they were accurate.

11 Q. Okay. And now, for instance, in the
12 document, again you advise the client "If for some
13 reason you believe that you have a defense to your
14 foreclosure, you must contact our office immediately
15 so we may address them in your Answer."

16 That's the same kind of advice that
17 was given in the letters?

18 A. That's correct. I mean, if something
19 that -- again, we're dealing with the same type of
20 cases day in and day out as it pertains to this
21 referral system.

22 So there is a standard Answer to a
23 foreclosure Complaint, keeping in mind that the
24 majority of foreclosures are handled by a selected
25 number of firms. So they're not going to change,

1 when they do a Complaint, the order of that Complaint
2 of what they're going to plead in. So, conversely,
3 the Answer would basically mirror what their standard
4 Complaint would be.

5 The reason to proactively keep saying
6 that to each individual client is because the circum-
7 stances may or may not be different. So instead of
8 potentially having to make a motion to amend, we'd
9 like to get involved in the early procedure on that.

10 Q. And on the second page, then, of this
11 document --

12 A. Yes, ma'am.

13 Q. And you've described this as kind of a
14 summary of the legal proceedings. Is that fair?

15 A. I think that's accurate, yes, ma'am.

16 Q. In the first complete paragraph is a
17 discussion of motions for summary judgment, and there
18 is advice that "Unless you have a defense to the
19 foreclosure, you will get a judgment against you, and
20 the Judge will order the property to sale"?

21 A. That would be an overview of a fore-
22 closure case, yes, ma'am.

23 Q. And advise the clients that this
24 occurs in almost every foreclosure case and so on?

25 A. If there is not an articulate defense,

1 legal defense, to a foreclosure, then that would be
2 accurate. And we explain to them, losing the job,
3 catastrophic family events, whatever they may be, we
4 certainly empathize with their situation, but that's
5 not normally what the courts would look at as a legal
6 defense. That would be a more hardship issue that
7 we, in turn, then would send letters to the mortgage
8 company, explaining them of those facts.

9 Q. Okay. And then in the third complete
10 paragraph down beginning with "Between the Judgment
11 date and sale date" --

12 A. Uh-huh.

13 Q. -- "the person and/or entity you hired
14 to represent your financial interest in the foreclo-
15 sure action will continue to work frantically" and so
16 on.

17 A. Uh-huh.

18 Q. And that person or entity is Fore-
19 closure Solutions. Is that right?

20 A. It could be. But it also -- several
21 of these people do hire credit counselors to take on
22 the same type of what Foreclosure Solutions is doing.
23 So that's generic to whom they have hired throughout
24 this process.

25 Q. So this paragraph could refer to

1 Foreclosure Solutions working frantically to get the
2 mortgage company or the bank to accept payment or
3 reinstate the loan, or it could mean a credit coun-
4 selor who is going to be working to get the mortgage
5 company to accept payment of the outstanding loan?

6 A. I think that's accurate, but certainly
7 I would be remiss -- I mean, for the most part it
8 would deal with Foreclosure Solutions, but it does
9 cover that area, because we deal with their credit
10 counselors, also.

11 Q. When you described earlier that
12 Foreclosure Solutions tried to deal with economic
13 aspects, is this another way of stating the same
14 thing?

15 A. I think the economic aspects would be
16 a savings program, which would be, my understanding,
17 a difference from what a credit counselor would be.

18 Q. Okay. It's your understanding, then,
19 that Foreclosure Solutions would be in touch with the
20 mortgage companies or the bank in order to make this
21 happen. Is that right?

22 A. Pursuant to the approval by the
23 client, assuming that was done. And I assume that it
24 is, but I don't see that document per se. But I
25 presume, naturally, since we're getting the case,

1 that that's accurate.

2 Q. That it's Foreclosure Solutions or the
3 credit counselor that is working with the mortgage
4 company or the bank to accept payment and reinstate
5 the loan?

6 A. I think that would be accurate, yes,
7 ma'am.

8 Q. And that's not something that you
9 typically as a law firm are called upon to do in the
10 course of your representation, is it?

11 A. Now it has been.

12 Q. Okay.

13 A. Within the last year and a half.

14 Q. Okay.

15 A. We primarily do that because of the
16 fact that, for a wide variety of reasons, they feel
17 more comfortable in dealing with the work ethic,
18 let's say, of a Mr. Mullaney, the punctuality of Mr.
19 Mullaney, than dealing with someone else as a result
20 of a case pleading, the nature of the case, someone
21 else being involved. They have access easier to a
22 person in my office and it will be more thorough.

23 Q. Okay. And what you're speaking about,
24 it's the mortgage company or the bank in some
25 instances prefers to work with an attorney. Is that

1 right?

2 A. That would make that choice, yes,
3 ma'am.

4 Q. Okay. But that's not the case for all
5 Foreclosure Solutions' clients, is it?

6 A. I would think that is an accurate
7 statement, but I would say it's now, I think, a
8 majority where we're finding that, that they're
9 dealing with us.

10 Q. So this has changed?

11 A. Yes, ma'am.

12 Q. Okay. And here, the third to the last
13 paragraph advice, "If for some reason the mortgage
14 company and/or bank does not reinstate your loan or
15 negotiate, you may need to seek a bankruptcy attorney
16 within three weeks of your sale date."

17 A. That's just an overall advice sum-
18 marizing best case, worst case, advising them of the
19 whole picture.

20 Q. And in describing these nuts and
21 bolts, this kind of goes along step by step to
22 instruct the client as to how the process works?

23 A. Yes, ma'am. Because most clients are
24 not familiar with our legal system.

25 Q. Okay. And generally, as this goes

1 forward, there will be a judgment. And this recom-
2 mendation to seek a bankruptcy attorney is going to
3 come on sometime after that. Is that right?

4 A. I wouldn't characterize it as gene-
5 rally. Because, based upon my previous testimony, if
6 it's 60 to 65 without the interplay of bankruptcy, I
7 wouldn't think it was generally.

8 I would think this is an overview of
9 what may occur, and if the harsh realities get to the
10 point of that last step, then most definitively they
11 will be advised to seek that option.

12 Q. Okay.

13 A. If applicable.

14 (Deposition Exhibit D
15 was marked for identi-
16 fication.)

17 Q. Okay. We're going to go on to Exhibit
18 D.

19 A. Yes, ma'am. Sorry.

20 Q. In your testimony earlier, you refer-
21 enced providing clients with an authorization. Is
22 this the authorization?

23 A. That is correct, yes, ma'am.

24 Q. Who drafted this authorization?

25 A. That would have been drafted from
input from me on what was to be given, but having

1 achieved the small status of partner in a small law
2 firm, I have the ability to delegate that task.

3 Q. But my question, this was prepared by
4 the law firm --

5 A. That is correct.

6 Q. -- and not Foreclosure Solutions?

7 A. Specifically at my instructions.

8 Q. What about page two, which is numbered
9 16 in the lower right-hand corner? Can you identify
10 this for me?

11 A. Yes, ma'am. It's a financial disclo-
12 sure form.

13 Q. Who prepared this form?

14 A. That is something that's probably been
15 for the most part borrowed from various sources. I
16 think we may have used this originally in a domestic
17 setting in terms of bills, and I think it was modi-
18 fied or codified into this particular form. The
19 majority of this, though, would not have been
20 drafted, on this one, at my request.

21 Q. Is this financial disclosure form
22 customarily used in your law firm's work for clients
23 of Foreclosure Solutions?

24 A. At this point, yes, ma'am. And I will
25 say I do represent several clients independent of any

1 referral system from Foreclosure Solutions. In fact,
2 I had one foreclosure case that I had gained a repu-
3 tation, I had successfully litigated for six years in
4 the Commonwealth of Kentucky.

5 So independently I used similar forms
6 like this, and when this client had come on board, I
7 think it's a modification of several forms. So I
8 guess, to answer your question succinctly, this is
9 used at this point for any foreclosure, any clients
10 in foreclosure, by Brooks, Moeves and Halloran, PLLC.

11 Q. And how is this financial disclosure
12 form completed? How do you get this information
13 completed?

14 A. I believe that is sent or faxed to the
15 client, depending on the nature of the time where
16 we're at in the case. It could be even overnighted.
17 And then that's filled out by the client. And advise
18 them the quickest way is to fax it back to us if it's
19 on a secure fax.

20 Q. When you're dealing with -- let me
21 clarify. At what stage in your receiving referrals
22 from Foreclosure Solutions did you begin to use this
23 financial disclosure form?

24 A. That was not instantaneously, but it
25 was sometime through the process. I found that would

1 be helpful, especially when we were taking on more
2 direct dealings with the mortgage company, to look at
3 the actual numbers and see.

4 Because it would do us no good to
5 negotiate something that was not economically suit-
6 able for our client. So we had to have a basis to
7 look at what we could, if we could get the forbear-
8 ance agreement done, what they could afford.

9 Q. So sometime since 2004 when you
10 started doing Ohio foreclosure work for Foreclosure
11 Solutions, you started using this form?

12 A. That would be accurate, yes, ma'am.

13 Q. And the purpose was for you to get the
14 financial information to negotiate with the financial
15 institutions?

16 A. And at some times, via the authoriza-
17 tion and this document, we would even get further
18 permission to send it to the mortgage company --

19 Q. Okay.

20 A. -- or financial institution if it
21 would help aid them in evaluating. Also, this
22 document -- in evaluating the matter on their behalf.

23 Also, this document would come into
24 play if we were potentially looking at a short sale
25 situation, which I think I explained to you at that

1 meeting.

2 (Deposition Exhibit E
3 was marked for identi-
4 fication.)

5 Q. Okay. I'm showing you what has been
6 marked as Exhibit E.

7 A. Yes, ma'am.

8 Q. Can you identify this?

9 A. It appears to be the limited power of
10 attorney, signed by the Godfreys, that we voluntarily
11 produced to you once we received authorization from
12 the client to do so.

13 Q. And this is the power of attorney that
14 was prepared by someone on behalf of Foreclosure
15 Solutions, not by your law firm. Is that right?

16 A. Definitely not prepared by my
17 office --

18 Q. Okay.

19 A. -- or anyone in my office.

20 Q. All right. Now, on the second page
21 this is signed by Tom Bien for the firm Foreclosure
22 Solutions. Have you ever met Mr. Bien?

23 A. No, ma'am, I have not.

24 Q. Do you have any understanding as to
25 the circumstances in which the power of attorney is
customarily signed by the clients of Foreclosure

1 Solutions?

2 A. At the meeting with the particular
3 person.

4 Q. Okay. So the Foreclosure Solutions
5 representative goes out to meet with these clients?

6 A. I don't know how it takes place, if
7 they come to them, you go. I don't know how that
8 works.

9 Q. Have you ever seen any kind of a
10 training manual for representatives of Foreclosure
11 Solutions?

12 A. I believe at some point another attor-
13 ney had prepared one, and I was asked to look at
14 that, yes.

15 Q. In terms of by training manual, I mean
16 that would give instructions about how to recruit a
17 client, for instance, attract a client.

18 A. I believe an attorney had advised them
19 on protocol of what could be done there.

20 Q. And you've seen that manual?

21 A. I have seen it subsequent to its
22 preparation, yes.

23 Q. When did you see that document?

24 A. That's hard to say, but I would prob-
25 ably say sometime in 2006.

1 Q. What was the reason that this training
2 manual was presented to you for review?

3 A. It was presented to me for review
4 because when I had talked to a couple of clients,
5 they had expressed to me some things that were being
6 said or done, and I wanted to, via their authoriza-
7 tion, discuss that with representatives of Fore-
8 closure Solutions.

9 Q. What were those things?

10 A. They were as generic as the use of who
11 we were and if we were associated with Foreclosure
12 Solutions. And I didn't know if that was somehow
13 being transmitted by a third party which I have no
14 contact with, so I wanted to clarify that and mandate
15 to Foreclosure Solutions that anything saying such as
16 that was completely unfounded and untrue.

17 Q. Could you recall the words or give me
18 a little better picture? I'm having trouble.

19 A. They would say something that "You
20 work for Foreclosure Solutions," that "I hired you
21 and you're in Foreclosure Solutions." And I
22 corrected that misunderstanding by the client.

23 Q. The documents gave the impression that
24 the law firm worked for Foreclosure Solutions?

25 A. I think some verbal statements --

1 Q. Okay.

2 A. -- as it would be derived from the
3 training manual gave that impression. None of the
4 documents, to my knowledge, gave any impression, that
5 I saw at least.

6 Q. To your recollection, did the training
7 manual go into the results to be expected, how to
8 communicate the results to be expected?

9 A. I'm not sure I understand the ques-
10 tion. I apologize.

11 Q. It was a bad question. I'm sorry.
12 Did the training manual instruct the Foreclosure
13 Solutions representatives as to what to tell the
14 prospective clients about the expected results of the
15 representation?

16 A. I don't think it, to my knowledge,
17 told them about the expected results. I think it was
18 more a manual of what they could do in terms of the
19 particular business they were in.

20 Q. Okay. Let's look now at the power of
21 attorney.

22 A. Yes, ma'am.

23 Q. And this power of attorney appoints
24 Tim Buckley and Foreclosure Solutions to negotiate on
25 behalf of the client with the financial institution,

1 savings and loans or banks and mortgages with regard
2 to the loan or the loan amount. Is that what this
3 power of attorney does?

4 A. That's what it purports to do, yes,
5 ma'am.

6 Q. And is that consistent with your
7 understanding of the business of Foreclosure Solu-
8 tions?

9 A. This document would be consistent,
10 yes.

11 Q. It's consistent with your understand-
12 ing that Foreclosure Solutions will negotiate on
13 behalf of the client with institutions, saving banks,
14 with regard to the loan?

15 A. No, I don't know what the term "nego-
16 tiation" in terms of what Foreclosure Solutions is
17 intending or what the client understands of that
18 word, but my understanding is that they will deal on
19 the economic circumstances of instructing them to
20 save money to assist them in this legal problem.

21 Q. And this power of attorney is the
22 basis for the authorization for Foreclosure Solutions
23 to hire an attorney on behalf of the client. Is that
24 also true?

25 A. This power of attorney would be the

1 basis of how Foreclosure Solutions would pick an
2 attorney, yes, ma'am.

3 Q. This is a durable power of attorney,
4 is it not?

5 A. That is correct.

6 Q. Is this durable power of attorney that
7 we've marked as Exhibit E representative of the
8 powers of attorney that you get for each of the
9 clients of Foreclosure Solutions?

10 A. Yes, ma'am. The only thing I will
11 point out, that I did call the Godfreys early on
12 about the county of Warren and Hamilton, some
13 interplay there that they had some questions about.

14 Q. Okay.

15 A. But it was a procedural. And when
16 they had called, they had already signed it, natur-
17 ally, and they wanted to know the county differ-
18 ential. And I explained to them the nature of the
19 entity and their physical residence.

20 Q. And what did --

21 A. And I did not feel that that was
22 legally significant.

23 Q. Okay. You recall specifically confer-
24 ring with one of the Godfreys or both of them?

25 A. On that particular small issue in a

1 small manner about that initial question. That was
2 it. That's the only contact I think I ever had.

3 Q. And that would be early on in the
4 proceedings?

5 A. Yeah. I would -- two weeks in.

6 Q. Okay. And how is it --

7 A. As pertaining to their particular
8 file, when I refer to that, not two weeks into my
9 representation.

10 Q. I understand. How is it that that
11 question came to you as opposed to Mr. Mullaney?

12 A. Probably because I was available and
13 Mr. Mullaney was not.

14 Q. Okay.

15 A. And that's how we tried to, you know,
16 service these clients. If an attorney is available,
17 they will take the call.

18 (Deposition Exhibit F
19 was marked for identi-
20 fication.)

21 Q. I'm showing you what has been marked
22 as Exhibit F.

23 A. Yes, ma'am.

24 Q. Can you identify this document?

25 A. It appears to be the intake sheet for
Richard and Karen Godfrey, page 33 and 34, that would

1 have been from our file and voluntarily turned over
2 to you subsequent to a meeting we had.

3 Q. Now we've gone over the power of
4 attorney and now the intake sheet. What other
5 documents are customarily in a file at the time that
6 you receive a file from Foreclosure Solutions?

7 A. The power of attorney and an intake
8 sheet, and if there are additional notes that were
9 taken specific to a particular case. But normally
10 those would be the originating documents.

11 Q. On Bates numbered 34 on the second
12 page --

13 A. Yes, ma'am.

14 Q. -- there is an escrow amount of
15 \$2,225. Do you know how that escrow amount is set?

16 A. I don't know how it's arrived at, no,
17 ma'am.

18 Q. Who makes that determination?

19 A. I don't know that. I would think
20 that's some type of combination of between Fore-
21 closure Solutions and the client.

22 Q. After the phrase "Saving Home" there
23 is a circle Yes. What is your understanding of the
24 significance of that?

25 A. That the intention relayed, when this

1 meeting took place to fill out these documents, that
2 their intent was, rather, to save than get into
3 trying to sell the home or short sale.

4 Q. And do you rely on that information?

5 A. No, ma'am. None of this is relevant
6 to me.

7 Q. On the right side here the amount of
8 \$1,095 is circled.

9 A. Yes.

10 Q. Do you know what that means?

11 A. And I see at the right 695. I don't
12 know. I presume that's a fee that Foreclosure
13 Solutions is charging. I don't know if it's the
14 1,095 or the 695, handwritten.

15 Q. You've never made inquiry to Fore-
16 closure Solutions as to how much they are collecting
17 from the client?

18 A. I know for a fact their fee changes,
19 but it's irrelevant on what my legal fee is. I have
20 a flat fee that the client agrees upon. It was 125
21 and now it's 150, so that's -- you know, it could be
22 any amount. It's not of any significance that I take
23 into play as far as my zealously representing my
24 client.

25 Q. So whatever amount it is that they

1 charge --

2 A. It is.

3 Q. -- that's not significant to you.

4 Your representation is paid for by the agreed amount,
5 and anything else is extraneous. Is that fair to
6 say?

7 A. I think it's fair to say. I mean, I'm
8 not trying to make it extraneous for the client, but
9 in terms of my legal representation, it has no impact
10 on what I do or how I handle the file.

11 (Deposition Exhibit G
12 was marked for identi-
13 fication.)

13 Q. Okay. Showing you what has been
14 marked as Exhibit G --

15 A. Okay.

16 Q. -- can you identify that document?

17 A. It appears to be a work agreement
18 between Foreclosure Solutions, LLC and Richard and
19 Karen Godfrey.

20 Q. Is this work agreement another docu-
21 ment that would normally be in a file that you would
22 receive from Foreclosure Solutions for each client?

23 A. The documents that you referred to, E
24 and F, I would say 99 percent of the time are there.
25 G is sometimes there and sometimes not. But in this

1 particular case it would have been in their file,
2 since we produced it.

3 Q. Okay. With respect to the charges
4 there, we talked about the \$995, and this work
5 agreement sets forth the amount that the client pays
6 to Foreclosure Solutions, does it not?

7 A. Yes, ma'am. It appears to be, yes,
8 ma'am.

9 Q. In any of the documents given to the
10 Godfreys, is there anywhere that the amount paid to
11 the law firm is set forth?

12 A. I'm referring back collectively to E,
13 F and G in answering. It does not appear, no, ma'am.

14 Q. To your knowledge, in having handled
15 clients on behalf -- or let me say referred by Fore-
16 closure Solutions since 2004, are you aware of any
17 instance in which there has been a direct communi-
18 cation to the client of the amount of the legal fee
19 paid to you?

20 A. At times it would be handwritten on a
21 note which would appear on the Exhibit F, and that
22 situation would be under Notes as filled out on that
23 form. But I think that occasion would not be the
24 norm. It would be later codified by us at some point.

25 Q. Is it fair to say that on a routine

1 basis the clients do not know how much of the fee
2 that they pay to Foreclosure Solutions goes to you?

3 A. I'm not there at the initial sale, so
4 I don't know what's verbally told to them. But if
5 you're asking is it codified in a written document,
6 the norm would be not codified, the amount for legal
7 fees.

8 Q. And is it your practice, at any time
9 during your representation of Foreclosure Solutions-
10 referred clients, to communicate that information to
11 them?

12 A. At times, yes. And if you want the --
13 I'm sure we don't do it every time, but at times,
14 yes.

15 Q. Okay.

16 A. A standard flat fee contract for 125
17 at a given point and then at 150. Now, whether we
18 get those signed back, sometimes we only get the
19 authorization signed back.

20 Q. Okay.

21 A. But that would be specifically the
22 way.

23 Q. You don't have a particular kind of
24 generic document of a fee disclosure or a fee agree-
25 ment that goes out to the client, do you?

1 A. Normally not. It could be just a
2 standard flat-fee civil representation.

3 Q. Okay.

4 A. Or it could be codified in a letter or
5 a note to the client.

6 Q. And then let's look at the work agree-
7 ment again. This is Exhibit G. And there again
8 appears the amount of \$2,225 that the client must
9 deposit into an escrow account. As I understand your
10 testimony, that's something that's arranged with the
11 client and Foreclosure Solutions, not with your
12 office?

13 A. That is correct. Yes, ma'am.

14 Q. And then is it your understanding that
15 that is the goal that the Foreclosure Solutions sets
16 for the client to save money?

17 A. That is their economic goal to that
18 particular file.

19 Q. Okay. The work agreement references
20 that when Foreclosure Solutions has negotiated a
21 settlement, the client agrees to deliver to the
22 lender the amount from the escrow account. So that
23 is it fair to say that this work agreement obligates
24 the client to follow through on paying the escrow
25 amount?

1 A. That's what the agreement purports to
2 say. I don't draw it up.

3 Q. Okay. The work agreement also pro-
4 vides that if the client does not, cannot or will not
5 deliver the funds, then Foreclosure Solutions can
6 withdraw from representation without any refund of
7 funds. That's their agreement, isn't it?

8 A. That's their agreement, but it's not
9 my agreement with the client.

10 Q. Okay. As part of this agreement with
11 Foreclosure Solutions, and let's look at paragraph
12 number C --

13 A. Yes, ma'am.

14 Q. -- the client also states that they
15 will not contact or attempt to contact the lender of
16 record, and if the lender contacts them, they're sup-
17 posed to tell them that they have sought representa-
18 tion by Foreclosure Solutions?

19 A. That's what it appears to say, yes,
20 ma'am.

21 Q. And you're aware of that provision in
22 the work agreement between the clients and Fore-
23 closure Solutions?

24 A. Again, it's an agreement not drafted
25 by my office and not relied upon. If you're saying

1 do I acknowledge that it's there, I acknowledge that
2 it's there, but it has no significance in terms of my
3 legal representation of the client.

4 Q. Okay. And your representation of the
5 client does not go towards advising them with respect
6 to their contract or arrangement with Foreclosure
7 Solutions?

8 A. No, ma'am. It goes to the nature of
9 their foreclosure case pending with the courts. My
10 office is paid a flat fee, and we stay in the case
11 regardless of what this work agreement says that
12 Foreclosure Solutions is going to do this or that,
13 and we even stay in the case postbankruptcy.

14 Q. You don't consider Foreclosure Solu-
15 tions to be a client of the law firm in connection
16 with your representation of the Godfreys. True?

17 A. My clients are the Godfreys as it
18 pertains to this matter.

19 Q. Do you consider Foreclosure Solutions
20 to be an adverse party with respect to your represen-
21 tation of Godfreys?

22 A. I would not consider them to be an
23 adverse party.

24 MS. WELSH: Okay. Well, we've been
25 going for nearly two hours. I think, if

1 it's all right with you, we'll take a break
2 and go off the record.

3 THE WITNESS: That's fine.

4 MS. WELSH: We'll have a short break.

5 (Recess taken: 11:14 AM - 11:27 AM.)

6 Q. Okay. Well, we're back on the record.

7 A. Yes, ma'am.

8 Q. We received a letter from your law
9 firm back in November that had an indication that
10 some member of the firm was admitted only in Ohio.
11 Is there someone who is admitted only in Ohio?

12 A. In November of 2006?

13 Q. Yes.

14 A. That would have been James Hart.

15 Q. Okay.

16 A. An associate that just acquired his
17 Ohio Bar results, whenever they came out. So I would
18 assume that that would have just been November of
19 this year.

20 Q. Okay. Well, I'm just going to show
21 you this.

22 A. Okay.

23 Q. This is a letter dated November 1st,
24 2006, to John Slauson and to me. And the reason why
25 we asked the question is that there is no one listed

1 on the top that has this little symbol next to their
2 name.

3 A. Okay. That would have been attorney
4 James T. Hart.

5 Q. Okay.

6 A. The letterhead issue probably would
7 not have been changed, since he had just passed the
8 October Bar.

9 Q. Okay.

10 A. And then secondly --

11 THE WITNESS: I apologize for bumping
12 your arm.

13 A. -- we made a conscious decision,
14 because of this investigation, not to have him sign
15 any pleadings, you know, so on and so forth, so --

16 But, I mean, we're not trying to hide
17 anything. It was just an oversight, I presume, on
18 the letterhead.

19 But his name is James Hart. He was
20 duly licensed I believe in October of 2006, whenever
21 the Bar results come out. I'm not aware of when they
22 come out specifically.

23 Q. You just made a comment about: we
24 made a decision not to have him sign any pleadings.
25 Could you explain that, please.

1 A. I had asked you and Mr. Slauson at the
2 voluntary meeting, in fact, stated affirmatively if
3 there was anything that we could do to prevent this
4 from going on to what, unfortunately, Mr. Mullaney
5 has experienced and then Ms. Nielsen, now Mr. Brook-
6 ing, I had asked you is there any way that we could
7 do something to stop this.

8 Because I could foresee, well, the
9 inquiry is this, and there's this, and there's that,
10 meaning people, and I wanted to try to stop that,
11 kind of get the bull by the horns and say, you know,
12 if I'm doing something --

13 But we received the answer that it's
14 being investigated. And we're still investigating it
15 today. So I made a conscious choice to an employee
16 of mine and who I consider a friend not to have this
17 go down to him.

18 Because I don't know, at this stage,
19 we're doing anything wrong. It hasn't been artic-
20 ulated. So that's why the decision was made not to
21 try to expose this any further.

22 Because we specifically discussed with
23 you about not representing the client anymore, and
24 all we, respectfully, got back was: it's under
25 investigation but we're not telling you to do

1 anything. So we made a choice in our office not to
2 try to put him into an unresolved situation.

3 Q. So are you saying that Mr. Hart does
4 not sign any pleadings with reference to clients
5 referred by Foreclosure Solutions?

6 A. That is correct. Mr. Brooking does.

7 Q. Does Mr. Hart do any of the work on
8 those files?

9 A. Mr. Hart would get work assigned to
10 him, yes, ma'am.

11 Q. So he does some of the work?

12 A. Yes, ma'am.

13 Q. He might draft some of the Answers,
14 for instance?

15 A. Most of the drafting is done by law
16 clerks in my office.

17 Q. Okay. What kind of work would Mr.
18 Hart do on these files?

19 A. He would do similar to what any attor-
20 ney would do in my office. He would answer phone
21 calls when granted. He would make sure that those
22 phone calls are returned.

23 Issues that come up in the file, they
24 would be addressed on a case-by-case basis. And he's
25 been given the general rule, if you will, that any-

1 thing problematic, any area of concern whatsoever,
2 gets addressed by me specifically and not by him.

3 So, i.e., if it's a problematic
4 client, that file is shifted to me. I call the
5 client back and try to -- if I'm admitted pro hac,
6 then I give appropriate advice in that matter, what I
7 deem is appropriate advice.

8 If I am not admitted pro hac in a
9 given case that he is having a problem with, I
10 explain to the client that Mr. Hart is not available,
11 I'm not licensed in the state of Ohio, this is what I
12 perform, what generic question can I answer for you.

13 So I try to avoid putting him, if you
14 will, into any awkward situations, because this is,
15 in my opinion, the way I view, a gray area. No
16 definitive answer, solution, has been given to what
17 these allegations are, this inquiry process.

18 But I'm trying to be proactive and
19 protect a friend and an employee of mine, that
20 evidently I did not do the appropriate job in
21 protecting Mr. Mullaney.

22 Q. Does Mr. Hart appear on behalf of any
23 Foreclosure Solutions clients in the state of Ohio?

24 A. At that time he would in Hamilton
25 County, Ohio. Up north in Canton, I don't know what

1 that is. But any other than a procedural issue that
2 he and Mr. Brooking can handle, like a generic motion
3 document, if it's a problematic case in terms of I
4 think that I would consider an intense legal argu-
5 ment, an intense debate, due to his experience level
6 I accompany him, with him.

7 In fact, I am going to be trying a
8 case in Cuyahoga County that's already been permitted
9 by the court, my pro hac, because of my experience
10 level, that we have definitively ascertained defenses
11 to, and we're doing all that for the \$150.

12 Q. You indicated that the law clerk
13 customarily would draft the Answers. Is that right?

14 A. Correct. And they would be reviewed
15 by attorneys subsequently.

16 Q. And the correspondence that we have
17 reviewed, the generic correspondence, does a law
18 clerk generally take the first crack at the corre-
19 spondence?

20 A. We have paralegals. We have law
21 clerks. Associates may or may not do that. I can't
22 answer for you on a daily basis. I would say the
23 generic overall view would be law clerks, associates
24 and paralegals would be involved in the drafting of
25 letters.

1 Q. And the notices of appearance for the
2 member of the law firm to appear in the case, would
3 that normally also be prepared by the law clerk?

4 A. Drafted by what I would consider
5 administrative secretarial staff and/or law clerks,
6 but -- and I'm not sure if -- I presume that's
7 appropriate for people to type documents, but I'm
8 beginning to think --

9 They are reviewed by every attorney.
10 I mean, an attorney signs them. Nothing goes out
11 with a law clerk signing it or a secretary signing a
12 pleading to the court. That's signed by a given
13 attorney.

14 Q. I understand.

15 A. Okay.

16 Q. Could I have that back, please.

17 A. Yes, ma'am (handing document.)

18 (Discussion off the record.)

19 Q. And just to review the persons on your
20 letterhead that we've been looking at --

21 A. Yes, ma'am.

22 Q. -- it's yourself, Brook Brooking,
23 Brian Halloran and Crystal Ford.

24 A. And that's what I testified to, yes,
25 ma'am.

1 Q. And the senior member, John R. S.
2 Brooking, was he involved in any way with Fore-
3 closure Solutions?

4 A. Well, considering he passed away
5 December 24th, 2006, which I believe I testified to,
6 he's no longer involved. But he never was.

7 Q. I apologize for overlooking your
8 testimony. And you did mention Richard Snyder.

9 A. Yes, ma'am, I believe I did.

10 Q. As "Of Counsel," is Mr. Snyder
11 involved in any way at present in the Foreclosure
12 Solutions?

13 A. No, ma'am. Mr. Brooking Senior --
14 John R. S. -- and Mr. Snyder have never been involved
15 with this client. And I will preface that Mr. Snyder
16 would sometimes get mail, that was listed on a pre-
17 vious letterhead, because we had the address of the
18 Ohio office on there.

19 When he was getting the mail, we made
20 a conscious choice to remove that office from the
21 letterhead, not to disturb his day-to-day practice,
22 since he was not involved with the particular
23 referrals.

24 Q. Is Ms. Ford involved in the Fore-
25 closure Solutions clients?

1 A. As it pertains to the Commonwealth of
2 Kentucky.

3 Q. Okay. But not for Ohio?

4 A. No, ma'am. That is handled by Ohio
5 licensed attorneys and/or myself, subject to pro hac
6 motions.

7 Q. Okay.

8 A. And quite candidly, I try to take the
9 majority. Since this inquiry has been undertaken, I
10 try to do the majority of it myself.

11 Q. All right. And by Ohio licensed
12 attorneys. So tell me, could you list by name the
13 attorneys for Brooking, Moeves and Halloran that
14 currently handle the Ohio work for Foreclosure
15 Solutions.

16 A. Currently it would be Brook Brooking,
17 in terms of formal appearances. Anything signed with
18 the court, it would be his Bar number.

19 Q. Okay.

20 A. And then it would be attorney James T.
21 Hart, H-a-r-t, in terms of daily work, phone calls,
22 drafting, so on and so forth, attendances and court
23 appearances that would require just an appearance,
24 say, that would not involve something that a first-
25 year attorney could not, you know, handle at that

1 stage of his career.

2 And then Patrick E. Moeves, myself,
3 subject to the relevant pro hac motions and then
4 subject, too, to any problematic areas I am now
5 involved with on a day-to-day basis, meaning that if
6 it's a complex issue pertaining to the case, if it's
7 an issue where Mr. Hart would feel uncomfortable
8 going up to speak to the judge on a particular matter
9 that he feels his experience level doesn't dictate,
10 then I'd say put -- pro hac me in. If it pleases the
11 court and I'm allowed to be in, I'll handle that on
12 behalf of that client.

13 Q. Okay.

14 A. And naturally, Mr. Halloran and Ms.
15 Ford, if an attorney would be unavailable, they're
16 going to take a phone call on an occasion. So I
17 don't want to say carte blanche, but I mean, for the
18 majority of the day-to-day work, it would be those
19 three.

20 Q. For clients who pay hourly, what is
21 your hourly billing rate?

22 A. It varies upon the subject matter, but
23 between 175 and \$200.

24 Q. And what is the range of hourly bill-
25 ing rates for all the attorneys in your office?

1 A. I would say, domestics being a lower
2 billable, probably an overview would be a hundred and
3 a quarter to 225.

4 Q. Now, you mentioned that Mr. Mullaney's
5 employment ended in the spring of 2006?

6 A. That's correct, yes, ma'am.

7 Q. Do you have an understanding as to why
8 he left?

9 A. He left for the nature of the hours.
10 The long hours were becoming problematic to he and
11 his wife starting a family. They have struggled to
12 do that, and fortunately they have just been able to
13 adopt a baby. But I think it was nothing other than
14 the work hours. I certainly miss him every day
15 since, the quality of human being that he is.

16 Q. What about Ms. Nielsen? Is she still
17 employed with you?

18 A. No, ma'am.

19 Q. What was the reason for her departure?

20 A. You'd have to speak to her about that.

21 Q. Do you have any understanding?

22 A. My understanding, she did not like the
23 work hours that we required, went to work for an
24 estate planning firm where it was more 9:00 to 5:00
25 type of hours that she works.

1 Q. You mentioned reviewing the training
2 manual for Foreclosure Solutions sometime within
3 2006?

4 A. I think excerpts, but, yes, I did
5 review something pertaining to that.

6 Q. Do you have a copy of that in your
7 office?

8 A. No, ma'am, I do not.

9 Q. If you asked Foreclosure Solutions, do
10 you think that you'd be entitled to have a copy of
11 that?

12 A. Currently, with the grievance process,
13 I would say no. But if you're requesting me to ask,
14 I'm certainly going to cooperate with what you're
15 telling me. After all, I'm voluntarily appearing
16 here. You know, I understand I'm admitted pro hac.
17 You know, my firm is subject to this.

18 I would voluntarily cooperate with
19 whatever you tell me to do. But if you're saying to
20 me do I think they're going to give it to me, I think
21 the answer is no to that. But if you're telling me
22 you will want me to request it, then I'll request
23 that through my counsel.

24 MR. STERN: Just for the record, we
25 have asserted and continue to assert that

1 prior to deposition, I think normally this would be
2 the first letter. So I'm 99 percent sure that it
3 probably is.

4 Q. And then this letter dated March 31st,
5 2006, is pretty much reflective of the generic letter
6 that we discussed earlier, is it not?

7 A. Other than I believe the generic docu-
8 ment would say "Entry of Appearance and Order Grant-
9 ing Motion" and explaining the term "to move." I
10 don't necessarily know if it would be a motion for
11 leave to plead. I think the generic just has two
12 prongs. This letter purports to have three prongs.

13 Q. Okay. And then the second letter in
14 this exhibit, page 41 --

15 And there again, this is the next
16 month.

17 -- this is the letter transmitting the
18 Answer to the Complaint. Is that right?

19 A. I would presume that there was -- the
20 motion for leave to plead then, with the date and
21 time, probably would have been then granted. And
22 then we would have filed the Answer accordingly,
23 pursuant to the court's availability to do that,
24 again re-emphasizing similar points that we empha-
25 sized on March 31st, 2006.

1 Q. And as in the generic letter, this
2 letter on page 41 reiterates that you understand that
3 they don't dispute that they're currently in default
4 and again asks them to contact you if they believe
5 they have any defenses.

6 A. Yes, ma'am. Because the basis of them
7 being in default is the basis of the lawsuit that's
8 been filed.

9 Q. And the next pages, 67 through 69,
10 reflect the Answer filed on behalf of the Godfreys.
11 Is that right?

12 A. That is correct, yes, ma'am.

13 Q. And for instance, in Count One, it's
14 purely a general denial for want of knowledge, deny-
15 ing the principal sum plus interest, court costs,
16 advances, and other charges? It's a general denial.
17 True?

18 A. Well, Count One is not correct,
19 because it does admit the allegation that they're
20 the owner and holder of a note. So I would not
21 consider that, with all due respect, a general
22 denial, since we're admitting a portion of it.

23 Q. I understand. But it's denying the
24 principal sum, plus interest, court costs, advances,
25 and other charges?

1 A. That would be correct, yes. Yes,
2 ma'am.

3 Q. And is this a typical Answer that
4 might be drafted by the law clerk and then reviewed
5 by Darren before filing and signing?

6 A. Well, not only Darren, but any attor-
7 ney. But it would be, again, depending on which law
8 firm filed the foreclosure action, because they use
9 the same type of Complaints.

10 It would have been filed based upon
11 the information presented to us on April 28th, 2006,
12 the nature of the Complaint that was filed. Then we
13 would have done that. In this case it appears to be
14 a relatively short Complaint with just three counts.
15 I mean, some are seven, eight, nine counts.

16 Q. Okay. And then going to the letter
17 identified by number 43 --

18 A. Yes, ma'am.

19 Q. -- this is May 18th, 2006, signed by
20 Jessica Nielsen. Is that correct?

21 A. Yes, ma'am, that is correct.

22 Q. Is this about the time, then, she took
23 over responsibility for these cases from Darren
24 Mullaney?

25 A. I believe the way it worked, she came

1 in, worked the first week of May, had a previously
2 scheduled vacation for the next week, which I guess
3 for calendarwise would have been after Derby, and
4 then she would have returned. So she probably would
5 have been working like a week beforehand, and this
6 would have been the second week that she was working.

7 Q. Okay.

8 A. Because we gave her permission to take
9 that previously scheduled vacation.

10 Q. And the next page, numbered 44 --

11 A. Yes, ma'am.

12 Q. -- has communication from Lerner,
13 Sampson and Rothfuss to Mr. Mullaney, giving the
14 amount necessary for reinstatement. Correct?

15 A. I think Lerner, Sampson and Rothfuss
16 may -- like once the first attorney in our office
17 makes the appearance, they send that letter to the --
18 I mean, we still get things with Darren's name on it.
19 We correct it.

20 Q. I understand.

21 A. But it probably would have been sent
22 to not Mr. Mullaney, since he wasn't there. It would
23 have been sent to Jessica. That would have been a
24 type characterization that Lerner, Sampson used.

25 But that would have been what was the

1 breakdown to reinstate the loan up and through June
2 8th for them to work this out economically through
3 our office and so on and so forth.

4 Q. And does this indicate to you that at
5 some point Mr. Mullaney made the request of Lerner,
6 Sampson and Rothfuss for this reinstatement letter?

7 A. Again, I can't speak -- I would
8 presume that Mr. Mullaney made the request, but it
9 could have been -- it was not myself, but it could
10 have been Mr. Brooking, Mr. Halloran, Ms. Ford or
11 even Ms. Nielsen.

12 Q. I understand. This statement of
13 reinstatement amount is provided free of charge by
14 Lerner, Sampson and Rothfuss, isn't it?

15 A. I don't know if they add that into
16 their attorney fees or not. I can't answer that.

17 Q. My question is, for you to get this
18 information, the law firm doesn't pay Lerner, Sampson
19 and Rothfuss anything to get this information?

20 A. No, ma'am, we don't.

21 Q. Okay. It's not that they charge you
22 \$25 to send you this amount?

23 A. No, ma'am, they don't.

24 Q. Okay. And the next page, numbered
25 46 --

1 A. Yes, ma'am.

2 Q. -- is this a letter transmitting a
3 copy of the motion for summary judgment to the
4 Godfreys?

5 A. Yes, ma'am. It appears to be, yes.

6 Q. In this letter it appears Ms. Nielsen
7 again gives the advice "contact us immediately if the
8 allegations in this Motion are incorrect"?

9 A. That is correct.

10 Q. If the law firm does not receive any
11 communication back from the client, would the law
12 firm, as a matter of custom, file an Answer to a
13 motion for summary judgment or not?

14 A. Unless there was something raised in
15 any type of intake documentation, they would see the
16 note on the previous exhibit that said Notes. Unless
17 there was a phone call from a client --

18 Again, procedurally Hamilton versus
19 Warren is what we would have had at that point. And
20 if there is no communication back from the client,
21 then normally my advice to my associates, or I do it
22 myself, is to notify the court that we will not be
23 responding in writing.

24 Q. Okay. My review of the file indicates
25 that there are no notes of any response from the

1 client, and I didn't see in the pleadings that any
2 response was filed.

3 A. I think that is accurate. No response
4 was filed in this case.

5 Q. Okay.

6 A. Just based upon my previous testimony
7 that --

8 Q. Exactly. And then document number 47
9 appears to be a transmittal of the magistrate's deci-
10 sion. Is that right?

11 A. Yes, ma'am.

12 Q. This is now June 26th, and the origi-
13 nal entry of appearance went on in maybe the end of
14 March. April, May and June, so about three months
15 later there would be a magistrate's decision granting
16 summary judgment. Is that time frame pretty typical
17 for Hamilton County?

18 A. I think Hamilton's usually a little
19 bit longer.

20 Q. Okay.

21 A. But as officers of the court, I will
22 point out we would have then notified the court that
23 it was ripe for decision, and then you have a trans-
24 mittal from June 15th, 2006, to June 26th, '06.

25 So in all deference to the court, I

1 think in this case that's why the decision was made
2 so quickly. Because Hamilton County is traditionally
3 longer time in terms of foreclosure, statistically
4 speaking.

5 We would have notified them that it
6 appears that we would not be responding in writing.
7 Therefore I think that's why the decision was made so
8 promptly.

9 Q. And the next page, number 48, is a
10 phone call slip? Yes?

11 A. Yes, ma'am.

12 Q. You had mentioned in your testimony
13 earlier that you recall having a telephone conversa-
14 tion with one or the other of the Godfreys regarding
15 the county of the action. Do you recall that?

16 A. Yes. On the power of attorney in the
17 early part of the representation, yes, ma'am.

18 Q. Would you customarily document that
19 conversation in the file?

20 A. Yes, ma'am. The only reason why this
21 would be here is pursuant to my instructions to my
22 associates to do that. And if we did not, you know,
23 produce it, then I can't explain what a file clerk
24 would have done with it.

25 Q. Okay.

1 A. But I am attesting that that conversa-
2 tion did occur.

3 Q. You would have expected something,
4 though?

5 A. Yes, ma'am, I would have expected it
6 to be there, and I apologize that it's not.

7 Q. Okay. And this phone call message
8 relates -- this was from July, relating to a call
9 from the Godfreys to Jessica. Is that right?

10 A. Yes, ma'am, it does. And the only
11 thing that I would advise that Ms. Nielsen versus
12 what Mr. Mullaney would do is Ms. Nielsen would just
13 codify the date and time, where Mr. Mullaney would
14 take the extra step and codify the nature of the
15 message, i.e., I left you a message to discuss
16 specifically this matter.

17 Q. Okay. Then let's look at the next
18 letter, page number 49.

19 A. Okay.

20 Q. And this is the transmittal of the
21 notice of entry granting motion for summary judgment
22 and decree in foreclosure. Yes?

23 A. That's correct.

24 Q. And again there is advice to the
25 client, "Please contact me if you feel you have any

1 appealable issues?"

2 A. That would have been the second
3 advice, based upon the decision, now it's entered
4 into an order.

5 Q. Okay. And the next page at this
6 point --

7 This is number 51.

8 A. Yes, ma'am.

9 Q. -- here is another statement. This is
10 another statement from Lerner, Sampson and Rothfuss
11 about the amount necessary for reinstatement?

12 A. It would have been at our -- it would
13 have been originated by our office, that request,
14 that we have a judgment, that we're trying to
15 communicate to the attorneys -- which is not codified
16 here, but the thought process would be, in order to
17 avoid a bankruptcy issue, what is the ability for the
18 lender now to work, based upon hardship, whatever it
19 may be. And this is the response that we received
20 back with trying not to go to that last step before
21 sheriff's sale.

22 Q. Okay.

23 A. So that would have been Lerner, Samp-
24 son and Rothfuss' response to our second request in
25 order to try to avoid bankruptcy for these folks.

1 Keeping in mind there weren't any
2 appealable issues, the judgment had already been
3 rendered, we were taking another step to try to work
4 something out, you know, using hardship issues,
5 throwing out the ability of a short sale, which, you
6 know, I explained to both of you at the meeting --

7 You were a little bit unsure of what
8 that was.

9 -- and explained how that thought
10 process was worked by me and how I intended to do it
11 in terms of what are residential sales in the
12 community, what are comparable sales, if any, you
13 know, on that street, stuff like that.

14 Q. During the course of the law firm's
15 representation of the Godfreys, did anyone ever make
16 a determination as to whether the Godfreys had the
17 ability to come up with the \$2200 referenced in the
18 work agreement for the escrow account?

19 A. I did not specifically. Other than
20 that first phone call on a Hamilton-Warren issue, I
21 didn't speak with them, so I don't know that. I
22 don't know what, you know, Ms. Nielsen would have
23 done on it, or whomever.

24 I don't think it would have been some-
25 thing Mr. Mullaney would have done, because he was in

1 the early stages of that proceeding. And again, at
2 that point you're working on the legal options, the
3 legal ability to defend.

4 Q. So the idea of finding the financial
5 solution and determining whether they can negotiate
6 the reinstatement really kicks into high gear after
7 the summary judgment motion. Is that fair?

8 A. Not necessarily, but your question was
9 the ability to pay the 2,025. That's irrelevant to
10 what Foreclosure Solutions is suggesting that they
11 say. My ability is to then get into with the lender,
12 and once I have a number, then we can talk about
13 that.

14 My personal recommendation is that we
15 do this before the summary judgment takes place. I
16 explain to my associates proactive versus reactive.
17 Proactive, control the situation. Reactive, you're
18 too late in the game and the money probably hasn't
19 been taken care of. So I can't speak to what Ms.
20 Nielsen did in this file, but --

21 Q. In terms of the initial reinstatement
22 amount from May was 15,900, in round numbers, and now
23 in August it's gone up to 20,200 or so. Fair enough?

24 A. Yeah, fair enough. The attorney fees,
25 it went up about a thousand dollars in that space of

1 time, and, you know, you're going to have past due
2 amounts.

3 Q. Sure.

4 A. So I think the numbers are probably
5 pretty accurate in that case.

6 Q. And the last page in this exhibit,
7 page number 53 --

8 A. Yes, ma'am.

9 Q. -- that's from September 14th, 2006,
10 and that's the order of dismissal?

11 A. That's correct.

12 Q. It's a transmittal of the order of
13 dismissal?

14 A. That's correct. Normally in that case
15 I would probably -- not having the order of dismissal
16 in front of me, that that would have been some type
17 of resolution to the case --

18 Q. Okay.

19 A. -- however it was.

20 Q. Now, I'm just going to go through
21 these fairly quickly.

22 A. Yes, ma'am.

23 (Deposition Exhibit I
24 was marked for identi-
25 fication.)

25 Q. Is Exhibit "I" the motion of the

1 plaintiff Wells Fargo Bank for summary judgment
2 against the Godfreys?

3 A. Yes, ma'am, it appears to be that
4 document.

5 (Deposition Exhibit J
6 was marked for identi-
7 fication.)

8 Q. And Exhibit J is the notice of the
9 motion for summary judgment hearing?

10 A. That is correct.

11 Q. And as I understand your testimony, if
12 the client has not contacted you that they have
13 defenses to this motion, the law firm will not appear
14 at the hearing for summary judgment and will not file
15 a response to the motion. Is that right?

16 A. We will notify the court. And this
17 hearing was set for June 19th, which is consistent,
18 then, with the June 15th letter and the June 26th
19 letter.

20 (Deposition Exhibit K
21 was marked for identi-
22 fication.)

23 Q. Okay. And I'm showing you what has
24 been marked as Exhibit K. Is this the magistrate's
25 decision, then, granting the foreclosure action to
Wells Fargo Bank?

A. Yes, ma'am. And then again, it

1 would -- the judgment appears to be entered June
2 19th. The client has a letter within the relevant
3 time frame once we receive it, which would have been
4 June 26th.

5 (Deposition Exhibit L
6 was marked for identi-
7 fication.)

8 Q. Okay. And Exhibit L, is this the
9 notice from the court documenting that the motion for
10 summary judgment, the entry granting that motion has
11 been journalized?

12 A. Yes. And it would be consistent,
13 then, with the July correspondence sent from my
14 office to the Godfreys, advising them what to do.

15 Other than I will point out that the
16 notice was sent to Darren Mullaney and there probably
17 was a substitution of counsel of Ms. Nielsen and it
18 was just sent to our address with his name, but he
19 had no involvement at that point.

20 Q. Okay. At this time when the letter
21 goes out notifying the clients that the summary
22 judgment motion has been granted --

23 A. Yes, ma'am.

24 Q. -- was there any inquiry at that point
25 as to how much money they had saved or what the
status of the economics efforts were by --

1 A. I'm sure there would have been an
2 inquiry. That's what precipitated the second re-
3 instatement request, because then -- and again, that
4 wouldn't be in the file.

5 But instead of immediately referring
6 to bankruptcy, you have a client who has some type of
7 what they consider viable economic position to take.
8 Therefore, you request the second reinstatement.

9 Q. My question is, to your knowledge, is
10 there any information, any documents in the file for
11 the Godfreys, in June and July of 2006, with respect
12 to their saving money or how much money they could
13 pay to --

14 A. Ms. Nielsen's handling that file. I
15 think that would be a question better to her. I
16 personally have no knowledge of that. I can only
17 tell you from what I see here that I would expect
18 that there was. Hence the second request for
19 reinstatement rather, right then, to bankruptcy.

20 Q. I understand. Of the generic letters
21 that the law firm has, do you have a generic letter,
22 such as the ones we looked at earlier for different
23 topics, inquiring of the client as to their progress
24 in saving money or working towards an economic solu-
25 tion?

1 A. Yes. Because that would then power
2 the financial packet that we ask them to fill out.
3 So that specifically addresses that with them.
4 That's why we ask them to fill it out, as I earlier
5 testified to, to evaluate the economic circumstances.

6 And what Foreclosure Solutions is
7 telling them to say, once again, with all due
8 respect, is irrelevant to what we were doing as
9 lawyers on their behalf.

10 Q. And just so I'm clear on this --

11 A. Yes, ma'am.

12 Q. -- what I'm asking is, at this stage
13 of the proceedings do you have a generic form letter
14 that you use that you would send out to the client to
15 inquire as to their financial status?

16 A. I think it would be the letter that
17 would include the financial authorization that I went
18 over as part of the packet that we voluntarily gave
19 to you.

20 Q. Now, is --

21 A. Well, you would see the -- it's in
22 Exhibit A.

23 I'm sorry. It wouldn't be A. It
24 would have been when you showed me those forms.

25 MR. STERN: In the authorization?

1 A. The authorization and the -- financial
2 authorization. Here it is. It's Exhibit D. The
3 authorization and this inquiry on Exhibit D, which
4 comprises page 16, would be normally when we're
5 inquiring of that in the particular steps.

6 The reason for that document is to --
7 looking at what we can do from an economic perspec-
8 tive, if it's a viable position from the lender.
9 Some lenders won't negotiate. Some lenders say: I
10 want X number of dollars.

11 And with, you know, the two-thirds
12 figure basically floating out there, we can kind of
13 have a good idea, by looking at this sheet, what's
14 going to be a viable solution.

15 Q. I'd like you to look at Exhibit B, if
16 you still have that in your stack.

17 THE WITNESS: I apologize. My apolo-
18 gies to you.

19 Q. Here you go. Here's another copy of
20 Exhibit B.

21 A. Okay.

22 Q. We talked about this earlier. Exhibit
23 B was comprised of generic copies of letters that the
24 firm typically sends out?

25 A. Correct.

1 Q. Okay. The first one here, on 11, is
2 enclosing The Nuts and Bolts of an Ohio Foreclosure
3 and the authorization form?

4 A. Correct.

5 Q. And what I'm asking you, Mr. Moeves,
6 is whether there is a generic letter similar to this
7 one, transmitting an inquiry in a later stage of the
8 proceedings.

9 A. I understand what you're asking.

10 Q. Okay. To your knowledge, is there
11 such a letter?

12 A. It is contained with Exhibit D, this
13 authorization, and the financial disclosure is nor-
14 mally sent with that generic letter.

15 Q. The one that -- the first one in
16 Exhibit B?

17 A. That's Exhibit B, correct.

18 Q. All right.

19 A. Now, it may be in certain stages that
20 it's re-sent if they haven't cooperated and, from
21 what we can gather from the file, they do have an
22 economic position to take.

23 Q. Now, Exhibit D is something that you
24 say that you send out early on, you want that infor-
25 mation?

1 the notice of dismissal?

2 A. Yes, that would be an unsigned copy
3 that we referenced in our previous letter outlining
4 the dismissal.

5 Q. Because at this point the Godfreys had
6 consulted --

7 A. Had consulted a bankruptcy attorney.
8 Again, for clarification, we would not
9 have represented the Godfreys in that bankruptcy.

10 (Deposition Exhibit O
11 was marked for identi-
12 fication.)

12 Q. I'm showing you what has been marked
13 as Exhibit O.

14 A. Yes, ma'am.

15 Q. Can you identify this document?

16 A. It appears to be a document dated
17 December 18th, 2006, from my attorney, who is seated
18 to my right here at the deposition, to the three
19 named individuals taking this deposition today.

20 Q. Have you reviewed this document?

21 A. Yes, ma'am. I reviewed it upon
22 receipt, but, I mean, my attorney does represent me,
23 so --

24 Q. I understand. Is there anything set
25 forth in this letter with which you disagree or

1 believe is inaccurate?

2 A. I think I have competent and outstand-
3 ing counsel, so I don't think there's anything I
4 would disagree with. He has kept me involved in
5 every stage of the proceedings and I'm very happy
6 with my representation to date.

7 MR. STERN: For the record, thank you.

8 Q. I'd like you to turn to the attachment
9 to the letter.

10 A. Yes, ma'am.

11 Q. And, in particular, look at number 2.
12 First of all, the letter represents that this was
13 drafted by Mr. Halloran. Is that correct, to your
14 understanding?

15 A. That's accurate.

16 Q. In the answer to number 2, the comment
17 is that: We have handled small, unassociated busi-
18 ness matters in the distant past for Foreclosure
19 Solutions, but we haven't performed any legal ser-
20 vices since approximately April of 2004. Is that
21 accurate?

22 A. And I think that's consistent with my
23 testimony where they were doing some ancillary legal
24 matters that I found at that point we should stay
25 away from because of involvement with the courts. So

1 I do feel that that is accurate.

2 Q. In your review of the training manual
3 for Foreclosure Solutions --

4 Do you recall your testimony about
5 that?

6 A. Yes, ma'am.

7 Q. -- was that work that was not done on
8 a fee for service basis for Foreclosure Solutions?

9 A. There was never a fee charged. That
10 was based upon my respectful request, when I had
11 heard something, to see exactly what was going on in
12 the matter. So subsequently that document was
13 brought to my attention. I neither commented nor
14 anything of that nature in terms of requesting a fee
15 or anything of that nature, getting paid for that.

16 MS. WELSH: We are going to take a
17 very short break.

18 THE WITNESS: Yes, ma'am.

19 MS. WELSH: And I'm about ready to
20 wrap up.

21 THE WITNESS: Okay. Thank you.

22 (Recess taken: 12:08 PM - 12:15 PM.)

23 Q. Mr. Moeves, I understand from your
24 testimony that you are the prime contact with Fore-
25 closure Solutions and you manage the relationship

1 with them. Is that fair?

2 A. I think that would be accurate, and
3 the hierarchy would be myself and then Mr. Halloran.

4 Q. Okay. In terms of your discussions
5 with Foreclosure Solutions or review of the training
6 manual, do you have an understanding as to what Fore-
7 closure Solutions tells your prospective clients
8 regarding the legal fee?

9 MR. STERN: It would be hearsay, but
10 go ahead.

11 A. I'm not aware of what they tell the
12 client. My review of the training manual was not
13 line by line, item by item. It was the fact that I
14 was somehow connected with Foreclosure Solutions and
15 that these training manuals that we were referring to
16 I guess loosely as a manual is more like a verbal
17 transcript like an actor would get. And my sole
18 interest in that was to review it to say I wasn't
19 involved with it, because that is inaccurate.

20 Q. Is it fair to say that at the time
21 that you receive the file from Foreclosure Solutions
22 you don't know what Foreclosure Solutions has said to
23 the client about the legal fee, if anything?

24 A. Most definitely at that point, yes,
25 ma'am.

1 Q. Okay. And you have no way of knowing
2 whether the client believes that they're getting
3 legal services paid for on an hourly rate or a flat
4 fee, do you?

5 A. No, ma'am.

6 Q. And during the course of your repre-
7 sentation of Foreclosure Solutions' clients, that
8 topic simply may never come up?

9 A. Well, I don't think that Foreclosure
10 Solutions -- when I represent them, they're my
11 client.

12 Q. All right. I apologize for the
13 misstatement.

14 A. But, you know, with that being said,
15 you know, I instruct -- now, whether my instructions
16 are followed to the T and things are, I guess like
17 any representation, modified throughout the course
18 and how it continues --

19 But the clients are told it is a flat
20 fee by my office at some point and it's 125, or now
21 it's 150. And I instruct them it's a flat fee
22 contract, 150, get them to sign.

23 But with a lot of these individuals, a
24 lot of that is, on a norm, not returned because they
25 feel that it's already been handled, whatever was

1 discussed initially, which I'm not involved in.

2 Q. A blank copy of that contract was not
3 provided to us, was it?

4 A. If it -- I presume, since you showed
5 me it's not just an illustrative portion of what you
6 provided, you provided me everything, then I would
7 say I have not reviewed it, and I can't answer you
8 why.

9 Q. And to the extent that that was not
10 provided to us, I would make a request to Mr. Stern
11 to provide it.

12 A. It would be a flat fee general civil
13 contract that would have BMH, PLLC -- BMH, PLLC being
14 Brooking, Moeves and Halloran -- that involved the
15 nature. "Foreclosure defense" would be filled in the
16 blank. The hourly rates would be crossed out as N/A
17 or not applicable.

18 Q. And is it your testimony that it was
19 the law firm's practice to request that that document
20 be signed and returned by each client referred to you
21 by Foreclosure Solutions?

22 A. And in practice that's what we attempt
23 to do, but I would tell you that the majority of that
24 is never returned to us, and I cannot definitively
25 tell you that it goes out in every file in every

1 case.

2 Q. You've indicated that the initial flat
3 fee that you accepted from Foreclosure Solutions to
4 accept the referrals was 125 and later went to 150.
5 Is that right?

6 A. That is correct, yes, ma'am.

7 Q. When you initially agreed to accept
8 the referrals from Foreclosure Solutions at that fee
9 of \$125, how did you make a determination as to
10 whether that was an appropriate fee for the services
11 that you would be rendering?

12 A. That was via the power of attorney.
13 That was my understanding the power of attorney would
14 provide that and that's what we were going to get,
15 that pursuant to their signed power of attorney they
16 had agreed to that portion.

17 Q. I understand that that's what the
18 offer was.

19 A. Correct.

20 Q. That he was offering the referrals to
21 you for that flat fee.

22 A. Right. And I have said that.

23 Q. My question to you was: what analysis
24 did you engage in to determine whether or not the law
25 firm should accept representation of these cases at

1 that fee level?

2 A. It was not a negotiated type of situa-
3 tion. I felt, having successfully defended a client
4 for six years in Kentucky, that I knew the fore-
5 closure very well, at least in the Commonwealth of
6 Kentucky. And that's how the initial referral
7 started.

8 And I also felt that if I was going to
9 be doing volume work, I could perhaps give something
10 back, that some people who get these pro bono awards
11 really don't give anything back. They attend this
12 and they attend that, but aren't out there really
13 doing anything for the day-to-day clients.

14 I thought, in a way, I could be of
15 some service with my law degree pertaining to people
16 that really needed it.

17 Q. So in your mind, this was partly a
18 voluntary service and partly a business deal?

19 A. I realized that on a majority of the
20 files, if not all, I would be going backwards. But
21 the fact that there could be a volume work similar to
22 what collections would be and the fact that I felt
23 very strong about this due to my Catholic upbringing.

24 And that was my decision and I
25 accepted it. If I made a bad business deal, then

1 that's certainly -- I guess my firm has to deal with
2 that, but I accepted it.

3 Q. So is it correct that you saw this
4 partly as a business deal and partly as a voluntary
5 service?

6 A. In my mind, I saw that. I can't speak
7 for what the other attorneys say, but I do think we
8 have a duty as lawyers to give something back. This
9 was my small attempt to do so.

10 Q. Now, your earlier testimony described
11 that your law firm has become more involved in nego-
12 tiating with the lenders in recent months. Is that
13 fair?

14 A. I would say not only months but a more
15 significant time than that.

16 Q. Can you give me a reasonable approxi-
17 mation, at the time that you first started accepting
18 Ohio referrals from Foreclosure Solutions in, say,
19 early 2004 when Darren Mullaney first started working
20 for you, do you have an impression as to what per-
21 centage of those cases the law firm handled negotia-
22 tions with the lenders?

23 A. It was certainly a smaller percentage,
24 but as the work evolved and we as a firm saw problem-
25 atic things occur in terms of what we would have to

1 take on, to Mr. Mullaney's credit, you know, he took
2 them on. That's what precipitated him working longer
3 hours, because we were having to perform more func-
4 tions, so on and so forth.

5 But as I told any attorney that worked
6 with me and for me, our name is on the line here. If
7 we made a bad economic bargain, so be it. We're
8 going to stay in and we're going to do this work,
9 everything that it takes to what we're hired to do to
10 help these people.

11 Q. Are you able to give me a reasonable
12 approximation, beginning in 2004 when this work
13 started, what percentage of those referrals from
14 Foreclosure Solutions the law firm handled the nego-
15 tiations with the lender?

16 A. A small percentage, probably less than
17 20 percent.

18 Q. And as the business developed and you
19 say it became more and more -- and let's now say in
20 2006, at the time that Darren left. At that time can
21 you give me a reasonable approximation of the
22 percentage of Foreclosure Solutions' referrals for
23 which the law firm handled the negotiations with the
24 lender?

25 A. I think it greatly increased, but I

1 don't know if we would characterize it as negotia-
2 tions. I would characterize it as doing what it
3 takes to create an answer or a solution to the prob-
4 lem.

5 And I don't know if Darren or Jessica
6 or whomever even thinks in terms of negotiations. I
7 think they think in terms of helping the client on
8 the existing file. I don't think we characterize it
9 as that. I think it's our duty. It's what we're
10 doing to represent the client.

11 Q. Now, I'm going to represent to you
12 that Mr. Mullaney had indicated to us that during the
13 course of his work for your law firm there were
14 certain lenders who refused to communicate with
15 Foreclosure Solutions and at that point Foreclosure
16 Solutions would call the law firm and say, essen-
17 tially, Mr. Mullaney, Lender Y will no longer talk
18 with us, will you take over dealing with them.

19 A. Okay.

20 Q. Are you familiar with that kind of
21 scenario? Does that sound like something that you
22 were aware of?

23 A. It would have been. It was a scenario
24 where Foreclosure Solutions, for a variety of rea-
25 sons, may or may not do the work. Whether it was

1 dictated by a lender or dictated by whomever, they
2 may or may not have done what was supposed to be
3 done.

4 But Mr. Mullaney would take on that
5 work and protect the best interests of that client
6 day in and day out, every day of the week and on the
7 weekends, in terms of representing that client zeal-
8 ously.

9 Q. Then, given that background, and let
10 me ask you again, at the time that he left in 2006,
11 can you give me a reasonable approximation of the
12 percentage of cases, to the extent you know, that
13 Foreclosure Solutions would communicate and say the
14 lender, they won't talk with us, you're going to need
15 to handle this?

16 A. Well, first of all, a lot of that
17 communication would come directly from the lender.
18 It wouldn't come from Foreclosure Solutions. And I
19 would think it was, at that point, getting into the
20 majority of cases that we were going to have to do
21 that.

22 But I think primarily that was coming
23 from the communication from the lender or the lend-
24 er's attorney directly to us, not from Foreclosure
25 Solutions to us.

1 Q. Now let's go back to in 2004, when you
2 indicated that at the time this process started that
3 the law firm would handle maybe 20 percent of the,
4 let's say, dealings with the lender to try and enter
5 into a forbearance agreement or negotiate a settle-
6 ment at that point.

7 For those, the remaining 80 percent,
8 is it fair to say you assumed that Foreclosure Solu-
9 tions was working with the lender to try and resolve
10 the economic aspects of the case?

11 A. Well, when we first got involved, as
12 you say, at that point, the 20 percent that we were
13 involved is because the cases were just new to us.
14 They hadn't developed into, let's say, a third or
15 fourth stage with a motion for summary judgment and
16 so on and so forth. So in initiation we were doing a
17 smaller amount of that because we really didn't know
18 what the client in each individual case needed.

19 And at some point, you know, whether
20 the -- I don't know what the assumption was, but as
21 it grew over time, I mandated as an office policy
22 that we needed to represent the client thoroughly, so
23 any assumptions that we would make, we would have to
24 err on the side of caution and assume that they were
25 incorrect and that we were just representing that

1 client from flag-fall to that's-all.

2 And certainly over time that has
3 changed. But I think in the beginning my answer
4 qualifies that the 20 percent was because the case
5 and the process was new.

6 And it gradually grew over time. It
7 just didn't go from 20 to a majority. It gradually
8 went, I would say, from 20 to 25 to 30 as our nature
9 of what was going on intensified in these cases that
10 would need to be undertaken.

11 Q. So it's fair to say that your course
12 of business at this point, you believe that the law
13 firm is in communication with the financial institu-
14 tion and with the lender for more than half of the
15 clients you represent?

16 A. It may even be more than that via the
17 authorization.

18 Q. Okay.

19 A. We do -- via that authorization we
20 take whatever steps we can to assist the client.

21 Q. Okay.

22 A. Hence, in the Godfrey case you would
23 see those requests for reinstatements.

24 Q. And for the cases in which there is
25 nothing in the file like that, it's fair to assume

1 that Foreclosure Solutions was going forward to try
2 and develop the resolution?

3 A. I don't know what they were doing.
4 Again, my understanding, as I've tried to articulate,
5 was the economic concerns, some type of saving plan,
6 which you have referred to and -- like the Godfreys,
7 the 2,025.

8 That was my nature of what for the
9 most part they were doing. In terms of the work
10 agreement and the scope, so on and so forth, again,
11 that wasn't relevant to what I was doing, so I can't
12 really speak to what they were doing --

13 Q. Okay.

14 A. -- unless it affected my office or an
15 attorney there. And then I took the approach to
16 become involved via if I had an authorization to do
17 so from the client.

18 Q. Okay. So with respect to the work
19 agreement for the Godfreys which we looked at --

20 A. Yes, ma'am, we did.

21 Q. -- that the Godfreys paid \$995 to
22 Foreclosure Solutions, of that the law firm received
23 150, which leaves \$845. Is it your testimony that
24 you don't know what work Foreclosure Solutions did
25 for that \$845?

1 A. My understanding is they were dealing
2 with the economic concerns, a saving program. But as
3 far as day in and day out, other than we would say,
4 via the authorization, my client wants this partic-
5 ular piece of paper they sent you, I would presume,
6 then, they are gathering documentation for some
7 reason. But I can't get into their heads what they
8 were doing.

9 Q. Back to the hypothetical from Mr.
10 Mullaney's comments, where he reported being told
11 either by Foreclosure Solutions or by a lender that
12 they would no longer deal with Foreclosure Solutions
13 and wanted to deal with the attorney only, since the
14 client was represented, do you have an impression as
15 to the percentage of cases in which that scenario
16 applied?

17 A. More than -- more than 50 percent.

18 Q. Okay.

19 A. I would say a very high percentage --

20 Q. Okay.

21 A. -- because of our accessibility and
22 Mr. Mullaney's work ethic.

23 Q. Let me clarify the question. What I'm
24 really referring is not a percentage of clients that
25 the law firm has but, rather, a proportion of lend-

1 ers that you deal with overall.

2 Can you give me a reasonable approxi-
3 mation of the percentage of the lenders that you deal
4 with who insist on negotiating and contacting the
5 lawyer only, versus Foreclosure Solutions?

6 A. I would say that is extremely high at
7 this point.

8 Q. Okay.

9 A. And I would say, if you had ten lend-
10 ers, give them seven to eight, I would say.

11 Q. And it's your impression that that has
12 increased over the past couple of years?

13 A. Most definitely, yes, ma'am. I think,
14 quite frankly, it's increased because of Mr. Mullaney
15 and the people associated with my firm, their work
16 ethic, saying they're available, we'll do this, we'll
17 get involved.

18 Q. Mr. Moeves, we have reached an agree-
19 ment with your attorney, which I imagine he has
20 shared with you, regarding your ability to attend the
21 depositions of your partners which will follow on
22 your deposition today. Are you aware of that?

23 A. Yes, I am. And, you know, with due
24 respect to everyone here, if you tell me not to
25 attend, I won't attend.

1 Q. Your attorney has asked that you
2 attend, and we have agreed with that, with the under-
3 standing that you will not communicate about the
4 substance of your deposition or about the nature of
5 the investigation or any topic related to that, with
6 your partners until their depositions are completed.

7 A. Yes, ma'am, I do understand.

8 Q. Are you in agreement with that?

9 A. And I am in agreement with that.

10 Q. Okay. And because the whole purpose
11 here is to avoid one influencing another's testimony
12 and to give us the ability to get each person's inde-
13 pendent testimony, I'm also requesting that you do
14 not do indirectly what we have asked you not to do
15 directly, and that is, for instance, I would ask that
16 you not tell your lawyer to "Tell my partner X, Y or
17 Z" and communicate with them indirectly by communi-
18 cating through the attorney.

19 Is that fair?

20 A. You know, that's very fair. But I
21 think -- with all due respect, I mean, I'm an officer
22 of the court like anyone else, and I was raised by a
23 mother and father with good values like anyone else,
24 and I'm going to do what you tell me to do.

25 And I'm not some type of human being

1 that would try to circumvent this process. I
2 voluntarily appeared here today. I voluntarily
3 appeared at every meeting.

4 Now, you may think that I'm not -- I
5 don't -- I'm a father of a four-and-a-half-year-old
6 son, and I want, when he goes to bed at night and
7 when he wakes up in the morning, to say, you know, my
8 father's a good human being and that my father
9 instructs me on what's right and wrong, like any
10 mother or father would think of what their son should
11 think about them.

12 So, yes, ma'am, I am going to do the
13 obvious. If you feel you have to state that for the
14 record, I'll state for the record how I feel about
15 that. I will do what I told you I was going to do,
16 and I will not do anything to circumvent these
17 proceedings.

18 MS. WELSH: Thank you, Mr. Moeves.

19 THE WITNESS: You're welcome.

20 MS. WELSH: That's all the questions
21 we have.

22 MR. STERN: We'll read.

23 THE WITNESS: Yes, read. Thank you.

24 

25 Patrick E. Moeves

Signed by reporter pursuant to Civil Rule 30(e).
Reason: Deposition not signed by witness within the allotted time.

(Deposition concluded at 12:35 PM.)

- - -

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

C E R T I F I C A T E

STATE OF OHIO :
SS:
COUNTY OF HAMILTON :

I, Luke T. Lavin, a duly qualified and commissioned notary public in and for the State of Ohio, do hereby certify that prior to the giving of his deposition, the within named Patrick E. Moeves was by me first duly sworn to testify the truth; that the foregoing pages constitute a true and correct transcript of testimony given at said time and place by said deponent; that said deposition was taken by me in stenotypy and transcribed under my supervision; that I am neither a relative of nor attorney for any of the parties to this litigation, nor relative of nor employee of any of their counsel, and have no interest whatsoever in the result of this litigation. I further certify that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office, at Cincinnati, Ohio, this 8th day of February, 2007.



MY COMMISSION EXPIRES:
APRIL 26, 2010.

LUKE T. LAVIN, RDR-CRR
NOTARY PUBLIC, STATE OF OHIO

CINCINNATI BAR ASSOCIATION

In re: John S. Brooking : CBA File No. 06-2887
: :

Deposition of: JOHN S. BROOKING
Taken: By Cincinnati Bar Association
Pursuant to notice
Date: Monday, February 5, 2007
Time: Commencing at 12:55 PM
Place: Cincinnati Bar Association
The Cincinnati Bar Center
225 East Sixth Street
Cincinnati, Ohio 45202-3209
Before: Luke T. Lavin, RDR, CRR
Notary Public - State of Ohio

FILED
DEC - 3 2007
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

On behalf of Cincinnati Bar Association:

Richard L. Creighton, Jr., Esq.
Keating, Muething & Klekamp
One East Fourth Street
Suite 1400
Cincinnati, Ohio 45202-3752
Phone: (513) 579-6400

John G. Slauson, Esq.
119 East Court Street
Cincinnati, Ohio 45202
Phone: (513) 632-5315

On behalf of John S. Brooking, Brian P. Halloran
and Patrick E. Moeves:

Geoffrey Stern, Esq.
Kegler, Brown, Hill & Ritter
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215-4294
Phone: (614) 462-5457

On behalf of Darren Mullaney:

John J. Mueller, Esq.
800 The Provident Building
632 Vine Street
Cincinnati, Ohio 45202-2441
Phone: (513) 621-3636

- - -

I N D E X

Cross-Examination by:	Page
Mr. Creighton	3

- - -

1 JOHN S. BROOKING

2 being by me first duly cautioned and sworn, deposes
3 and says as follows:

4 CROSS-EXAMINATION

5 BY MR. CREIGHTON:

6 Q. Mr. Halloran, we've been introduced.
7 I'm Rich Creighton --

8 MR. SLAUSON: John Slauson.

9 Q. -- and John Slauson, and we're here to
10 examine you here today in a proceeding. As an
11 attorney you know the drill, so I'll get right into
12 it. I'll try to get you out of here quickly.

13 Would you state your name for the
14 record, please.

15 A. John Sampson Brooking.

16 Q. I understand you go by the nickname
17 Brook?

18 A. Yes.

19 Q. Okay.

20 A. That was my father's father's nickname
21 which I took on to try to distinguish between two
22 Johns, and unfortunately it just made matters more
23 confusing over the years.

24 Q. When were you admitted to the Bar?

25 A. Kentucky or Ohio?

1 Q. Let's take Kentucky first.

2 A. 1990.

3 Q. And how about Ohio?

4 A. 1991.

5 Q. What's your law school background?

6 A. Graduated from Salmon P. Chase in
7 1990.

8 Q. And your working history from 1990 to
9 the present, in brief?

10 A. The law firm at the time I believe was
11 already known as Adams, Brooking, Stepner, Woltermann
12 and Dusing. And I worked there as an associate until
13 the spring of 1999, so from '90 to '99.

14 My dad and I made the decision to go
15 out on our own, joined up with a third attorney, and
16 the name of the firm was Brooking, Brooking and Ken-
17 drick, K-e-n-d-r-i-c-k. And that ran through July of
18 2004.

19 Craig Kendrick made the decision to go
20 on his own, due to no issues within the firm, so my
21 dad and I spent several months trying to determine
22 exactly what we would do. So I guess technically
23 there was about a month that we were known as Brook-
24 ing and Brooking, without Mr. Kendrick being a part
25 of it.

1 And then effective September 1st,
2 2004, my father and I merged in with what was then
3 Moeves and Halloran, and the firm became, effective
4 September 1st, 2004, Brooking, Moeves and Halloran,
5 which is where I am obviously still today.

6 Q. What is the form of the law firm as
7 far as legally?

8 A. Professional limited liability com-
9 pany.

10 Q. And you are one of the principals,
11 then?

12 A. Yes, sir.

13 Q. We're here to talk about basically
14 the relationship between the firm and yourself on the
15 one hand and Foreclosure Solutions on the other. Can
16 you tell me, Brook, what your first recollection of
17 association with Foreclosure Solutions was.

18 A. When my dad and I joined or merged in
19 with Moeves and Halloran, I was aware that the firm
20 accepted referrals from a group known as Foreclosure
21 Solutions.

22 That referral system and our, being
23 BMH's, procedural system was in place and functioning
24 before my dad and I joined the firm. So I was only
25 aware of it and had absolutely no involvement with

1 it, "it" being the awareness of Foreclosure Solu-
2 tions.

3 Q. The business relationship between the
4 firm that you were merging with at that time, was
5 that any part of the decision to join --

6 A. No.

7 Q. -- with those fellows?

8 A. No, it wasn't.

9 Q. It was just something that you were
10 aware of existed?

11 A. That's right. Actually, there were --
12 my business is substantially --

13 And my dad's. If you knew him, you'll
14 know this.

15 -- was substantially, is substantially
16 business transactional law, you know, corporate,
17 employment law, banking, business stuff, as opposed
18 to what I call handholding, the domestic, criminal,
19 personal injury.

20 And there was some hope and expecta-
21 tion that we, "we" being BMH, might be able to land a
22 couple of large corporate clients. That was the
23 hope. I think that possibility was a motivation for
24 all of us to talk, because that fell right in my
25 wheelhouse.

1 Q. Okay.

2 A. As well as my dad's.

3 Q. Since the merger back in 2004, what
4 role have you played personally with respect to
5 Foreclosure Solutions?

6 A. Almost nonexistent through the
7 entirety of 2004 and the entirety of 2005 and up
8 through the spring, probably, of 2006. When I say
9 almost nonexistent, the system was in place and
10 operating before I came on board, so I did my own
11 thing, my dad did his own thing, and we just con-
12 tinued to operate our law practices.

13 However, within a law practice, as you
14 are well aware, if a phone call needs to be taken, if
15 a court appearance needs to occur, whatever it might
16 be, there's a constant source of coverage.

17 Those things may have happened on a
18 most rare occasion, and if you asked me to say
19 definitively that it occurred in that roughly year
20 and a half or more time frame, I couldn't even tell
21 you that.

22 Q. So your best recollection is that you
23 may have answered some phone calls, you may have made
24 a couple of court appearances?

25 A. No, I don't recall making a court

1 appearance, but some of these status conferences or
2 scheduling conferences or things of that nature might
3 occur by phone, and it may be that I participated
4 only to cover someone else during one of those
5 telephone conferences.

6 Q. Okay. Now, in the previous proceeding
7 we talked about the fact that the firm was doing work
8 in at least three or four Ohio counties: Cuyahoga,
9 Summit, Hamilton. I believe the other one was
10 Warren. It doesn't make any difference in partic-
11 ular. But were you doing any work in Ohio on these
12 referrals from Foreclosure Solutions personally, that
13 you can think of?

14 A. At what time frame? In the initial
15 time frame I was just discussing?

16 Q. Let's do the initial time frame.

17 A. Yes. Up through the spring of 2006 --
18 and that is an approximate time frame, and that time
19 frame actually matches the time frame when Darren
20 Mullaney left the firm to pursue another option of
21 legal practice.

22 Up until that time frame it is possi-
23 ble that I might have taken a phone call. It is
24 possible that I might have, probably did on one or
25 more occasion, sit in on one of those telephone

1 conferences.

2 I seem to remember one time it hap-
3 pened. And I was -- it was a fairly new process to
4 me, and I got specific instructions as to what I was
5 supposed to do as to what occurred in these.

6 And I've been licensed in Ohio for
7 whatever, 15, going on 16 years, so I understand the
8 court process, but I just had no prior involvement
9 with this referral, these referrals of foreclosure
10 clients.

11 Q. Did you ever enter an appearance in
12 any cases in Ohio prior to the spring of '06?

13 A. I don't recall having done that.

14 Q. Okay. Let's talk about the time after
15 Mr. Mullaney leaves the firm. What changed, as to
16 your role?

17 A. Well, at that point Darren was an Ohio
18 licensed attorney. When he left, we now had two Ohio
19 licensed attorneys within our office. One was my
20 dad -- who wasn't going to make court appearances or
21 take phone conferences; he was a part-time lawyer at
22 that point -- and then me.

23 And so to the extent, after Darren
24 left, that there was -- well, if there were pleadings
25 to be filed and Darren was no longer with our office,

1 those pleadings were filed under my signature.

2 If there were any court appearances to
3 be made at that point in time, unless someone else
4 from our office had been granted pro hac status, the
5 court appearances would have been by me. Only on an
6 as-needed basis.

7 And I can't tell you that it happened
8 all that much as far as court appearances, but I can
9 tell you that my involvement with the communication
10 and pleading side of it increased.

11 And your records will probably show
12 the duration, after Darren Mullaney left and Jessica
13 Nielsen came on board, and that's that limited amount
14 of time that I was involved in these. And then once
15 Jessica was on board, I went back to handling what I
16 had been handling before.

17 Q. Okay. So for a very limited period of
18 time in 2006 you would have had heavier involvement,
19 and when Jessica Nielsen came on board, then you
20 reverted to your basically prior role that you've
21 already described?

22 (Mr. Patrick E. Moeves enters the
23 deposition hearing room.)

24 A. Availability for coverage purposes.
25 And then there is yet another time frame that obvi-

1 ously we're getting to.

2 Q. Okay.

3 A. Because Jessica didn't stay very long.
4 And bottom line, when the issues that form the sub-
5 ject matter of why we're here today began, Jessica no
6 longer had comfort level to put her name on anything.
7 And that's when I stepped back in, and that has
8 remained the case through the present date.

9 Q. Okay. So presently you are filing
10 appearances in Ohio courts on these foreclosure
11 referrals?

12 A. That's correct.

13 Q. And along with those appearances you
14 are doing whatever is necessary, in your opinion, to
15 represent these referral clients in these fore-
16 closures as their Ohio attorney?

17 A. I am, along with the rest of the
18 attorneys in our office and office staff.

19 Q. Okay. As a practical matter, do you
20 make many personal appearances?

21 A. No. As a practical matter, we've got
22 an associate who joined our firm whenever the time
23 frame was that a new Ohio attorney is licensed, who's
24 licensed only in Ohio, who makes most of the appear-
25 ances on the Ohio matters.

1 Q. And that's James Hart?

2 A. That's correct.

3 Q. Would you then describe your role as
4 supervising Mr. Hart in his Ohio practice?

5 A. Myself as well as my partners, most
6 definitely.

7 Q. Is it fair to say that Mr. Moeves is
8 the one who has the primary relationship with Fore-
9 closure Solutions?

10 A. Just so it's clear, Moeves is the
11 pronouncement.

12 Q. Okay.

13 A. And I would say that it's safe to say
14 that Pat Moeves has the primary responsibility for
15 overseeing our representation of foreclosure clients
16 that come to our firm through referrals from Fore-
17 closure Solutions. I'm not willing to say that he's
18 got the primary relationship with the entity Fore-
19 closure Solutions.

20 Q. Okay.

21 A. I'm not willing to say that any of us
22 have an actual formal relationship with that entity.

23 Q. Okay. But the client contact or the
24 business contact came through Patrick. Correct?

25 A. I believe that's correct. Remember,

1 that occurred before I was with the firm.

2 Q. Okay. And on a daily basis today, is
3 that still the case? That relationship, personal
4 relationship, the business relationship, is more with
5 Patrick than with anybody else?

6 A. I can't tell you what the ongoing
7 relationship is on a personal level, because that's
8 outside the purview of our law firm. On a business
9 level, I don't know what degree of relationship he
10 had, because the communication back and forth between
11 the entity Foreclosure Solutions and their employees
12 and Brooking, Moeves and Halloran is limited.

13 Q. When those communications are had, do
14 you participate in them personally?

15 A. No. And those only occur -- our
16 client in this deal, or clients, are the defendants
17 in foreclosure matters, and as a result of that, we
18 have an attorney-client privilege that's limited to
19 those clients.

20 Only when those clients have specifi-
21 cally authorized us to discuss aspects of their case
22 with Foreclosure Solutions and signed a waiver, I
23 believe, of attorney-client privilege do we then
24 discuss their case, the specifics of their case, with
25 Foreclosure Solutions.

1 Q. Is it your understanding that the
2 selection of counsel for these foreclosure matters is
3 being done by Foreclosure Solutions as opposed to the
4 clients directly?

5 A. That is my understanding.

6 Q. And that's pursuant to a power of
7 attorney?

8 A. Yes.

9 Q. Have you --

10 A. Power of attorney signed by the ulti-
11 mate clients authorizing Foreclosure Solutions to do
12 just that.

13 Q. Have you personally examined that
14 power of attorney?

15 A. No.

16 Q. Or those powers of attorney?

17 A. No, sir.

18 Q. Have you ever looked at them?

19 A. No.

20 Q. Okay.

21 A. Well, I take it back. As a blank
22 power of attorney, I have never taken a look at --
23 I've never taken a look at their form power of
24 attorney and reviewed it for its substance or
25 reviewed it with the purpose of criticizing or

1 suggesting changes to it.

2 The executed powers of attorney, yes.
3 And I couldn't possibly quantify how many, but that
4 document comes with the other file materials each
5 time we get a referred client. So I have seen those
6 on a number of occasions, already executed. I jumped
7 the gun on your question.

8 Q. That's all right. Walk me through, if
9 you will -- today a file comes in from Foreclosure
10 Solutions. Walk me through what happens at your
11 place.

12 A. The file comes in, among others, and
13 there is a process that is gone through that includes
14 reviewing the information that's been provided, which
15 is that power of attorney and other information that
16 is completed by our client at the time that they have
17 met with someone from Foreclosure Solutions.

18 And that information that the power of
19 attorney will show us, the clients have authorized
20 Foreclosure Solutions to refer the legal aspect to an
21 attorney. So we cover that and make sure that's
22 done.

23 And then the other information that's
24 provided is more fact-based information, and it will
25 tell us specific contact information and detailed

1 information about the clients.

2 It will tell us if a foreclosure
3 action has already been commenced or just threatened;
4 if the foreclosure action has been commenced, has
5 service been obtained; if service has been obtained,
6 has --

7 It doesn't really tell you that
8 they're in default, but if it's gone to that point
9 where service has been obtained and the day for
10 Answer has come and gone, it will tell you --

11 I just dealt with one a couple of
12 weeks ago that said hearing on motion for default
13 pending. It gives you the necessary information that
14 you need to set your file up with and tells you what
15 to do first and foremost.

16 If there is a time-sensitive matter
17 where an Answer deadline is fast approaching or right
18 on top of you or, God forbid, it's passed already
19 and, hopefully, there's no motion for default already
20 pending --

21 That's kind of an extreme case.

22 -- then that urgency dictates what we
23 do first, which may very well be file the entry of
24 appearance, get the Answer filed, communicate with
25 the court so that we are protecting the client's

1 interests.

2 Q. Let me back up in the process here.
3 So what happens, I'm assuming, is that you get a
4 physical file sent over in the mail or by hand
5 delivery from Foreclosure Solutions.

6 A. Uh-huh.

7 Q. And in that file --

8 A. I'm sorry. Yes.

9 Q. And in that file are some documents,
10 one of which would be the power of attorney, a copy
11 of that or the original, some kind of a form that has
12 information that you need, for example, contact
13 information for the clients, which would be names,
14 addresses, telephone numbers, that type of thing.
15 Correct?

16 A. Yes.

17 Q. And then also there would be copies,
18 perhaps, of pleadings, a Complaint, a motion if
19 anything had been filed, maybe a copy of the summons,
20 et cetera.

21 A. That's correct. It's not always
22 there. And if it's not, then it's necessary to
23 immediately get on the court docket, computerized
24 court docket for that particular jurisdiction and
25 county, and determine what the status is fairly

1 quickly, since a lot of these do come to us time
2 sensitive.

3 Q. Okay. Now, when this packet of
4 materials comes in, how is it handled at your office,
5 by whom? In other words, who receives that and how
6 do they check it in?

7 A. There is a system in place that
8 includes multiple people that do multiple tasks. I
9 think that there are -- to my observation, there's
10 one of three people that are setting these files up.
11 That whole process I'll call setting the file up.

12 And there was a girl at our front desk
13 who does it. There's a girl who is doing it because
14 the girl at the front desk is pregnant and is not
15 going to be there for a while. There's a paralegal
16 within our office that does it. I'm aware of those
17 three people that do the setup process.

18 Q. And these are all nonlawyers?

19 A. Yes.

20 Q. All right.

21 A. One's a paralegal, but they're all
22 nonlawyers.

23 Q. And once the file has been taken in
24 and run through the process that you've set up, how
25 does it then get assigned to a particular attorney

1 within the office?

2 A. It goes to -- I guess technically it's
3 within and under the purview of primarily Pat, since
4 this system originated from a contact to him, as
5 we've discussed. And then it goes to, as a matter of
6 course, Jamie Hart, the associate, who we've also
7 discussed.

8 Q. Now, we have been speaking in generic
9 terms about defining where this file related to, and
10 let's say that today you're doing this for both
11 Kentucky clients and Ohio clients. Correct?

12 A. That's correct.

13 Q. And no other states?

14 A. Not to my knowledge.

15 Q. Okay.

16 A. I don't think we have anyone licensed
17 in any other state at this point.

18 Q. And so as part of the initial intake,
19 I assume that one of the first determinations is
20 where is this, Kentucky or Ohio. Correct?

21 A. Right. And I say that all cases go
22 the direction of Jamie, with Pat's overview, and of
23 course, if Pat's not available, all of the partners'
24 overview. I'm only talking about Ohio cases.

25 Q. Okay. That's part of the reason for

1 my question.

2 A. Right.

3 Q. What do you do if it's a Kentucky
4 case?

5 A. The Kentucky cases, as I understand
6 it, are handled primarily, again with Pat as over-
7 view, by a different associate within our office by
8 the name of Crystal Ford. And I couldn't tell you a
9 single Kentucky foreclosure client that I've had any
10 involvement with.

11 Q. What percentage of your practice would
12 you say is related to Ohio as opposed to Kentucky?

13 A. Generally and not with respect to
14 foreclosure?

15 Q. Generally.

16 A. That's varied over the years, depend-
17 ing upon how much referral work I'm getting from
18 which sources. I'm going to say it's 70 percent
19 Kentucky, 30 percent Ohio.

20 For a time frame I had a relationship,
21 I still do, with group called the Real Estate Inves-
22 tors Association of Cincinnati, where I was the only
23 attorney listed within their newsletter. And a lot
24 of these folks were setting up entities for asset
25 protection purposes, and at that point in time I

1 would have been willing to say it was higher.

2 Now, we have some corporate clients
3 who require additional work at times who are Ohio-
4 based clients, and so sometimes if that's required,
5 that percentage might go up. But I'm mostly a
6 Kentucky lawyer that you guys let come across the
7 river every once in a while.

8 Q. All right. And then with respect to
9 the Foreclosure Solutions-referred clients, it's
10 almost a hundred percent Ohio at this time?

11 A. I don't know what that percentage is.

12 Q. Well, I don't mean in the office.
13 You. You handling.

14 A. Oh. Right. If I'm handling a fore-
15 closure matter, which, as we said at the beginning,
16 it truly remains more of oversight and coverage, I
17 don't believe I'm doing any in Kentucky. It's all on
18 Ohio foreclosure matters.

19 Q. All right. So the file comes in. If
20 it's an Ohio matter, it goes to Mr. Hart today.
21 Before that, at one point it was Jessica Nielsen.
22 Before that, it was Mr. Mullaney. Correct?

23 A. Yes. Subject to a continuum of over-
24 sight primarily by Pat Moeves, but including Pat
25 Moeves, Brian Halloran and, to a lesser extent, me

1 until the time frame we discussed.

2 Q. Okay. Now, after it gets assigned to
3 Mr. Hart today, and let's say it's an Ohio matter,
4 what would be your involvement in an Ohio matter
5 today on a typical basis, if any?

6 A. Hands on, very little. Like I said,
7 the procedure hasn't changed over time. It's been in
8 place for two and a half years. The procedure works.

9 There are people that do intake and
10 set up the file. There are people that oversee
11 calcula-- you know, determining whether there's any
12 apparent defenses, what pleading needs to be filed,
13 is there a motion that needs to be filed. There are
14 people that handle the correspondence and communica-
15 tion aspect.

16 And that system is in place and works.
17 And, obviously, I have not altered anything since I
18 became more involved with that.

19 At this point the involvement would be
20 oversight, primarily oversight of letters and plead-
21 ings. And my name is on the pleadings on all Ohio
22 matters at this point.

23 Q. All Ohio matters?

24 A. (Nodding.)

25 Q. Why is that?

1 A. Because I'm the Ohio counsel within
2 the firm. I am unaware, unless your all's rules have
3 changed, that anyone can file a pleading without
4 being licensed in the state of Ohio, until that
5 person has potentially been admitted pro hac vice.

6 Q. What about Mr. Hart? Is he also on
7 the pleading?

8 A. No, not at this time.

9 Q. Am I correct in my understanding that
10 the reason Mr. Hart is not going on the pleadings at
11 this time is in part the concern over what we're here
12 about today?

13 A. I'd say that's accurate.

14 Q. Is it fair to say, Brook, that you
15 don't have any knowledge of how it is that Fore-
16 closure Solutions communicates with the people who
17 become clients of the firm through that referral
18 service as far as what the fee will be, what the
19 basis of the fee will be?

20 A. That's correct. That's fair to say.

21 Q. And is it also fair to say that in
22 your case personally, you do not have conversations
23 with or discussions with those referral clients, when
24 they come in, about the fee that's going to be
25 charged, either the amount or the basis of it?

1 A. At the time they come in to Foreclo-
2 sure Solutions?

3 Q. No. At the time they become a client
4 of the firm.

5 A. No. That is fair to say, correct.

6 Q. Now, Patrick described a system in
7 which, in most instances or as part of the routine,
8 you do send out a letter asking people to basically
9 confirm what the fee will be. Are you familiar with
10 that?

11 A. I am. I believe we provided, during
12 our informal investigation, a sample of that letter
13 to this committee.

14 Q. Patrick also said, I believe, that
15 while those are routinely sent out or at least
16 intended to be sent out with every file, that the
17 rate of return has not been all that great, that
18 people simply do not sign off and send those back.
19 Has that been your experience as well?

20 A. That's right.

21 Q. Now, let me ask you, in the case of a
22 file in which you have communicated by letter with
23 the clients and they have not returned the letter, is
24 there anything further done as a routine, in other
25 words, as part of the procedure, to encourage them to

1 return that letter?

2 A. Other than, on every single case,
3 multiple letters and multiple phone calls in an
4 effort to communicate to the client, every single
5 file, multiple efforts to reach the client, to
6 communicate with the client, to make everything as --
7 and copies of all pleadings, copies of everything are
8 provided to the client, and all phone calls are
9 returned when they come in.

10 It is a very big effort that requires,
11 at this point, not counting the attorneys, probably
12 ten people within our office that contribute towards
13 that, plus the three -- plus -- not counting the
14 three partners who you're asking today. And plus the
15 three of us.

16 Q. Okay. But going to my specific ques-
17 tion, you're not aware of any effort by the firm in
18 particular to recommunicate specifically, to have
19 people sign that acknowledgement of the fee arrange-
20 ment and return it if they don't return the first
21 one?

22 A. I'm not aware that that does or does
23 not happen. It may very well be that during the
24 course of telephone communication that occurs after
25 this letter is sent, that those folks are requested

1 to send that back in. I don't know.

2 Q. Okay. But you're not saying that
3 that's part of the routine; you just simply don't
4 know one way or the other?

5 A. That's correct. And let me -- I need
6 to go back and add one other thing to a prior answer.

7 Q. Sure.

8 A. You were asking about this procedure
9 when the file comes in.

10 Q. Yes.

11 A. It's that our acceptance of a prospec-
12 tive client is not automatic for every file. So
13 there is a decision-making process in place to
14 determine whether or not to accept a referral on a
15 particular case, and that decision is made on a
16 case-by-case basis.

17 Q. Okay. Tell me about how that. How do
18 you do that?

19 A. I'll give you an exact example. I had
20 to appear in Clermont County. And God forgive me.
21 Time seems a little fuzzy to me right now because I'm
22 not quite over my dad's passing, but I think it was
23 the beginning of last week.

24 I had to appear in Clermont County on
25 a matter on a file that came in that wasn't checked

1 closely enough to determine that the very situation I
2 spoke of earlier had occurred.

3 The defendants had been served. The
4 Answer time frame had come and gone. The clients,
5 defendants, were in default. A motion for default
6 had been filed and a hearing had been set.

7 That's not the kind of case where we
8 want to say to a client there's much that we can do
9 for you at this point, because they're beyond that
10 point in most cases.

11 However, in that case, and to make
12 matters worse, the judge that it was assigned to
13 said -- I mean, the entry of appearance went in, the
14 motion for leave to plead went in with an order
15 attached granting us an extension of time to file an
16 Answer, and the judge said: I am not going to sign
17 your order and you need to be here on the hearing on
18 this motion for default judgment.

19 And, in fact, I went to that hearing,
20 appeared before the judge magistrate --

21 I guess the magistrate, they call
22 them.

23 -- and was able to get the judge to
24 make a determination of excusable neglect on the part
25 of the defendants, overrule the motion for default

1 judgment and grant our motion for leave to file an
2 Answer and, in fact, file an Answer on that date.

3 That worked out, and that was a situa-
4 tion where we got the client more than the client
5 could have ever expected, because they were already
6 in default and were going to lose their case. And we
7 got it for them.

8 However, that was one that under
9 normal circumstances we probably would not have
10 accepted, because here's someone who is in this
11 situation already.

12 And that's an example of a case like
13 that. There could be many other types of cases where
14 you view it as being too late. And the only way you
15 know that is based upon the information that is
16 contained in this sheet that's filled out that comes
17 with the packet of the file, and in going to the
18 computer or court docket to determine.

19 Q. Who makes that judgment call, that
20 decision that you won't take this matter, you will
21 take another one?

22 A. I'm going to call that a decision by
23 committee. It may very well be a situation where the
24 person who is setting the file up and checking the
25 court docket says this falls within the parameters or

1 one of the parameters we've discussed previously, I
2 don't think this is one we want, bring it to, poten-
3 tially, James Hart's attention. Jamie may say we
4 don't want this one, talk to Pat about it. And Pat
5 may say, yes, I agree.

6 But we kind of have some that are
7 problem matters where they have been referred to us
8 and we say, no, these are the cases we just aren't
9 going to take, because there's no reason for us to
10 get involved at this point. And the person brings it
11 to the right person's attention and that decision
12 gets made.

13 Q. Okay. Now let's --

14 A. I wanted you to be clear on that,
15 though, from my prior answer.

16 Q. Okay. I appreciate that. Now, let's
17 assume that you have one of those instances where you
18 decline to take the representation. That decision,
19 to whom is that communicated?

20 A. That file is sent back to Foreclosure
21 Solutions, presumably in the same manner that it was
22 received by us, which is hand delivery, with a return
23 of the fee that was paid for that and the indication
24 that we are not taking this referral.

25 Q. Is any effort made under those circum-

1 stances to communicate directly to the involved indi-
2 viduals, the people who are being foreclosed?

3 A. Not to my knowledge. And there
4 wouldn't be. They're not our client and it's not our
5 responsibility or right to communicate with that
6 potential client at that point in time.

7 And one further step. The clients
8 don't necessarily a hundred percent of the time
9 accept the referral, and there have been occasions
10 where the client has said: I'm going to get someone
11 else.

12 Q. All right. Now, you mentioned some-
13 thing that I hadn't thought of yet. When the file
14 comes initially, hand delivery from Foreclosure
15 Solutions, are you saying that typically the \$150 fee
16 comes with it, in other words, a check attached or
17 one check for, you know, five, ten files, whatever it
18 might be?

19 A. The latter. That's correct, one check
20 for however many number of files are included within
21 the packet for that day.

22 Q. So if, let's say, you had -- make it
23 simple -- ten files come over in a day and you for
24 some reason made the decision to decline representa-
25 tion on one of them, then a check would be cut back

1 from the firm to Foreclosure Solutions for just the
2 one file?

3 A. That's my understanding, correct.

4 Q. I take it that you don't involve your-
5 self personally in all that paperwork?

6 A. I don't. As a matter of fact, I
7 rarely write any checks in the firm. I happen to
8 know where the checks are, but that's about as far as
9 it goes.

10 Q. Now let's focus on one you get
11 involved in because it's an Ohio matter at the
12 current time. Is it safe to say that you do not have
13 any conversations with the clients about the fee,
14 either as to its amount or how it's determined, after
15 the representation is accepted?

16 A. I can't recall ever having had that
17 conversation personally with a client. I can't tell
18 you whether or not that conversation with other of
19 our attorneys or staff has or has not occurred.

20 Q. Okay. Again, I'm only asking for your
21 knowledge --

22 A. Right.

23 Q. -- of what you've been involved in.

24 A. I can't tell you that it is our policy
25 not to discuss what the amount of the fee is with our

1 client; I can't tell you that it is our policy to
2 discuss what the amount of our fee is. I can only
3 tell you that I don't ever recall having had that
4 particular discussion with any foreclosure clients.

5 Q. Did you play any role in the determi-
6 nation of what the fee, flat fee, should be?

7 A. No.

8 Q. Is that something that Patrick was
9 responsible for?

10 A. I don't think even he was. I think we
11 were told what the amount would be, without negoti-
12 ation or input, and it was just stated as a matter of
13 fact.

14 Q. Well, Brook, you'd agree with me that
15 somebody had to make a decision even if someone puts
16 it to you that, "This is what I'll pay, no negotia-
17 tion whatsoever, 125 or 150," somebody still has to
18 make the decision to accept that offer?

19 A. Yes, I'm sure that occurred. And
20 obviously what you're getting at is it would have
21 been -- that decision would have occurred before I
22 was a member of the firm.

23 Q. Okay. So you didn't have any role in
24 that acceptance of that number?

25 A. No.

1 Q. And, therefore, I assume you wouldn't
2 have any knowledge of what considerations were taken
3 into account in making that decision to accept?

4 A. That's correct. I would not.

5 Q. Can you recall ever having what I'll
6 call a fee dispute with any of the Ohio clients?

7 A. No. I know there have been occasions
8 where Ohio foreclosure clients have wanted to pay our
9 firm additional fees for the work we've done and the
10 result we've obtained, and it's my understanding that
11 that has occurred on more than one occasion.

12 Those offers have routinely been
13 rejected. We've never accepted any additional ten-
14 ders of additional fees from any of those clients.

15 Q. Is it fair to say that in some cases
16 the amount of time being devoted by the people in
17 your firm -- yourself, other attorneys and the
18 paraprofessional staff -- can be far, far greater
19 than any time consideration would allow you to bill
20 if you were billing hourly rates?

21 A. Yes. I just gave you an example of
22 one.

23 Q. Okay. And are there other examples at
24 the other extreme, where the case, the matter goes
25 through in a very routine manner, and you don't spend

1 as much time as the fee would indicate, \$150?

2 A. No. In my opinion, no.

3 Q. So if Patrick characterized the deci-
4 sion to take these kind of cases as, I'll use the
5 word somewhat guardedly, charity or feeling that the
6 firm should do this out of a sense of obligation to
7 the public, would that be a fair characterization, in
8 your view?

9 A. We just established that I wasn't a
10 part of the decision-making or acceptance process of
11 starting the system up, so I can't address what the
12 idea or thought process was at the time when I wasn't
13 there. If Pat characterized it in a particular way,
14 I'll accept his characterization, from his point of
15 view, of course.

16 Q. Well, would you agree that today, as a
17 principal in the firm, that it appears to be this is
18 not a very good financial arrangement for the firm?

19 A. No, I would not agree with that.

20 Q. Okay.

21 A. I would agree that on a file-by-file
22 basis that what we do on the simplest files, on the
23 simplest matters, eats up the \$150 every single time.
24 That's my belief.

25 And never do we, never have we or do

1 we or will we, stop our representation of a partic-
2 ular client because that 150 is eaten up. How-
3 ever -- so I do believe --

4 I have a system of determining whether
5 something's profitable or not that's a little bit
6 different from other people. If my hourly rate is
7 \$180 an hour and I get \$200 on a case and I spend
8 less than an hour working it, I've just made money.

9 Because if I'm worth \$180 an hour and
10 the work's there but I make more than that in an
11 hour, I've made money. If I make less than that in
12 an hour, I've lost money.

13 It's the whole concept of what's
14 your profit margin on the work you do. There's no
15 question that doing one, five, ten files of these
16 foreclosure matters at \$150 a file would not be
17 profitable.

18 It's just like with collection work.
19 You don't make money doing collections doing one,
20 five or ten collections. You do it because you have
21 a lot of collections. And because you have a lot of
22 collections, even though your profit margin is lower,
23 you still make money because of the bulk amount of
24 collections.

25 So your question was would I agree

1 that representation of these foreclosure clients is
2 financially detrimental, and I would not.

3 Q. Okay.

4 A. I can't tell you that our profit
5 margin on those cases is as good as my sitting down
6 and preparing a new LLC for someone. As a matter of
7 fact, I can tell you that it's absolutely not. But
8 that doesn't mean it's financially detrimental to us.

9 Q. Okay. Let me turn to a slightly
10 different subject here. One of the things that the
11 firm and you do for these clients in Ohio is to
12 engage in discussions with the lenders to see if
13 there is some way of resolving the foreclosure in a
14 way other than the loss of someone's home. Correct?

15 A. That's correct, except I'd say it
16 would be with lender's counsel. But yes, that's
17 correct.

18 Q. Or lender's counsel?

19 A. Typically if they hire an attorney,
20 they're going to let that person figure it out.

21 Q. Okay. What percentage of the time is
22 that process of negotiations or discussion going on
23 between the firm or yourself and the counsel for the
24 lenders versus Foreclosure Solutions doing that?

25 (Mr. Moeves leaves the deposition)

1 hearing room.)

2 A. I don't have any clue the extent to
3 which Foreclosure Solutions does that. So from our
4 perspective, our negotiation, "ours" being BMH, our
5 negotiation is 100 percent of the time trying to work
6 it out.

7 And I think we need to remember what
8 we're dealing with here. We're talking about a fore-
9 closure case that is based upon, in every situation,
10 a promissory note. And there is, to my knowledge,
11 one defense to a promissory note, and that defense is
12 you didn't sign it.

13 And there may be issues of fraud that
14 you can determine, there may be issues of usury, the
15 interest's rates too high. However, we're dealing
16 with commercial lenders here, we're dealing with
17 large lenders typically, who aren't going to get into
18 the area of usury.

19 So we are dealing with customers,
20 clients who typically have very little defense to a
21 foreclosure. There may be issues like the mortgage
22 payments were misapplied, the note payments, or not
23 applied at all or other mistakes.

24 There is a case involving fraud that
25 our firm will be trying up in Cuyahoga County --

1 I don't even know when it's set, but I
2 know that it's set and will go forward.

3 -- where during our investigation
4 fraud was uncovered. However, the lion's share of
5 these cases, when we investigate it, we're not going
6 to find a defense.

7 When you don't find a defense, rather
8 than filing frivolous pleadings, frivolous discovery,
9 rather than belaboring a case that there don't appear
10 to be any defenses to the claim, in which event we
11 have drug this out for our clients and in the mean-
12 time increased dramatically the plaintiff's attor-
13 ney's fees, which are recoverable in every fore-
14 closure matter, instead of doing that, our energies
15 change to trying to get this matter worked out.

16 I apologize for going on and on.

17 Q. That's all right.

18 A. But I was trying to explain it. Your
19 question was what percentage do we work out versus
20 Foreclosure Solutions. I have no clue or concept if
21 Foreclosure Solutions tries to work out any of these,
22 but I know that we do in every case that we have. So
23 my answer would be, to my knowledge, a hundred per-
24 cent.

25 Q. Okay. Let me show you what was marked

1 in a prior deposition as Exhibit C. It's a document
2 called "The Nuts and Bolts of an Ohio Foreclosure."
3 Did you have any role in the preparation of this
4 document?

5 A. No.

6 Q. What is your understanding as to what
7 this document is and how it's used?

8 A. My understanding is that this document
9 is provided to every client that we accept via refer-
10 ral from Foreclosure Solutions, to explain the entire
11 foreclosure process from start to finish.

12 Q. So it's something that's sent as a
13 matter of course after the intake of the file that
14 you described before?

15 A. That's correct. And I'm assuming, and
16 I'm sure you can verify, that this is a form that we
17 actually provided to Mr. Slauson postinterview, in
18 our office, presumably.

19 Q. As a matter of course, again, as far
20 as you know, if that document, Exhibit C, is sent to
21 a particular client at the beginning of that intake
22 process when you accept it --

23 You accept it. Now you're going to
24 send a letter.

25 -- would a copy of that be kept in

1 your file?

2 A. I don't know that. I just don't know.

3 Q. Okay. When one of these files comes
4 in and it's an Ohio file and you've accepted and you
5 are going to be signing the pleadings because it's
6 the current time, and let's assume it's Hamilton
7 County, do you as a matter of course get that file
8 and personally review it?

9 A. Sometimes, but not as a matter of
10 course.

11 Q. All right. So if you're going to be
12 filing, let's say, an Answer in that case, how is it
13 that you determine that everything is the way it
14 should be for the filing of that Answer, in other
15 words, that you're filing a proper Answer to that
16 particular Complaint?

17 A. The Complaint sets out the allega-
18 tions, and just as there are -- bottom line, every
19 foreclosure Complaint is substantially the same
20 Complaint.

21 I've done foreclosure plaintiff work.
22 I did it for a couple of years for Fifth Third Bank,
23 and you can routinely take out one bit of information
24 and put in the next bit of information within the
25 body of a foreclosure Complaint and it will be almost

1 ready to go.

2 The Answer process is the same. As I
3 said to you, there are very few defenses that can be
4 raised to a foreclosure action. And typically at the
5 time that we get these in, these Complaints, we are
6 into a distress situation with time-sensitive mat-
7 ters.

8 So there may not be enough time to
9 investigate on the front side, and it may be a matter
10 of filing an Answer, which the client is obviously
11 entitled to do, to protect that client's interest
12 before being able to conduct a full investigation.

13 And that happens quite a bit, where
14 you file an Answer to protect the client's interest,
15 you do your investigation, you speak with a client
16 and determine that there are no apparent defenses,
17 there are no -- that they did sign the note, they did
18 miss their payments, that the amount that the plain-
19 tiff has stated appears to be correct, where you
20 don't have anything.

21 And in those situations the best
22 advice to give to the client is we need to try to get
23 this worked out, because we are not going to defend
24 against it.

25 Q. Let me go back to Exhibit C there for

1 a second. If one of these documents, The Nuts and
2 Bolts of an Ohio Foreclosure, was not for some reason
3 sent to a client as a matter of due course, how would
4 the client know what kind of defenses they might have
5 to a foreclosure action?

6 A. That would be explained to them
7 through multiple communications on every single file.

8 Q. By an attorney?

9 A. By an attorney. Mostly by an attor-
10 ney. If it was discussing legal rights, it would
11 definitely be by an attorney within our office,
12 because all of our staff have been advised not to
13 discuss legal issues with foreclosure clients.

14 Q. All right. Well, let's go back to the
15 intake process for a second. A file comes in.
16 You've decided to accept it. A letter goes out to
17 the clients. And let's say that that letter contains
18 the proposed or the actual Answer that's being filed
19 but doesn't have The Nuts and Bolts document in it.
20 That's possible to go in that fashion. Correct?

21 A. I --

22 Q. I mean, it could happen in that
23 sequence?

24 A. I'm sorry. I may have missed it. Say
25 your sequence again. I might have missed it.

1 MR. CREIGHTON: Hey, Luke, help me out
2 here.

3 THE WITNESS: Thank you.
4 Sorry about that.

5 (Question read.)

6 A. I think you said that could happen in
7 that sequence. My belief is that even if there is a
8 time-sensitive urgent pleading that needs to be
9 filed, that the initial letter that is sent out that
10 you've referenced previously and clearly you have a
11 version of, with which this Nuts and Bolts descrip-
12 tion is included, goes out. I don't believe that
13 there are any cases, to my knowledge, where a plead-
14 ing -- where a letter enclosing a pleading goes when
15 a letter with a Nuts and Bolts doesn't either accom-
16 pany it or precede it.

17 Q. But it may or may not appear in the
18 file? In other words, a copy of The Nuts and Bolts
19 may or may not?

20 A. If I get to looking in a file, I don't
21 need to go back to square one of our correspondence,
22 although I have had occasion to look at a file and
23 wonder how many times we have spoken with a client.

24 Another case that occurred, we were
25 the victim of a forged power of attorney. It was a

1 husband and wife. The husband and wife were
2 estranged. This was up in Bowling Green, Ohio, which
3 I know that drive well because my wife's family is
4 from Toledo and it's two hours and 45 minutes away.

5 And this case progressed through its
6 normal process. No apparent defenses. All of our
7 communications were addressed to the right address,
8 addressed to husband and wife, and the wife had
9 forged the -- we have come to find out the wife had
10 forged the husband's signature on the power of attor-
11 ney.

12 I think there was seven letters to the
13 correct address, addressed to both people. There
14 were multiple phone conversations with the wife,
15 multiple messages left at the residence.

16 And it had gone all the way to a sale
17 date, I believe was the status, when we were con-
18 tacted and advised by another attorney up in the
19 Bowling Green area that his client never -- he didn't
20 even know about the representation and what's going
21 on. And we showed him a copy of the POA, and the
22 answer was: That's not our signature.

23 So what we did in that situation was
24 two of us traveled to Bowling Green on a Monday, for
25 a Monday morning hearing, and appeared with the new

1 counsel for the husband and appeared with the judge,
2 and verified to the judge that, given what the hus-
3 band's attorney was saying, we had no way to dispute
4 that and did not dispute it.

5 We accepted it as stated and we
6 endorsed the husband's motion to set aside the sale
7 date. And at that time, being a victim of fraud
8 ourselves, perjury, we asked the court to allow us to
9 withdraw, which the court did do.

10 In that kind of a case I read through
11 the entirety of the file to see how many times we had
12 written and where were the letters sent and how was
13 it this problem could have arisen. That's a case
14 where I would.

15 You know, our standard operating
16 procedure is this is sent to every single client that
17 we ever represent, "this" being Exhibit C, The Nuts
18 and Bolts. I just --

19 I don't know if routinely it's copied
20 and put in the file. It wouldn't surprise me to
21 learn that we have made the decision not to copy
22 every single time a document that we know goes with
23 every one of those initial letters.

24 (Mr. Moeves returns to the deposition
25 hearing room.)

1 Q. Let me hand you what was previously
2 marked as Exhibit H. And I will represent to you
3 that the testimony on that was this is the initial
4 letter that went out to this particular husband and
5 wife client, the Godfreys, on or about March 31st,
6 2006, and was executed and forwarded by Mr. Mullaney.
7 It's an Ohio matter, apparently.

8 The testimony on this, as I recollect,
9 was --

10 A. This is by Pat?

11 Q. Yes. Patrick testified that he
12 believes that to be the first letter that went out,
13 that it appears that that's the first letter that
14 went to the clients. Okay?

15 I don't see a reference in there to
16 The Nuts and Bolts being one of the enclosures. As
17 you read through that, do you disagree with that in
18 any way?

19 A. That this letter does not reflect a
20 reference to The Nuts and Bolts enclosure?

21 Q. Yes.

22 A. Obviously this document speaks for
23 itself, but it does not appear to include that refer-
24 ence.

25 Q. And there's nothing in that letter

1 that would indicate to you that The Nuts and Bolts
2 was, in fact, sent out, other than what you under-
3 stand to be your office's standard operating proce-
4 dure?

5 A. Right. And I agree with you there's
6 nothing in this letter that references The Nuts and
7 Bolts. It may be that the procedure you described
8 can occur upon occasion.

9 This is a matter at a point in time
10 where I wasn't involved at all, except for coverage
11 purposes. So I can't tell you what happened in this
12 specific case. But I agree that there's no reference
13 to that document, The Nuts and Bolts document, within
14 this letter.

15 Q. All right.

16 A. And no indication that it was sent
17 with this letter.

18 Q. When a file comes over from Fore-
19 closure Solutions, do they give you any kind of
20 summary as to what the status of discussions are or
21 have been with the lender or lender's counsel?

22 A. I'm not aware of that.

23 Q. How would you know, in the normal
24 course, what Foreclosure Solutions has done or failed
25 to do in any given specific situation? Take the

1 Godfreys, for example, when this file would have come
2 over. How would you know, if you looked at the file,
3 what had Foreclosure Solutions done or not done?

4 A. Other than the information that is
5 included within the -- it's handwritten typically.
6 It's what's called an intake sheet, for lack of a
7 better word, kind of like what you might fill out in
8 an emergency room.

9 It's a handwritten preprinted that
10 comes with the files we get, and that's got some
11 client specific information on there that may give us
12 additional information above and beyond --

13 In fact, it looks like you may be
14 pulling one out there. That's got information on it.
15 Beyond that --

16 Q. Let me hand you --

17 A. Do you want me to stop while you --

18 Q. Yes. Let me hand you Exhibit F here.
19 Is this an intake sheet?

20 A. My phrase, first of all. Let's be
21 clear. I just use that phrase. I've never heard
22 anything where --

23 Q. Okay.

24 A. This sheet, though, is what I'm talk-
25 ing about: the preprinted handwritten form.

1 Q. And whose writing would be on here, on
2 this? It's obviously a form sheet.

3 A. I don't know whose that is.

4 Q. Well, the question's not quite that
5 specific. Would this be handwritten in here by Fore-
6 closure Solutions people before they send it, or is
7 this handwritten by people in your office after you
8 get the file?

9 A. This is handwritten when we receive
10 the file. Our office doesn't insert this handwritten
11 information. I don't know who handwrites it on the
12 front end of it.

13 Q. So it comes already filled out, if you
14 will?

15 A. Correct. Other than that, which has,
16 like I said, some client specific information -- what
17 exhibit number was that?

18 Q. F?

19 A. Exhibit F. Other than that Exhibit F,
20 and of course the pleading that comes along with it,
21 our involvement is directly related and limited to
22 the clients.

23 Q. Okay. The second page of this Exhibit
24 F is called "Lead Report." And I assumed from read-
25 ing it that this was a document that was prepared --

1 First of all, it's a form that is not
2 generated by your office. It appears to be generated
3 by Foreclosure Solutions and, secondly, filled out by
4 someone at Foreclosure Solutions, not at your office.
5 Is that your understanding?

6 A. It is my understanding that this is a
7 form that was not prepared by our office, nor was it
8 completed by our office. I don't know who prepared
9 this form, nor do I know who filled this form out.

10 Q. Okay. But this would be an example of
11 what is delivered to you with the intake of a file?

12 A. That's correct.

13 Q. So, for example, under Notes where we
14 see the notation he is intense about saving his home,
15 does not want to move again, this would have been
16 information garnered in an interview that no one in
17 your firm was a participant in?

18 A. That would appear to be the case. Who
19 was a part of that interview, I don't know.

20 Q. Okay.

21 A. Our investigation from our end will
22 start fresh and proceed on its own without that
23 information.

24 MR. STERN: Do you want to take a
25 break?

1 MR. CREIGHTON: Yes.

2 Off the record.

3 (Discussion off the record.)

4 (Recess taken: 2:00 PM - 2:45 PM.)

5 Q. We were asking you about Exhibit F, I
6 believe. So Exhibit F, just to clarify and make sure
7 we get back on track here, is a document that typi-
8 cally -- and I don't mean this particular one for
9 every case, but a form like this comes in with the
10 file at intake?

11 A. In our office, yes.

12 Q. Now, in what percentage of the cases
13 that you've been involved in did you actually have
14 any telephone or personal contact with the clients?

15 A. I can't give you an estimate of per-
16 centage, but I'll just say it's low, a low percent-
17 age.

18 Q. So most of it's handled by the written
19 communications, the exchange of letters?

20 A. Oh, I'm sorry. You said me.

21 Q. Yes, sir.

22 A. I would say -- would you ask the
23 question again. I thought you were just talking
24 about me versus the rest of the firm.

25 Q. I am. In those cases that you have

1 been listed as the counsel and you have entered an
2 appearance in an Ohio court, I'm asking, just in a
3 rough form, in about what percentage of those cases
4 have you had either telephonic or direct communica-
5 tion, meetings, with the clients?

6 A. Me personally in those cases?

7 Q. Yes.

8 A. A very low percentage. Our office,
9 someone from our office, whether it be Jamie Hart,
10 myself, Pat, Brian, Crystal, one or two paralegals,
11 three or four law clerks, in that case I would say
12 the predominant percentage is they're actually
13 telephone contact.

14 Most cases there is actually telephone
15 communication between someone from our office and the
16 client. In-person meetings is a much lower percent-
17 age.

18 Q. Okay. Now, with respect to those
19 contacts, on kind of an average basis, what are the
20 contacts concerning when you would have telephone
21 conversations with the client?

22 A. The same matters addressed in the
23 various correspondence back and forth: the circum-
24 stances of a particular case, the facts of a partic-
25 ular case, whether or not there are any defenses,

1 discussing through whether there are any defenses,
2 any impending important dates that are coming up, the
3 consequence of any hearings, the impending results of
4 a particular case, important dates, if it's going for
5 a judgment, if a summary judgment has been filed, if
6 it's going to where a judgment's going to be entered,
7 if the property is going to sale. A communication on
8 a case-by-case basis on the particulars of that case.

9 Q. How often have you actually gone to an
10 Ohio court and entered an appearance, on a physical
11 basis? For example, let's take Cuyahoga County.
12 Have you gone up there?

13 A. No.

14 Q. Those were handled primarily by who,
15 Mr. Mullaney and now Mr. Hart?

16 A. Yeah, and presumably Pat Moeves as
17 well. But I don't know of any particular instances.
18 I know Darren was up there and I'm fairly sure that
19 Jamie has been up there, and I believe Pat's been up
20 there. And I was almost there this week, but we were
21 able to handle something by telephone.

22 Q. And I think you mentioned an appear-
23 ance in Clermont County recently?

24 A. Yes, sir.

25 Q. So you do get across the river and

1 actually make physical appearances in courts on
2 occasion?

3 A. Hamilton County, Clermont County,
4 Brown County, but I can't recall -- multiple times,
5 but I can't recall the exact circumstances of that
6 appearance. But the answer is yes to your question.

7 Q. Does the firm, to your knowledge, ever
8 make a refund of any fee paid?

9 A. It's my understanding that has
10 occurred. How many times and the circumstances of
11 that, I can't describe.

12 Q. Is that subject, possible refund of
13 money, is that covered in the letter that goes out?

14 A. I don't recall. You've got all the
15 letters. I'm sure that you've probably looked
16 through them and can show me the specific letters.

17 Q. Okay. I will tell you, unless I
18 missed it here, I'm not aware of any of those.

19 A. Honestly, I'm not being cute about it.
20 I just don't know without looking at the Answers. If
21 you were to tell me that you couldn't find anything
22 in the letters that addresses a possible refund of
23 money, then I would have no reason to dispute that.

24 Q. What I was clarifying for you, I'm not
25 aware of having seen the form letter, if it is a form

1 letter, regarding the fee arrangement.

2 A. I doubt there is one.

3 Q. Okay.

4 A. My understanding, which probably Pat
5 verified during his deposition, was that we gave you
6 a sampling of all documents that we use in every
7 case.

8 Q. So your understanding today is that
9 there may not be a form letter as it relates to fee?

10 A. There may not be, that's correct.

11 Q. Okay. Do you consider the fee earned
12 at the time that it is received from Foreclosure
13 Solutions?

14 A. I guess that depends upon a number of
15 circumstances, including the occurrence where we
16 refund money may happen. But to my consideration,
17 yes, I do. It's a flat fee to handle the foreclosure
18 litigation as counsel for the foreclosure defendants,
19 from entry of appearance, Answer, to final resolu-
20 tion.

21 Q. As I understand it, and please correct
22 me if I'm wrong, the basics of the relationship, in
23 other words, what you're going to be doing and for
24 how much, in other words, what your fee is going to
25 be, that was a matter that was an understanding

1 between Foreclosure Solutions as the attorney, acting
2 as an attorney-in-fact for the client, and your firm?
3 In other words, it doesn't have a direct communica-
4 tion with the client but, rather, with its attorney?

5 A. I don't know the extent to which Fore-
6 closure Solutions has a conversation with the client
7 as to fee or what that amount might be. I don't know
8 that and can't address it.

9 As we discussed previously, though I
10 wasn't here at the time when that occurred, obviously
11 someone, presumably Pat, or Pat and Brian, consented
12 to the fee of \$150 per referral.

13 Q. And is it your understanding that, as
14 a part of that, the agreement was, whatever it took
15 to represent these people in a foreclosure action on
16 any particular referral, you'd stay with it through
17 the end, the firm would stay with it?

18 A. I have no clue whether that particular
19 issue was discussed at the time that the referrals
20 started coming in for 150 per. I can tell you as an
21 absolute matter of fact that that's the way represen-
22 tation of these clients has been handled for as long
23 as I've known about it, that once we get in, we stay
24 in.

25 If Foreclosure Solutions drops the

1 client for whatever reason, that's up to them. We
2 don't get out. You know, the only way we get out of
3 a case is if the client says, I want you out, I'm
4 going to hire somebody else and I'm going in a
5 different direction, I don't need your services
6 anymore, you're out. Otherwise, we go forward.

7 Q. Okay.

8 A. So that would be my understanding. I
9 don't know, though, if it was discussed with Fore-
10 closure Solutions.

11 Q. Okay. And I assume that the bank-
12 ruptcy representation is a separate matter that you
13 refer out. Is that correct?

14 A. That's right. We don't handle --
15 never have handled and have no intention of handling
16 any aspect of bankruptcy. Who gets that, I suppose,
17 is who's available and willing to take the referral
18 for a bankruptcy.

19 And what fee they get paid by that
20 client is up to the bankruptcy attorney. We don't
21 get any portion of that and we never -- once we get
22 to 150, that's it. We refer it to bankruptcy and we
23 don't get any portion of it. We don't do the bank-
24 ruptcies.

25 Q. With respect to the cases in which

1 you've been involved, have you had any occasions
2 where you were personally calling Foreclosure Solu-
3 tions to discuss the client?

4 A. No. I've never spoken with anyone
5 from Foreclosure Solutions about any aspect of any
6 case. I have not even -- I've met Tim Buckley upon
7 occasion. I don't even know who any of the other
8 people there are.

9 Q. Are you aware of any situation in
10 which Foreclosure Solutions has asked the firm to
11 stop representing a client?

12 A. I am not personally aware that that's
13 occurred, though I guess it's possible, if you have
14 other information.

15 Q. No. It wasn't a question of knowl-
16 edge.

17 A. I don't think, quite frankly, that
18 Foreclosure Solutions has any authority to request
19 or suggest that we discontinue representation of
20 a client with whom we have the attorney-client
21 relationship. So I would doubt very seriously that
22 that's ever occurred.

23 Q. Well, I'm curious about one thing,
24 then. In Exhibit E, in this power of attorney that's
25 used by Foreclosure Solutions, it says that one of

1 the things that the power of attorney covers is the
2 ability to hire and engage counsel. Do you see that?

3 A. Oh. I see that, yes.

4 Q. Okay. Would you assume, then, that if
5 they have the power to engage, that they have the
6 power to terminate?

7 A. No.

8 Q. Okay. So once --

9 A. The answer is no, I would not assume
10 that. I think once that relationship is established
11 with a client, no one can come in and discontinue
12 that.

13 MR. CREIGHTON: Would you give me just
14 a minute here.

15 THE WITNESS: Of course.

16 (Recess taken: 2:58 PM - 3:00 PM.)

17 Q. Mr. Halloran, would you read this
18 paragraph here to yourself for a second, and then I
19 have a question about it. And I'm referring to
20 Exhibit C, the second page, the third full paragraph.

21 A. Okay.

22 Q. Okay. And just so we're on the same
23 book and page here, I've asked you to read the
24 paragraph beginning "Between the judgment date."
25 Correct?

1 A. Yes.

2 Q. Is it your understanding that that is
3 a true statement, specifically where it says "the
4 person and/or entity you hired to represent your
5 financial interest in the foreclosure action will
6 continue to work frantically to get the mortgage
7 company to accept payment, reinstate your loan," et
8 cetera?

9 A. I would say that's correct. That is
10 what we do.

11 Q. Okay. When you say "what we do," is
12 it your understanding that that refers -- "the person
13 and/or entity you hired to represent," is that you
14 guys?

15 A. That's how I would read that, yes.

16 Q. You don't read that as being Fore-
17 closure Solutions?

18 A. No. I mean, as I understand it, this
19 is a nuts and bolts description of the foreclosure
20 process, A to Z. As I read this. And this is, in
21 fact, exactly what we do. And as I explained to you
22 earlier, it's the predominant number of cases that go
23 this route.

24 Q. Solution?

25 A. Solution.

1 Q. Okay.

2 A. Workout, reinstatement, forbearance
3 package, short sale, whatever it might be, than in
4 which you actually find a --

5 And you may not be successful, but you
6 try any way you can.

7 -- than in cases where you find a
8 valid defense and actually defend against it.

9 Q. But, in fact, the people that you're
10 sending this Nuts and Bolts document to, in fact, had
11 hired Foreclosure Solutions to represent their finan-
12 cial interest in the foreclosure action. Correct?

13 A. I don't know the nature of the con-
14 tract between the client and Foreclosure Solutions.
15 I don't know what they hired them to do. And I don't
16 care, from my end. We're hired pursuant to the power
17 of attorney and authorization from the client to
18 represent their interest as defendants in a fore-
19 closure action, and that's what we do.

20 Q. But you --

21 A. You know, this document, again, this
22 is a document that existed prior to my coming to the
23 firm and has continued to be used. When I read it, I
24 interpret it as a generic explanation, and this is
25 what we, in fact, do.

1 Q. Is it possible that there are two
2 entities or groups of people working on parallel
3 paths, Foreclosure Solutions on one hand and your
4 firm on the other, on behalf of the same people?

5 A. I suppose it's possible. I don't know
6 what Foreclosure Solutions is doing on their end. I
7 just know what we're doing on ours.

8 Q. Can I then safely assume that you
9 don't in any way attempt to supervise or monitor what
10 Foreclosure Solutions is either doing or not doing
11 with respect to communicating on behalf of the
12 client, your clients, with the lenders?

13 A. No, although our communications with
14 the client might include the suggestion that the
15 client limit their communications and dealings on the
16 case with their attorney, which is a standard thing
17 that you suggest to your clients.

18 Likewise, our communication to
19 lender's counsel might be the same: we represent
20 this party; you communicate with us. But we don't
21 supervise nor do we direct or criticize what Fore-
22 closure Solutions does in their communication with
23 anyone.

24 Q. Have you become aware, as you were
25 doing your work for a client, that Foreclosure Solu-

1 tions was continuing, in any case, to communicate on
2 behalf of their customer, your client, with the
3 lender?

4 A. On no case that I've been involved
5 with. I am aware that --

6 Actually, no, no case that I've been
7 involved with. I was going to say I'm aware that
8 might occur, because the client will get authoriza-
9 tion from Foreclosure Solutions for us to talk to
10 them, but that's between us and Foreclosure Solu-
11 tions.

12 So I apologize. My answer is no, I'm
13 not aware that that's ever occurred.

14 Q. Okay. What is your understanding of
15 how Foreclosure Solutions obtains the business that
16 they are then referring to you?

17 A. I don't have any specific knowledge as
18 to how they obtain that business.

19 Q. Do you know, for example, whether they
20 come through notices of the filing of suits in the
21 various courts?

22 A. I don't know. I don't know how they
23 come upon the clients that are referred to us as
24 prospective clients.

25 Q. Is it, in general, true that by the

1 time you're seeing the file for the very first time
2 on the intake that a foreclosure has already been
3 filed against the people that become your client?

4 A. I would say that that is the case more
5 often than not.

6 Q. What consideration is given at that
7 time of intake to the issue of whether these clients
8 should consider bankruptcy law as a remedy for their
9 problem at that time rather than later down the road?

10 A. At the point in time that they come to
11 our office?

12 Q. Yes.

13 A. I would say that bankruptcy considera-
14 tion is always in your mind.

15 If we start with the premise that most
16 of these there is no defense to and you move on to
17 the next premise that you are at the mercy of the
18 lender as to whether or not you are going to be able
19 to work out an arrangement, whether it is through
20 reinstatement, forbearance, short sale, whatever it
21 might be, and that the foreclosure sale remains a
22 very distinct possibility, I think bankruptcy is
23 always a consideration, probably from the get-go.

24 Q. Well, how do you evaluate, then -- I
25 mean, what's the process of evaluating with these

1 files that come at the clip of maybe five to ten a
2 day, what process do you go through to evaluate
3 whether this file we really ought to consider bank-
4 ruptcy and this file no?

5 A. Well, I think if you determine that a
6 valid defense exists to a lawsuit, then considering
7 bankruptcy at that time would be malpractice.

8 You would obviously assess the merits
9 of each given case, discussions with a client, review
10 of the Complaint, discussions with lender's counsel,
11 informal discovery, review of note, mortgage, what-
12 ever other documents there might be, assess the case
13 and determine at that point whether or not there are
14 any defenses to the case.

15 You may find one like this case up in
16 Cuyahoga County where there's a fraud and there's
17 going to be a trial. If you don't find any defenses,
18 then you focus your effort on the workout portion.
19 And, obviously, pretty early on you are going to know
20 how receptive to workout the lender or lender's
21 counsel are.

22 And at some point in time if it
23 becomes apparent that this matter is going forward
24 and you're not going to be able to save your client's
25 house through a workout, then bankruptcy is an option

1 and presumably needs to be at some point in time
2 communicated to the client.

3 Q. You mentioned that one particular,
4 I'll call it fraud case, up in Cuyahoga County a
5 couple of times.

6 A. Uh-huh.

7 Q. Are you personally involved in that?

8 A. No.

9 Q. So anything you know about it came
10 through Patrick or others?

11 A. Second- or third-hand, yes, sir.

12 Q. Do you happen to know from that
13 second- or third-hand information how it was that the
14 fraud was discovered in that particular case?

15 A. I do not. I only heard that it was
16 discovered through the investigation and, as a
17 result, that a defense is being pursued.

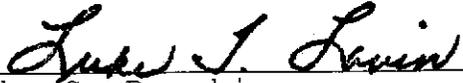
18 MR. CREIGHTON: Okay. I have nothing
19 further.

20 MR. STERN: Thank you.

21 We'll read, please.

22

23



John S. Brooking

24

25

Signed by reporter pursuant to Civil Rule 30(e).
Reason: Deposition not signed by witness within the allotted time.

(Deposition concluded at 3:10 PM.)

- - -

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

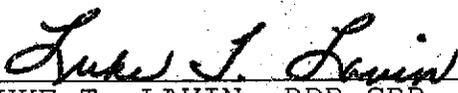
C E R T I F I C A T E

STATE OF OHIO :
 SS:
 COUNTY OF HAMILTON :

I, Luke T. Lavin, a duly qualified and commissioned notary public in and for the State of Ohio, do hereby certify that prior to the giving of his deposition, the within named John S. Brooking was by me first duly sworn to testify the truth; that the foregoing pages constitute a true and correct transcript of testimony given at said time and place by said deponent; that said deposition was taken by me in stenotypy and transcribed under my supervision; that I am neither a relative of nor attorney for any of the parties to this litigation, nor relative of nor employee of any of their counsel, and have no interest whatsoever in the result of this litigation. I further certify that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office, at Cincinnati, Ohio, this 8th day of February, 2007.

MY COMMISSION EXPIRES:
 APRIL 26, 2010.


 LUKE T. LAVIN, RDR-CRR
 NOTARY PUBLIC, STATE OF OHIO



Court Reporters Video Services
620 Cincinnati Club Building . 30 Garfield Place . Cincinnati, Ohio 45202-4364
513/241-3200 . FAX 513/241-7958 . 800/277-7165

STATEMENT OF OWNERSHIP RIGHTS

Deposition transcripts are the copyrighted property of Ace-Merit, LLC, and are subject to federal and state copyright law. Copies may be purchased from Ace-Merit, LLC, or from a cooperating court reporting firm. Once purchased, copies of the transcripts may be copied within a purchasing law firm exclusively for the purpose of analysis within that firm or for discussion with that firm's client(s). Copying and distribution beyond these limits, and any copying or distribution for which the copying party receives compensation, is strictly prohibited.