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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS

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EFFINGHAM JAMES,

Plaintiff,

-against- Index No.
 9644/04

ODRA N. ARANGO, FFFC f/n/o FIRST FRANKLIN
FINANCIAL GROUP, A&a GLOBAL RESOURCES, INC.
A/k/a A&A GLOBAL RESOURCES LTD., ANN ALVAREZ
AND ALFRED MILLS,

Defendants.
-----X

89-00 Sutphin Boulevard
Jamaica, New York

September 20, 2005
9:44 a.m.

EXAMINATION BEFORE TRIAL of CHARLES
CHAIN LIECHTUNG, a Non-Party Witness, taken on
behalf of the Parties and held before a Notary
Public of the State of New York.

1 APPEARANCES:
 2
 3 ALABA A. RUFAL, ESQ.
 4 Attorney for the Plaintiff
 5 106-26 Guy R. Brewer Boulevard
 6 Jamaica, New York 11433
 7 BY: ALABA A. RUFAL, ESQ.,
 8
 9 BUCHANAN INGERSOLL, P.C.
 10 Attorney for the Defendant FFFC
 11 One Chase Manhattan Plaza
 12 New York, New York 10005
 13 File No. 15469-5992
 14 BY: TIMOTHY FIERST, ESQ.,
 15
 16 STEVEN D. ISSER, ESQ.
 17 Attorney with the Non-Party Witness
 18 420 Lexington Avenue, Suite 2025
 19 New York, New York 10170
 20 BY: STEVEN D. ISSER, ESQ.

21 ***

1 IT IS HEREBY STIPULATED AND AGREED by and
 2 between the attorneys for the respective parties
 3 hereto that all rights provided by the C.P.L.R.,
 4 including the right to object to any question,
 5 except to the form, or to strike any testimony at
 6 this examination are reserved and, in addition, the
 7 failure to object to any question or to move to
 8 strike testimony at this examination, shall not be
 9 a bar or waiver to make such motion at, and is
 10 reserved for, the trial of this action.
 11 IT IS FURTHER STIPULATED AND AGREED that this
 12 examination may be sworn to, by the witness being
 13 examined, before a Notary Public other than the
 14 Notary Public before whom this examination was
 15 begun, but the failure to do so, or to return the
 16 original of this examination to counsel, shall not
 17 be deemed a waiver of the rights provided by Rule
 18 3116 C.P.L.R., and shall be controlled thereby.
 19 IT IS FURTHER STIPULATED AND AGREED that the
 20 filing of the original of this examination is
 21 waived.
 22 IT IS FURTHER STIPULATED AND AGREED that
 23 counsel for the witness shall be furnished a copy
 24 of the within deposition without charge.

1 CHARLES CHAIN LIECHTUNG,
 2 a witness, after having been first
 3 duly sworn by a Notary Public of
 4 the State of New York, was examined
 5 and testified follows:
 6 EXAMINATION BY
 7 MR. RUFAL:
 8 Q Please state your full name for the
 9 record.
 10 A Charles Chain, C-H-A-I-N, Liechtung,
 11 L-I-E-C-H-T-U-N-G.
 12 Q Please state your address.
 13 A 55 Causeway, Lawrence, New York 11559.
 14 MR. ISSER: Before we begin, I
 15 would just like to -- on the record say
 16 two things. First, my client is here
 17 pursuant to a subpoena. We complied, we
 18 didn't insist on certain technical lines
 19 with the subpoena and things like that.
 20 But I will say, we are concerned that as
 21 Plaintiff's attorney is aware, there is a
 22 federal action pending concerning the same
 23 transaction of which my client is a
 24 defendant. He is not a defendant in this
 25 litigation and we, you know, we feel that

1 Liechtung
 2 back door discovery into the federal
 3 action is not appropriate in the subpoena.
 4 And I'm not going to cast any suspicions
 5 or accusations at this point, I just want
 6 to say we expect some good faith and we're
 7 going to limit it to the aspects of this
 8 case which calls for testimony as called
 9 for in the subpoena.
 10 Secondly, my client -- my client's
 11 client in the transaction at issue in this
 12 action and the other is First Franklin,
 13 the bank that provided the mortgages. I
 14 just wanted to say for the record that
 15 First Franklin's attorney is here and we
 16 will be relying on him as a safeguard for
 17 privilege -- the attorney/client privilege
 18 that exists between my client and his
 19 client. I may object on the grounds of
 20 privilege here and there but the attorney
 21 for First Franklin is here and he can
 22 protect the bank's privilege best.
 23 Having said that, please continue.
 24 MR. FIERST: I'm going to make a

2 (Pages 2 to 5)

1 Liechtung
 2 going to repeat Mr. Isser's objections for
 3 the record to the extent that they apply
 4 to my client, First Franklin, that this
 5 court, this action that is pending before
 6 Justice Price has not been made aware of
 7 the pending foreclosure action brought by
 8 National City for this property in which
 9 my client was named as a party defendant.
 10 To the extent that perhaps discovery has
 11 not been completed in that action or
 12 representations have been made in this
 13 action, that discovery has not been
 14 complied with, I do object for the effort
 15 of obtaining back ordered discovery as
 16 mentioned by Mr. Isser.

17 MR. ISSER: Oh, sorry, and also
 18 I'd just like to state here that the
 19 subpoena asked for my client to bring
 20 documents to the deposition. I would just
 21 like to acknowledge that we did hand all
 22 non-privileged documents called for by the
 23 subpoena to Mr. Rufai before we began.

24 MR. RUFAl: My name is Alaba Rufai
 25 and I have already received those certain

1 Liechtung
 2 documents pursuant to the subpoena brought
 3 by Mr. Liechtung.

4 MR. FIERST: I'd also like to
 5 state for the record that I believe that
 6 this deposition of Mr. Liechtung has been
 7 rescheduled as a result of the initial
 8 deposition canceled as a result of a death
 9 in my family and a scheduling conflict for
 10 Mr. Liechtung in obtaining counsel, Mr.
 11 Isser.

12 Q My Name is Alaba Rufai once again.
 13 I'm the attorney for the plaintiff Effingham
 14 James and I'm going to be asking questions as
 15 you know. Okay.

16 To start with are you a licensed
 17 attorney?

18 A Yes.

19 Q How long have you been licensed?

20 A Since 1979.

21 Q And when did you start practicing in
 22 real estate, in bank closings?

23 A Closings?

24 MR. ISSER: Just bank closings or
 25 closings, in general?

1 Liechtung

2 Q Closings in general.

3 A I started practicing in a real estate
 4 practice in 1979.

5 Q Now, have you at anytime ever been
 6 disciplined as an attorney?

7 A Yes.

8 Q When was that?

9 A That was just recently. I received a
 10 letter within the last six months.

11 Q Can you tell me what that, with
 12 regards to what?

13 A It had to do with a case involving a
 14 lawsuit that I -- having nothing to do with
 15 real estate. It had to do with a case where I
 16 had agreed with another attorney for that
 17 attorney to handle a case for me and she
 18 didn't do anything. I never took my name off
 19 the case and it went through default judgment
 20 so by the mere fact that my name was on the
 21 case, I got a -- I forgot the level of the
 22 admonishment, but it was like a low level,
 23 like a letter to me.

24 Q Let us get back to closings, where you
 25 have your primary practice. Now, how -- can

1 Liechtung

2 you describe to me what a typical closing
 3 entails?

4 A What kind of closing?

5 Q Okay. Like a straight purchase, sale
 6 down purchase closing whereby you're --

7 MR. FIERST: I'm going to object,
 8 it's a broad question.

9 MR. ISSER: You have to define
 10 that.

11 Q Okay. You say you've been closing
 12 since 1979; is that correct?

13 A Yes.

14 Q Now, have you always been closing --
 15 have you always been representing only banks?

16 A No.

17 Q In other words, you're representing
 18 sellers and buyers?

19 A Yes.

20 Q Now, when you represent a bank at a
 21 closing, what do you have to do at the
 22 closing?

23 A When I represent the bank at a
 24 closing, I am instructed by the bank to follow
 25 their instructions in closing the transaction

1 Liechtung
2 for them which entails collating documents,
3 preparing in many cases, Hud-1 settlement
4 statement and disbursing funds in accordance
5 with their instructions.

6 Q Now, how do you get employed by the
7 bank to represent them for that?

8 MR. ISSER: I just want -- I mean,
9 I'm letting a little background in but,
10 you know, this is a non-party subpoena.
11 The questions should be about his
12 transactions, Mr. Liechtung's background,
13 I mean, I don't think we should be going
14 into such depth as to how he gets his
15 clients and things like that.

16 MR. RUFAL: No, I'm referring --
17 we're talking about closings. This is
18 about closings. And this background is
19 justified. It's justified because it's
20 related to what we're doing.

21 THE WITNESS: What's the question?

22 Q The question is: How do you try to
23 get appointed by the bank? How do you get
24 employed to represent them at the closings?

25 A There is no -- usually -- I mean, it's

1 Liechtung
2 a case by case basis. Sometimes the bank will
3 contact me directly. Sometimes -- in any case
4 -- in any case, the bank confirms that I'm the
5 attorney in any case.

6 So sometimes my office is located
7 well, so the broker will use me, the broker
8 will suggest that. There's a bank list. The
9 way it works is the banks have approved
10 attorneys. And brokers or whoever picks the
11 attorney from the approved list. If you're
12 not approved, you're not going to be an
13 attorney for a bank.

14 Q An average closing -- well, how long
15 would you say it would take?

16 A Today? I don't know, it could take
17 anywhere from -- an average purchase closing?

18 Q Yes.

19 A They've taken as short as 45 minutes
20 and they've taken as long as a day. You know,
21 it depends on the people, the attorneys, the
22 arguments they'll have. It depends on a lot
23 of things.

24 Q Now, when you are at the closing, what

1 Liechtung
2 bank have any control over you?

3 MR. ISSER: I just object as to
4 the form.

5 MR. RUFAL: You object to the
6 form. So would you like --

7 MR. ISSER: I don't understand the
8 question.

9 Q Okay. The question is this. Do you
10 work independently of the bank? What
11 discretion do you have with regards to that
12 closing?

13 A I don't mean to be difficult but I
14 need a clarification. Let me tell you what I
15 need. Is it discretion in disbursement of
16 funds? Is it discretion in how I conduct the
17 closing?

18 Q Discretion in regards to how you
19 conduct the closing and the disbursement of
20 funds?

21 MR. ISSER: I'm going to object to
22 that. It's a compound question.

23 Q Okay. It is. When you have a
24 transaction, apart from the instruction sheet
25 that is sent to you, do you have to go back to

1 Liechtung
2 the bank to ask for authority with regards to
3 anything?

4 A I have to go back to the bank to ask
5 for authority to disburse funds.

6 Q To disburse funds. That's what I
7 thought. So that's at the discretion of the
8 bank. Okay.

9 Now how many closings do you do in a
10 week?

11 MR. ISSER: You know what, I'm
12 going to object now. I mean, he is a
13 non-party, he's not an expert witness in
14 closings. This is about a specific
15 transaction.

16 MR. RUFAL: I understand.

17 MR. ISSER: You'll be able to
18 depose him in the federal case and ask him
19 who his client is and things like that.
20 But, I mean, he's here and he's a busy
21 guy.

22 THE WITNESS: No, no. Can I -- I
23 just want to say something. I personally
24 am confused because we're talking about a

1 Liechtung
 2 want to talk to me about May of '02.
 3 MR. RUFAL: I'm going to talk to
 4 you about May of '02.
 5 THE WITNESS: No, no. If you want
 6 to ask me questions now -- now, is your
 7 questions now as to what I did in May of
 8 '02 or that time of my life you can, but
 9 I'm going to object because what happens
 10 today is irrelevant to what happened three
 11 years ago.
 12 MR. RUFAL: I'm not going to be
 13 talking about what happens today.
 14 THE WITNESS: So then just be
 15 specific.
 16 Q Before May of '02, what was your
 17 average closing?
 18 A How many closings did I average in a
 19 week?
 20 Q In a week, yes.
 21 A I don't -- I couldn't give you an
 22 average.
 23 Q Okay. That's good enough for me.
 24 Now, with regards to the closing you
 25 did for F.F.F.C. regarding the transfer of

1 Liechtung
 2 Mr. James, Effingham James to Odra Arango --
 3 now, could you tell me how exactly you were
 4 appointed for that particular closing?
 5 A No, I couldn't.
 6 Q You don't recall it?
 7 A No.
 8 Q Do you remember the specific date of
 9 that closing?
 10 A Not independently but I reviewed the
 11 documents and I know that it was May 29th,
 12 2002.
 13 Q Now, do you recall as to what time of
 14 the day it was?
 15 A It was in the evening.
 16 Q Like about what time in the evening?
 17 A Well, I know from reviewing my
 18 scheduling book that it was about 6:30, 7
 19 o'clock in the evening.
 20 Q Is the scheduling book one of the
 21 things you gave to me?
 22 A No.
 23 Q Can I possibly have that?
 24 MR. ISSER: No.
 25 Q Now, do you recall the attendees of

1 Liechtung
 2 the -- the people that attended the closing?
 3 A Not specifically. Not independently,
 4 to put it that way. Not independently. Not
 5 independently.
 6 Q But if you reviewed records would you
 7 be --
 8 A I reviewed my records and I don't have
 9 an independent recollection or a picture in my
 10 mind of the closing.
 11 Q But would a review of the records
 12 refresh your memory as to the people who
 13 attended the closing?
 14 A Yes.
 15 Q So.
 16 A So based on a review of my records,
 17 Effingham James was there. Odra Arango was
 18 there. Wally Duvall was there. Elliott Bakst
 19 was there and I was there. Beyond that, I
 20 don't have any real recollection of anyone
 21 else being there.
 22 Q And who is Wally Duvall?
 23 A Wally Duvall is an attorney.
 24 Q What was his interest at that closing?
 25 What was her interest? It was either a he or

1 Liechtung
 2 a she?
 3 A It's a she.
 4 Q It's a she. What was her interest at
 5 that time?
 6 MR. ISSER: I'm going to object to
 7 the term "interest." Role may be --
 8 Q Okay. What was her role at that
 9 closing?
 10 A From a review of the records she
 11 appears to have represented the seller,
 12 Effingham James.
 13 Q She represented the seller, Effingham
 14 James. Okay. Was the buyer Odra Arango
 15 represented by an attorney?
 16 A I don't know.
 17 Q You don't know. Was there any other
 18 person apart from these people you mentioned
 19 that attended the closing?
 20 A At this point in time I really don't
 21 have a recollection of anyone else being
 22 there. I mean --
 23 Q You were at the closing; am I correct?
 24 A I'm sorry?
 25 Q You were at the closing yourself?

1 Liechtung
 2 THE WITNESS: Let me ask a
 3 question.
 4 MR. RUFAL: I'll object to that
 5 though. You are conferring while I was
 6 asking the question. I cannot -- I will
 7 object to you before answering my question
 8 conferring to your attorney.
 9 THE WITNESS: Okay. All right. I
 10 was -- okay. When there is a purchase,
 11 let me preface my answer a little bit.
 12 When there's a purchase, I don't stay in
 13 the room. As long as there's an attorney
 14 present, I give the papers, confirm the
 15 I.D. and I don't sit in the room. I let
 16 them do other things. I let them do their
 17 thing no matter who's purchasing what.
 18 So, yes, I was present at the closing as
 19 an attorney for the lender, but I was
 20 doing the settlement statement, reviewing
 21 the documents and doing other work while
 22 the closing went on. The closing took
 23 place in my office but I had -- I was
 24 present as the attorney but I was not
 25 present in the room.

1 Liechtung
 2 Q You were not present in the room?
 3 A Correct.
 4 MR. FIERST: Excuse me. Now,
 5 there's no question.
 6 (Witness conferring with his
 7 attorney.)
 8 Q Now, for the periods -- withdraw that.
 9 So at sudden times you go into the
 10 room -- the closing room but you just weren't
 11 present all through the closing? Is that what
 12 you're saying?
 13 A Correct.
 14 Q Okay. Well, for those periods that
 15 you are in the room -- the closing room, you
 16 were able to observe Effingham James; is that
 17 correct? That he was present at the closing?
 18 A Yes.
 19 Q He was present in the closing room?
 20 A Yes.
 21 Q And you said it was based on the
 22 review of the documents. That made you
 23 believe Wally Duvall represented Effingham
 24 James?

1 Liechtung
 2 extent that's not his testimony.
 3 MR. RUFAL: That was his
 4 testimony.
 5 THE WITNESS: No, I said that
 6 based on an independent review, I did.
 7 Q Okay. So now, you say you observed
 8 Wally Duvall at the closing present?
 9 A No, I didn't. I said based on the
 10 documents that she was there.
 11 Q Oh, okay.
 12 A Based on the documents that she was
 13 there. I don't have -- if I shut my eyes and
 14 try to envision the closing, I don't have a
 15 recollection of that closing, I just don't, I
 16 tried. I don't.
 17 Q So independent of your review of the
 18 documents, you cannot say for sure if Wally
 19 Duvall attended the closing or not; is that
 20 correct?
 21 A Correct. Thank you.
 22 Q Now, part of the list of checks you
 23 gave me -- part of the documents that
 24 Mr. Liechtung brought to the table with your
 25 attorney asked for -- shows that Odra Arango

1 Liechtung
 2 and -- sorry A&A Global Resources --
 3 MR. FIERST: I think A&A Global
 4 Resources is one and the same. It's AAGR,
 5 the initials, it's not two different
 6 companies.
 7 Q The check for \$58,755.96 was written
 8 to A&A Global Resources?
 9 A Yes, they were.
 10 Q Now, what -- for what was this check
 11 written for?
 12 MR. ISSER: Object. For what
 13 purpose, is that the question?
 14 MR. RUFAL: Yes.
 15 THE WITNESS: I don't know.
 16 Q You don't know. Did you review the
 17 settlement statement before coming to this
 18 deposition?
 19 A Yes.
 20 Q Now, in your review of the settlement
 21 statement, did you not see that there was an
 22 indication -- in the entry number 508 of the
 23 settlement statement --
 24 MR. ISSER: Which settlement

1 Liechtung
2 the record. If it's a HUD form, it's
3 dated.

4 MR. RUFAL: Okay, this -- I'm
5 referring to a HUD settlement statement
6 dated May 29, 2002.

7 MR. FIERST: Can we just go off
8 the record one second. I have to speak to
9 one of my attorneys from my office,
10 please. It will take only five minutes.
11 (Off the record.)

12 MR. ISSER: Before we get to the
13 entry let's just clarify there are two
14 loans in this transaction. Which loan in
15 the HUD statement are you referring to?

16 MR. RUFAL: We're getting to that.
17 I was referencing a HUD statement dated
18 May 29th, 2002, with regard to a transfer
19 of the property. Looking at 119-47 166th
20 Street prior to May 29, 2002, belonging to
21 Effingham James and that was being
22 transferred to Odra Arango.

23 Q Now, this particular HUD statement is
24 -- pertains to the first mortgage in the
25 amount of \$196,000.

1 Liechtung
2 Now item number 508 of the statement
3 indicates that a check for \$59,000 was written
4 to AAGR Realty Management, LLC.

5 When you reviewed this document, did
6 you notice that -- the entry? Did you notice
7 the entry?

8 A So you want to know if I noticed the
9 entry?

10 Q No. Okay. Basically, what I want to
11 know was this. What was that \$59,000 for?

12 A That \$59,000 appeared on the HUD
13 pursuant to a commission bill that was given
14 to me at the closing to pay that money to that
15 payee.

16 Q When you say commission, can you
17 please explain what commission; what that
18 commission was with regards to?

19 A There is -- I believe it was for a
20 real estate commission that was to be paid to
21 that payee pursuant to a bill, a statement
22 signed by Effingham James and given to me at
23 closing.

24 Q You say -- so that means a broker, a
25 real estate broker's commission?

1 Liechtung

2 A There is a copy of it in there.

3 Q There is a copy of it in there. Can
4 you just show me that copy?

5 A (Witness complies.)

6 MR. FIERST: Off the record.

7 (At this time, there was a

8 discussion held off the record.)

9 MR. RUFAL: Back on the record.

10 Q Now as part of the documents I
11 received from Mr. Liechtung, the commission
12 agreement, it's dated 5/15 -- May 15, 2002.

13 And the document what appears to be the
14 signature of Mr. James but that -- what
15 represents to be the signature of Mr. James
16 and some other broker/manager, I don't know.

17 Now, this indicates that this document
18 was signed by Mr. James on the same day of the
19 closing. The commission indicates that it was
20 signed by Mr. James. Now, did Mr. James sign
21 this document in your presence?

22 A No.

23 Q At what time were you given this
24 particular document?

25 A I don't know, I don't remember.

1 Liechtung

2 Q You don't remember. Okay, now, this
3 document says its for a real estate broker
4 commission agreement and from the amount it
5 says \$59,000? Is that -- the purchase price
6 is \$245,000 that -- this would represent about
7 24 percent of the purchase price. Do you not
8 find that unusual?

9 A Yes.

10 Q And then even though you found it
11 unusual, you wrote the check any way; is that
12 correct?

13 MR. ISSER: I'm going to object.
14 You're asking about the transaction. He's
15 not an expert, he's not being called here
16 as an expert witness. This is relevant to
17 this federal action, this doesn't --

18 MR. RUFAL: But it's relevant to
19 the action we have in Supreme Court and
20 that's --

21 MR. ISSER: You're asking your
22 questions, I haven't objected. You asked
23 him if he knows what the checks are for,
24 you're asking him why certain checks were
25 cut, but his beliefs on this check as a

1 Liechtung
 2 non-party when he's a defendant, it's in a
 3 related action, I think it's back door
 4 discovery.
 5 MR. RUFAL: No, it's of the --
 6 MR. ISSER: He's a non-party
 7 witness.
 8 MR. RUFAL: It's relevant.
 9 MR. ISSER: You didn't ask him his
 10 observations. You didn't ask him his
 11 observations --
 12 MR. RUFAL: I asked him his
 13 observations. I said identify -- the fact
 14 that the check was \$59,000 out of a
 15 \$245,000 purchase price -- is it unusual.
 16 MR. ISSER: That's not an
 17 observation. That's a subjective opinion.
 18 You're asking a subjective opinion as a
 19 non-party witness pursuant to a subpoena
 20 especially when there's a related federal
 21 action, those questions will have to wait
 22 another day.
 23 Q Now, can you tell me -- I want to know
 24 --
 25 MR. ISSER: My client would like

1 Liechtung
 2 to provide an answer of sorts to your last
 3 question.
 4 MR. RUFAL: Not after you have
 5 conferred with your attorney. I mean, if
 6 you --
 7 MR. ISSER: That's fine.
 8 MR. RUFAL: It would be all right,
 9 but he conferred with his attorney before.
 10 You can go ahead.
 11 MR. FIERST: Objection, based upon
 12 privilege between Mr. Isser and my client,
 13 this is his opinion and he's not an expert
 14 witness in these proceedings.
 15 MR. RUFAL: Objection to what?
 16 MR. FIERST: Objection to --
 17 MR. ISSER: Let's move on, it's
 18 okay.
 19 Q Now, I want to have an understanding.
 20 Is there anything you recollect independently
 21 of your review of your documents from that
 22 transaction on that day?
 23 A That's pretty broad.
 24 MR. ISSER: Could you narrow the

1 Liechtung
 2 Q Okay. The question is, do you
 3 remember anything from that transaction? From
 4 all the questions I've asked you, it's obvious
 5 that you've answered me only pursuant to your
 6 review of the documents. Now, what I want to
 7 know if do you have any recollection of the
 8 transaction itself at all independent of the
 9 review of these documents?
 10 MR. ISSER: Let me just -- do you
 11 mean any aspect whether seeing anyone in
 12 the lobby, seeing someone in the room,
 13 copying a document, writing a check,
 14 you're asking about any aspect of the --
 15 MR. RUFAL: I'm just asking, do
 16 you -- does he remember the transaction
 17 happening?
 18 MR. ISSER: Any part of it or the
 19 whole thing? I mean, I'm just trying to
 20 clarify your question.
 21 Q Let me tell you. Okay. Let me just
 22 ask it. There was an accident, somebody --
 23 every person -- I understand before the
 24 accident doesn't remember maybe the police
 25 report can help him remember that. I just

1 Liechtung
 2 want to know, does it -- do you remember that
 3 transaction even happened at all?
 4 MR. ISSER: Let me just clarify.
 5 What if he remembers an ambulance pulling
 6 up and that's all he remembers. Would
 7 that be remembering the accident?
 8 MR. RUFAL: If an ambulance is
 9 pulling -- an ambulance pulls up every
 10 time. He has to. If he remembers -- he
 11 must remember an ambulance pulled. That
 12 doesn't mean that the accident didn't
 13 happen -- there was an accident happened
 14 and the ambulance pulled up. That's what
 15 I --
 16 MR. FIERST: Maybe I can help.
 17 Mr. Liechtung when you and I first spoke
 18 back in, I guess, June and I advised you
 19 that the proceedings were taking place,
 20 you had not yet looked at your documents;
 21 correct?
 22 THE WITNESS: Correct.
 23 MR. FIERST: Based upon our phone
 24 call where I advised you you were noticed

1 Liechtung
 2 MR. RUFAL: Wait, wait, wait.
 3 Objection -- you want to -- if you're
 4 going to refer to any phone calls, you
 5 want to explain the nature of the
 6 conversation.
 7 MR. FIERST: I just did. When I
 8 advised Mr. Liechtung of these proceedings
 9 and the fact that --
 10 MR. RUFAL: What is the nature of
 11 the advice?
 12 MR. FIERST: That this action was
 13 pending and he was noticed for a
 14 deposition.
 15 At that time, did you have any
 16 independent recollection of this
 17 transaction?
 18 THE WITNESS: No.
 19 MR. RUFAL: That does not answer
 20 my question though.
 21 Q My question was, did you remember any
 22 transaction happening on May 29th?
 23 A I would need to further refresh my
 24 recollection.
 25 Q In order to remember that?

1 Liechtung
 2 A In order to see if I remember it.
 3 Q Now, this organization that this check
 4 was written A&A Global, Now, have you had
 5 prior transactions with them?
 6 MR. ISSER: I'm going to object.
 7 This is not about prior transactions, this
 8 is about this transaction.
 9 MR. FIERST: The matter is also
 10 privileged by the federal privacy act.
 11 Q Now, at the time did you know Odra
 12 Arango -- did you know if Odra Arango was
 13 buying the property with the intent to occupy
 14 it or not?
 15 A I would have no idea what her
 16 intentions were.
 17 Q Okay. But did Odra Arango indicate
 18 that she was buying the property as a straw
 19 buyer and would not occupy the property?
 20 MR. ISSER: I'm just going to
 21 object for you to define "straw buyer."
 22 Q Okay. Did Odra Arango indicate that
 23 when she buys -- after that transaction that
 24 day that she would keep the property to live
 25 in?

1 Liechtung
 2 A Did she indicate that to me?
 3 Q Uh-huh.
 4 A No, I don't remember but if she did I
 5 wouldn't have closed.
 6 Q If she did what?
 7 A I she did, I wouldn't have closed.
 8 Q If she did what?
 9 A No answer.
 10 Q So when you say if she did you meant
 11 if she indicated that she was buying the
 12 property, not with the intention to keep it,
 13 you would not have closed?
 14 A I would have questioned the
 15 transaction.
 16 Q Did you speak to Odra Arango at all?
 17 MR. ISSER: Objection, when?
 18 MR. RUFAL: At the time of this
 19 closing.
 20 THE WITNESS: I don't remember.
 21 Q Did you speak to Mr. James at the time
 22 of the closing?
 23 A I don't remember.
 24 Q Did you speak to Ms. Duvall at all at
 25 the time of the closing?

1 Liechtung
 2 A I don't remember, but I probably did.
 3 Q What -- why would you think you
 4 probably did? Was there any particular
 5 reason?
 6 A Well, yes, she was the attorney at the
 7 closing and she was handing me various
 8 documents and bills. And I spoke to the title
 9 closer also probably because he was going over
 10 the title, getting his bill. I mean, he's --
 11 stuff doesn't appear out of thin air. I have
 12 to get it from the attorneys that are at the
 13 closing.
 14 Q Do you know what kind of bills and
 15 documents Ms. Duvall was handing to you?
 16 A I mean not independently, but she
 17 prepared certain paperwork for my settlement
 18 statement.
 19 Q What kind of paperwork?
 20 A The check cut sheet, you know a sheet
 21 that would tell me who, you know, what checks
 22 were being drawn.
 23 Q Now, the check list as you referred
 24 to, you said, that means the check list?
 25 A Yes.

1 Liechtung
 2 Q Okay, the check list --
 3 A Do you have a copy of that, let's see
 4 if there's --
 5 MR. RUFAL: I think I have that in
 6 one of your documents.
 7 MR. ISSER: It's handwritten.
 8 MR. RUFAL: Huh?
 9 MR. ISSER: It's handwritten.
 10 (Off the record.)
 11 Q Now, as part of the document that was
 12 given to me by Mr. Charles Liechtung is a
 13 check list. It's dated May 29, 2002. It's
 14 with regard to the transaction in question.
 15 Now, Mr. Liechtung is it this check
 16 list that was given to you by Ms. Duvall?
 17 MR. ISSER: Let me just further
 18 clarify. It's a handwritten list. It's a
 19 form with blank lines and there's
 20 handwriting in the blank lines. Should we
 21 mark this. No? All right. Go on,
 22 please.
 23 THE WITNESS: That would be --
 24 what was the question?
 25 (Question read back.)

1 Liechtung
 2 THE WITNESS: It would be.
 3 Q So Mr. Duvall prepared this check
 4 list?
 5 A Yes.
 6 Q So the handwritten figures on the
 7 check list would be Ms. Duvall's handwriting?
 8 A Yes.
 9 Q Now, you said you probably had
 10 conversations was Mr. Bakst at the time of the
 11 closing? What kind of conversation do you
 12 think you probably had with him?
 13 MR. ISSER: I'm going to object.
 14 You're asking him to speculate.
 15 MR. RUFAL: No, I'm telling -- he
 16 said he probably had. What would be the
 17 reason why you had?
 18 THE WITNESS: Typically, I would
 19 review the title report that was marked by
 20 the title closer. I would review the loan
 21 policy -- the loan policy given in favor
 22 of the bank. I would review his bill and
 23 the payoff, the mortgage payoff and if I
 24 had any questions or corrections to them.

1 Liechtung
 2 would say hello. Typically, that's my
 3 conversation with them.
 4 Q At the closing, do you remember if the
 5 keys were given to Ms. Arango, the buyer, at
 6 that closing?
 7 A I don't remember.
 8 Q You don't remember. Were you aware if
 9 a lease with an option agreement was given by
 10 the -- Odra Arango to Mr. James?
 11 A No.
 12 Q You're not aware. Do you recollect
 13 the seating position of Mr. James and Mrs.
 14 Duvall and Odra Arango?
 15 A No.
 16 Q You don't recall?
 17 A No.
 18 Q Do you recall your own seating
 19 position whenever you were in the closing?
 20 MR. ISSER: Do you mean at the
 21 table?
 22 THE WITNESS: At a typical
 23 closing?
 24 Q No, at this particular closing?
 25 A No.

1 Liechtung
 2 Q Did you ever sit at the table at the
 3 closing?
 4 A Probably not. I usually don't sit at
 5 closing when they're in my office.
 6 Q Is the bank aware of that practice of
 7 yours?
 8 A Well, I don't know. I don't know if
 9 they're aware of it or not.
 10 Q Is that appropriate?
 11 A I don't know.
 12 MR. ISSER: I'm going to object to
 13 that.
 14 THE WITNESS: I don't know if it's
 15 appropriate or not.
 16 Q Do you know if somebody by the name of
 17 Ann Alvarez was at the closing?
 18 A I don't remember.
 19 Q You don't remember. Do you know Ann
 20 Alvarez?
 21 A Yes. I know who she is.
 22 Q You know who she is. What about
 23 Alfred Mills? Do you know if Alfred Mills was
 24 at the closing?

10 (Pages 34 to 37)

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1 Liechtung
 2 Mills.
 3 Q Do you know what his relationship with
 4 this particular transaction is?
 5 A No.
 6 Q Do you -- based on the documents it
 7 was the person that took the credit
 8 application, the loan application of Mrs.
 9 Arango, did your documents indicate anything
 10 like that?
 11 A I don't -- first of all, I don't have
 12 a -- you're talking about the loan
 13 application?
 14 Q The loan application, yes?
 15 A I don't have a copy of that in my
 16 file. I don't retain a copy of that in my
 17 file.
 18 Q Here it shows that you wrote from your
 19 check list that Mr. -- Okay. We may have a
 20 copy of the checks that Mr. Liechtung wrote at
 21 the table for a distribution of the proceeds
 22 from that transaction. Now, in one of those
 23 check lists, it shows that you wrote checks to
 24 -- in one of the check list it shows that Mr.
 25 Liechtung wrote check -- okay, specifically

1 Liechtung
 2 the check number is 5275 and that you wrote
 3 this check to Discount Funding?
 4 A Yes.
 5 Q Now, what is the service of Discount
 6 Funding give. What is the service --
 7 A That check was written pursuant to the
 8 instructions given to me by my client. It
 9 represented a fee payable to Discount Funding.
 10 I have no idea what services they provided or
 11 didn't provide.
 12 Q You know, as part of the -- in
 13 response to my question you said you wrote the
 14 check Discount Funding to what -- the
 15 instruction of who?
 16 A Pursuant to the instructions of my
 17 client.
 18 Q Of your client. So independent of
 19 your instructions, you don't know what a --
 20 A Independent of that instruction, I
 21 wouldn't be closing the loan.
 22 Q I know, but -- so you do not know what
 23 the check you were cutting to Discount Funding
 24 represents?
 25 MR. ISSER: By firsthand knowledge

1 Liechtung
 2 you're asking?
 3 MR. RUFAL: By firsthand
 4 knowledge.
 5 THE WITNESS: Do I know?
 6 Q Do you know based on your instructions
 7 that your client gives you?
 8 A The check was written pursuant to the
 9 instructions of my client, period.
 10 Q I understand that. Now, even though
 11 your client instructed you, does your client
 12 usually not give -- with the instructions the
 13 description of the checks you are writing?
 14 MR. FIERST: Objection to
 15 privilege, attorney/client privilege.
 16 MR. RUFAL: What's privileged?
 17 I'm not -- I'm not --
 18 MR. FIERST: Instructions between
 19 my client and Mr. Liechtung who served as
 20 my client --
 21 MR. RUFAL: I'm not asking for the
 22 substance of any information.
 23 MR. FIERST: You're asking for the
 24 written instruction.
 25 MR. RUFAL: I'm not asking for

1 Liechtung
 2 written instruction, I'm asking --
 3 MR. FIERST: Objection is for the
 4 record. I'm instructing Mr. Liechtung not
 5 to -- not to --
 6 MR. RUFAL: Let it be know for the
 7 record, I did not ask for specific
 8 information. I'm asking for -- if it's a
 9 practice that they right a memo which --
 10 I'm not asking for the substance of the
 11 memo.
 12 MR. FIERST: The objection is that
 13 your questions must remain as to this
 14 transaction only not as a matter of
 15 practice.
 16 MR. RUFAL: I am asking with
 17 regard to this transaction what regards to
 18 the memo.
 19 Was there something with the
 20 instructions specifying what that check
 21 has to do?
 22 MR. FIERST: Objection privileged.
 23 Let's move along.
 24 MR. RUFAL: You are you not
 25 representing Mr. Liechtung.

1 Liechtung
 2 MR. FIERST: I'm representing my
 3 client.
 4 MR. RUFAL: You're representing
 5 your client --
 6 MR. FIERST: -- who Mr. Liechtung
 7 served as attorney.
 8 MR. RUFAL: All right. Let me
 9 tell you, your client can't only -- if
 10 your client cannot ascertain as to that
 11 privilege. I'm not asking your client
 12 that. I'm deposing Mr. Liechtung as Mr.
 13 Liechtung, not as your client so that
 14 objection is void as far as I'm concerned.
 15 So it's void.
 16 MR. FIERST: Okay. You're the
 17 judge and jury. So let me --
 18 MR. RUFAL: I'm no judge and jury.
 19 MR. FIERST: So let me clarify
 20 that you would like Mr. Liechtung to
 21 assert the privilege?
 22 MR. RUFAL: He doesn't have to --
 23 frankly, I don't have --
 24 MR. FIERST: Proceed.
 25 MR. RUFAL: Mr. Liechtung has an

1 Liechtung
 2 do, answer your question and if the bank's
 3 right, he's just committed a breach of the
 4 attorney/client ethical violation or
 5 whatever you want to call it. I mean,
 6 look, it's between you and him. This has
 7 nothing -- I'm not -- all I'm saying is if
 8 the bank won't let my client answer, my
 9 client can't.
 10 You're looking at me like it's got
 11 something to do with me. This has nothing
 12 to do with us.
 13 MR. RUFAL: I don't have -- I
 14 don't have problems with you.
 15 MR. FIERST: Objection to that
 16 characterization.
 17 Q Okay. Now did instructions which you
 18 referred do -- do you have a copy of the list
 19 of the instructions?
 20 A Yes. But I have to see if its
 21 privileged or not. I'm allowed to confer;
 22 right?
 23 Q Yes.
 24 MR. ISSER: Off the record.
 25 (Off the record.)

1 Liechtung
 2 attorney here and you have warned Mr.
 3 Liechtung to assert a privilege.
 4 MR. FIERST: You're voiding my
 5 objection?
 6 MR. RUFAL: Yes, I have.
 7 MR. FIERST: Go on.
 8 MR. ISSER: My client owes a
 9 privilege to the bank. The bank's
 10 attorney is asserting that privilege and
 11 is instructing my --
 12 MR. RUFAL: No.
 13 MR. ISSER: And instructing my
 14 client not to answer. I am not --
 15 frankly, it doesn't have anything to do
 16 with my client or I. Its the bank
 17 privilege. Only the bank can waive it.
 18 Whether it's privileged or not, we are
 19 going to follow the bank's objection.
 20 My hands are tied, sir. I am not
 21 taking -- the bank has the privilege.
 22 They're instructing my client not to
 23 answer based on their reading and
 24 understanding of the privilege. I can't

1 Liechtung
 2 MR. ISSER: To cut through all
 3 this, there is a document that we have
 4 produced because its not privileged that
 5 was signed by Ms. Arango that contains
 6 these instructions so you have a document.
 7 MR. RUFAL: Can you show that
 8 document to me?
 9 THE WITNESS: (Witness complies.)
 10 Those are signed by the borrower.
 11 Q Now, Mr. Liechtung has given me as
 12 part of the documents he produced pursuant to
 13 the subpoena, he has given me a lender's
 14 closing instructions dated May 29, 2002. Now,
 15 his attorney said this is non-privileged
 16 instructions that he's willing to produce?
 17 MR. ISSER: Well, just to clarify
 18 on the prior issue. This document is not
 19 privileged, in our opinion, because it was
 20 signed by a third party so there's no
 21 confidentiality concerning this. But this
 22 is a different situation than other
 23 documents that you asked about before.
 24 But this document was produced in response

1 Liechtung
 2 because it's not privileged because it's
 3 not confidential.
 4 Q Now, with regard to the documents I
 5 was referring which you were instructed not to
 6 respond because of privilege --
 7 MR. RUFAL: Now, Mr. Fierst, what
 8 kind of privilege are you asserting?
 9 MR. FIERST: Attorney/client.
 10 MR. RUFAL: Attorney/client?
 11 MR. FIERST: Because it's
 12 correspondence between Mr. Liechtung and
 13 his client and my client, First Franklin.
 14 MR. RUFAL: And let me -- I don't
 15 understand. Your client which is F.F.F.C.
 16 Is your client not a party to this
 17 transaction?
 18 MR. FIERST: I'm sorry?
 19 MR. RUFAL: Is your client not a
 20 party -- is your client not a party to
 21 this transaction.
 22 MR. FIERST: My testimony is not
 23 relevant here.
 24 Q Mr. Liechtung is Mr. -- is F.F.F.C --
 25 okay. F.F.F.C. -- let me go into. F.F.F.C.

1 Liechtung
 2 is a party to this action and with regard to
 3 the transaction --
 4 MR. FIERST: Are you testifying,
 5 Mr. Rufai?
 6 MR. RUFAL: I am saying to go --
 7 MR. FIERST: I suggest that you
 8 put a question on the table.
 9 MR. RUFAL: I do not have to put.
 10 I'm putting -- I'm putting -- I'm saying
 11 for the record. For the record, I'm
 12 stating that F.F.F.C. is a party in this
 13 action -- in the action in question and
 14 that the question I'm asking Mr. Liechtung
 15 is with regard to the transaction that
 16 F.F.F.C. had and which Mr. Liechtung
 17 represented F.F.F.C. So the --
 18 MR. FIERST: I have no objection
 19 to any questions about the transaction
 20 itself. My objection relates to
 21 memorandums, correspondence, discussions
 22 between First Franklin and Mr. Liechtung
 23 which is certainly governed by the
 24 attorney/client privilege regardless if
 25 they involve the transaction.

1 Liechtung
 2 MR. RUFAL: Like I was saying.
 3 Now, this question I have is for Mr.
 4 Liechtung with regards to the memo was
 5 with regard to the transaction and since
 6 F.F.F.C. is a party in this action and Mr.
 7 Liechtung represented F.F.F.C. with
 8 regards to the transaction, these
 9 objections are frivolous and baseless.
 10 That's for the record, I'm saying that.
 11 Q Now, let's talk a little about the
 12 settlement statement with regards to this
 13 transaction?
 14 MR. FIERST: Which one?
 15 Q The two settlement statements. The
 16 first -- let's discuss the first -- the one
 17 pertaining to the first mortgage? The
 18 settlement amount pertaining to the first
 19 mortgage.
 20 MR. FIERST: Which principal
 21 amount is?
 22 MR. RUFAL: \$196,000.
 23 Q Now, with regards to this HUD
 24 statement, now did you get a final approval
 25 from F.F.F.C?

1 Liechtung
 2 A Yes.
 3 Q At what time that day did you get it?
 4 A I didn't get it that day, I got it the
 5 next day.
 6 Q Do you remember about what time the
 7 next day you got that?
 8 A I don't know.
 9 Q Now, did you disburse funds before you
 10 obtained the final approval?
 11 A No.
 12 Q So it was after you got the final
 13 approval that you disbursed funds?
 14 A Yes.
 15 Q Now, with regards to the check for
 16 Discount Funding, how did you get the check to
 17 Discount Funding?
 18 MR. ISSER: Do you mean physically
 19 delivered the check?
 20 Q How did you deliver the check to them?
 21 A I don't know.
 22 Q Was it a representative of Discount
 23 Funding present at the closing?
 24 A I don't remember.
 25 Q You don't know. Now, do you still

1 Liechtung
 2 close for F.F.F.C.?
 3 MR. ISSER: I'm going to object.
 4 This is -- we're talking about three years
 5 after the transaction?
 6 MR. RUFAL: Yes.
 7 MR. ISSER: That's not relevant to
 8 this.
 9 MR. RUFAL: Okay. There's no
 10 relevance here, so, okay.
 11 Q How often -- until My 29, 2002, how
 12 often did you close for F.F.F.C. average on a
 13 weekly basis?
 14 A I don't know. I couldn't even tell
 15 you. I mean, I don't -- there's no way
 16 sitting here I could even tell you.
 17 Q Because you don't remember or --
 18 A Because I represent a lot of banks and
 19 this is one of my more minor banks.
 20 Q Before May 29, 2002, did you have any
 21 closings with Discount Funding?
 22 MR. ISSER: I'm sorry, can you say
 23 that again?
 24 Q Prior to May 29th -- after this
 25 transaction of May 29th --

1 Liechtung
 2 A I may have.
 3 MR. ISSER: Well, let me hear the
 4 question.
 5 THE WITNESS: Well, he asked did I
 6 have any closings with Discount Funding.
 7 MR. ISSER: I would -- so what do
 8 you mean "with?" Where they got a check
 9 or they provided services.
 10 THE WITNESS: Well, let me ask you
 11 this. Specifically with whom?
 12 Q In which Discount Funding was the
 13 originator of the loan?
 14 A I may have.
 15 Q Prior to May 29, 2002, did you have
 16 any closing if you recall at it all whereby
 17 you cut checks to A&A Global were the broker?
 18 A I don't recall.
 19 Q Prior to May 29, 2003, did you have
 20 any closings with -- at that which Ann Alvarez
 21 attended the closing?
 22 MR. ISSER: I'm going let it go a
 23 little but this is really more relevant to
 24 the federal action. This has been --

1 Liechtung
 2 relevant to this transaction?
 3 MR. RUFAL: The thing is not
 4 you're not familiar with the case we have
 5 in the Supreme Court. If you were
 6 familiar you wouldn't ask why. I
 7 understand where you're coming from
 8 because you're a defendant in the action.
 9 MR. ISSER: Okay. I'm going to
 10 let a couple of these questions go. I
 11 mean, I'm just trying to accommodate and I
 12 agree but, I mean, I just want to give a
 13 warning.
 14 MR. RUFAL: I understand.
 15 MR. ISSER: I mean, you could ask
 16 him --
 17 THE WITNESS: I don't know.
 18 Q Okay, what about with regard to Alfred
 19 Mills?
 20 A I don't know.
 21 Q Now, based on your review of the
 22 records --
 23 A Of the documents?
 24 Q Of the documents. Seeing that a check
 25 for \$59,000 was cut for A&A Global on a price

1 Liechtung
 2 that is total \$245,000 -- on the purchase
 3 price of \$245,000. Now, based on your review
 4 of the records of this transaction, would you
 5 cut a check to A&A Global today if the same
 6 transaction were to repeat?
 7 MR. ISSER: I'm going on object.
 8 That's calls for speculation and that's
 9 clearly not relevant. Don't answer that.
 10 Q Now, still on the review of the -- did
 11 you write any check at all to Mr. James at the
 12 table?
 13 MR. ISSER: Are you asking him if
 14 he remembers writing a check out to Mr.
 15 James?
 16 MR. RUFAL: To Mr. James at the
 17 closing.
 18 MR. ISSER: He's asking if you
 19 remember. You don't have to look at the
 20 documents. Is this person from memory or
 21 do you want to --
 22 MR. RUFAL: I would prefer if you
 23 say so, but obviously from what he's
 24 saying --

14 (Pages 50 to 53)

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1 Liechtung
 2 no. But before I say no, no, I didn't.
 3 Q Now, were you shown any checks that
 4 the buyer, Odra Arango wrote to Effingham
 5 James outside the closing, outside the
 6 proceeds I mean, from the closing?
 7 A I found in my file copies of Citibank
 8 money orders. That's the best -- I don't
 9 recall but I found in my file copies of money
 10 orders that were delivered --
 11 Q Do you have the copies of that?
 12 A They are there.
 13 Q Can I see them?
 14 A (Witness complies.)
 15 Q Okay. With the document given to me
 16 by Mr. Liechtung are copies of money orders
 17 which supposedly -- which allegedly was given
 18 to Mr. James by Odra Arango. These money
 19 orders are dated? Could you tell us the date
 20 of these?
 21 A I want to say it says 5/30/02.
 22 MR. ISSER: Excuse me. Just for
 23 the record, it's very, very difficult to
 24 make out the date. The document speaks
 25 for itself.

1 Liechtung
 2 THE WITNESS: I'm not going to
 3 check everyone but on the one I just
 4 checked and that you wanted, it says
 5 5/30/02.
 6 Q Yeah, that's exactly what the document
 7 says. It says that they were issued May 30,
 8 2002. There is six money orders -- no, sorry,
 9 five money orders on the each -- let me see
 10 what the first one says. Okay. The first one
 11 that's money order -- the number it states
 12 234-605591721 issued in an amount of \$1,000.
 13 The second one 234-605591720, it's also in the
 14 amount of \$1,000. The third one also dated
 15 May 30, 2002, number 234-605591718 in the
 16 amount \$1,000. The fourth one also dated May
 17 30, 2002, number 234-605591719 in the amount
 18 of \$1,000 and the fifth one also dated May 30,
 19 2002, number 234-605591723 in the amount of
 20 \$300. Now, there is a sixth one, but this one
 21 is issued to, I believe, Northeastern Metro
 22 abstract. It's also dated May 30, 2002. The
 23 number is 234-605591722 in the amount of \$200.
 24 Now when you reviewed the documents
 25 and this document -- this particular money

1 Liechtung
 2 order indicates that they were actually issued
 3 a day after the closing. What -- did this
 4 appear unusual?
 5 A Did what appear unusual?
 6 Q That it was a day after the closing?
 7 A No. You're asking me this question in
 8 a vacuum. It's a vacuum. Did it appear
 9 unusual, not under the circumstances.
 10 Q What do you mean by the circumstances?
 11 A Well, under the circumstances of the
 12 closing, it was not unusual.
 13 Q What is the circumstances of the
 14 closing?
 15 A The circumstances I'm referring to is
 16 that the buyer would not have known what she
 17 would have had to bring to the closing until
 18 after the banks were closed because we started
 19 the closing after the banks were closed. So
 20 the next day she would have gotten the money
 21 that she needed to give the balance of the
 22 purchase price. Where was she going to get
 23 it? I don't recall what time the closing
 24 closed -- ended but if it started at 6, 7
 25 o'clock, she can't, she won't know what she

1 Liechtung
 2 had to bring. She didn't know she needed \$200
 3 more for the title company. So that's why
 4 it's not unusual. If it started at 10:00
 5 o'clock, it might be, it might not be. But,
 6 under the circumstances of this closing, it's
 7 not unusual.
 8 Q I do appreciate your offer of your
 9 opinion here.
 10 A You asked me what I meant, I told you
 11 what I meant.
 12 Q Yeah, I appreciate it. However, if I
 13 understand very well, normally a lender's
 14 attorney is supposed give a net to the buyer
 15 and it was -- a net amount which the bank will
 16 bring to the table from the loan amount and
 17 its from that the net that the buyer will be
 18 able to determine how much he's supposed to
 19 bring to the table?
 20 A You're right. What is the underlying
 21 assumption of that statement? You're
 22 underlying assumption is what when you make
 23 that statement?
 24 Q That you would have given the buyer a
 25 net amount and the buyer would --

1 Liechtung

2 A Well, that's what you stated, but your
3 underlying assumption is that I was going to
4 have the ability to give that net; right? The
5 ability?

6 Q Yes?

7 A And I could only have the ability if
8 my paperwork comes in a timely fashion and my
9 paperwork probably did not come in a timely
10 fashion and that is not unusual. So that's
11 why he may or may not, or whoever was
12 representing her, may or may not have had the
13 net figure. So even though you would have the
14 net figure, you would be able -- theoretically
15 be able to determine what the buyer would have
16 to bring.

17 If you had the figures it's likely
18 that in this instance as in many instances,
19 the paperwork didn't come in. So there are
20 certain assumptions that you should not make
21 when you deal with closings because a Chase
22 closing isn't the same as HSPs. Every closing
23 is different. So, you know, just -- your
24 assumptions are -- this was in -- in the
25 circumstances of the closing this was not

1 Liechtung

2 unusual.

3 Q Okay. So what would have the usual?
4 What would have been the time within which you
5 would have been able to get --

6 A You know, I really don't know. It
7 depends on how many closings I've had that
8 day. I don't drive. If I was doing eight
9 closings that day and my girls couldn't get to
10 it in time, then they wouldn't have it. You
11 know, there's a whole series of circumstances
12 that occur here. I know that this is
13 important to you, it's important to me, but
14 it's not the only closing I do.

15 So, there's a whole series of
16 circumstances that have to -- I can't answer
17 that question. What would be perfect, I get
18 my paperwork at 10:00 o'clock in the morning
19 the day before the closing and I tell
20 everybody what it is. That's perfect. And
21 that happens rarely. But this is -- it's a
22 dynamic. I mean, you know, I don't know what
23 would be -- I could tell you what perfect is.
24 I could tell you what every closing attorney

1 Liechtung

2 I'm at the whim of the bank, the clients, the
3 attorneys. I'm the serviceman here. So I do
4 the best I can.

5 But under the circumstances of this
6 closing, if the closing is starting at 7
7 o'clock, it's not unusual that someone had to
8 run out the next day to get the money.

9 Q Does the bank, does the bank
10 instruction notify you that you have -- does
11 the lender notify that all evidence of
12 payments should be obtained for closing before
13 final authorization of disbursement?

14 MR. ISSER: Are you asking in this
15 closing?

16 MR. RUFAL: In this closing, yeah.

17 THE WITNESS: Yes.

18 Q So now if this was obtained the
19 following day, would that violate that
20 instruction?

21 A No. What is your assumption? The
22 question?

23 Q No. You just said now. I asked you
24 that does the bank not require that all
25 disbursements be authorized and obtained on

1 Liechtung

2 the table and you said, yes?

3 A No, I said -- that's not what you
4 asked me. Could you read back his question?

5 MR. RUFAL: Read back my question.
6 (Question read back.)

7 Q What I'm saying is that --

8 A When are you assuming I disbursed?

9 Q No, I know you disbursed the following
10 day. But the closing took place on the 29th?

11 MR. ISSER: I'm just going to
12 object. It depends what his definition of
13 closing is. If your definition of closing
14 is the day everyone gets together in the
15 room, that occurred on the 29th. If your
16 definition of closing is when everyone
17 gets their money and the deal is formally
18 done, that clearly didn't happen on the
19 29th.

20 THE WITNESS: You're flipping and
21 I'm not being --

22 MR. ISSER: I'll handle talking to
23 the attorney.

24 I'm not accusing you of flipping.

1 Liechtung
 2 MR. RUFAL: It's fine. It is so
 3 easy.
 4 MR. ISSER: When does the
 5 closing --
 6 MR. RUFAL: Now, the closing --
 7 when you said closing, closing is defined
 8 as something, what is the transaction.
 9 MR. ISSER: Is it disbursement of
 10 funds?
 11 MR. RUFAL: When a transaction
 12 took place. That is the transaction.
 13 MR. ISSER: When did it take
 14 place?
 15 MR. RUFAL: The other document
 16 shows it, May 29th.
 17 MR. FIERST: What if the matter
 18 closes in escrow?
 19 MR. ISSER: Yeah, what if it
 20 closes in escrow? If there's a dry
 21 closing and the funds are disbursed the
 22 next day and the keys are delivered the
 23 next day, when would you say it closed?
 24 MR. RUFAL: It closes on the day
 25 it closed, on May 29th. The closing did

1 Liechtung
 2 not change the date of the closing.
 3 MR. ISSER: If nothing else
 4 happens on the 29th --
 5 MR. RUFAL: It does though. It
 6 does though.
 7 MR. ISSER: Does it close?
 8 If nothing else happened on the 29th, if
 9 nothing happened on the 30th, the funds
 10 weren't disbursed on the 30th --
 11 MR. RUFAL: There is no closing.
 12 MR. ISSER: Did the transaction
 13 close?
 14 MR. RUFAL: It's canceled.
 15 MR. ISSER: There's no closing.
 16 It's -- I mean.
 17 MR. FIERST: Go off the record.
 18 (At this time there was a
 19 discussion held off the record.)
 20 MR. FIERST: On the record. Ask
 21 your question.
 22 Q Let the record show that when I refer
 23 to closing, I mean the date in which the
 24 transaction actually took -- that is when the
 25 transfer of the deed from Effingham James to

1 Liechtung
 2 Odra Arango took place and when the bank
 3 advanced funds to Odra Arango to facilitate
 4 the transfer -- or better still the purchase
 5 of the subject property.
 6 MR. ISSER: Are you saying? I'm
 7 going to object that that might be two
 8 different dates.
 9 THE RUFAL: It is on the record.
 10 MR. ISSER: Well, my client
 11 obviously is not aware of your definition
 12 for the deposition and I don't know if he
 13 agrees with it or not but that's fine.
 14 Q Do you object to that?
 15 A You stated two things you stated the
 16 date when the date when the deed is
 17 transferred for the deed -- the date that
 18 something -- Arango got the property and the
 19 date that the funds were advanced; right.
 20 Q Yeah, I made that -- where the bank
 21 agreed to advance the funds.
 22 A But that's not true. That's not true.
 23 The truth of the matter is that the bank
 24 agreed to advance the funds on the 30th.
 25 Q Hmmm?

1 Liechtung
 2 A Yes.
 3 Q Okay. If you think this -- the
 4 document says otherwise.
 5 A The document doesn't say that.
 6 Q The note was signed of the 29th of
 7 May?
 8 MR. FIERST: Objection. I think
 9 -- if we can go back to the record, I
 10 think, Mr. Rufal asked a when question as
 11 to when Mr. Liechtung received final
 12 approval for the HUD settlement
 13 statements. Can you possibly find that
 14 question? I don't know if -- I mean, my
 15 recollection is that Mr. Liechtung
 16 testified that he got final approval on
 17 the 30th.
 18 MR. ISSER: Off the record.
 19 (At this time there was a
 20 discussion held off the record.)
 21 MR. ISSER: Let's go on.
 22 Q Now, did you -- at the closing did you
 23 have any suspicion that there was something
 24 going on that wasn't appropriate?
 25 A I probably didn't.

1 Liechtung
 2 Q When you reviewed the document --
 3 A Which document.
 4 Q The documents you provided us for this
 5 deposition.
 6 MR. ISSER: I'll just objection.
 7 He didn't see -- hasn't reviewed them for
 8 preparation for this document so that you
 9 could go on with this deposition --
 10 Q When you reviewed the document
 11 pertaining to this transaction for which you
 12 based a substantial part of your opinion --
 13 part of the facts you posed here did you think
 14 -- review anything unusual from the document,
 15 from the entries on it?
 16 A Did I review anything unusual from the
 17 entries?
 18 Q Yes?
 19 A I did not view what I did as unusual
 20 or incorrect if that's your question.
 21 Q So when you looked at the documents
 22 and you see the checks that were written out,
 23 the proportionality of the disbursement of the
 24 funds, you did not have any problem thinking
 25 that this is a normal transaction?

1 Liechtung
 2 public.
 3 A It doesn't matter.
 4 Q Okay. What is your understanding of
 5 public policy?
 6 A If I'm supposed to write a check to a
 7 terrorist organization, I won't do it or I'll
 8 question it. But if I'm supposed to write a
 9 check pursuant to a commission agreement or
 10 another bill given to me by the seller, signed
 11 by the seller, I'm going to write that check.
 12 Q Even if the amount of the check is
 13 grossly disproportionate?
 14 A I have no idea what was done for any
 15 monies that I put down on that statement. Do
 16 you understand that?
 17 Q Based on -- based on your --
 18 A Based on a commission --
 19 Q That's a --
 20 A I'm telling you what my answer is.
 21 Based on the commission statement given to me
 22 at the closing, signed by your client and the
 23 change initialed by your client with the
 24 attorney present, I will write a check that he
 25 wants. And if he wanted to give that to

1 Liechtung
 2 MR. ISSER: I'm going to object.
 3 He's testified what his instructions were.
 4 He's testified that he didn't do anything
 5 unusual. He's not an expert witness to
 6 discuss whether the checks are normal.
 7 MR. RUFAL: I'm not -- I can't
 8 answer that -- I'm just telling him that
 9 based on what happened.
 10 THE WITNESS: What I have answered
 11 is that based on the review of the
 12 paperwork that I had, I did not view what
 13 I did in this transaction as unusual or
 14 incorrect.
 15 Q I'm only asking what you did.
 16 A I don't pass on what other people do.
 17 I'm given instructions to do certain things at
 18 closings by attorneys and clients and that's
 19 what I do unless it goes my client's
 20 instructions or public policy. Otherwise, I
 21 follow instructions given to me.
 22 Q Public policy. So let me ask you
 23 this. You don't think for --
 24 A It doesn't matter what I think

1 Liechtung
 2 Harrah's Casino, and spend every dime he had
 3 on Harrah's Casino chips, it's not for me to
 4 pass moralistic judgment at the closing.
 5 That's my role.
 6 Q So based on what you just said. So,
 7 is this your representation that my client
 8 signed this --
 9 A You saw the documents.
 10 Q Yeah. And initialed the changes?
 11 A There's an initial there.
 12 Q And initialed the change. So you
 13 obtained that permission agreement at the
 14 table -- at the closing table? You didn't get
 15 it the following day?
 16 A No.
 17 Q It was on the closing of May 29, 2000?
 18 A Yes, exactly. Because I put the
 19 number in the settlement statement based on
 20 that agreement just like I put the title
 21 charges in, just like I put every other fee in
 22 based on someone's instructions. I don't make
 23 this up.
 24 Q Now, these money orders, when did they

1 Liechtung

2 A I don't know. I don't know, but it
3 was sometime on the 30th and I assume it was
4 sometime on the 30th. I don't know it was,
5 but I assume it was.

6 Q So you could not say for sure that my
7 client was actually paid on the closing -- at
8 least on May 29th, the amount that you
9 indicated here?

10 A What's your question?

11 Q Okay. The question is this: I refer
12 to what you're referring to the first three
13 settlement statements with regard to the first
14 mortgage of \$196,00 on the item 603.

15 It says, Mr. James was given title to
16 an amount -- proceeds from the transaction
17 \$4,335.69?

18 MR. ISSER: I just want to object
19 to -- I want to clarify when you use the
20 term "proceeds from the transaction"
21 there's a distinction between the proceeds
22 from the mortgage or the whole
23 transaction. My client represented that
24 the proceeds of the mortgage that people
25 are entitled to that number is not

1 Liechtung

2 A May 29, 2002.

3 Q Now, does this amount -- is it the one
4 that is represented by the money orders -- the
5 copies of the money orders you have given me?

6 A I would imagine that it is.

7 Q It is. Now, when was money order
8 dated?

9 A May 30.

10 MR. ISSER: Asked and answered.

11 Q May 30th?

12 A Well, let me -- you asked me, right?
13 They seem to be dated May 30, 2002. What's
14 the question?

15 Q On item number 107 of the first
16 mortgage which is for the \$196,000, there's an
17 entry that you wrote a check for \$750?

18 A Okay. It's 1107, line 1107.

19 Q It's not 107, it's 1107. Item number
20 1107. On item number 1103 you gave another
21 check for \$100 to Mr. Charles Liechtung?

22 Mr. Liechtung, can you explain to me
23 what those checks are for?

24 A My fee for doing the closing. For
25 doing that loan. The loan for \$196,000.

1 Liechtung

2 necessarily related.

3 Q What does this entry number 603 on the
4 HUD statement pertain to the first mortgage of
5 \$196,000. The entry Number 603, what does
6 that represent?

7 A The amount of 4,335.69?

8 Q Yes?

9 A That represents what should be coming
10 through the seller if after paying everything
11 out on behalf of the seller. So he starts off
12 with 245. He makes all these payments.

13 Q Do you have the list?

14 A I don't have the list, they're all on
15 the HUD. They're all on the HUD.

16 Q Okay.

17 A They go -- they're line 502, 504, 508
18 and 509 on the HUD. On the front of the --
19 settlement statement for \$196,000. After
20 paying all this from out of the purchase price
21 he's supposed to be getting 4,335.69.

22 Q Now, when was this HUD statement
23 prepared?

24 A At the closing.

25 Q What date?

1 Liechtung

2 Q Now I have in my hand as part of the
3 documents produced by Mr. Liechtung the
4 settlement statement pertaining to the second
5 mortgage in the amount of \$49,000. Item
6 number 1107 on that statement indicates that
7 Mr. Liechtung received a check for \$400. Now
8 what does that entail?

9 A That's my fee for that loan.

10 Q For that loan?

11 A This loan.

12 Q Now, who usually determines how much
13 you get paid for the closing?

14 A I'm sorry?

15 Q Who determines how much you get paid
16 for the closing?

17 A Me.

18 Q You're the one that determines?

19 A Well, I determine it and it has to fit
20 within certain parameters. But, yeah, it's my
21 fee.

22 Q What parameters are there?

23 A The bank has to approve it.

24 Q So the bank approved this?

25 A The bank approved it, yes.

1 Liechtung
 2 Q Was there any fee sheet that was given
 3 with regards to this transaction?
 4 A Fee sheet from whom?
 5 Q By anybody. A fee sheet. Did you
 6 have -- was there any fee sheet related to
 7 this transaction?
 8 MR. ISSER: I'm going to object
 9 just I don't understand. I'm confused by
 10 the question.
 11 MR. RUFAL: Why are you objected
 12 to the words?
 13 MR. ISSER: Because I'm confused
 14 by the question.
 15 MR. RUFAL: I'm not confused.
 16 Because you are --
 17 MR. ISSER: I'm going to object.
 18 It's still an objectionable question. Ask
 19 the judge. Is there any fee sheets? I
 20 don't know what fee sheet means. Maybe
 21 you and him have different ideas of what a
 22 fee sheet is. You can ask your question
 23 and if it is confused in the transcript --
 24 I didn't tell him not to answer. Listen,
 25 I'm entitled to object.

1 Liechtung
 2 MR. RUFAL: You have to have a
 3 basis for your objection.
 4 MR. ISSER: I did.
 5 MR. RUFAL: You have to have a
 6 basis for objection.
 7 THE WITNESS: The question is a
 8 little bit vague. Who would have provided
 9 the fee sheet in your question?
 10 Q My question was any fee sheet?
 11 A I'm going to show you one from Wally
 12 Duvall prepared.
 13 Q Okay. I'm talking about, did you
 14 obtain any fee sheet from the mortgage broker?
 15 A No.
 16 Q Did you obtain any fee sheet from the
 17 bank?
 18 A Yes.
 19 Q Do you have a copy of the fee sheet?
 20 A Well, there is a couple of -- there's
 21 two different documents that would contain
 22 fees. One I gave you. One is this -- this
 23 has fees.
 24 Q Yes. I think this has fees

1 Liechtung
 2 they call an itemization which I don't have a
 3 copy of. I don't keep copies of all those
 4 documents.
 5 Q Who has a copy of the documents?
 6 A I don't know. I send it back to the
 7 bank and that's it.
 8 Q So the bank has it?
 9 A I don't know. I send it back to the
 10 bank and that's it. I don't know what they
 11 have.
 12 Q When you mean the bank, which bank?
 13 A First Franklin.
 14 Q So this fee sheet we're talking about
 15 was generated by the bank?
 16 MR. ISSER: What fee sheet is
 17 this?
 18 THE WITNESS: The itemization that
 19 I referred to was generated by the
 20 bank.
 21 Q Did you receive any fee sheet from the
 22 bank that was prepared by the mortgage broker?
 23 A It's not in my file and I don't
 24 recall. It's not in my file and I don't
 25 recall.

1 Liechtung
 2 Q You don't recall it?
 3 A No, it's not in my file.
 4 Q Now, from all the questions I've asked
 5 you so far is there anything that you remember
 6 that you want to change any of your responses?
 7 A I don't remember your question three
 8 questions ago so I have no idea. When I get
 9 the transcript I'll look it over. I'm an old
 10 guy.
 11 Q Now, have you told me everything you
 12 know about this transaction that you can? I
 13 mean occurring that the reason of the
 14 deposition do you think there is anything I
 15 need no know?
 16 MR. ISSER: I'm going to object.
 17 You ask him questions, he gives you
 18 answers --
 19 Q Now, have you provided me with all the
 20 documents you reviewed for this deposition?
 21 A I provided you with everything that I
 22 had in my file that was not privileged. That
 23 was not in our opinion privileged.
 24 Q And what documents would you review

1 Liechtung
 2 to say the substance but the --
 3 A The types of documents referred to by
 4 Mr. Fierst. Memos, things like that.
 5 Q With regard to this transaction?
 6 A Yes.
 7 Q Now that will be the end of my
 8 questions. Thank you, Mr. Liechtung.
 9 EXAMINATION BY
 10 MR. FIERST:
 11 Q Just a couple of questions.
 12 Mr. Liechtung, if you wouldn't mind, I'd
 13 appreciate the consent of Mr. Isser. I'd just
 14 like to ask you just a couple of questions
 15 just to possibly clarify the record on some of
 16 the things that Mr. Rufai had asked you.
 17 The documents that you furnished Mr.
 18 Rufai in response to the subpoena, are those
 19 documents kept by you in the ordinary course
 20 of your business?
 21 A Yes.
 22 Q And is it your practice to keep copies
 23 of the documents for every loan that you
 24 close?
 25 A To keep those types of documents.

1 Liechtung
 2 Q If you do not independently remember
 3 various things that happened at closing, by
 4 your review of those documents are they able
 5 to refresh your recollection to some degree?
 6 A Sometimes to some degree.
 7 Q To your recollection independently or
 8 upon your review of the documents, did
 9 Effingham James approve the disbursements of
 10 the funds at this closing?
 11 A Yes.
 12 Q To your recollection were any of the
 13 funds used to pay off a previous loan,
 14 mortgage loan held by Mr. James?
 15 A Yes.
 16 MR. RUFAI: I'm going to just
 17 intervene. You said your recollection, do
 18 you have a recollection independently?
 19 MR. ISSER: Wait, wait -- we can't
 20 have two attorneys at once.
 21 THE WITNESS: No, I'm doing it
 22 based on the settlement statements and the
 23 canceled checks.
 24 Q That's my next question.
 25 Is the payoff or satisfaction of the

1 Liechtung
 2 first mortgage withdrawn --
 3 Is the payoff or satisfaction of the
 4 previous mortgage reflected on the HUD-1
 5 settlement statement?
 6 A Yes.
 7 Q Just to clarify your previous
 8 testimony, Mr. James was represented by
 9 independent counsel?
 10 A Yes.
 11 Q In your experience as an attorney that
 12 represents purchasers, sellers and lenders, is
 13 it out of the ordinary that the lenders
 14 attorney might complete the closings in
 15 another room?
 16 A No, not at all.
 17 Q Again, to clarify your testimony did
 18 you testify that Ms. Duvall prepared the check
 19 cut sheet or the disbursement sheet?
 20 A Yes, I did.
 21 Q To your knowledge did Ms. Duvall get
 22 paid for her services as Mr. James' attorney?
 23 A Yes, she did.
 24 Q And is that fee also reflected on the
 25 HUD statement?

1 Liechtung
 2 A Yes, it is.
 3 Q Let's just discuss briefly the timing
 4 of the closing. You testified that the
 5 closing commenced maybe around 6 o'clock in
 6 the evening?
 7 A 6 or 7 o'clock.
 8 Q Based upon the normal setting of this
 9 closing, the end of the month being May 29, is
 10 it out of the ordinary that a closing would
 11 take place at night?
 12 A No, not at all.
 13 Q And is it out of the ordinary
 14 therefore that the final approval for
 15 disbursements for the loan can take place --
 16 Based upon the timing of the closing,
 17 is it out of the ordinary that the final
 18 approval of the HUD statements or the
 19 disbursements of the funds will not take place
 20 until the next business day?
 21 A No.
 22 Q Based upon that fact, when did this
 23 actual loan finally disburse?
 24 A May 30th.
 25 Q Is it your responsibility after taking

1 Liechtung
 2 in invoices and any other checks on the day
 3 that the loan disburses to make sure that the
 4 HUD statements balance?
 5 A Yes.
 6 Q And did the HUD statements in this
 7 transaction balance?
 8 A Yes.
 9 Q Mr. Liechtung, who pays your fees?
 10 A The borrower.
 11 Q And who is the borrower in this
 12 transaction?
 13 A Odra Arango.
 14 MR. FIERST: Thank I have nothing
 15 further.
 16 (Time noted: 11:31 p.m.)
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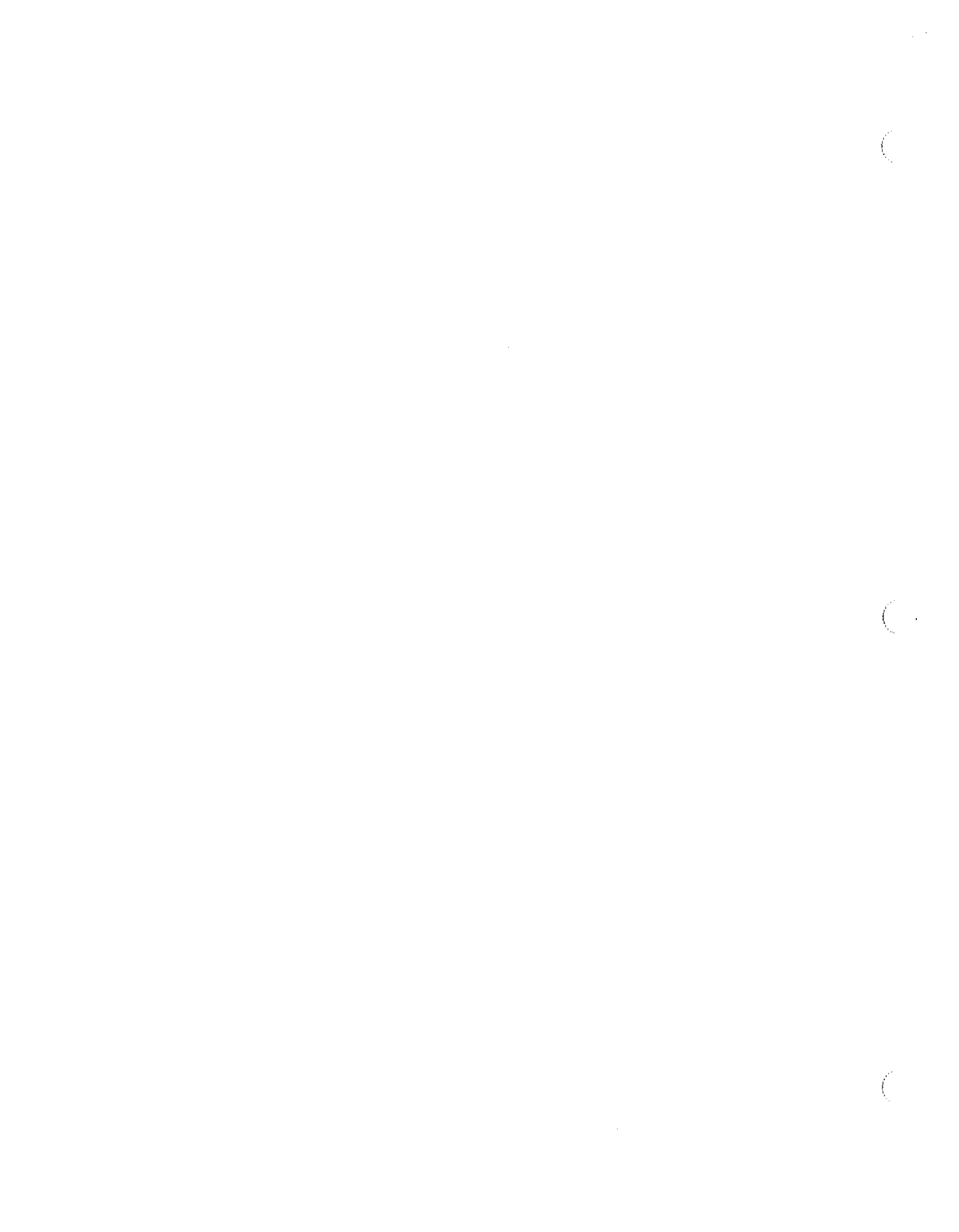
1 Liechtung
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 3
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 5
 6 CHARLES C. LIECHTUNG
 7
 8 Subscribed and sworn to before me.
 9 this ____ day of _____, 2005.
 10
 11
 12 _____
 13 Notary Public
 14
 15
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1
 2
 3 CERTIFICATE
 4 STATE OF NEW YORK)
 5) ss:
 6 COUNTY OF NEW YORK)
 7 I, SHIRLEY GONZALEZ, a Shorthand
 8 Reporter and Notary Public within and for the
 9 State of New York, do hereby certify:
 10 That CHARLES CHAIN LIECHTUNG, the
 11 Non-Party witness whose EXAMINATION BEFORE
 12 TRIAL was held on September 20, 2005, as
 13 hereinbefore set forth, was duly sworn by me,
 14 and that this transcript of such Examination
 15 is a true and accurate record of the testimony
 16 given by such witness.
 17 I further certify that I am not
 18 related to any of the parties to this action
 19 by blood or by marriage, and that I am in no
 20 way interested in the outcome of this matter.
 21 IN WITNESS WHEREOF, I have hereunto
 22 set my hand this 4th day of October, 2005.
 23
 24 _____
 SHIRLEY GONZALEZ

1 STATE OF NEW YORK) Pg__ of __ pgs
2) ss:
3 COUNTY OF NEW YORK)

4 I wish to make the following changes,
5 for the following reasons:

- 6 _____ CHANGE: _____
- 7 REASON: _____
- 8 _____ CHANGE: _____
- 9 REASON: _____
- 10 _____ CHANGE: _____
- 11 REASON: _____
- 12 _____ CHANGE: _____
- 13 REASON: _____
- 14 _____ CHANGE: _____
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