

UNITED STATES OF AMERICA
OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

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In the Matter of: :

FRANKLIN D. RAINES :

J. TIMOTHY HOWARD : Notice Number

LEANNE G. SPENCER : 2006-1

Respondents :

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Washington, D.C.

Wednesday, February 7, 2007

The scheduling conference in the above-entitled
matter, convened at 9:32 a.m., before:

HON. WILLIAM B. MORAN

APPEARANCES:

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1 P R O C E E D I N G S

2 ADMINISTRATIVE JUDGE MORAN: Okay. Good
3 morning. For those of you who have not met me
4 before, I am Judge William B. Moran. I am the
5 presiding officer in this case, which is captioned as
6 the Office of Federal Housing Enterprise Oversight in
7 the matter of Franklin D. Raines, J. Timothy Howard,
8 LeAnne G. Spencer. Notice
9 Number 2006-1.

10 We are here today at the EPA East Building,
11 EAB Courtroom at 1201 Constitution Avenue,
12 Washington, D.C. for the purpose of the scheduling
13 conference concerning the aforementioned
14 administrative notice of charges brought by the
15 Office of Federal Housing Enterprise Oversight, which
16 we're referring to
17 as OFHEO, in the matters I just mentioned.

18 I would like the parties now to
19 introduce themselves for the record beginning
20 with OFHEO.

21 MR. FELT: Thank you Your Honor. I'm David
22 Felt. And with me at counsel table from the outside

1 Rocco Covino.

2 MR. COVINO: Good morning, Your Honor.

3 MR. FELT: And Joseph Aronica.

4 ADMINISTRATIVE JUDGE MORAN: Mr. Downey,
5 nice to see you again.

6 MR. DOWNEY: Thank you, Your Honor.
7 Good morning, Your Honor. Kevin Downey for Frank
8 Raines.

9 ADMINISTRATIVE JUDGE MORAN: Mr. Salky,
10 good to see you again.

11 MR. SALKY: Good morning, Your Honor.
12 Steven Salky for J. Timothy Howard.

13 MR. KRAKOFF: Good morning, Your Honor.
14 This is my first time before you. David Krakoff for
15 LeAnne Spencer.

16 ADMINISTRATIVE JUDGE MORAN: Nice to meet
17 you, sir.

18 MR. KRAKOFF: Nice to meet you.

19 ADMINISTRATIVE JUDGE MORAN: Okay. I'm
20 going to make a statement and a ruling. Then we'll
21 deal to some extent with some other issues and some
22 questions I have and then other matters that the

1 parties may want to raise.

2 Can you all hear me okay?

3 AUDIENCE MEMBER: Your Honor, no, sir, I
4 can not hear you well.

5 ADMINISTRATIVE JUDGE MORAN: You cannot
6 hear well?

7 AUDIENCE MEMBER: No, sir.

8 ADMINISTRATIVE JUDGE MORAN: Okay. If I
9 have feedback, tell me. We'll get this adjusted.

10 Can you hear me now?

11 AUDIENCE MEMBER: Much better, sir.

12 ADMINISTRATIVE JUDGE MORAN: Okay. This
13 scheduling conference is being held pursuant to
14 12 CFR Section 1780.33. And the purpose is to
15 schedule, quote, the course and conduct of this
16 proceeding.

17 In my notice of this conference, which was
18 issued on January 31, 2007 and which was orally
19 noticed during a conference call held
20 with the parties on the same date, I indicated that
21 other issues could be addressed in this conference
22 provided those issues were identified to me by

1 February 2nd, which was last Friday, I believe.

2 In accordance with that requirement,
3 the Court did receive a proposed scheduling
4 order from OFHEO and a proposed schedule from counsel
5 from Mr. Raines. I believe there are
6 also submissions from the other two respondents.
7 I don't remember the exact title of them, but I did
8 read all of them.

9 The Raines proposal, and that is
10 joined, as I recall, by each of the other
11 respondents, calls for all prehearing
12 submissions to be completed by February 12th;
13 that is, this February 12th. And that the
14 hearing is to begin by February 16th.

15 Counsel for Raines, et al. has
16 contended that 12 USC 4633, Subsection (a)(2)
17 requires that the hearing in this case must commence
18 by February 16th, 2007.

19 Now, just this morning, literally
20 before I took the shuttle down here from my office,
21 my paralegal handed me the response or comment from
22 OFHEO on this issue. It's entitled OFHEO's

1 memorandum regarding the section I just mentioned. I
2 have skimmed it, but not fully digested it. But I
3 have read it quickly.

4 I would note that this particular provision
5 actually provides, as opposed to the hearing
6 commencing, it provides that any such hearing shall
7 be fixed for a date not earlier than 30 days, nor
8 later than 60 days after service of the notice of
9 charges under Section 4631 unless an earlier or later
10 date is set by the hearing officer -- that would be
11 me -- at the request of a party served.

12 Now, I note at the outset for this
13 particular issue that the notice of charges,
14 which was filed on December 18, 2006, contains 101
15 claims in a 153-page document.

16 I note that each of the respondents
17 have filed discovery requests. Although, I have to
18 also make mention that the Court has only received
19 the Respondent Spencer's discovery request. As of
20 this morning, my office has not received a copy from
21 the other respondents regarding their discovery.

22 Now, I have received, however, OFHEO's

1 opposition to the discovery and, I believe, some
2 responses to that. But the -- in terms of the
3 original discovery requests from the
4 respondents, other than Ms. Spencer's attorney,
5 I have not received that.

6 Now, Ms. Spencer's discovery request,
7 which was filed on January 8, 2007, seeks 110
8 separate document requests.

9 As of January 23, a motion to strike or
10 limit Spencer's discovery request was filed
11 by OFHEO. And it represents to the Court that that
12 request seeks millions of pages of
13 materials.

14 And as I noted, a response has been filed
15 to that motion. And as you all know, the rules do
16 contemplate the availability of filing
17 a reply as well.

18 As I mentioned, while I have not yet
19 received a copy of the discovery request filed
20 on behalf of Mr. Raines or Mr. Howard, OFHEO has
21 represented to me in its filings that these discovery
22 requests also involve each millions of pages.

1 I also want to note for the record
2 that I was designated as the presiding officer
3 in this matter on January 29, 2007. And that, as
4 mentioned, the conference call was held two days
5 after I was appointed to preside in this matter.

6 Now, having read the respondents' position
7 on the applicability of the Section 12 USC 4633
8 (a)(2) and the requirement proposed by respondents
9 that the hearing itself must commence no later than
10 60 days after filing the notice of charges, and also
11 having independently researched the issue and having
12 perused the OFHEO response to this issue, it seems to
13 me that there are several, underscore several,
14 independent bases to reject the respondents'
15 claim that the hearing itself must literally commence
16 by February 16, 2007.

17 First, I note that the language does
18 not state that the hearing shall commence -- the word
19 commence is not there -- within the 30 to 60-day
20 window; but, rather, that it should be, quote, fixed
21 for a date.

22 I construe that to mean that the

1 scheduling conference should occur within this time
2 frame, and that, among other items, the anticipated
3 hearing date fixed within that time.

4 And I want to mention now, in case I
5 happen to overlook it later on, I'll depend on
6 one of the parties to bring this to my attention,
7 pursuant to my order that, by February 2, I received
8 proposed scheduling -- a proposed schedule for the
9 order of the hearing and scheduling order. I
10 received that from OFHEO.

11 But what's lacking in all of the
12 submissions is an actual date for the hearing; even
13 though that date might change, I think it's important
14 to be consistent with the statute; That my scheduling
15 order, which will be issued shortly after this
16 proceeding, that is, within a few days, that it
17 actually include a proposed hearing date. And that's
18 not in any of the submissions.

19 So to restate what I said, that my
20 interpretation is that the scheduling conference, and
21 nothing else, must occur within that 60 daytime
22 frame.

1 But perhaps more importantly, it is
2 Hornbook law -- and when I use the term
3 "Hornbook" law, that means that there is no need for
4 me to have citations to this statement. And that
5 statement is that the construction of a statute
6 should not result in an absurdity. And that is what
7 we would have here if I were to adopt the
8 respondents' position. It would be nothing short of
9 an absurdity.

10 And in that respect, I do -- I do view the
11 assertion as being specious and somewhat
12 disingenuous. Because only a low-scale small claims
13 action could reasonably be expected to begin within
14 the time frames that the respondents have suggested,
15 and certainly not a matter with 101 claims in the
16 notice of charges.

17 I also note that, effectively, the Supreme
18 Court has addressed this issue. And in my way over
19 here on the shuttle bus, I noted that OFHEO cites the
20 same case which I'm about to mention to you. That is
21 the case of Brock, Secretary of Labor versus Pierce
22 County, which is at 476 US 253, 1986 decision by the

1 Court.

2 And there, a statutory provision under the
3 Comprehensive Employment and Training Act required
4 that the Secretary of Labor, quote, issue a final
5 determination as to the misuse of CETA funds within
6 120 days of receiving a complaint alleging such
7 misuse.

8 In a unanimous decision by the Court,
9 it held that there was no indication that Congress
10 intended to remove the Secretary's enforcement powers
11 if the finding determination did not occur within 120
12 days.

13 And in that case, as here, the Court noted
14 that the Secretary had promulgated regulations
15 implementing the provision at issue.

16 Also in that case, as here, the Court
17 noted that the statute nowhere specifies the
18 consequences of a failure to meet the 120 day period.

19 And, finally, from that decision, the
20 Court also noted the importance that Congress
21 expressed through that statute of its concern
22 with fraud and illegal practices. And similarly,

1 here, without in any way implying any prejudgment of
2 the case, but it is a fact that OFHEO was created to
3 ensure the integrity of the enterprises over which it
4 has oversight.

5 Brock versus Secretary of Labor is not the
6 only Supreme Court case dealing with this issue. One
7 other example, among many, is the United States
8 versus Good Real Property at 510 US 43, a 1993
9 decision.

10 The Court noted that it has held that, if
11 a statute does not specify a consequence for not
12 implying with statutory timing provisions,
13 the federal courts will not in the ordinary
14 course impose their own course of sanction.

15 In that light, the respondents have
16 not pointed to any provision within the Federal
17 Housing Enterprise -- Housing Enterprise's Financial
18 Safety and Soundness Act of 1992 that specifies the
19 consequences of a failure to meet the putative claim
20 that the hearing itself must begin within 60 days
21 after service of the notice of charges.

22 Now, absent a dispositive ruling in

1 some motion in the future that ends the case, we're
2 going to be together for quite a period of time. And
3 so I want to notify all of you that it is my view
4 that you are obligated in your motions to at least
5 make note of the existence of case law which runs
6 contrary to a position you are arguing.

7 So if there is clear precedent that
8 runs against the position that you are arguing,
9 it is my view that you have an obligation at
10 least in a footnote to note the presence of clear
11 contrary statements of law, interpretations of that
12 law, or arguments that you're making.

13 So you're on notice of my view that
14 that is one of your future obligations as
15 officers of the court.

16 MR. DOWNEY: Your Honor, may I be heard on
17 this for a moment?

18 ADMINISTRATIVE JUDGE MORAN: No.

19 MR. DOWNEY: No. Thank you, Your Honor.

20 ADMINISTRATIVE JUDGE MORAN: Although,
21 this is sufficient, what I have just stated, to
22 reject the respondents' claim, I also view that

1 respondents' discovery request to have the effect of
2 a de facto request that the Court set a later date
3 for the hearing in this matter. That is, this is an
4 alternative independent bases to reject the
5 respondents' claim.

6 Now, it was at this point that I was going
7 to offer the OFHEO counsel the opportunity to weigh
8 in on this because I mentioned during the conference
9 call a week ago that they should be prepared to speak
10 to this. And then, as I already alluded to, I
11 received a document which I have reviewed.

12 But I -- I do not -- I do not see any need
13 for any further -- I've read -- I read and considered
14 the arguments. And that is my ruling in terms of
15 this particular issue.

16 Do you have something different that
17 you want to mention, counsel?

18 MR. DOWNEY: No, Your Honor. I just
19 wanted to speak to your comments about the Brock case
20 and implicitly I think it's failure to be included in
21 our pleading. If I might just be heard on that for
22 second.

1 We're not arguing, Your Honor, that
2 you lose jurisdiction over this matter for
3 today's purposes. We're arguing the hearing should
4 be set for February 16.

5 ADMINISTRATIVE JUDGE MORAN: I
6 understood that.

7 MR. DOWNEY: So we understand the point
8 that OFHEO is making with regard to that.

9 The other point I would make, Your Honor,
10 is I just want to warrant to the Court that our
11 submission is in no way disingenuous. The burden is
12 on us to prepare for a February 16 hearing are
13 comparable to the burdens on OFHEO. And we're ready
14 to make the submissions on February 12 we identified.

15 So we're not in any way asking for or
16 arguing for anything other than for hearing to start
17 on February 16. Thank you.

18 ADMINISTRATIVE JUDGE MORAN: Counsel for
19 OFHEO, want to say anything in response to this? It's
20 not called for, but you can. It's your option.

21 MR. ARONICA: No, Your Honor. I think
22 we've laid out our position in the papers that we

1 filed.

2 ADMINISTRATIVE JUDGE MORAN: Okay. And so
3 you have a ruling on that issue.

4 MR. DOWNEY: Thank you, Your Honor.

5 MR. KRAKOFF: Your Honor, can I just be
6 heard just for a moment to respond to a couple of
7 comments by Your Honor.

8 ADMINISTRATIVE JUDGE MORAN: Sure. And,
9 again, counsel, tell me your name again. I know I
10 have it here, but you're new to this group.

11 MR. KRAKOFF: It's Krakoff.

12 ADMINISTRATIVE JUDGE MORAN: Okay. Go
13 ahead, counsel.

14 MR. KRAKOFF: David Krakoff.

15 I just really wanted to respond very
16 briefly to Your Honor's observation that the motions
17 and the position with regard to 4633 (a)(2) was
18 possibly specious and disingenuous.

19 And with all due respect, we disagree with
20 that characterization. And I say that at this point
21 because we're just getting started to know one
22 another.

1 ADMINISTRATIVE JUDGE MORAN: Yes.

2 MR. KRAKOFF: And I want to assure the
3 Court that we do not take positions that we in any
4 way consider to be disingenuous. We're ready to go.
5 Simple as that. And I think that we're -- OFHEO --
6 what's really behind OFHEO's position is they're not
7 ready to go.

8 And what has happened here, Your
9 Honor, is that OFHEO has initiated an
10 examination three years ago. They hired Deloitte &
11 Touche. They hired Stanley Sporkin and his law firm,
12 Weil, Gotshal & Manges. They hired Duane Morris.
13 The Web site says it's one of the top 100 law firms
14 in the country.

15 And they should be ready to go. And
16 they've complained about document production.
17 Your Honor, in the last 3 years, they've issued two
18 reports which --

19 ADMINISTRATIVE JUDGE MORAN: Mr. Krakoff,
20 how long is this going to go on? I've made my
21 ruling. I understand your position. And no umbrage
22 is taken. I was merely alerting the parties that you

1 have an obligation in front of me to cite cases that
2 went contrary to positions that have argued.

3 And I did view this as a close call in
4 terms of the argument being made here given my
5 earlier remarks about the entire context of this
6 case. To suggest that this hearing should begin
7 February 16 is -- it's really disingenuous to suggest
8 that that should happen. I think it's not a fair
9 argument to make.

10 MR. KRAKOFF: Well --

11 ADMINISTRATIVE JUDGE MORAN: It doesn't
12 mean that that carries over to anything other
13 than -- any other rulings at all. But that's my view
14 of this. There's going to be a lot of serious things
15 that I'll have to deal with rather than this
16 particular issue. But now it's disposed of.

17 MR. KRAKOFF: I understand, Your Honor. And
18 I appreciate your candor in sharing your view on
19 that.

20 And in all candor as well, our concern is
21 that OFHEO has used the last 3 years to mount
22 a public campaign, a bitter campaign, that is

1 personal against our clients.

2 And we have sought mandamus to move
3 this matter to the District Court where we can have a
4 fair hearing. Not -- which is no -- no comment on
5 Your Honor.

6 ADMINISTRATIVE JUDGE MORAN: I don't take
7 it as that.

8 MR. KRAKOFF: It's the OFHEO piece of this.
9 So that's really where we're coming from, Your Honor.

10 ADMINISTRATIVE JUDGE MORAN: Since you're
11 here, why is it, though, that you would not seek
12 mandamus after I issue my recommended decision if
13 that's the case?

14 MR. KRAKOFF: We sought mandamus at the
15 earliest possible date, as soon as the --

16 ADMINISTRATIVE JUDGE MORAN: No. But my
17 question is: Why would you not wait, given what you
18 just said, and seek mandamus -- which, by the way, I
19 may be blurring together some of the positions, but I
20 think they're all of the same vein, which is that
21 your position is that, not only should Mr. Lockhart
22 not be able to review this matter, but that anyone

1 within OFHEO -- it's not just Mr. Lockhart; is that
2 correct?

3 MR. KRAKOFF: Yes, Your Honor. Our
4 position is that the agency may maintain a position
5 and an important role in this matter as the
6 prosecutor. And that can occur in District Court.

7 But that the agency is so thoroughly
8 on record in the public domain from Mr. Falcone, who
9 was investigated by --

10 ADMINISTRATIVE JUDGE MORAN: Okay. Please.
11 I've read the lengthy documents. I've even scanned
12 -- I have even scanned through some of your filings
13 in front of the District Court.

14 So I'm aware of all of the representations
15 about your position as to how Mr. Lockhart has
16 revealed himself, in your respective, to be
17 irrevocably tainted and unable to act as an
18 independent reviewer.

19 But that still doesn't really answer what
20 I've posited to you, which is that, it seems to me
21 that, if you have any mandamus claim, any legitimate
22 claim -- I'm not saying; I don't know -- that would

1 come after the recommended decision is issued by me.

2 And I might state that -- and this is not
3 said in a defensive posture at all, so please don't
4 interpret it that way. But I've been doing this for
5 10 years. And my record is out there.

6 And I'm pretty proud of the record
7 that you will see if anyone takes the time to
8 research the various agencies, eight or nine agencies
9 that I've held hearings in. You will find that I'm
10 pretty much an independent adjudicator, that you'll
11 find no bias one way or the other.

12 I call balls and strikes. Sometimes people
13 think the umpire is blind, but I'm a fair and
14 impartial judge. And that's what you'll be getting
15 in this case and in any matter that I preside in if
16 you happen to be in front of me in some other agency
17 case.

18 So I come back to the point that, to
19 the extent you may have some claim, again,
20 without suggesting one way or the other whether
21 there's merit to that claim, the timing for that
22 would most appropriately be after there is an initial

1 recommended decision issued by me.

2 I would also note that, in thinking about
3 this matter a little bit, that, you know, it isn't as
4 if the director can willy-nilly ignore findings of
5 fact, determinations of credibility that I would have
6 to deal with during the course of a hearing.

7 And I'm going to say this for the last
8 time, assuming there's no dispositive motion that
9 would cause the proceeding to end. Who knows what's
10 coming down the pike. I'm not going to keep
11 repeating myself on that.

12 But the point is that a --- if, for
13 instance, assuming, hypothetically, that one or more
14 of the respondents were to prevail or to prevail in
15 part, who knows, the point is that the director or
16 any reviewing authority cannot just usurp the
17 determinations made by the Administrative Law Judge
18 and just go contrary to what the evidence and the
19 credibility findings are.

20 So, again, I come back to -- and
21 that's going to end the discussion on this for
22 now -- my view is that the appropriate time, if

1 at all, to raise a question of mandamus would be
2 after I issue a recommended decision in this
3 case.

4 So thank you, Mr. Krakoff.

5 MR. KRAKOFF: Thank you, Your Honor.

6 And I do wish to point out that your reputation is
7 for -- as being very fair. And we do not have any
8 quarrel with you as the presiding officer at all.

9 ADMINISTRATIVE JUDGE MORAN: So then you
10 endorse my idea that you're going to wait for the
11 mandamus until after the initial decision is issued?

12 MR. KRAKOFF: We will consider a mandamus
13 petition with regard to the 4633 (a)(2) issue. And I
14 think that's what the Court is addressing. But our
15 quarrel is with OFHEO, Mr. Lockhart, because Mr.
16 Lockhart has talked to anyone and everyone about this
17 issue.

18 ADMINISTRATIVE JUDGE MORAN: Okay.
19 Thank you. Thank you.

20 Okay. Before I turn to some of the other
21 issues, because there was not an alternative
22 scheduling order presented by the respondents other

1 than what I mentioned to you earlier that the hearing
2 begin on February 16, I am adopting the proposed
3 scheduling order which was presented by OFHEO and
4 received by me on February 2nd.

5 We will -- what we need to do, though, is
6 to add what I mentioned earlier, which is a proposed
7 date for the hearing to actually begin. We need to
8 include that.

9 Now, in another OFHEO matter that I am
10 currently presiding, for the most part, the parties
11 have worked together well, as there is an identity of
12 some of the parties here as in the other case.

13 MR. DOWNEY: Some of the counsel, Your
14 Honor.

15 ADMINISTRATIVE JUDGE MORAN: What's that?

16 MR. DOWNEY: Some of the counsel.

17 ADMINISTRATIVE JUDGE MORAN: Yes.

18 MR. FELT: One of the parties.

19 ADMINISTRATIVE JUDGE MORAN: Yes.

20 That's what I was referring to. The identity meaning
21 in mathematical terms identity of some of the
22 counsel.

1 I want you to confer with each other after
2 the conclusion of this scheduling conference and get
3 back to me so that I can issue a scheduling order
4 perhaps on Friday.

5 And that would include, if there's some
6 reasonable basis to amend some of the dates that
7 OFHEO has presented. If you can't agree on that,
8 then I'm going to go with what I have in front of me.
9 It seems reasonable. And so that disposes of that.

10 MR. DOWNEY: Your Honor, can I ask one
11 practical question related to scheduling? I know
12 that Your Honor has a number of matters from being in
13 the Freddie Mac matter. Are there any timeframes
14 within the period that this schedule contemplates
15 that Your Honor would not be available or prefer that
16 we not suggest?

17 ADMINISTRATIVE JUDGE MORAN: I
18 haven't -- we'll work that out as we go through.
19 I haven't compared the two. I think -- I think in
20 the other matter, which I really don't want to be
21 discussing on the record here, I think that the -- as
22 I recall, the last time, the hearing was scheduled to

1 begin in October of this year.

2 MR. DOWNEY: That's my recollection also,
3 Your Honor.

4 ADMINISTRATIVE JUDGE MORAN: But with my
5 able staff attorney, we should be able to handle
6 everything.

7 MR. DOWNEY: Okay. So sometime -- under
8 this schedule, sometime in 2008 is what you would be
9 seeking?

10 ADMINISTRATIVE JUDGE MORAN: I believe so,
11 yes. The parties are not, for example, in the other
12 matter -- and let's keep these separate, okay. I
13 have no idea as to the anticipated length of the
14 hearing in the other OFHEO matter. So I can't --
15 that would help you later on.

16 MR. DOWNEY: That's fine.

17 ADMINISTRATIVE JUDGE MORAN: But we won't
18 know that until we get further down the road.

19 MR. DOWNEY: We'll take that into account
20 in our discussions, Your Honor. I was just thinking
21 if there was any other matter in 2008. I want to
22 make clear we're going to adhere to our position on

1 the 4633 (a)(2) issue. But I want to work with the
2 Court around the scheduling issues so we can deal
3 with things practically.

4 Thank you, Your Honor.

5 ADMINISTRATIVE JUDGE MORAN: Thank you.

6 Although my ruling has disposed of
7 this, I can't resist but to mention that in the
8 memorandum regarding proposed scheduling
9 submitted by counsel for Ms. Spencer, at the end of
10 that memorandum, counsel says: While the matter is
11 pending before the Court of Appeals, referring to the
12 mandamus proceeding, counsel submits that this Court
13 should refrain from adopting the schedule proposed by
14 OFHEO.

15 Then they go on to say: But we
16 reserve our right to have a hearing in this
17 matter commence no later than February 16,
18 2007. And to which I say that idea is rejected.

19 The other thing is, for people that
20 are more familiar with this area of practice
21 than I am, I notice that, in the Respondent Howard's
22 submission in advance of the scheduled hearing to be

1 held -- this is a document entitled Submission in
2 Advance of the Scheduling -- Scheduling Hearing to be
3 held on February 8, 2007.

4 Mr. Salky, you represented that I
5 should either recommend dismissal of the notice
6 of charges in accordance with your theory about
7 12 USC 4633 or request that Judge Richard Leon -- who
8 I happen to know; we went to the same law school --
9 hold a hearing on Mr. Howard's motion on February
10 16th.

11 Are you suggesting that you can
12 request a particular judge to hear a matter?

13 MR. SALKY: Just to advise the Court, the
14 current status is Judge Leon has set a hearing on Mr.
15 Howard's motion to compel essentially these
16 proceedings to be held in the District Court.

17 And what I was suggesting to Your
18 Honor was that, at the time we filed that, OFHEO had
19 filed for a 45-day extension to respond to our
20 motion, an extension to which we had opposed.

21 And that I was suggesting to Your
22 Honor that you might, before doing anything in terms

1 of the scheduling, if you were to reject the -- our
2 4633 argument, that you might encourage Judge Leon to
3 -- regardless, he has ruled and set a hearing on that
4 motion. So we would be -- we will be heard on that.

5 ADMINISTRATIVE JUDGE MORAN: But not on the
6 question of whether 4633 requires that the hearing
7 begin by February the 16th. That is not in front of
8 Judge Leon.

9 MR. SALKY: That is not before him.

10 ADMINISTRATIVE JUDGE MORAN: And it would
11 be my view that, unless OFHEO were to consent to
12 this, that it would be inappropriate to be requesting
13 a particular judge to hear a particular issue
14 unrelated to what is in front of that judge.

15 MR. SALKY: No. I was suggesting that
16 encouraging that judge which has been assigned that
17 matter, in other words, Judge Leon is hearing the
18 motion --

19 ADMINISTRATIVE JUDGE MORAN: I
20 understand.

21 MR. SALKY: -- of Mr. Howard to compel the
22 proceedings to commence in the United States District

1 Court. He's been assigned that case. That this court
2 --

3 ADMINISTRATIVE JUDGE MORAN: Right. But
4 I'm sure the District Court has their own method for
5 assignment of cases to judges. And this would be a
6 separate matter, not something that would be
7 automatically added on to Judge Leon's plate.

8 MR. SALKY: If Judge Leon were to decide
9 the motion in favor of Mr. Howard's position, it is
10 my belief and understanding that, as a result of his
11 assignment of all the related civil litigation in the
12 Fannie Mae case, he would be assigned and has been
13 assigned to -- would be assigned to that matter.

14 ADMINISTRATIVE JUDGE MORAN: That's a
15 little different than what I'm concerned about.
16 But that's -- that's sufficient. Thank you. You
17 have a ruling on this matter. I just wanted to
18 express my concern.

19 MR. SALKY: And I wish to advise the Court
20 I no longer need to have the Court's assistance in
21 regards to the scheduling of the hearing. That has
22 been done.

1 ADMINISTRATIVE JUDGE MORAN: Okay. I'm
2 going to run through a couple other matters.
3 Let's deal with what should be an easier matter.

4 Yes, Mr. Salky.

5 MR. SALKY: Only because I'm standing up.
6 I know one of the other matters is issues with
7 relation to motions to strike discovery request. I
8 know that's on Mr. Aronica's list of items to be
9 taken up.

10 Mr. Felt and I have conferred and
11 have, I think, determined that we wish the
12 parties to be able to confer further in hopes of
13 resolving actually what is a larger set of document
14 production issues because of the parallel proceedings
15 before Judge Leon in the civil litigation to which
16 OFHEO is making production.

17 So we will confer further, the
18 parties, as Your Honor indicated. At least the
19 attorneys have a good working relationship. We'll
20 confer further and advise the Court subsequently.

21 So we will be seeking to postpone what is
22 due on Monday for us, which would be a response with

1 a motion to strike OFHEO's first set of document
2 requests.

3 We think that the document production
4 issues, given the Court's ruling on the date that the
5 hearing should commence, can be resolved by
6 discussion or, more likely, be resolved by discussion
7 and then make it unnecessary to have further
8 pleadings at this time before the Court.

9 ADMINISTRATIVE JUDGE MORAN: Okay.
10 That's fine. So please put that in writing and
11 request to me to that effect. Okay, Mr. Salky?

12 MR. SALKY: Yes, sir.

13 ADMINISTRATIVE JUDGE MORAN: Okay. Now
14 let's deal with something a little bit easier. I
15 have in front of me a confidentiality agreement and
16 stipulated protective order related to the production
17 of documents.

18 Am I correct there's no dispute there? All
19 that requires is my signature and then the parties'
20 signatures; is that right?

21 MR. FELT: Yes. That's our protective
22 order that we drafted, Your Honor. That's all that

1 that would require.

2 MR. DOWNEY: Your Honor, actually --

3 ADMINISTRATIVE JUDGE MORAN: Excuse me. Are
4 you representing someone in this case?

5 AUDIENCE MEMBER: No, sir, Your Honor.
6 I wanted to say it's very difficult to hear what
7 counsel are saying. And I just wondered if they
8 might speak closer to the microphone, Your Honor. I'm
9 not sure the sound system is picking up.

10 MR. DOWNEY: As long as Your Honor can hear
11 me.

12 We have a number of what I would call
13 mechanical concerns related to the protective order.
14 I think before Your Honor signs the order, before
15 there's further discussion, I could rehearse those
16 here, but it might be better to make it part of the
17 process that Mr. Salky just described.

18 ADMINISTRATIVE JUDGE MORAN: Is that
19 acceptable to OFHEO?

20 MR. FELT: Yes.

21 ADMINISTRATIVE JUDGE MORAN: Okay. So that
22 disposes of that for now at least. You'll be sending

1 me some sort of a confidentiality stipulated
2 protective order that you worked out. Yes?

3 MR. FELT: Yes.

4 ADMINISTRATIVE JUDGE MORAN: Okay. Now,
5 I'm not going to rule on this, but I just want to
6 take note of the fact that, again, as I'm about to
7 leave to go on the shuttle down here, my paralegal
8 gives me the response from counsel from Mr. Raines
9 regarding the docketing of the ex-parte letter from
10 Mr. Downey. And I haven't had a chance to read your
11 response. Obviously I'm not going to be ruling on
12 that right now, obviously.

13 It would seem to me that if I were to get
14 to the first juncture, though, and determine that it
15 was appropriate to docket that, I think that the
16 motion also calls for some sort of sanction or -- it
17 would seem to me, but I'll hear from you if you want
18 to speak to me now about this or through some other
19 format, letter, the time to deal with that would be
20 not until after the conclusion of any -- the
21 conclusion of the proceedings or the issuance of a
22 recommended decision and not have that hanging over

1 as a concern or an active issue.

2 Let's just postpone dealing with that other
3 than in the question of including it in the record or
4 not. I don't want to get into questions of sanctions
5 if I get there. Does that work for you people?

6 MR. FELT: It works for us, Your Honor.

7 MR. DOWNEY: Your Honor, I don't have a
8 view on that one way or another. I'd be happy to
9 have you decide it now because I think it's
10 inappropriate.

11 But I just want to bring to your attention
12 that, actually -- I apologize for the late delivery
13 of our submission -- but actually OFHEO has outdone
14 me by one because they submitted this morning just
15 before the hearing started something which I'm sure
16 Your Honor doesn't have. I could pass up my copy.

17 MR. FELT: We have a copy.

18 MR. ARONICA: We have a copy.

19 ADMINISTRATIVE JUDGE MORAN: What does it
20 relate to?

21 MR. DOWNEY: It relates to what I think is
22 in front of Your Honor, which relates to the --

1 ADMINISTRATIVE JUDGE MORAN: The question
2 of the ex-parte letter are you saying?

3 MR. DOWNEY: To the letter. It is a motion
4 for referral to the director. OFHEO can speak for
5 itself on this. But I understand that they asked
6 that the letter be referred back to the director.

7 ADMINISTRATIVE JUDGE MORAN: I'm -- I'll
8 look at that back --

9 MR. DOWNEY: That's fine. Just while I
10 have the benefit of you being here, rather than
11 burdening you with further proceedings, my suggestion
12 on the issue of documenting the letter in light of
13 the fact that OFHEO's position is now that it should
14 be referred back to the director is simply that the
15 motion to docket should be denied.

16 It was filed in our view with the director
17 in the first instance. They now concede it should be
18 with the director. We'll take up the issue of
19 whether the director has ruled on it in separate
20 proceedings.

21 ADMINISTRATIVE JUDGE MORAN: Okay. What do
22 you have to say for OFHEO? That takes that into

1 account?

2 MR. FELT: Yes, it does. I think the
3 parties are essentially in agreement that this matter
4 should be moved up to the director as soon as
5 possible for his consideration, Your Honor.

6 ADMINISTRATIVE JUDGE MORAN: Okay.
7 Would this be the same Director Lockhart?

8 MR. FELT: Yes, Your Honor.

9 ADMINISTRATIVE JUDGE MORAN: Okay.

10 MR. DOWNEY: Your Honor, I apologize.
11 But I just want to be careful about the record.
12 The parties aren't in agreement that it should be
13 moved up for his consideration. Our position is it's
14 already been decided by the director.

15 But I think what we are in agreement
16 to, what a fair characterization of our
17 agreement is, is it was presented to the
18 director and that is the appropriate level for which
19 it should be decided.

20 ADMINISTRATIVE JUDGE MORAN: Okay. I just
21 have two other things that I'm going to deal with,
22 and then I'll listen to the parties if they have

1 other things they want to bring to my attention.
2 Don't expect I'll make any rulings about things that
3 you raise, though, this morning, because it's not
4 likely.

5 The two things that I wanted to raise. One
6 is just strictly procedural; and that is
7 that I need a WordPerfect version of the notice
8 of charges and the answers. And there's no
9 hidden agenda behind that. It just enables
10 me -- and by this, this is an obligation for all
11 filings.

12 It enables me, since I have to be the
13 craftsman of these articles, we don't really
14 have -- nowadays, we don't have a secretary who types
15 things up. It enables me to use the cut
16 and paste feature. And I like working with
17 WordPerfect.

18 The other -- the two do not work together
19 well. And so that's why I'm requesting in
20 WordPerfect. And I know I sound a little bit out of
21 date because here I am requesting it be
22 in a floppy disk. And everybody knows except me that

1 floppy disks just aren't being used anymore. But my
2 computer at home doesn't know that. But it turns out
3 that I can use a CD at home as well.

4 So whatever electronic format, please make
5 it in WordPerfect. And make it so it's not read only
6 so that I can be about my copying and pasting your
7 words where I need to.

8 Okay. Now, the other question I
9 wanted to ask of you folks is, I have in front
10 of me the document subpoenas filed on behalf of Mr.
11 Raines. And just give me a moment, please.

12 Okay. And this is -- obviously, I'll make
13 my own determination on this. In reviewing the
14 regulation pertinent to this issue and the subpoenas,
15 it would appear that my role is essentially pro forma
16 in terms of signing document requests for subpoenas
17 unless -- I mean, I'm aware that the regulation does
18 allow me to limit the scope of the subpoena. Do you
19 want to help me with that section, someone? What is
20 the section that deals with that? 1780.28, right?

21 It says that I should issue the
22 document subpoenas promptly except if I determine

1 that the application does not set forth a valid basis
2 for the issuance of the subpoena or that any of its
3 terms are unreasonable, oppressive, excessive in
4 scope or unduly burdensome. Then I can either refuse
5 to issue the subpoena or limit it.

6 And so my question is -- I just want
7 to get your input on this. And I'll give you
8 one example on what my thinking was. When I looked
9 over the first party, the third party
10 that Mr. Raines wants to get documents from, that's
11 Deloitte & Touche. Am I pronouncing that correctly,
12 the last name?

13 MR. DOWNEY: That's correct.

14 ADMINISTRATIVE JUDGE MORAN: Okay. I've
15 heard of them, but I wasn't sure of the
16 pronunciation.

17 Anyway, it ran through my mind, well,
18 is it possible that Deloitte & Touche could be
19 construed as a de facto party or that the documents
20 are privileged? And so what I'm leading up to is
21 your views as to whether that is really left in the
22 burden of the party that was subpoenaed to then seek

1 to have the subpoena quashed on whatever grounds they
2 may have.

3 And so, effectively, it comes back to
4 my role is, notwithstanding the language of 1780.28,
5 rather a pro forma role.

6 Do you want to start with that? Do
7 you have any comments about that from OFHEO
8 first of all? You don't have to. I'm just asking.

9 MR. ARONICA: I think briefly, Your Honor,
10 I think there may be items that are called for in
11 that subpoena that may be confidential.

12 And as I indicated in our letter to
13 the Court, we may want to take a look at that
14 and file a motion in that regard unless, in a meeting
15 -- meet and confer with counsel, some of the items
16 might be deleted so that we don't need to bring that
17 to the Court.

18 ADMINISTRATIVE JUDGE MORAN: Okay.
19 That's exactly what I was concerned about, whether
20 this could be, effectively, a backdoor method of
21 getting documents for which, trying to achieve
22 frontally, it would be denied because of some

1 assertion of some privilege.

2 MR. ARONICA: Yes, Your Honor. So we would
3 like to meet with them and discuss those.
4 And then if we cannot reach an agreement, then we
5 might present something to the Court, a motion to
6 quash or something.

7 But, generally, the third party who
8 receives the subpoena certainly has the right to move
9 to quash it.

10 ADMINISTRATIVE JUDGE MORAN: Sure. So then
11 you -- then you essentially, if I can sum up what
12 you're saying, then you essentially agree that,
13 absent my finding something in those limitations that
14 I have already mentioned twice now, that my role is
15 virtually a pro forma issuance of the subpoenas.

16 MR. ARONICA: That's correct, Your Honor.

17 ADMINISTRATIVE JUDGE MORAN: Okay.

18 MR. ARONICA: But we would like to have the
19 opportunity to confer with counsel because we believe
20 there are things in there that are objectionable and
21 we may want to bring that to the Court at this stage.

22 ADMINISTRATIVE JUDGE MORAN: Before --

1 because the requirement is that I issue these
2 promptly. Are you saying before I issues the
3 subpoenas or after?

4 MR. ARONICA: Before the Court issues the
5 subpoenas. We would like to confer with them to see
6 whether some of the items can be withdrawn and we
7 have no objection to the issuance, which doesn't
8 necessarily mean that Deloitte & Touche, the
9 third-party recipient, wouldn't move to quash it for
10 whatever basis they see it.

11 ADMINISTRATIVE JUDGE MORAN: Okay. And
12 I'll hear from you in a second, Mr. Downey. Are you
13 acting as lead counsel on these issues for the other
14 respondents? Yes?

15 MR. DOWNEY: I'll try to do my best. I
16 haven't conferred with them on this issue but I'll do
17 my best.

18 ADMINISTRATIVE JUDGE MORAN: Okay.
19 Well, then I have the question, do you even have the
20 standing, do you have standing to object other than,
21 for instance, if I -- what I suggested a moment ago,
22 if you can make the argument that, in effect, this is

1 not a third party.

2 MR. ARONICA: For example, I believe one of
3 the requests, and I don't have it in front of me, one
4 of the requests from Deloitte & Touche is regarding
5 their engagement with OFHEO when they were working on
6 behalf of OFHEO. We believe that's objectionable.

7 We want to confer with counsel to see
8 if they would eliminate that. And if they do
9 not, then we -- we would advise the Court that
10 we would want to file something to move to quash that
11 and strike that portion of their third-party
12 subpoena.

13 ADMINISTRATIVE JUDGE MORAN: And your
14 standing to be able to move that would be based on
15 what?

16 MR. ARONICA: Privilege. Since the items
17 would be used in this hearing. I believe we would
18 have standing at this point to object to what's
19 included in their subpoena request.

20 ADMINISTRATIVE JUDGE MORAN: Okay.

21 Mr. Downey. Thank you.

22 MR. DOWNEY: Your Honor, just to answer the

1 question you posed directly. I think your role is
2 largely pro forma, and we don't need to advocate in
3 advance.

4 Let me use a different example of a third
5 party because I think the Deloitte example
6 complicates it for a reason that I'll explain in a
7 minute.

8 Goldman Sachs is another party from
9 whom we're seeking documents. OFHEO doesn't
10 have any privilege relationship or claim of a
11 privilege relationship with Goldman Sachs.

12 I think the Court's role in that is to
13 review the subpoena and issue it.

14 There are some complications with
15 regard to the Deloitte & Touche because of this
16 relationship. But I think the appropriate step for
17 the Court to take is to issue -- have the subpoena
18 issued.

19 We represent to the Court that we'll work
20 with OFHEO to try to address whatever concerns they
21 have. And if there's a nonproduction upon which we
22 think there should be a production, we'll have the

1 burden of coming to the Court and addressing it then.

2 I don't think we should try to work
3 that issue before the subpoena is issued. They're
4 not self-enforcing in any event.

5 ADMINISTRATIVE JUDGE MORAN: Well, what I
6 gather from counsel for OFHEO is he is requesting a
7 little bit of time to just at least discuss this with
8 you and the other respondents before I issue the
9 subpoenas.

10 Are you willing to have some reasonable
11 period of time for this discussion to take place
12 before I issue the subpoenas?

13 MR. DOWNEY: Your Honor, I'm willing to do
14 it that way. But I would suggest the better way to
15 do would be to just let the subpoena issue. Because
16 there's plainly a lot of material that Deloitte needs
17 to get working on gathering as the subsequent
18 auditors.

19 ADMINISTRATIVE JUDGE MORAN: Okay. I'll
20 consider that.

21 MR. DOWNEY: But I represent, whether it
22 happens one way or the other, we'll work with them.

1 ADMINISTRATIVE JUDGE MORAN: Okay.
2 Mr. Salky, do you want to get up and speak? And,
3 also, Mr. Krakoff, if you have something, please.
4 Everyone gets a turn.

5 MR. SALKY: Your Honor, I do think that
6 there will be a lot of third-party subpoenas issued.
7 So I do want to just comment and endorse the
8 following procedure, which is that either party can
9 submit requests for third-party subpoenas. I think
10 it's a ministerial act.

11 The party then, OFHEO, for instance, can,
12 if it believes the third party would be producing
13 information which is privileged, has an opportunity
14 in that motion that Deloitte might file or it could
15 file. So it has standing to that extent after the
16 subpoena is issued, but not before the issuance of
17 the subpoena.

18 It's not to say the parties can't
19 informally confer. But the rules seem to us to
20 be clear, as Your Honor indicated, that, if we
21 believe and in good faith, there is a good faith
22 requirement in the rule that we must adhere to, that

1 we need the documents to defend our case, or OFHEO
2 needs third-party documents to proceed in its case,
3 that the Court would then, this Court, would issue
4 the subpoena subject, of course, to objections
5 subsequently.

6 ADMINISTRATIVE JUDGE MORAN: Okay.
7 Mr. Krakoff.

8 MR. KRAKOFF: Your Honor, I have nothing to
9 add to what Mr. Downey and Mr. Salky represented.
10 They did a great job.

11 ADMINISTRATIVE JUDGE MORAN: Okay.
12 Well, here's what I'm going to do. I'm going to
13 direct that the parties consult with one another. And
14 let me know by next Monday, Monday coming up next,
15 which would be the 12th, okay. And then I will act
16 with regard to the issuance of the subpoenas.

17 But I'm not -- I'm still going to pay
18 attention to 1780.28 (a)(3) and use my best judgment
19 about that with regard to this particular request for
20 third-party document subpoenas.

21 All right. So you will consult with
22 one another.

1 MR. ARONICA: Thank you, Your Honor.

2 ADMINISTRATIVE JUDGE MORAN: I don't have
3 anything else to bring up. Did we come up with a
4 date for the hearing yet? Did we say that?

5 MR. FELT: No, Your Honor. We had left
6 that blank.

7 ADMINISTRATIVE JUDGE MORAN: You were going
8 to get back to me.

9 MR. FELT: We were going to get back to you
10 on that. We were not certain of Your Honor's
11 schedule and didn't want to presume in that regard.

12 I just wanted to ask your indulgence
13 to return to the issue of the referral to the
14 director on the recusal issue.

15 And I needed to correct the record at least
16 -- or respond to Mr. Downey's assertion
17 that the director had already made a decision on that
18 issue.

19 In fact, he has not made a decision.
20 There's nothing in the record.

21 ADMINISTRATIVE JUDGE MORAN: You have to be
22 clearer to me. Which item are you referring to in

1 terms of the director's decision?

2 MR. FELT: The director has not made a
3 decision as to whether or not to recuse himself from
4 this matter.

5 ADMINISTRATIVE JUDGE MORAN: Oh.

6 MR. FELT: And we think it is important,
7 and we agree with the respondents, to the extent that
8 we believe it's important that the director have an
9 opportunity, have an opportunity soon, to address
10 that issue.

11 And that's why we would urge Your
12 Honor to sign the order that we've proposed this
13 morning, or this morning by motion, to refer
14 that matter to the director so that he can deal with
15 it.

16 The issue is currently pending in the Court
17 of Appeals. As you know, they put it on
18 an expedited schedule, briefing schedule. And
19 we would appreciate that matter being formally
20 referred to the director, which I believe is the
21 reason why he wanted it docketed and made a part of
22 the record in the case. He just wanted some

1 formality brought to the process.

2 ADMINISTRATIVE JUDGE MORAN: Right. But
3 you haven't -- I don't physically have that document
4 yet.

5 MR. FELT: I can cure that right now.

6 ADMINISTRATIVE JUDGE MORAN: Of course,
7 counsel for the respondents all have this, correct,
8 counsel?

9 MR. FELT: They do, Your Honor.

10 MR. DOWNEY: We do, Your Honor. We
11 received it this morning.

12 This is just a reminder, because I
13 know there's a lot. This is the issue on which our
14 position is that there's a motion pending to docket
15 it. Now there is a motion to refer it. The correct
16 procedure is not to docket it and refer it, but just
17 to deny the initial motion.

18 ADMINISTRATIVE JUDGE MORAN: Okay.

19 MR. KRAKOFF: Your Honor, can I just make
20 one comment with regard to Mr. Felt's representation?

21 ADMINISTRATIVE JUDGE MORAN: This
22 individual keeps standing up in the hearing room.

1 MR. KRAKOFF: Sorry.

2 AUDIENCE MEMBER: I want to clarify.
3 You asked if I'm representing anybody. I'm a
4 reporter for The Washington Post.

5 ADMINISTRATIVE JUDGE MORAN: Yes.
6 That's fine. We want you to be able to hear.

7 AUDIENCE MEMBER: Thank you, sir.

8 MR. KRAKOFF: And the only thing I wanted
9 to note for the record is that Mr. Pollard, the
10 general counsel of OFHEO, has represented in a press
11 conference, at least as noted in the media, that the
12 director refuses to recuse himself from this matter.
13 So just for the record.

14 ADMINISTRATIVE JUDGE MORAN: Okay.

15 MR. KRAKOFF: Thank you.

16 MR. FELT: I don't think we're arguing this
17 motion or the substance of this for Your Honor, but
18 that we obviously do not agree that the director has
19 refused to recuse himself. And I think, if one were
20 to examine the timing of the statement, you would
21 realize or anyone would realize that it was not made
22 in response to this motion or any of their papers.

1 ADMINISTRATIVE JUDGE MORAN: Okay.
2 People are queuing up here. Just wait, Mr. Salky.

3 It would help me, by the way, if you
4 can make arrangements with the court reporter
5 that I get a copy of the transcript of this
6 proceeding this afternoon. Is that possible? Can you
7 work that out?

8 MR. FELT: Yes, we will, Your Honor.

9 ADMINISTRATIVE JUDGE MORAN: Okay. Next is
10 Mr. Salky.

11 MR. SALKY: Simply to note for the record
12 that Mr. Howard, that he not be orphaned in this
13 matter.

14 The pleading which OFHEO filed this morning
15 with the Court to refer Mr. Downey and Mr. Spencer --
16 Ms. Spencer's request for recusal, to refer those
17 back to the director, did not include Mr. Howard's
18 request for recusal.

19 My understanding upon conferring with
20 counsel for OFHEO is that they do seek the same
21 referral back to the director. And we don't oppose
22 that.

1 ADMINISTRATIVE JUDGE MORAN: Do you agree,
2 counsel for OFHEO?

3 MR. FELT: Yes. Yes, we do, Your Honor.

4 ADMINISTRATIVE JUDGE MORAN: They are not
5 orphaned.

6 MR. FELT: They are definitely not
7 orphaned, Your Honor.

8 ADMINISTRATIVE JUDGE MORAN: Okay.

9 MR. FELT: We want to keep them in this.

10 ADMINISTRATIVE JUDGE MORAN: Okay. That
11 concludes the items that I need to bring up.

12 You'll be getting appropriate orders from
13 me promptly dealing with some of the issues that
14 we've raised here that have been raised here this
15 morning.

16 Is there anything else that anyone
17 wants to bring to my attention before we call
18 the scheduling conference to a close? I'm going to
19 begin with OFHEO, Mr. Salky.

20 MR. ARONICA: Nothing further, Your Honor.

21 ADMINISTRATIVE JUDGE MORAN: Okay. Now,
22 Mr. Salky, go ahead.

1 MR. SALKY: And I think we've
2 established this with OFHEO. But I would like the
3 Court also to ensure that notices in this case are,
4 not only sent to my attention, but to Mr. Eric
5 Delinsky's attention who is a member of our firm who
6 has entered an appearance in this matter.

7 I've asked OFHEO to make sure they include
8 him on all notices. I have a trial schedule that may
9 take me out of town. I want to be sure that we are
10 -- things tend to happen, you know, the morning of
11 and the Friday afternoon. I just want to make sure
12 we all get proper service. Thank you.

13 ADMINISTRATIVE JUDGE MORAN: Mr. Felt, is
14 that all right?

15 MR. FELT: That's not a problem. I would
16 just like to ask that Mr. Aronica, likewise, be
17 served with any notices in the case for the same
18 reason.

19 ADMINISTRATIVE JUDGE MORAN: Okay.
20 Mr. Salky, everyone understands what Mr. Felt said?

21 Okay. Go ahead, Mr. Downey.

22 MR. DOWNEY: Your Honor, just one request

1 in connection with your entry of the scheduling order
2 that might would be, I think, useful to us as a
3 party. It might be useful to OFHEO as well.

4 I wonder if -- it would be a long time
5 between this conference and whatever hearing
6 date is set by Your Honor.

7 I wonder if the scheduling order might
8 embody the idea that we would come for a conference
9 at some point, you know, part of the way or midway
10 through just to get Your Honor's views on the
11 progress of discovery and raise any issues that are
12 outstanding.

13 I think it's beneficial for us, for
14 example, to hear your reflections on the
15 subpoenas rather than to issue a bunch of paper.
16 It may keep the matter on track better.

17 ADMINISTRATIVE JUDGE MORAN: Okay. And my
18 reaction to that is I have no problem doing that.
19 But we need not formally include it within the
20 scheduling conference.

21 All you have to do is get on the
22 phone, and we'll talk, and we'll get together in

1 person as appropriate without formally including it.
2 I have no aversion to it, but there's no
3 need to do it.

4 MR. DOWNEY: Fair enough, all right.

5 MR. KRAKOFF: Nothing further, sir.

6 ADMINISTRATIVE JUDGE MORAN: Okay. So the
7 important thing is that you'll have this transcript.
8 OFHEO, you'll take care of that for me.

9 MR. ARONICA: Yes, Your Honor.

10 ADMINISTRATIVE JUDGE MORAN: All right. It
11 was nice meeting all of you. Stay warm. We'll be
12 meeting again in the near future I'm sure. This
13 meeting will come to a close. Thank you.

14 (Whereupon, at 10:32 a.m., the hearing
15 adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

I, Vicky J. Stallsworth, the officer before whom the foregoing hearing was taken, do hereby certify that the proceedings was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said transcript is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.


Notary Public in and for
the District of Columbia 

My Commission expires:

August 14, 2007