

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

MOUNTAIN WEST BANK, an Idaho
state banking corporation,

Plaintiff,

vs.

LAWSON TATE,

Defendant.

CASE NO. CV-2011-2076

**MEMORANDUM DECISION,
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

INTRODUCTION AND BACKGROUND, MENORANDUM DECISION.

This case involves valuation of property on a loan foreclosure. A two-day court trial was held on July 30 and 31, 2012, in Kootenai County. A Scheduling Order was issued on November 4, 2011, scheduling the case for a court trial. That Scheduling Order requires each party to file Proposed Findings and Conclusions with the Court at least seven days before trial. Scheduling Order Notice of Trial Setting, pp. 4-5, ¶ 9. Neither party filed any proposed findings prior to the trial commencing on July 30, 2012. At the beginning of the first day of the court trial, the Court ordered the parties to submit proposed findings of fact and to submit an electronic copy by no later than the day after the trial finished. Both parties filed proposed findings, but only plaintiff provided an electronic copy to the Court.

Defendant Lawson Tate (Tate) obtained a loan from Plaintiff Mountain West Bank

(MWB), for real property known as Parcel 4 and 5 of the Panhandle Estates Subdivision Survey. To finance Defendant's purchase of Parcels 4 and 5, he obtained loans from Mountain West Bank. As to Parcel 5, MWB loaned Tate the initial sum of \$72,800.00. In consideration of this extension of credit, on March 29, 2005, Tate executed and delivered to MWB a *Promissory Note* in the original amount of \$72,800.00. Tr. Ex. 1. This Note was secured by a *Deed of Trust* encumbering the parcel of real property commonly referred to as Parcel 5. Tr. Ex. 2. As to Parcel 4, MWB loaned Tate the initial sum of \$100,800.00. In consideration of this extension of credit, on March 29, 2005, Tate executed and delivered to MWB a *Promissory Note* in the original amount of \$100,800.00. Tr. Ex. 5. This Note was secured by a *Deed of Trust* encumbering the parcel of real property commonly referred to as Parcel 4. Tr. Ex. 6. At the time of maturity, MWB reissued the loan under the reassurance of two appraisals completed by Jennifer Plaster, requested by MWB and paid for by Tate. On April 26, 2010, each of Tate's loan obligations were modified by mutual agreement to extend the respective maturity dates to April 1, 2011. These changes were memorialized by a *Change in Terms Agreement* and *Modification of Deed of Trust*. Tr. Exhibits. 3, 4, 7 and 8. In October 2010 Tate gave notice that he would not be able to pay the loan at the new maturity date. Thereafter, Tate made attempts to negotiate resolution of the debt short of foreclosure. MWB and Tate had a meeting in March 2011. On June 21, 2011, MWB filed its Complaint in this matter, seeking a deficiency judgment based on the promissory note, in the amount of \$11,384.16 on one loan and for \$37,119.22 on the other loan (for a total of \$48,503.38), which was based on the difference between the amount owed by Tate as of June 10, 2011, and June 17, 2011, respectively on each parcel and each loan, plus interest, late fees, foreclosure fees, and appraisal, less the \$66,000.00 and \$69,000.00 credit bid on each parcel and loan, respectively, by MWB. Complaint, pp. 4-5, ¶¶ 5-15.

At least just prior to trial, the umbrage taken by Tate is that:

On June 2011, Plaintiff filed a lawsuit for a deficiency on the Loan. The deficiency and thereby Complaint filed with this Court was based on a suggestion for listing price provided by a real estate sales agent. Plaintiff did not obtain an appraisal on the real property until February 28, 2012, approximately eight (8) months following the original filing. By filing a lawsuit without an opinion of fair market value, Plaintiff was forced in February to establish a value on the real estate that bolstered its original unsupported claim. Defendant has obtained an appraisal, three (3) Broker's Price Opinions, and a county assessment on the Real Property all establishing that the Real Property has held its value and has not significantly declined in value as of the 2010 reassessment. The professional opinions of value are consistent with the appraisals created by Jennifer Plaster from Gregg Appraisal in 2010 showing the Real Property to have maintained its value.

(Defendant's) Trial Brief, filed July 27, 2012, pp. 2-3. Specifically, Tate claims that at the time MWB filed this lawsuit, "...the only value on the Real Property obtained by (MWB) was a suggested listing price in the form of a competitive market analysis (CMA) created by Jake Oliver, a real estate sales agent with ReMax Realty." *Id.*, p. 5. Tate then complains: "Approximately eight (8) months after filing this lawsuit, (MWB) obtained an appraisal from Ed Morse of Morse Appraisal." *Id.*, p. 6. Essentially, Tate's defense is that the Morse appraisal for MWB is not credible simply because it was obtained *after* the sale and after MWB filed this lawsuit. Tate writes:

In our present case we have two appraisals created for the purposes of deficiency litigation. The significant difference is that (MWB's) appraisal was prepared approximately eight (8) months after it filed suit based on unsupported assertions of fair market value. (MWB) had no option but to find an appraisal that would bolster and support these unsupported values. As such (MWB's) appraisal lacks significant credibility.

Id., p. 7. Tate claims there is no deficiency owed to MWB because Tate claims the fair market value at the date of the sale under the trust deed exceeded Tate's debt to MWB. *Id.*, pp. 4-8.

Following the trial, Tate writes:

(MWB) supported this opinion of value with either: 1) a Competitive Market

Analysis (CMA), prepared by a real estate sales agent, Jake Oliver, *who did not have authority or the required certification to provide an opinion of value.* Moreover, Mr. Oliver, as state in his Affidavit, supplied the Plaintiff with a CMA for the sole purpose of a suggested listing price for the property and did not grant Plaintiff the right to use the CMA in any other context; or 2) An appraisal prepared by Sheryl Reeves that was requested but undisclosed. To this date this appraisal is unverified, self-serving hearsay. The only document supporting an opinion of value disclosed to Defendant or testified to in this Court was the appraisal prepared by Ed Morse in late February of 2012. This appraisal was prepared approximately eight (8) months subsequent to the filing of this Lawsuit.

Defendant's Post Trial Brief/Proposed Findings of Fact and Conclusions of Law, filed August 1, 2012, p. 2. (*italics added*).

At no time has Tate cited any legal authority indicating that appraisals obtained after the sale are somehow improper. Tate's argument that Morse's appraisal is not credible merely because it was prepared after MWB filed this lawsuit for a deficiency, and thus, was simply obtained by MWB to support the decision it had already made (to file a deficiency lawsuit), ignores the fact that there is no requirement for an appraisal of a specific quality *prior to* the lender seeking a deficiency judgment. In fact, nothing prevents a lender from *filing* a lawsuit for a deficiency judgment without any appraisal at all. Obviously *at trial*, the party seeking the deficiency will need evidence of fair market value, and MWB has met that burden.

Because the Court was not provided any legal authority by Tate indicating that appraisals obtained after the sale are somehow improper, the Court has conducted its own research. The concept advocated by Tate finds no support in the Idaho Code regulating trust deeds. I.C. § 45-1501 et seq. Specifically, Tate's concept is not mentioned in the statutes governing when a trust deed can be foreclosed (I.C. § 45-1505) and how a trust deed is to be foreclosed (I.C. § 45-1506). The Court can find no authority from other jurisdictions that require an appraisal prior to foreclosure sale.

It is unknown what discovery Tate conducted prior to trial. At trial, it was very obvious

that counsel for Tate had no knowledge of an appraisal performed by Reeve on May 24, 2011. The fact of the Reeve appraisal came about on cross-examination of Rich Britain, MWB's Senior Assets Administrator, conducted by Tate's attorney. That cross-examination by Tate's attorney disclosed from Britain's lips that Britain ordered the Reeve appraisal and approved the credit bid based on this appraisal by Reeve, and not based upon the CMA of Oliver. Britain testified that he was not aware of the CMA prepared by Oliver. At trial, it was quite obvious Tate and his counsel did not understand the difference between experts to be used at trial, and experts that are not to be used at trial. I.R.C.P. 26(b)(4)(B). Idaho Rule of Civil Procedure 26(b)(4)(B) requires that Tate *could not* have discovered opinions held by Reeve if Reeve was "an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial." Britain's testimony is that Reeve was hired to prepare an appraisal, and that Britain relied on that Reeve appraisal in determining MWB's credit bid. The logical inference then is that Reeve's appraisal was that of an expert "retained" "in anticipation of litigation or preparation for trial."

Thus, IF there were a prohibition in a bank's relying on a Competitive Market Analysis (there is no such prohibition), there is no evidence that MWB relied on such CMA in arriving at an appropriate figure for its credit bid.

Before rendering judgment on a deficiency judgment following a sale under a deed of trust, the Court must first make a finding as to the fair market value at the time of the sale of the property under that deed of trust. I.C. § 45-1512. The amount of the deficiency judgment cannot be more than the amount of indebtedness exceeds the fair market value at the time of the sale under the deed of trust. *Id.*

This case was originally filed by MWB in Kootenai County. Kootenai County Case No.

CV 2011-5008. Tate filed a Motion to Change Venue on August 11, 2011. MWB opposed the motion, and oral argument was held on October 26, 2011. On November 2, 2011, this Court filed its Memorandum Decision and Order Granting Defendant's Motion for Change of Venue, Scheduling Order and Order for Mediation, changing the venue to Bonner County, and this case became Bonner County Case No. CV 2011 2076.

This case was originally scheduled for trial beginning May 29, 2012. On April 24, 2012, the mediator selected by the parties, Charles B. Lempeis, filed an Acknowledgment Pursuant to Rule 15(k)(7) IRCP Regarding Case Status/Mediation, informing the court that mediation was held on March 12, 2012, and that said mediation resulted in a "conditional settlement of the matter." A status conference was held on May 16, 2012, and the parties indicated they were still trying to resolve the matter and requested a continuance of sixty days. The parties also agreed to have the court trial in this now Bonner County matter take place in Kootenai County.

FINDINGS OF FACT

1. In 2005, Tate purchased two undeveloped parcels of real property in Bonner County. The first parcel, commonly referred to as Parcel 4 of Panhandle Estates, was purchased for the price of \$101,000.00. The second parcel, commonly referred to as Parcel 5 of Panhandle Estates, was purchased for the price of \$126,000.00.

2. Parcels 4 and 5 are undeveloped, neighboring parcels of real property located in an area known as Careywood, Bonner County. Careywood, Idaho is a rural area located between the towns of Athol to the south, and Cocolalla to the North.

3. Parcel 5 is approximately 21.26 acres, located due west of Highway 95 and the adjacent railroad tracks. With the exception of a rudimentary horse feed shelter and wire fencing, no improvements are constructed on Parcel 5.

4. Parcel 4 is approximately 20.03 acres, and is contiguous to Parcel 5 which lies directly to the West. No improvements are constructed on Parcel 4.

5. Access to both parcels is via a shared, dirt roadway that services the five (5) parcels in Panhandle Estates. The road is accessed from Highway 95, an uncontrolled two-lane highway, by crossing a set of railroad tracks that parallel the highway. Exhibit D.

6. The shared driveway traverses across Parcel 5 to access the various neighboring parcels. Consequently, Parcel 5 is divided by the roadway into 3 distinct segments as it crosses and re-enters the property. Exhibit D.

7. Parcel 5 is characterized as open grazing land and a wooded, rocky bench with valley views below. Exhibit D. For part of the year, the open grazing land is subject to seasonal flooding.

8. Parcel 4 is a wooded parcel of sloping topography. Exhibit D. The parcel is irregular in shape and bordered to the north-east by the shared roadway. Exhibit D.

9. Both parcels are zoned Ag-10 under the Bonner County zoning ordinance. This requires a minimum lot size of 10 acres. This designation allows for grazing, forestry and rural home sites. According to each of the appraisers, the parcels are best suited for rural home sites.

10. To finance Tate's purchase of Parcels 4 and 5, he obtained loans from Mountain West Bank (MWB).

a. As to Parcel 5, MWB loaned Tate the initial sum of \$72,800.00. In consideration of this extension of credit, on March 29, 2005, Tate executed and delivered to MWB a *Promissory Note* in the original amount of \$72,800.00. Exhibit 1. This Note was secured by a *Deed of Trust* encumbering the parcel of real property commonly referred to as Parcel 5. Exhibit 2.

b. As to Parcel 4, MWB loaned Tate the initial sum of \$100,800.00. In consideration of this extension of credit, on March 29, 2005, Tate executed and delivered to MWB a *Promissory Note* in the original amount of \$100,800.00. Exhibit 5. This Note was secured by a *Deed of Trust* encumbering the parcel of real property commonly referred to as Parcel 4. Exhibit 6.

11. On April 26, 2010, each of Tate's loan obligations were modified by mutual agreement to extend the respective maturity dates to April 1, 2011. These changes were memorialized by a *Change in Terms Agreement and Modification of Deed of Trust*. Exhibits 3, 4, 7 and 8.

12. Pursuant to each of the respective *Promissory Notes*, Tate promised to make monthly payments for the accrued interest due on each loan. The monthly payments were due no later than the 1st date of each calendar month. Exhibits 1, 3, 5 and 7. Under the terms of the promissory notes and deeds of trust, the failure to make a payment when due constitutes an "Event of Default."

13. In November 2010, Tate notified MWB that he would not be making any further payments on either loan and to begin foreclosure. On December 8, 2010, a demand letter was mailed to the Tate advising him that he was in default as to each of his respective loan obligations. Exhibits 9 and 10.

14. Tate has not made any further payments on either loan obligation since December 2010.

15. After Tate defaulted on his loan obligation, MWB directed the trustee of each Deed of Trust to foreclose to initiate non-judicial foreclosures. Exhibits 11, 12, 14 and 15.

16. On June 10, 2011, a trustee's sale was conducted as to MWB's *Deed of Trust*

encumbering Parcel 5. As of the date of sale, the following amounts were due and owing on the *Promissory Note* secured by the *Deed of Trust*:

- a. Principal Balance: \$ 99,861.78
- b. Accrued Interest and Late Charges: \$ 4,401.01
\$ 104,262.79

Exhibit 17.

17. Following the sale, a *Trustee's Deed* was conveyed to MWB in exchange for its credit bid in the amount of \$66,000.00. Exhibit 13. After reduction for MWB's credit bid, the sum of \$38,262.79 remained due and owing on the *Promissory Note*. Exhibit 5. Pre-judgment interest continues to accrue on the amount owed at the rate of 6.0% per annum. *Id.*

18. On June 14, 2011, a *Trustee's Deed* was recorded with the Bonner County Recorder's Office. Exhibit 13. The instrument recites that the foreclosure was carried out in compliance with I.C. § 45-1502, *et seq.* In accordance with I.C. § 45-1510, the recitals are *prima facie* evidence of the truth thereof, and there has been no evidence to the contrary.

19. On June 17, 2011, a trustee's sale was conducted as to MWB's *Deed of Trust* encumbering Parcel 4. As of the date of sale, the following amounts were due and owing on the *Promissory Note* secured by the *Deed of Trust*:

- a. Principal Balance: \$ 72,118.00
- b. Accrued Interest and Late Charges: \$ 3,042.04
\$ 75,160.92

Exhibit 18.

20. Following the sale, a *Trustee's Deed* was conveyed to MWB in exchange for its credit bid in the amount of \$69,000.00. Exhibit 16. After reduction for MWB's credit bid, the sum of \$6,160.92 remained due and owing on the *Promissory Note*. Exhibit 1. Pre-judgment interest continues to accrue on the amount owed at the rate of 6.0% per annum. *Id.*

21. On June 22, 2011, a *Trustee's Deed* was recorded with the Bonner County

Recorder's Office. Exhibit 16. The instrument recites that the foreclosure was carried out in compliance with I.C. § 45-1502, *et seq.* In accordance with I.C. § 45-1510, the recitals are prima facie evidence of the truth thereof, and there has been no evidence to the contrary.

22. MWB timely commenced this action on June 21, 2011, in accordance with I.C. § 45-1512.

23. Immediately following the trustee's sales, MWB listed Parcels 4 and 5 with a local realtor.

a. Parcel 4 was listed for approximately one (1) year at \$65,000.00. During that time, MWB was not able to attract any buyers. During late June 2012, the listing price was reduced to \$64,500.00.

b. Parcel 5 was initially listed for \$69,000.00, and subsequently reduced to \$65,000.00. In December 2011, the property was sold to a third-party buyer for the sum of \$40,000.00.

24. Ed Morse is a certified general appraiser with thirty-eight years experience appraising and selling property in the North Idaho area. Morse testified at trial as an expert witness on behalf of MWB. As an appraiser, Morse has received the peer-review M.A.I. designation from the Appraisal Institute, as well as a C.R.E. designation from the Counselors of Real Estate. Morse has appraised properties since 1973, has been certified in Idaho since 1992 when certification was first used in Idaho. In addition, Morse holds a M.B.A., law degree, and real estate broker's license. Morse has taught at the University of Idaho College of Law. This Court finds Morse to be credible.

25. James Black is a real estate appraiser. He testified that he trained under a certified general appraiser such as Morse, but is not, himself a certified general appraiser. Black testified

at trial as an expert witness on behalf of Tate. Black concluded that the fair market value at the time of the June 2011 sales was \$92,000.00 for parcel 5, and \$85,000.00 for parcel 4.

26. The appraisal industry recognizes three general approaches to appraising real property: (1) the sales approach; (2) the cost approach; and (3) the income approach. The cost approach is generally used or a reliable indicator of value for unimproved land. The income approach is generally not applicable to non-income producing land.

27. After inspecting the subject parcels, Morse investigated the comparable sales data available on both the Selkirk and Coeur d'Alene MLS. During this process, Morse looked for sales of rural acreage in Bonner County in an attempt to determine the probable market value as of the date of sale for Parcels 4 and 5. To select reasonably comparable sales, Morse physically inspected the property for each of the sales he relied upon.

28. After reviewing the sales data, Morse selected five (5) sales that he concluded were reasonably comparable in physical location, size and attributes. After analyzing the industry recognized elements of comparison for each of the properties, Morse made adjustments to the sales price to account for the contribution he concluded those elements had to the sales price of the respective comparable.

29. In addition to the sales, Morse considered the listing of Parcel 4 for \$65,000.00, and rejected offer of \$47,000.00. He opined it was reasonable to consider this listing as the parcel has been continuously listed for over one year under nearly identical market conditions (as compared to the June 2011 date of sales) without any significant interest.

30. Based upon his sales comparison, Morse opined that the market value of Parcel 5 as of June 10, 2011, was \$61,500.00.

31. Based upon his sales comparison, Morse opined that the market value of Parcel 4

as of June 17, 2011, was \$54,000.00.

32. Combined, Morse opined the market value of both parcels was \$112,000.00. Combined, Black opined the market value of both parcels was \$177,000.00. Thus, there is a difference between the expert opinions in the present case in the amount of \$65,000.00.

33. Recently, Morse reviewed the appraisal reports completed by James Black with respect to Parcels 4 and 5. In the course of his review, Morse physically inspected each of the properties pertaining to the sales data upon which Black relied. After observing the distinguishing attributes for each property, Morse analyzed Black's use of adjustments to account for their contribution to the sales price. For example, Black's downward adjustment of \$25,000.00 for improvements to Black's comparable #4 would overstate the value of the land. Black made no adjustment for the superior location adjacent to a National Forest on Black's comparable #5. Finally, Black gave no adjustment, no consideration to the train tracks, access problems, and noise associated with the two parcels at issue.

34. In addition, Morse opined that Black's consideration of sales of properties closer to Sandpoint and Priest River was not justified. Finally, Morse opined that Black's failure to account for the neighboring railroad tracks directly adjacent to the subject parcels was not justified.

35. The Court finds Morse to be more credible than Black. Morse's experience is superior. Morse was able to discredit all criticisms made by Black. The proof, as they say, is in the pudding. As mentioned above in paragraph 23, immediately following the trustee's sales, MWB listed Parcels 4 and 5 with a local realtor. Parcel 4 was listed for approximately one (1) year at \$65,000.00. During that time, MWB was not able to attract any buyers. During late June 2012, the listing price was reduced to \$64,500.00. Parcel 5 was initially listed for

\$69,000.00, and subsequently reduced to \$65,000.00. In December, 2011, the property was sold to a third-party buyer for the sum of \$40,000.00. These facts corroborate Morse more than Black.

CONCLUSIONS OF LAW

1. Appraisals obtained after the sale are proper. Tate has cited no authority that a foreclosure without a prior appraisal is improper. The Court has conducted its own research. The concept advocated by Tate finds no support in the Idaho Code regulating trust deeds. I.C. § 45-1501 et seq. Specifically, Tate's concept is not mentioned in the statutes governing when a trust deed can be foreclosed (I.C. § 45-1505) and how a trust deed is to be foreclosed (I.C. § 45-1506). The Court can find no authority from other jurisdictions that require an appraisal prior to foreclosure sale. MWB acted entirely in good faith in these proceedings. In fact, MWB gave a credit bid on both parcels that exceeded Morse's appraisals. MWB's credit bid exceeded Morse's appraisal by \$4,500.00 on Parcel 5, and by \$15,000.00 on Parcel 4.

2. The Court finds Morse to be more credible than Black. Based upon his sales comparison, Morse opined that the market value of Parcel 5 as of June 10, 2011, was \$61,500.00. Based upon his sales comparison, Morse opined that the market value of Parcel 4 as of June 17, 2011, was \$54,000.00. Combined, Morse opined the market value of both parcels was \$112,000.00.

3. On June 10, 2011, a trustee's sale was conducted as to MWB's Deed of Trust encumbering Parcel 5. As of the date of sale, \$104,262.79 was due and owing on the Promissory Note secured by the Deed of Trust. Exhibit 17. Following the sale, a Trustee's Deed was conveyed to MWB in exchange for its credit bid in the amount of \$66,000.00. Exhibit 13. After reduction for MWB's credit bid, the sum of \$38,262.79 remained due and owing on the

Promissory Note. Exhibit 5. That is the amount of the deficiency on Parcel 5, regarding Count I of MWB's Complaint. Pre-judgment interest continues to accrue on the amount owed at the rate of 6.0% per annum. *Id.* On June 14, 2011, a Trustee's Deed was recorded with the Bonner County Recorder's Office. Exhibit 13. The instrument recites that the foreclosure was carried out in compliance with I.C. § 45-1502, et seq. In accordance with I.C. § 45-1510, the recitals are prima facie evidence of the truth thereof, and there has been no evidence to the contrary.

4. On June 17, 2011, a trustee's sale was conducted as to MWB's Deed of Trust encumbering Parcel 4. As of the date of sale, \$75,160.92 was due and owing on the Promissory Note secured by the Deed of Trust. Exhibit 18. Following the sale, a Trustee's Deed was conveyed to MWB in exchange for its credit bid in the amount of \$69,000.00. Exhibit 16. After reduction for MWB's credit bid, the sum of \$6,160.92 remained due and owing on the Promissory Note. Exhibit 1. That is the amount of the deficiency on Parcel 5 regarding Count II of MWB's Complaint. Pre-judgment interest continues to accrue on the amount owed at the rate of 6.0% per annum. *Id.*

5. In all aspects of its claims, MWB is the prevailing party. In all aspects of Tate's affirmative defenses (except for improper venue), MWB is the prevailing party. MWB is entitled to attorney fees against Tate.

ORDER

IT IS HEREBY ORDERED, based on Morse's appraisal, the Court finds the market value of Parcel 5 as of June 10, 2011, was \$61,500.00, and the market value of Parcel 4 as of June 17, 2011, was \$54,000.00. Combined, Morse opined the market value of both parcels was \$112,000.00. After reduction for MWB's credit bid, the sum of \$38,262.79 remained due and owing on the Promissory Note. Exhibit 5. That is the amount of the deficiency on Parcel 5,

regarding Count I of MWB's Complaint. Pre-judgment interest continues to accrue on the amount owed at the rate of 6.0% per annum. *Id.* After reduction for MWB's credit bid, the sum of \$6,160.92 remained due and owing on the Promissory Note. Exhibit 1. That is the amount of the deficiency on Parcel 5 regarding Count II of MWB's Complaint. Pre-judgment interest continues to accrue on the amount owed at the rate of 6.0% per annum. *Id.*

IT IS FURTHER ORDERED counsel for MWB is ordered to prepare a judgment consistent with these findings of fact, conclusions of law and order.

DATED this 4th day of September, 2012.

JOHN T. MITCHELL, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of September, 2012, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

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Jeanne Clausen, Deputy Clerk