

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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LAWRENCE E. JAFFE PENSION PLAN, ON )  
BEHALF OF ITSELF AND ALL OTHERS SIMILARLY )  
SITUATED, )

Plaintiffs, )

- *against* - )

HOUSEHOLD INTERNATIONAL, INC., ET AL., )

Defendants. )

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Lead Case No. 02-C-5893  
(Consolidated)

CLASS ACTION

Judge Ronald A. Guzmán

**APPENDIX OF TRANSCRIPT EXCERPTS IN SUPPORT OF DEFENDANTS' MOTION  
FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(b) AND  
DEFENDANTS' MOTION FOR NEW TRIAL PURSUANT TO RULE 59**

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**VOLUME 1 OF 2**

CAHILL GORDON & REINDEL LLP  
80 Pine Street  
New York, New York 10005  
(212) 701-3000

EIMER STAHL KLEVORN & SOLBERG LLP  
224 South Michigan Ave.  
Suite 1100  
Chicago, Illinois 60604  
(312) 660-7600

*Attorneys for Defendants  
Household International, Inc., William F.  
Aldinger, David A. Schoenholz and Gary  
Gilmer*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

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LAWRENCE E. JAFFE PENSION )  
PLAN, on Behalf of Itself and )  
All Others Similarly Situated.)  
  )  
Plaintiffs,                        )  
  )  
vs.                                      ) Lead Case No. 02-C-5893  
  )  
HOUSEHOLD INTERNATIONAL, )  
INC., et al.,                      )  
  )  
Defendants.                        )

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VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION  
OF  
CHARLES CROSS  
CONFIDENTIAL

---

9:02 A.M.  
APRIL 9, 2008  
1515 COMMERCE STREET  
TACOMA, WASHINGTON

---

REPORTED BY: JULIE R. HEAD, CRR, RPR, CCR No. 3119

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A P P E A R A N C E S

1  
2  
3 FOR THE PLAINTIFFS:  
4 CAMERON BAKER, ESQ.  
5 LUKE O. BROOKS, ESQ.  
6 Coughlin Stoia Geller Rudman Robbins LLP  
7 100 Pine Street, Suite 2600  
8 San Francisco, California 94111  
9 Phone: 415.288.4545 Fax: 415.288.4534  
10 E-mail: cbaker@csgr.com  
11 E-mail: LukeB@csgr.com  
12  
13 FOR THE DEFENDANTS:  
14 HOWARD (PETER) G. SLOANE, ESQ.  
15 LAUREN PERLGUT, ESQ.  
16 JASON M. HALL, ESQ.  
17 LARA R. CORCHADO, ESQ.  
18 Cahill Gordon & Reindel LLP  
19 80 Pine Street  
20 New York, New York 10005  
21 Phone: 212.701.3000 Fax: 212.269.5420  
22 E-mail: psloane@cahill.com  
23 E-mail: lperlgut@cahill.com  
24 E-mail: jhall@cahill.com  
25 E-mail: lcorchado@cahill.com

Page 3

1 FOR THE WITNESS:  
2 ELIZABETH P. MARTIN, ESQ.  
3 Gordon Thomas Honeywell Malanca Peterson &  
4 Daheim LLP  
5 Wells Fargo Plaza  
6 1201 Pacific Avenue, Suite 2100  
7 Tacoma, Washington 98402  
8 Phone: 253.620.6500  
9 Fax: 253.620.6565  
10 E-mail: emartin@gth-law.com  
11  
12  
13 ALSO PRESENT:  
14 JOHN L. BLEY, ESQ.  
15 Foster Pepper PLLC  
16 1111 Third Avenue, Suite 3400  
17 Seattle, Washington 98101  
18 Phone: 206.447.4400  
19 Fax: 206.447.9700  
20 E-mail: bleyj@foster.com  
21  
22  
23 TANIA GRANT, Videographer  
24  
25

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1 Would you look at page 399 of Exhibit 2, and  
2 lines ten to 11, and, in connection with a question, you  
3 gave the answer: "I think the report doesn't attempt to  
4 make any statistical analysis," end of quote.

5 Did you give that answer and was it accurate  
6 at the time?

7 A. I gave that answer. That's kind of a goofy  
8 answer.

9 Q. Was it accurate at the time?

10 A. I think -- I was being truthful.

11 Q. That's all I want to know.

12 A. I was being truthful at the time.

13 Q. Would you agree with me that the 19 complaints  
14 that you looked at was a woefully inadequate population  
15 to draw from?

16 A. That sounds like something I would have said.

17 Q. Let's look at it so I'm not misquoting you or  
18 mischaracterizing it.

19 If you look at page 398 of Exhibit 2, and you  
20 were asked the following question, line 22:

21 "Do you have any opinion whether a sample of  
22 19 complaints out of a population of thousands and  
23 thousands of complaints would be statistically  
24 significant?"

25 Answer: "I would say, without having any

1 remote claimed expertise in this area, that anybody who  
2 was a statistician or knew anything about statistics  
3 would tell you that that was a woefully inadequate  
4 population to draw from."

5 Did you give that answer and was it accurate  
6 at the time?

7 A. Yes, and yes. And, remember -- The reason I  
8 remembered this is because you said -- you quoted this  
9 to me just a little while ago, before we -- earlier on  
10 in my deposition, so --

11 Q. Yes.

12 Would you agree with me, notwithstanding the  
13 number of complaints that -- Well -- Well, let me  
14 withdraw the question. This is not your testimony,  
15 here, but I'm asking you a little different question.

16 Would you agree with me that 19 complaints out  
17 of a total of the number of loans that you looked at or  
18 that -- I'm sorry -- that were made by Household in the  
19 time period that you reviewed was a woefully inadequate  
20 statistical sample?

21 MR. BAKER: Objection as to form.

22 A. If you're -- If you're trying to say that  
23 it -- that it --

24 Q. (BY MR. SLOANE:) I'm not -- Let me -- Let me  
25 interrupt you.

1 I'm not trying to say anything. I'm asking  
2 you a question, and that's all you have to do, is answer  
3 the question to the best of your knowledge.

4 You want to read it back? I didn't mean to  
5 interrupt you, but --

6 You seem to suggest that I was trying to put  
7 words in your mouth. I'm not. I just want to know your  
8 answer.

9 (Record read as follows:

10 Q. "Would you agree with me that 19  
11 complaints out of a total of the number  
12 of loans that you looked at or that were  
13 made by Household in the time period  
14 that you reviewed was a woefully  
15 inadequate statistical sample?")

16 MR. BAKER: Same objection.

17 A. I'm not sure how you're using statistical  
18 sample. And I notice that I used it -- I think  
19 previously -- or they asked me the question about it,  
20 but -- And a --

21 Q. (BY MR. SLOANE:) Why don't you answer it in  
22 your own words.

23 A. Okay.

24 Q. Maybe we can get there easier.

25 A. All right. In a classic sense of doing

1 statistical analysis, yes, I think -- as I said, here,  
2 anybody who does stats would say, "Well, you can't use  
3 19 out of a giant population to say this is  
4 statistically representative of something," but I don't  
5 think I ever did say that, so, I would say yes to you,  
6 and I apparently said yes back then, so -- Yeah. Yes.

7 Q. Okay.

8 In the work that you did in connection with  
9 this report, did you make any effort to determine the  
10 number of complaints in reference to the total amount of  
11 loans in any particular year?

12 A. I knew the number of complaints in each year  
13 and I knew the number of loans in each year. I don't  
14 think I needed to make any -- and I knew that, so, I'm  
15 not sure I needed to make an attempt to do it.

16 MR. SLOANE: Reask the question -- Let me have  
17 the question reread and maybe you've answered it or  
18 maybe you've not. Let's see.

19 A. Okay.

20 (Record read as follows:

21 Q. "In the work that you did in  
22 connection with this report, did you  
23 make any effort to determine the number  
24 of complaints in reference to the total  
25 amount of loans in any particular

1 year?"

2 A. I did do that. I'm not sure it was any  
3 effort, but I -- I did do that.

4 Q. (BY MR. SLOANE:) And what did you conclude in  
5 the report in that regard?

6 A. I -- I don't remember.

7 Q. Okay. Well, let me harken back -- Withdrawn.  
8 Do you understand -- Did you understand the  
9 concept, in the work you did, of a denominator and  
10 determining a denominator in trying to establish a  
11 company-wide -- whether something was a company practice  
12 or company-wide practice?

13 MR. BAKER: Objection as to form.

14 A. I know what a denominator is. I don't know  
15 there's any formulator that says a specific denominator  
16 has to be derived in order to come up with a  
17 company-wide practice.

18 And, again, you haven't shown me, yet, where I  
19 used the term company-wide practice. You've only shown  
20 me where I was responding to somebody that was using  
21 that term with me. So, I'm not sure I would have dealt  
22 with that.

23 Q. (BY MR. SLOANE:) Okay.  
24 Let me have the question, again, and I'll ask  
25 you if -- if you can answer my question.

1 little bit.

2 Q. Sure. Please do.

3 A. Again, there's is -- there is nothing about  
4 this report that we --

5 Q. That's Cross Exhibit 3.

6 A. -- that we would argue is a statistical  
7 analysis. So, you're using that term with me. I don't  
8 know if I ever claimed, in this report, that it was a  
9 statistical analysis, but my guess is I wouldn't have.

10 So, in a -- if we were to hire a  
11 statistician -- which wouldn't be me -- if we were to  
12 hire a statistician to do some analysis, they would --  
13 they would probably come back with some numbers that  
14 show that the number of complaints I was looking at in  
15 this report were very, very, very, very small in  
16 relation to the population of complaints, but we  
17 don't -- the regulatory world, we don't live in a  
18 vacuum. We measure things like are the complaints with  
19 this company greater than with a peer company and are  
20 they increasing at a greater rate, are they more  
21 egregious than other types of complaints, these types of  
22 things.

23 In that sense, they may not be a classic  
24 statistical indicator for us, but they are,  
25 nevertheless, important in us forming our decisions.

1 (Record read as follows:  
2 O. "Did you understand the concept in  
3 the work you did of a denominator and  
4 determining a denominator in trying to  
5 establish a company-wide -- whether  
6 something was a company practice or  
7 company-wide practice?")  
8 MR. BAKER: Same objection.  
9 A. Could -- Could you rephrase that for me?  
10 Q. (BY MR. SLOANE:) Sure.  
11 A. I don't mean to be obstinate, here. I'm  
12 just --  
13 Q. No, you're not being obstinate, at all. That  
14 question -- That's exactly what I asked you to do before  
15 we started.  
16 In -- In connection with your work, did you  
17 make any effort to quantify how many complaints --  
18 whether the number of complaints, in any particular  
19 practice -- practice that you identified was  
20 statistically significant in terms of the overall  
21 loans -- number of loans that were made by Household in  
22 any particular time period?  
23 A. Yes and no.  
24 Q. Okay.  
25 A. Or no -- No and yes. I could try to explain a

1 And, I don't know, if -- if I can give you  
2 a -- just the off-the-top-of-my-head strange analogy. I  
3 could walk down this street out front, here, a thousand  
4 times, in front of that Tully's Coffee shop and, one  
5 day, I could decide to go in and shoot somebody and take  
6 money out of the till. That's one out of a thousand  
7 times, but I think that somebody would consider that to  
8 be something that would need to be dealt with.  
9 And that's what we're -- In this report, when  
10 we're dealing with 19 complaints, that's -- that's what  
11 we're saying, is these 19 complaints were egregious acts  
12 against consumers. And we never tried to argue that  
13 they make up a huge percentage of -- of the total loans  
14 in the company. What we say is we find these practices  
15 within these complaints -- we find them to be egregious.  
16 We communicate with -- with many of the states across  
17 the country. We find that they have similar complaints  
18 in their files, that their examination findings are  
19 similar to the things that we're finding in our  
20 examination. And, therefore, we feel comfortable in  
21 saying that, when we look at the company, we -- we do  
22 not like the practices we're seeing here. That's what  
23 that report does.  
24 Q. Now, you mentioned communications with other  
25 examiners.

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1 controlled by Household, contained within a certain  
2 environment or picture that they had -- had painted, and  
3 I know that -- that to the extent that an agency not  
4 being a person can lose sort of patience with that  
5 process, we had reached a point where we had -- where we  
6 had lost patience with it. We were no longer interested  
7 in -- in having the dialogus that they kept insisting  
8 that they wanted to have.

9 Q. (BY MR. SLOANE:) Would you look at page 246  
10 of Exhibit 2, lines 15 to 25.

11 Question: "So, as of the time that you sent  
12 out this expanded report, you had made your findings and  
13 opinions and you were not interested in revisiting them,  
14 were you?"

15 There's an objection.

16 The Witness: "Personally, no, I wasn't too  
17 interested in that because I had done my job and was  
18 ready to move to the next stage. As far as what the  
19 director was interested, I would have to leave that to  
20 him to answer."

21 Did you give that testimony and was it  
22 accurate at the time?

23 A. Yes and yes.

24 Q. Let me direct your attention to Exhibit 2,  
25 page 371. It actually starts -- Let's start at page

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1 complaints.

2 Q. And if you had credited, in any respect,  
3 Household's word over the word of the borrowers, that  
4 would be in the report; isn't that right?

5 A. Not necessarily, no.

6 Q. Well, would you look at page 391, line 21 of  
7 Exhibit 2.

8 A. Line number?

9 Q. Line number 21.

10 A. Thank you.

11 Q. 391. I'm going to go from 391, 21, to 392, 2.  
12 The question was asked: "Can you recall any instance in  
13 discussing the 19 loans that are at issue in this report  
14 that's Exhibit C where you took Household's word over  
15 the word of the borrower as to what facts occurred?"

16 Answer: "I don't remember. I also have to  
17 let the report speak for itself. If I did do that, it's  
18 probably in there."

19 Did you give that testimony and was it  
20 accurate?

21 A. I gave the testimony. There's two huge  
22 qualifiers in there: I don't remember and probably.  
23 But, to the best of my ability, I was giving a truthful  
24 answer at that time.

25 Q. Okay. And let me continue on a little bit to

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1 371. You can read as much as you want. I'm focused on  
2 lines ten to 13. And the question was asked: "In other  
3 words, your report is just dealing with problems and  
4 negative issues, not the positive side of the business?"

5 Answer: "Absolutely."

6 Did you give that testimony at that time and  
7 was it accurate?

8 A. Yes.

9 Q. Yes to both?

10 A. Yes to both.

11 Q. Okay.

12 Off the record.

13 (A discussion was held off the record.)

14 Q. (BY MR. SLOANE:) Is it accurate to say that,  
15 of the 19 reports -- 19 complaints and loans listed in  
16 your report, there wasn't a single instance, in  
17 connection with those loans, in which you took  
18 Household's word over that of the borrower as to what  
19 had occurred?

20 A. Boy, hum. I don't recall, but that -- It  
21 would be uncommon for me to take a hundred percent of  
22 what the borrowers' said and nothing of what Household  
23 said, but, generally, as -- as the complaints supported  
24 the violations or harms we were noting, I believed the  
25 consumers more than I believed Household in those

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1 short-circuit this and see if, again, this is something  
2 that you testified to and you believe was accurate.

3 It continues on line -- on page 392 of  
4 Exhibit 2.

5 The Witness: "No, maybe from your" -- dash,  
6 dash -- "I understand you have a different perspective  
7 than from my perspective" --

8 And here's the part I wanted to ask you about:  
9 "I don't know how that's -- it wouldn't have been  
10 relevant to me. This is not a report about good things  
11 Household did or the things that Household and us were  
12 in agreement on. It's the things" -- dash, dash --  
13 "it's about the harmful things Household did and the  
14 things" that were -- "that we were in disagreement on."

15 Did you give that testimony and was it  
16 accurate at the time?

17 A. Yes and yes.

18 Q. Would you look at page 393, lines two to 13.  
19 The question was asked: "And are you telling me that,  
20 with respect to those 19 complaints and that analysis,  
21 you would have excluded any of the information that was  
22 favorable to Household just as you did in the more  
23 general discussion about Household?"

24 There's an objection.

25 The witness says, "Yeah, likely. Unless it



1 was relevant to the argument of the point I was trying  
 2 to make, there would be no point to put it in."  
 3 Question: "What was the argument of the point  
 4 you were trying to make?"  
 5 Answer: "That these consumers were harmed."  
 6 Did you give that testimony and was it  
 7 accurate at the time?  
 8 A. Yes and yes.  
 9 MR. SLOANE: Okay. I'm told we have about  
 10 five minutes left on the tape, so, why don't we change  
 11 it now, and I guess it would be a good idea to take a  
 12 short break just because of that, if that's all right.  
 13 A. Sure.  
 14 THE VIDEOGRAPHER: We are now going off the  
 15 record in the continuing deposition of Charles Cross.  
 16 This is the end of tape one. The time is now 11:06 a.m.  
 17 (Off the record at 11:06 a.m.)  
 18 (Back on the record at 11:23 a.m.)  
 19 THE VIDEOGRAPHER: We are now back on the  
 20 record in the continuing deposition of Charles Cross.  
 21 This is the beginning of tape two. The time is now  
 22 11:23 a.m.  
 23 Q. (BY MR. SLOANE:) Mr. Cross, let me ask you  
 24 this question: Is it correct to say that the purpose of  
 25 your report, which is Exhibit 3, was not to come to the

1 relevant, it might be another question, but you didn't  
 2 ask that, so --  
 3 Q. (BY MR. SLOANE:) And is it also fair to say  
 4 that -- that in connection with your work, that it was  
 5 not a significant part of your examination to review any  
 6 of the Household policies or training manuals or  
 7 bulletins about practices that it should or should not  
 8 engage in?  
 9 A. I -- I don't believe so, in the writing of  
 10 this report. I believe, subsequent to this report,  
 11 we -- using that term loosely -- spent more time in that  
 12 area.  
 13 Q. Okay. At the time that you did this report  
 14 and investigation, was it your view that a company  
 15 should be held responsible for the acts of a single  
 16 individual employee?  
 17 A. Yes.  
 18 Q. And would, as you -- as you -- If you want to  
 19 expand on that, go ahead. I don't want to interrupt  
 20 you.  
 21 A. Depends -- The acts being done within the  
 22 company. They're not responsible for the guy owning a  
 23 home and, you know, kicking the dog or something.  
 24 Q. Yeah, I understand.  
 25 And would that -- those acts, in your

1 fairest overall appraisal of all of Household's  
 2 practices as to all of its borrowers in the state of  
 3 Washington?  
 4 A. Yes.  
 5 Q. That was not the purpose of this report?  
 6 A. That was not the purpose of the report.  
 7 Q. Okay. Did you think, in connection with the  
 8 work you did for Household, that it was relevant for you  
 9 to know about what Household's actual policies were  
 10 about how it communicate -- communicated information to  
 11 its customers, question mark?  
 12 MR. BAKER: Objection. Vague. Objection as  
 13 to form.  
 14 MR. SLOANE: Could I have the question reread?  
 15 He may be right, but it's probably wrong.  
 16 (Record read as follows:  
 17 Q. "Did you think, in connection with  
 18 the work you did for Household, that it  
 19 was relevant for you to know about what  
 20 Household's actual policies were about  
 21 how it communicate -- communicated  
 22 information to its customers, question  
 23 mark?")  
 24 MR. SLOANE: It's okay.  
 25 A. I would say yes, I think it's relevant. How

1 understanding, by that individual, be, in your view, a  
 2 company practice?  
 3 A. Very well could be, yes.  
 4 Q. Okay. Now, in connection with the  
 5 investigative work that you did of Household and -- You  
 6 didn't operate under any presumption that borrowers had  
 7 a responsibility to review the terms of any documents  
 8 they signed; is that correct?  
 9 A. I think that is incorrect, if I -- if I  
 10 understand your question.  
 11 Q. Well, for the purposes of your regulatory  
 12 jurisdiction, you don't operate under any presumption  
 13 that borrowers have a responsibility to review the terms  
 14 of the documents they sign; is that fair?  
 15 A. There's a -- There's a -- somewhat of a  
 16 complex answer to that.  
 17 I did not have jurisdiction over borrowers or  
 18 borrowers' actions. We -- In the agency's normal course  
 19 of reviewing, investigating, resolving complaints, there  
 20 was a lot of discussion about the level to which  
 21 borrowers had a responsibility to go to -- to -- to  
 22 determine if the transaction was appropriate for them,  
 23 and so forth. So, there was a lot of -- a lot of  
 24 agency, a lot of division, a lot of unit discussion  
 25 about that. And all of that would have -- Everything --

1 Q. (BY MR. SLOANE:) Mr. Cross, I don't have  
2 any -- any questions -- further questions for you at  
3 this time. Thank you.  
4 A. You're welcome.  
5 MR. BAKER: Let's mark this next in order.  
6 It's number seven.  
7 MS. MARTIN: 6.  
8 MR. BAKER: Sorry, 6.  
9 MR. SLOANE: It's a bad start.  
10 MR. BAKER: Trying to trick me.  
11 (Cross Exhibit 6 was marked for  
12 identification.)  
13 (A discussion was held off the record.)  
14 EXAMINATION  
15 BY MR. BAKER:  
16 Q. Okay. Mr. Cross, if you could turn to the  
17 page to -- second page of this document.  
18 And, earlier today, you were testifying about  
19 some testimony that Mr. Bley had given, the Federal  
20 Reserve Board, I believe, in 2000. You recall that  
21 testimony?  
22 A. Yes.  
23 Q. Okay. And is the second page on -- is that a  
24 copy of the testimony that Mr. Bley gave?  
25 A. It appears to be.

1 I'm reading this, now, and this -- the paragraphs, here,  
2 are more in John's voice than my voice.  
3 Q. If I could direct your attention to page two.  
4 A. Of --  
5 Q. I'm sorry, page number two of the testimony.  
6 A. Got it.  
7 Q. You see, in the third paragraph, there's a  
8 reference, "I have attached as Exhibit A a memorandum  
9 authored by the department's chief mortgage  
10 investigator, Mr. Chuck Cross, which describes the  
11 deceptive practices we have observed in Washington?"  
12 A. Yes.  
13 Q. Okay. And that's the memo that you were  
14 referring to as the attachment that you had authored?  
15 A. Right. That's the thicker part of this  
16 document, actually.  
17 Q. Okay.  
18 If I could direct your attention to the next  
19 paragraph that says, "It is important to note that  
20 predatory lending is not a new problem. State  
21 regulators have been dealing with this very same issue  
22 under a different name for years," period. "What was  
23 once called mortgage fraud is now called predatory  
24 lending," period. "Under either name, our mission to  
25 investigate violations and enforce the law has remained

1 Q. And did you author portions or all of this  
2 testimony?  
3 A. Let me -- Let me read it.  
4 (A discussion was held off the record.)  
5 MR. BAKER: First page is a cover letter.  
6 A. It's a cover letter. You don't have that.  
7 MR. SLOANE: Oh, just have the testimony.  
8 (A discussion was held off the record.)  
9 MS. MARTIN: Is the testimony actually through  
10 page four?  
11 MR. BAKER: Yeah, page four and then there are  
12 some attachments.  
13 MS. MARTIN: Oh, attachments. Okay. I was  
14 confused. Thank you.  
15 A. Could I give you more than a simple yes or no?  
16 Q. (BY MR. BAKER:) Sure.  
17 A. Okay. Much of the content of this I would  
18 have provided to John -- when I'm reading this now, and  
19 I realized that, when you talked to me on the phone  
20 previously, I didn't have a copy of this in front of me.  
21 Clearly, the attachment that -- that, I think, went  
22 along with it --  
23 Q. Um-hum.  
24 A. -- is my authorship, and much of the content  
25 of this would have been information I provided to John.

1 the same." Do you see that?  
2 A. Yes.  
3 Q. Do you concur with that?  
4 A. Yes.  
5 MR. SLOANE: Does he concur with it today?  
6 Q. (BY MR. BAKER:) Did you always concur with  
7 that?  
8 A. Yes. Missions do change a little bit over  
9 time, but I -- I think, generally, it's a pretty  
10 accurate statement.  
11 Q. Okay.  
12 Was the term predatory lending used within the  
13 department during the time period that Mr. Sloane was  
14 asking about, 1999 to 2002?  
15 A. Yes.  
16 Q. Okay. Did you have any discussions with  
17 Mr. Bley about predatory lending during that time  
18 period?  
19 A. Sure.  
20 Again, I didn't very often brief John because  
21 I didn't report directly to him. My boss reported to  
22 him. And, actually, during part of this time, my boss'  
23 boss reported to him. But -- But my relationship with  
24 John goes -- goes way back, and, so, we would discuss  
25 predatory lending.

1 So -- And, also, we were beginning to  
2 understand more and more about predatory lending  
3 practices. We had the FAMCO case under our belt, now.  
4 We understood more about what was going on, and the  
5 deception that could actually occur with consumers,  
6 where, a lot of times, consumers didn't even really have  
7 a clue what happened, what went on.

8 So, we're having these conversations and it  
9 was determined that -- that it made sense to do an  
10 investigation or an exam -- expanded examination report  
11 to -- and focus on the complaint side of the world as it  
12 related to Household and try to -- try to understand  
13 what was really going on with the practice of the  
14 company, see if what we were hearing from the complaints  
15 made sense or what -- what the routine exams was telling  
16 us made sense. That's -- That's how it got started.

17 Q. Okay.

18 Well, I'm going to ask you some more questions  
19 about that after lunch, but let me just follow up a few  
20 more questions.

21 Did you give a declaration in the Luna case  
22 with respect to this particular DFI report?

23 Let's mark this next in order.

24 A. I see one there, so, I'm going to say yes.

25 Q. That's -- That's a good guess.

1 questions about the deposition testimony that you gave  
2 that's reflected in Cross Exhibit 1 and Cross Exhibit 2,  
3 and I just want to follow up on some of those questions.

4 He was asking you about specific snippets of  
5 testimony. Is it true that, to the best of your  
6 knowledge -- I should say -- Let me start again.

7 To the best of your knowledge, did you give  
8 truthful and accurate testimony in response to the  
9 questions that were posed to you in those two  
10 depositions?

11 A. Yes.

12 Q. Okay. Since then, have you learned anything  
13 that would have led you to believe that the testimony  
14 you gave was not accurate?

15 A. Without reading all that testimony, that is --  
16 that is hard to say.

17 There -- I'd like to think -- probably not  
18 true, but I'd like to think I'm a little bit smarter, a  
19 little -- know a little bit more today than I knew back  
20 then. But I would say that everything that I said at  
21 that time was truthful. Whether, now, you would ask me  
22 some -- you know, some piece out of there that maybe I  
23 would know more about today or not -- I can't say for  
24 sure. But that was -- was an accurate, truthful  
25 testimony at the time it was taken. And the facts were

1 (Cross Exhibit 8 was marked for  
2 identification.)

3 MS. MARTIN: This is Exhibit 8; is that right?

4 Q. (BY MR. BAKER:) Is this a copy of your  
5 signature on the bottom of page two?

6 A. That's my signature.

7 Q. Okay. And, before signing this, did you  
8 review it to make sure it was correct?

9 A. Yes, I -- Yeah, I definitely would have  
10 reviewed it and made sure it was correct.

11 Q. Okay.

12 And this -- This particular document that's  
13 referred to in paragraph three is a copy, apparently,  
14 that was a -- of the expanded report that was obtained  
15 from the Bellingham Herald website, but the same  
16 conclusions that are referenced in paragraph three,  
17 here, apply also to Cross Exhibit 3? Same experience?

18 A. Yes, yes.

19 Q. Okay. It's the same report, in other words?

20 A. It's the same report.

21 And this -- I think I -- as I remember, I  
22 happily did this because it provided me some cover. I  
23 think I was being accused of having released this report  
24 that Household wanted to protect it and I didn't, so --

25 Q. Mr. Sloane was asking you a number of

1 very current at that point in time, too. I have to say  
2 that, as well.

3 Q. Okay.

4 Now, let's mark a couple more before,  
5 hopefully, we break for lunch.

6 Let's mark this next number.

7 (Cross Exhibit 9 was marked for  
8 identification.)

9 (A discussion was held off the record.)

10 MS. MARTIN: Your copy is -- is there, yeah.

11 Q. (BY MR. BAKER:) This is just the question I'm  
12 going to ask you again. Ignoring the handwriting on  
13 this, earlier you were testifying -- testifying about a  
14 March 4th, 2002 report examination based on what was --  
15 based for calendar year 2001. To the best of your  
16 knowledge, is this a copy of -- of that report, plus the  
17 cover letter from Mr. Burgert?

18 A. It sure looks like it.

19 Q. Okay. And, at this point in time, March of  
20 2004, would Mr. Burgert have been reporting to you?  
21 Sorry, 2002.

22 A. Oh.

23 MR. SLOANE: You need it?

24 A. I -- Hum, I -- Yes, I think so. Ed was my  
25 boss at one time, but then he got demoted. I -- I

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1 And you're discussing concerns resulting from borrower  
2 confusion over biweekly and bimonthly programs. You see  
3 that in sort of the second full paragraph there?  
4 A. Yeah.  
5 Q. Are you familiar with the term effective rate  
6 or equivalent rate as used with respect to a biweekly  
7 payment program?  
8 A. Yes.  
9 Q. And did you identify a pattern of deceptive  
10 practices at Household that used those terms?  
11 A. I -- I believe so, yes.  
12 Q. Okay.  
13 And could you explain to -- to me what that  
14 process was or what the deceptive practice was?  
15 MR. SLOANE: Object to the form of the  
16 question. You said a pattern at Household.  
17 MR. BAKER: I did.  
18 A. I was afraid you were going to ask me that,  
19 because, as I remember, this is a fairly complex area of  
20 the exam. But I will try to the best of my  
21 recollection.  
22 Q. (BY MR. BAKER:) Actually, you know what,  
23 maybe I'll just see if I can help you out, here. You --  
24 Let's see.  
25 Here, let's mark this next in order.

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1 borrowers?  
2 MR. SLOANE: Object to the question. May  
3 beyond the scope of the exam -- direct examination.  
4 A. I think the answer is yes.  
5 Q. (BY MR. BAKER:) Okay.  
6 A. It -- I supervised this area and I had people  
7 handling -- We received about a thousand complaints a  
8 year, so, did I look at every complaint? At one time, I  
9 was the only guy looking at complaints, but you get into  
10 this period of time and it took bigger cases like FAMCO  
11 and Household for me to become involved in the  
12 complaints.  
13 Q. Okay.  
14 A. But I approved every -- Every complaint  
15 finding that ever went out went out under my approval,  
16 but a lot of it was under sort of policy and procedure:  
17 You do this in this situation.  
18 Q. Okay. And if I direct your attention to the  
19 second page of this document. There's a paragraph  
20 starting, "Third". If you could read that to yourself.  
21 A. Um-hum.  
22 I've read it.  
23 Q. Okay. And does that refresh your recollection  
24 as to what the -- the biweekly effective rate deceptive  
25 practice was?

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1 (Cross Exhibit 10 was marked for  
2 identification.)  
3 (A discussion was held off the record.)  
4 MR. SLOANE: Is this about a specific customer  
5 that was referenced in the report, Cam?  
6 MR. BAKER: I believe they are in this report,  
7 actually --  
8 THE REPORTER: I'm sorry?  
9 MR. BAKER: I believe they are. I believe  
10 they are.  
11 MR. SLOANE: On that basis, go ahead.  
12 Q. (BY MR. BAKER:) And, Mr. Cross, you see this  
13 is a letter to you from Household?  
14 A. Yes.  
15 Q. Okay. And it relates to a specific complaint  
16 from the -- the Johnstons. Do you see that?  
17 A. Yes.  
18 Q. Okay. And you would have reviewed this and  
19 considered this in evaluating the complaint -- the  
20 merits of the claim; is that right?  
21 A. In relation to this -- yeah, Julian and Terry  
22 Johnston complaint, yes.  
23 Q. And is it fair to say it was part of your  
24 regular business practices, during the time period we're  
25 talking about, to evaluate complaints received from

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1 A. A little bit. He -- Schneider, here, is  
2 referring to the equivalent rate. I think we talked a  
3 lot about the effective rate -- I can't remember, now,  
4 whether those terms are interchangeable or had some  
5 subtle nuances that were different among them.  
6 And, in general -- And there were a couple of  
7 variations or maybe more variations than the whole  
8 biweekly or bimonthly program. In general, what -- what  
9 we found was that when borrowers had a biweekly or  
10 bimonthly payment plan, they would communicate to us  
11 that -- that their rate was approximately half of what  
12 we could see on the note was showing as their rate, and,  
13 as we discussed this with them -- and, then, also would  
14 look at the materials and the responses from the  
15 company -- it became apparent to us that -- that this  
16 whole -- there was a sales pitch that went with getting  
17 the biweekly program, and that sales pitch was clearly  
18 leading borrowers to believe that their rate was half of  
19 what it really was.  
20 Now, there's -- there's a whole ton of  
21 discussion that ensued, that I'm sure went on for months  
22 and months, about the meaning of effective, meaning of  
23 equivalent, who meant what by what.  
24 In the end, our finding was that this is what  
25 borrowers carried away from -- from -- from the sales

1 pitch. These guys were the professionals selling this  
 2 loan program and -- in our -- In our regulatory world,  
 3 under the concept by which we issued the company a  
 4 license, they have an obligation not to mislead people,  
 5 and we found that borrowers were entering the  
 6 transaction believing that their rate was half of what  
 7 it really was.

8 Q. Okay. And did you determine that that was a  
 9 deceptive practice?

10 A. Absolutely.

11 Q. Okay. In the report, here, it says -- I'm  
 12 reading from the -- looks like the second-to-last line  
 13 of this paragraph. It says, "The department has  
 14 identified the practice in other branches in Washington  
 15 and has even received reports from regulators in other  
 16 states concerning the practice." Do you see that?

17 A. What document are you on?

18 Q. I'm sorry, I'm on your Exhibit B.

19 A. Okay. Page 46, still.

20 Q. Page 46. Yeah. The paragraph we're looking  
 21 at, this kind of inset.

22 A. That begins with --

23 Q. The Department.

24 A. The prime -- or --

25 Q. Yeah, borrowers have been informed.

1 Q. Page 89, and question from Mr. Parlette:  
 2 "Let's put back together. I believe you said the  
 3 effective or equivalent interest rates sales program was  
 4 found in several other states?"

5 Answer: "I was told that."

6 Question from Mr. Parlette: "Okay." Do you  
 7 know how many other states" -- sorry, "Do you know how  
 8 many states?"

9 Objection from Mr. Dunne.

10 Answer: "No, I don't know how many, but I  
 11 know that I was told that by at least 15 to 20 states."

12 A. And I don't know how far back we have to go to  
 13 get this into appropriate context, but, first, this was  
 14 contemporaneous in time with -- with the events, so, I  
 15 stand by what was said there.

16 What I'm wondering, now, if we went back and  
 17 looked at the earlier context, if the 15 and -- 15 to 20  
 18 was not relevant to the multistate, then -- in other  
 19 words, not -- the 15 -- 15 to 20 may not have been  
 20 before this report was drafted.

21 Q. Okay.

22 A. Yet, the report was drafted, and -- and a lot  
 23 of discussions ensued after the report was drafted, and  
 24 that's when the 15 to 20 may have said, "Hey, us, too."  
 25 But -- I'd have to read a bunch of this to figure that

1 A. Okay.

2 Q. Okay.

3 A. And then what -- You're looking at the last  
 4 sentence that begins with department?

5 Q. Yeah. Well, no, the second-to-last  
 6 sentence --

7 A. Got it.

8 Q. -- that says, "However the department has  
 9 identified"?

10 A. Yes, okay.

11 Q. Okay.

12 A. Okay.

13 Q. And other practices -- sorry, "the practice to  
 14 other branches in Washington and has even received  
 15 reports from regulators in other states concerning the  
 16 practice." Do you see that?

17 A. I do, yes.

18 Q. Okay. Do you recall how many other states  
 19 reported this practice? And if I could direct you to  
 20 page 89 of your deposition --

21 A. Okay.

22 Q. -- and your answer there.

23 A. I'm going to say, off the top of my head,  
 24 probable Minnesota and Georgia, but -- Okay. I'm on  
 25 page 89.

1 out, I think.

2 Q. Okay. So, you're not sure when you -- when  
 3 the timing of these 15 to 20 other states telling you  
 4 when that occurred?

5 A. Right.

6 Q. It could have occurred before this report or  
 7 could have occurred subsequent?

8 A. Right.

9 Q. Okay. But you're saying, to your knowledge,  
 10 this practice occurred between 15 and 20 other states?

11 MR. SLOANE: Objection to form of the  
 12 question.

13 Q. (BY MR. BAKER:) In addition to Washington?  
 14 MR. SLOANE: That's not what he said. He said  
 15 he had been told something. He didn't know whether it  
 16 occurred. How would he know?

17 Q. (BY MR. BAKER:) You can answer the question.

18 A. I would say I was told. I did not -- I don't  
 19 know that I -- that I personally investigated materials  
 20 from other states; although, it's quite possible that --  
 21 We came together on several occasions and discussed  
 22 things and -- and looked at stuff, so, but -- but it is  
 23 most accurate to say that I was told that by 15 to 20  
 24 states.

25 Q. Okay. Earlier in this deposition, you

1 years later, that New York was the only state that did  
2 not have that issue. And this actually came to light  
3 during the case. And the reason was New York had a  
4 specific law saying you could not have prepayment  
5 penalties, so, New York came into the case saying,  
6 "Well, we don't see that in our state." It's because  
7 prepayment penalties were completely disallowed, so  
8 there's no reason to try to deceive somebody or  
9 misrepresent that a prepayment penalty existed.

10 But all the other states, that was a very big  
11 point that was discussed over and over and over.

12 Q. And was there consensus within the group that  
13 Household was engaged in deceptive practices with  
14 respect to their prepayment penalties?

15 MR. SLOANE: Objection to the form of  
16 question. What do you mean by the group?

17 MR. BAKER: The group that you're talking  
18 about now.

19 MR. SLOANE: I'm lost on what group.

20 MR. BAKER: He's talking --

21 Q. (BY MR. BAKER:) You're talking about, if I  
22 understand, there's a group of you -- some are attorneys  
23 general, some are -- you are regulators -- who are  
24 talking about these practices, and I'm wondering if you  
25 reached a consensus that Household is engaged in

1 deceptive practices with respect to prepayment penalties  
2 in all the states that you are representing.

3 MR. SLOANE: Objection. Mischaracterizes his  
4 testimony, but it's way beyond the scope of the direct  
5 examination.

6 A. The group grew to about 40 states, I believe,  
7 with time, and, yes, we had -- I remember two physical  
8 meetings we were all in the same room. The first  
9 meeting, I think there were about 25 states, and then  
10 the next meeting grew to about 40 states, and we very  
11 much -- with the exception of New York, who wanted to  
12 stay away from the prepayment penalty issue, because  
13 they didn't have prepayment penalties in their state,  
14 every other state was saying, "This is a major issue in  
15 our state and it's an issue we have to have resolution  
16 of in this case."

17 Q. (BY MR. BAKER:) One of the other things that  
18 you talk about in your report that we haven't touched  
19 upon has to do with the GFEs in the -- quote, unquote --  
20 buydown or discount points. Do you recall that?

21 A. Yes.

22 Q. Okay. What can you tell me about that  
23 particular practice?

24 A. There were -- There were two -- I believe  
25 there were two deceptions that I cited revolving around

1 the discount points, in this case. One was whether the  
2 discount points were what I would call bona fide -- did  
3 they actually have an effect of buying the rate down --  
4 and the second was the disclosure on the Good Faith  
5 Estimate of a range of discount points, which typically  
6 began at zero and went up somewhere -- anywhere from  
7 maybe six, seven thousand up to maybe, like, ten or 11  
8 thousand. It was -- It would just be showing, in the  
9 Good Faith Estimate, zero to this larger number.

10 But, in the cases I reviewed, consistently,  
11 the borrowers paid at the very top of that number. Yet,  
12 the borrowers were telling us that the loan originator  
13 said they would be at the bottom. They would get  
14 essentially a -- a very low-cost or no-cost loan. So --  
15 Deception -- To reverse those, deception, first, around  
16 what was disclosed to the borrower, making the borrower  
17 believe that it could be as low as zero, and it  
18 virtually never was, in -- in our investigation, and  
19 then, once discount points were actually paid, they  
20 didn't seem to have any affect in moving the rate down  
21 any, which would be your natural assumption, is that --  
22 and based on some documentation produced by Household,  
23 some tables that showed that there was an inverse  
24 relationship between points and rate. You would assume  
25 that, but that was not what we found.

1 Q. Okay. Was that also the subject of  
2 discussions within the -- you mind if I call it the AG  
3 group?

4 A. That's fine. Yes.

5 Q. Yeah, was it?

6 MR. SLOANE: Objection. Well, beyond the  
7 scope of my examination.

8 Q. (BY MR. BAKER:) And was there a consensus  
9 reached within that group that Household was engaged in  
10 deceptive practices throughout those states?

11 MR. SLOANE: Objection.

12 Q. (BY MR. BAKER:) With respect to the discount  
13 points and the GFE disclosures?

14 MR. SLOANE: Cam, you keep spending time on  
15 this. It's well beyond the scope of my examination.  
16 It's not even close. What is --

17 MR. BAKER: Peter, you know that's the most  
18 ridiculous objection. Why don't you read the rule, the  
19 Federal Rules of Civil Procedure. And I'm entitled to  
20 ask any question. There's no limitation on the scope of  
21 an examination at the deposition. Not only that --

22 MR. SLOANE: Excuse me. Fact discovery is  
23 over. It's been over for months. Has nothing to do  
24 with the Federal Rules of -- of --

25 MR. BAKER: Civil Procedure.

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1 MR. SLOANE: -- Civil Procedure. Has to do  
2 with the rules set forth by the magistrate judge in this  
3 case. This is not your fact deposition.  
4 MR. BAKER: We've noticed the deposition.  
5 Q. (BY MR. BAKER:) But, anyway, do you recall  
6 the question?  
7 MR. SLOANE: Is that -- Is that pursuant --  
8 Just so I understand your position, your questions are  
9 now being asked pursuant to your noticed deposition?  
10 MR. BAKER: They could be or they could be  
11 asked in response.  
12 MR. SLOANE: I want a position on it.  
13 MR. BAKER: I'm both. I'm taking both.  
14 MR. SLOANE: You're saying it's proper, A,  
15 and, B, it's within the scope of your notice; is that  
16 what you're saying?  
17 MR. BAKER: I'm saying both.  
18 MR. SLOANE: Okay.  
19 MR. BAKER: And I don't want to waste any more  
20 time on this.  
21 MR. SLOANE: Excuse me, I -- I made my point.  
22 I just want to know what yours was.  
23 A. I think my answer's yes.  
24 MR. BAKER: Okay.  
25 A. But you might want to be precise in the

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1 that they had a safe harbor under RESPA that allowed  
2 them to disclose the range of discount points in the  
3 Good Faith Estimate in the fashion in which they  
4 disclosed those points," period. You see that?  
5 A. Um-hum.  
6 Q. And it says that this issue has kind of been  
7 going back and forth with them since late 1999.  
8 A. Yes.  
9 Q. Okay. Who, at Household, was maintaining  
10 that? Who told you that they had a safe harbor?  
11 A. I don't remember. I -- It would be --  
12 Q. Mr. Schneider?  
13 A. Mr. Schneider.  
14 We had a lot of correspondence revolving  
15 around the complaints where I think we were raising this  
16 concern, but -- there -- there's a -- there was a woman  
17 with Household who was something like assistant general  
18 counsel, and I can't remember her name, now, and I think  
19 we had a lot of arguments with her about this topic.  
20 Q. Okay.  
21 And according to your -- It goes on. You said  
22 that you asked HUD for an opinion letter?  
23 A. Yes.  
24 Q. Okay. And let me just show you a document.  
25 (A discussion was held off the record.)

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1 question.  
2 MR. SLOANE: He doesn't want to be precise.  
3 MR. BAKER: I do.  
4 Q. (BY MR. BAKER:) I want to make sure -- The  
5 question I want to know is: Was there a consensus  
6 reached, within the AG group, that Household was engaged  
7 in deceptive practices with respect to the disclosures  
8 of -- on GFES and the -- quote, unquote -- buydown  
9 discount points that you discussed?  
10 MR. SLOANE: Same -- Sorry, same objection.  
11 A. My recollection is that it was 100 percent,  
12 so, we -- Yes, a consensus.  
13 Q. (BY MR. BAKER:) Okay. Now, in your  
14 deposition, on page 132, which is Cross Exhibit 1,  
15 there's a reference -- if you go to page, again, 132.  
16 A. I'll have to catch up with you here.  
17 Q. That's okay.  
18 A. I'm sorry --  
19 Q. Page 132.  
20 A. Got the wrong -- Got the wrong exhibit, sorry.  
21 132. Okay. What line?  
22 Q. So, on page 132, if I could direct your  
23 attention to the question and answer starting on lines  
24 13. And there's a -- The answer was: "Household  
25 maintained for, I don't know, two, two and a half years,

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1 MR. SLOANE: Would you give us the date of the  
2 document?  
3 MR. BAKER: It looks like it's -- it doesn't  
4 actually have a -- it's like July 5th, 2002.  
5 MR. SLOANE: That's the date.  
6 Q. (BY MR. BAKER:) And I just want to know, is  
7 this a copy of the letter that you received back from  
8 HUD?  
9 MS. MARTIN: I need one.  
10 A. Yes.  
11 MS. MARTIN: Sorry, thank you.  
12 MR. BAKER: Okay. And this is Cross  
13 Exhibit 11?  
14 (Cross Exhibit 11 was marked for  
15 identification.)  
16 Q. (BY MR. BAKER:) Did you ever show this  
17 letter -- Sorry, did you ever show this letter to  
18 Household?  
19 A. Yes.  
20 MR. SLOANE: Objection. Beyond the scope.  
21 A. Yes, I did.  
22 Q. (BY MR. BAKER:) And what was their response?  
23 A. It's one of my favorite points in history. I  
24 remember handing this in -- it was in our first -- first  
25 large meeting of -- of negotiated settlements and we

1 relationship with him -- great guy -- and he would visit  
 2 Mark at least once a month -- you know, just monitoring  
 3 -- "How's the company doing," you know, "We're your  
 4 licenses. We want to make sure we still have a  
 5 relationship with you." And Mark was starting to become  
 6 more and more direct with Tom in their meetings, saying,  
 7 "You guys are" -- "Your company's kind of veering off  
 8 the regulatory path, here," and -- and -- and this  
 9 would -- I'm -- I'm pretty sure, without knowing any  
 10 better, but we could trace this fax and we're back and  
 11 ultimately find out that it probably was an executive --  
 12 executive area of -- of DFI, and this is probably the  
 13 fax machine out of their area, to Tom, showing Tom  
 14 support of what Mark was talking to him about" -- you  
 15 know, "We're having these problems. These complaints  
 16 are arising," and so forth. But I'm speculating on  
 17 that.

18 Q. Now, in your -- the DFI report that we were  
 19 talking about, Exhibit 3, it's a discussion of 19 -- 19  
 20 complaints: is that right?

21 A. Yes.

22 Q. Okay. How are those 19 chosen?

23 A. Date, for one. The -- The elements of the  
 24 transaction, the appearance of possible violations, the  
 25 story that the consumers were telling us about what

1 transpired.

2 Q. Did you believe that those complaints were  
 3 representative of other complaints that you had received  
 4 from Household that aren't referenced in this specific  
 5 report?

6 A. I don't --

7 MR. SLOANE: Did you actually mean to ask the  
 8 question that way?

9 MR. BAKER: Yeah.

10 Q. (BY MR. BAKER:) So, what I'm saying is -- Let  
 11 me go back and we'll start again.

12 MR. SLOANE: No, you didn't.

13 Q. (BY MR. BAKER:) So, you got 19 complaints  
 14 that are discussed in Exhibit 3, right?

15 A. Um-hum.

16 Q. Those weren't all the complaints that you --  
 17 that DFI had received from Household, right?

18 A. Right.

19 Q. Okay.

20 MR. SLOANE: Object to the form of the  
 21 question. There's --

22 MR. BAKER: Oh, sorry.

23 MR. SLOANE: You keep using the phrase from  
 24 Household. If you read your question a little more  
 25 carefully, you'd see that I was trying to help you.

1 Q. (BY MR. BAKER:) All right. About Household,  
 2 right?

3 A. (The witness nods his head.)

4 Q. Okay. Do you believe that the 19 complaints  
 5 that you analyzed in Exhibit 3 are representative of  
 6 other complaints received about Household?

7 MR. SLOANE: Are you asking him did he believe  
 8 at the time or as sitting here today, because --

9 MR. BAKER: Did he believe at the time.

10 A. I don't know. I -- I -- I don't know if they  
 11 represented other complaints. I do know, at the time,  
 12 and to this day, I believe that they represented other  
 13 loans, but whether they represented other complaints --

14 Q. (BY MR. BAKER:) Okay.

15 A. -- I can't answer.

16 Q. Let's -- Can I direct your attention to page  
 17 60 of your report -- sorry, of Exhibit 1, which is your  
 18 deposition.

19 Directing you to starting on 60, line 21,  
 20 through 61, line -- page 61, line three. Question was:  
 21 "Did you review other clients other than the 19?"

22 Answer: "Yes."

23 Question: "And did you believe that those 19  
 24 complaints were representative or typical of the ones  
 25 you received?"

1 Objection from Mr. Dunne.

2 Answer: "They were representative of many of  
 3 the complaints we had received at earlier times and were  
 4 very, very similar to complaints we received subsequent  
 5 to the date of the report," period.

6 You see that?

7 A. Yes, I do.

8 Q. And is that accurate testimony, to the best of  
 9 your knowledge?

10 A. I'm sure that was accurate testimony.

11 Q. Okay. Now, the report itself only deals with  
 12 complaints received with respect to complaints from HFC  
 13 borrowers and not Beneficial borrowers: is that correct?

14 A. There were no Beneficial borrower complaints  
 15 in this report.

16 Q. All right. Did you ever come to an opinion  
 17 that there were similar patterns of deceptive practices  
 18 taking place in the Beneficial offices?

19 A. We believed that.

20 Q. And when you say we, do you mean DFI?

21 A. DFI, yes.

22 Q. Okay.

23 A. And -- Well, DFI and, eventually, other  
 24 people, and they evolved in the multistate.

25 Q. And what was the basis for your belief?



1 A. For one thing, the -- the -- the sales  
 2 practices, the -- the way loans appeared to be  
 3 originated, as I remember, were very similar between the  
 4 organizations. I believe that even some of the  
 5 locations were the same locations, Beneficial and BFC  
 6 being in the same location at times, kind of maybe  
 7 sharing employees. But we also had complaints against  
 8 Beneficial. I think we had almost as many complaints  
 9 against Beneficial as we did against Household, and we  
 10 would have looked at those complaints and, ultimately,  
 11 their -- I mean, I remember needing to do a report on  
 12 Beneficial similar to what I did on Household. It just  
 13 never -- We -- We went off on this whole other tangent  
 14 and it didn't go there.

15 Q. Did you start that report?

16 A. Boy, I might have. I can't remember. I might  
 17 have.

18 Q. Okay.

19 In your first deposition, on -- in  
 20 December 19, 2002, you provided, as an exhibit, a list  
 21 of the then open complaints. Do you recall that?

22 A. Yeah.

23 Q. Okay.

24 A. Yeah.

25 MR. BAKER: Let's mark this next in order.

1 listed Examiner. What does that mean?

2 A. It means that this file had been moved from  
 3 processor -- entry person -- to an examiner to review.

4 Q. Are you familiar with a Daniella Mortenson?

5 A. Yes.

6 Q. What was her role at the DFI at this time?

7 A. She was that person who did the input into the  
 8 system for us. She was later replaced -- just see a  
 9 name here -- I think Wilma Nepsund replaced Danielle at  
 10 some point in time.

11 Q. Okay. So, she was sort of more the intake  
 12 person?

13 A. Yes.

14 Q. Okay. And then continuing on this one chart,  
 15 2891, there's a number of days column and it has 337  
 16 days.

17 A. Yes.

18 Q. What does that refer to?

19 A. The number of -- It should be the number of  
 20 days counted from the day the complaint was stamped as  
 21 received at DFI.

22 Q. So, that's how long the complaint had been  
 23 pending?

24 A. Yes.

25 Q. Okay. And, so, and that means that, as an

1 MS. MARTIN: 14.

2 MR. BAKER: 14.

3 A. I think I remember there maybe being some --  
 4 some confusion about the dates in this document. I --

5 MS. MARTIN: There's no question pending.

6 A. Sorry.

7 MS. MARTIN: Oh, it's okay.

8 (Cross Exhibit 14 was marked for  
 9 identification.)

10 (A discussion was held off the record.)

11 Q. (BY MR. BAKER:) Okay. And I'll just  
 12 represent, it does have a sticker on the bottom of this  
 13 page one that lists it as Exhibit A, the date:  
 14 December 19th, Witness: Cross. You see that? It's on  
 15 the first page.

16 A. Yes.

17 Q. At the bottom.

18 So, the question I was going to ask you -- if  
 19 I could direct your attention to Bates number ending in  
 20 93.

21 A. I'm there.

22 Q. Okay. And there's an original file number  
 23 2891. I'm looking at the first --

24 A. Yes.

25 Q. -- 2891, then it has -- under Examiner, it has

1 open complaint, it's been opened for almost a year and  
 2 not resolved?

3 A. Yes.

4 Q. Okay.

5 Let me just mark one more document and then  
 6 we'll take a break, if you want -- for --

7 MR. SLOANE: Almost done?

8 MR. BAKER: I'm almost done, actually.

9 Mark this next in order.

10 MS. MARTIN: This will be 15.

11 MR. BAKER: 15.

12 (Cross Exhibit 15 was marked for  
 13 identification.)

14 Q. (BY MR. BAKER:) I'm going to ask you to  
 15 ignore the first couple of pages of this document and go  
 16 to the second-to-last page, which is Bates number ending  
 17 in 78.

18 A. Okay.

19 Q. It references -- It's in the agenda for a  
 20 meeting that was held between the State of Washington  
 21 and Household officials on May 23rd, 2002. Do you see  
 22 that?

23 A. Yes.

24 Q. And I believe, at this meeting, Robin Allcock  
 25 and Tom Detelich were there, and I believe also yourself

1 Q. We're here on -- We're here on -- on May 23rd,  
2 2002. There's a discussion. Someone from your side  
3 mentions, "By the way, there's a multistate interest."  
4 Was there any discussion between you and Household about  
5 the next step to resolve the multistate interest in this  
6 issue?  
7 A. I believe -- I believe we --  
8 MR. SLOANE: Objection. Same objection.  
9 Sorry, Chuck.  
10 A. I believe we hypothesized about that, but we,  
11 of course, could not make any statements for what other  
12 states would do. But I -- But we hy -- we hypothesized  
13 about the potential outcome if -- if things had to go,  
14 you know, to a more aggressive level.  
15 Q. (BY MR. BAKER:) Was there any discussion at  
16 this meeting, to your knowledge, about a potential  
17 settlement between AGs and the multistate group and  
18 Household?  
19 A. I don't remember.  
20 Q. Okay.  
21 Why don't we take a short break.  
22 MR. SLOANE: Yeah.  
23 THE VIDEOGRAPHER: We are now going off the  
24 record in the continuing deposition of Charles Cross.  
25 This is the end of tape two. Time is now 2:28 p.m.

1 practice in other states consistent with what -- with  
2 the findings that you made in Exhibit 3?  
3 MR. SLOANE: Same objection.  
4 A. Much -- Much of what the other states found  
5 and produced in our, you know, exchange of materials,  
6 and so forth, was consistent with what we found in  
7 Washington.  
8 Q. (BY MR. BAKER:) Okay.  
9 And, in terms of the AG, you're familiar with  
10 the fact that there was actually a settlement between  
11 Household and the multistate group; is that right?  
12 MR. SLOANE: Same objection: Well beyond the  
13 scope.  
14 A. Yes.  
15 Q. (BY MR. BAKER:) Okay. When, to your  
16 knowledge, did that agreement come into fruition?  
17 MR. SLOANE: Same objection. Also object to  
18 the form of the question.  
19 A. On my birthday, October 2nd, 2002.  
20 Q. (BY MR. BAKER:) Okay. Why didn't DFI get to  
21 the point of filing charges based on the apparent  
22 violations found in your DFI report that's Exhibit 3?  
23 A. Two reasons. The -- Well, maybe three  
24 reasons.  
25 When we started down the multistate path, we

1 (Off the record at 2:28 p.m.)  
2 (Back on the record at 2:41 p.m.)  
3 THE VIDEOGRAPHER: We are now back on the  
4 record in the continuing deposition of Charles Cross.  
5 This is the beginning of disk three. The time is now  
6 2:41 p.m.  
7 Q. (BY MR. BAKER:) Earlier, you testified that  
8 you, Mr. Gallatin, Mr. Polidori were reviewing documents  
9 in the context of the AG settlement discussions -- I  
10 believe that's correct; is that right?  
11 A. Yes.  
12 MR. SLOANE: Objection. Objection. Well,  
13 beyond the scope.  
14 A. Yes, and even more data than documents.  
15 Q. (BY MR. BAKER:) Okay.  
16 A. The AGs began to spend a lot of time with  
17 documents. We spent a lot of time with data.  
18 Q. Did you ever personally review any complaints  
19 received from consumers in other states about  
20 Household's practices?  
21 MR. SLOANE: Objection. Well beyond the  
22 scope.  
23 A. I don't remember.  
24 Q. (BY MR. BAKER:) Okay. Were the documents and  
25 materials you received with respect to Household's

1 were at least committing ourselves, in intent and  
2 theory, to try to -- to try to stick with that, being in  
3 solidarity with other states and bring a large  
4 resolution for the entire country.  
5 You have to remember, there were only --  
6 There -- There weren't 50 states that were -- that were  
7 carrying this thing. There were a handful of states  
8 carrying the 50 states -- and that's how the multistates  
9 work. You sort of take turns carrying the load. So --  
10 And there were a lot of states that ended up in the  
11 settlement and they just sort of signed on at the end  
12 and they just rode on our coattails right on out through  
13 the settlement, and said, "Whatever they say, we --  
14 that's good for us."  
15 So, we had this -- this allegiance to other  
16 states holding that -- that together. Although,  
17 Washington was always extremely aggressive, so was  
18 Minnesota, New York, some other states, extremely  
19 aggressive in saying -- threatening, at various points  
20 in time, to pull out and actually file charges. So, we  
21 always retained that right and authority to file  
22 charges, but we had a commitment to the multistate. We  
23 thought we had a good chance of getting as much for  
24 Washington consumers out of the multistate as we could  
25 if we went on our own.

1 So, there was incentive. So, we could get  
2 something for everybody plus us, equivalent to what we  
3 probably could get if we went on our own. And then  
4 there's the whole resource issue -- I mean, in reality,  
5 it would have been five years of -- of our agency's  
6 life, very ugly -- you know, this stuff would have gone  
7 on for -- for five years and it would have been a huge  
8 resource drain and that's -- that's much of the reason  
9 why you settle.

10 Q. Okay. A lot of -- of -- Household produced a  
11 lot of documents to show that they were in compliance  
12 with the various federal and state laws, including loan  
13 documents signed by borrowers.

14 MR. SLOANE: You talking about in connection  
15 with his report?

16 MR. BAKER: Yeah.

17 MR. SLOANE: In other words --

18 MR. BAKER: He considered that.

19 Q. (BY MR. BAKER:) You considered that as part  
20 of -- and -- and found that, despite that, that there  
21 was deceptive practices taking place; is that right?

22 A. Yes.

23 Q. Okay. Why didn't you find -- Why didn't you  
24 rely upon the loan documents that Household was  
25 producing to determine that there was, in fact,

1 compliance?

2 A. In the early days, I think we did. In the  
3 very early days of complaints coming in -- and if I  
4 could roll the clock back, I would -- but, in the early  
5 days, the company's arguments had been somewhat  
6 convincing for us, and I think that we -- we had a  
7 little bit of trouble coming to grips with what the  
8 consumers were telling us. It didn't -- It didn't make  
9 sense, early on, that this would be happening, that --  
10 that a -- such a big company, such a well-structured,  
11 well-organized, well-funded company, would be doing  
12 these things to consumers. It didn't -- didn't make a  
13 lot of sense. But, over a period of time, we -- we --  
14 we changed our belief on that.

15 So, in the early days, there were documents  
16 that were coming in. Company would -- would send us the  
17 disclosures from their files, or whatever, and we'd look  
18 at them and say, "Ah, well, consumer must have," you  
19 know, "ignored them," or, "Maybe a consumer isn't  
20 telling the full story," or whatever, and we would -- we  
21 would largely discount the consumer and -- and close out  
22 the complaint.

23 We reached a tipping point where we just, for  
24 lack of a better description, sort of stood around,  
25 looking at each other, saying, you know, at some point,

1 you know, we're having trouble believing this any  
2 longer, the answers we were getting. And, so, there  
3 became -- There was a point in time -- late 2001, early  
4 2002 -- where we felt we were getting a lot of  
5 disinformation from the company, a lot of -- We were --  
6 We were extremely unhappy with the response we were  
7 getting from the company. We stopped trusting the  
8 response. And we started more and more believing what  
9 we saw from the consumers, what the consumers were  
10 telling us.

11 Documentation is one part of a case, and  
12 regulators do have a tendency to sort of get blinders  
13 on, saying, "Well, it's in the file. It must be true.  
14 Hey, it came out of a computer. It's there. Somebody  
15 must have gotten it." But you hear enough stories about  
16 consumers saying, "I never saw it," or, "That's not how  
17 it was explained to me," and so forth, and you start to  
18 change your mind over time.

19 That's how all these predatory lending cases  
20 come about. If you -- you take almost any predatory  
21 lending case, that I can think of, and you go back to  
22 the start of time, the regulators were not saying, you  
23 know, consumers were harmed, here. It always kind of  
24 starts off with not really believing that what people  
25 are saying is it, and then you -- it grabs traction with

1 time and your -- your mind has changed.

2 And it was no different with this case, so --

3 So, we reached a point where -- where the  
4 relationship seemed to be so disingenuous that -- it was  
5 almost like stuff was being fabricated to convince us,  
6 and we didn't believe it any longer.

7 Q. Did your experience with FAMCO have anything  
8 to do with it? In other words where -- where the paper  
9 files looked clean, but, in fact, there were deceptive  
10 practices taking place?

11 A. FAMCO had nothing to do with our impression of  
12 Household. Household was completely responsible for our  
13 impression of Household. FAMCO educated us to learn how  
14 to look beyond what was being said and FAMCO -- The  
15 earlier complaints I was talking about where we didn't  
16 maybe believe the consumers as much as we should have,  
17 that was -- that was -- those complaints go back to the  
18 early days of FAMCO, before we started to learn more  
19 about how deception could take place, misrepresentation  
20 could take place, how people could be trained to lie  
21 with the truth, and all of these -- these sales  
22 practices that we hadn't -- I came out of the banking  
23 world. That kind of stuff didn't really take place in  
24 the banking world. And, so, I had to be educated.

25 So, FAMCO educated me, educated the

TAB 2

**30(b)(6) Deposition of Todd May  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY**

5/1/2007

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<p>IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION No. 02 C 5893 (No. 07 C 80028 - N.D. of CA)</p> <p>LAWRENCE E. JAFFE PENSION PLAN, on behalf of Itself and All Others Similarly Situated,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>HOUSEHOLD INTERNATIONAL, INC., et al, Defendants.</p> <p align="center">*****</p> <p align="center">30(b)(6) VIDEOTAPED DEPOSITION OF WELLS FARGO REPRESENTATIVE TODD MAY (HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY PURSUANT TO PROTECTIVE ORDER)</p> <p align="center">*****</p> <p>DATE TAKEN: 05/01/07 BY: CINDY M. TRATTLES</p>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 LERACH COUGHLIN STOIA GELLAR 4 RUDMAN &amp; ROBBINS, LLP 5 Suite 2600 6 100 Pine Street 7 San Francisco, California 94111 8 Phone: 415.288.4545 9 Fax: 415.288.4534 10 Email: jdavis@lerachlaw.com 11 By: Mr. Jason Cassidy Davis and 12 Mr. Luke Brooks 13 For the Plaintiffs</p> <p>14</p> <p>15 CAHILL GORDON &amp; REINDEL LLP 16 80 Pine Street 17 New York, New York 10005 18 Phone: 212.701.3000 19 Fax: 212.269.5420 20 Email: lbest@cahill.com</p> <p>21</p> <p>22 By: Ms. Landis C. Best and 23 Mr. Paul F. Millen 24 For the Defendants</p> <p>25</p> <p>LORD BISSELL &amp; BROOK 111 South Wacker Drive Chicago, Illinois 60606-4410 Phone: 312.443.0235 Fax: 312.896.6235 Email: jkloecker@lordbissell.com By: Mr. John F. Kloecker For the Deponent</p> <p>Also Present: Attorney Susan E. Flint of Wells Fargo and Videographer Pat Curto</p>																																																																																																																								
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<p>1 I N D E X</p> <p>2 Examination by Mr. Davis, Page 10</p> <p>3 Examination by Ms. Best, Page 210</p> <p>4</p> <p>5 INDEX OF EXHIBITS</p> <table border="1"> <thead> <tr> <th>Exhibit</th> <th>Name</th> <th>Description</th> <th>Page #</th> </tr> </thead> <tbody> <tr> <td>6</td> <td>Wells Fargo 1</td> <td>Wells Fargo's 30(b)(6) Subpoena</td> <td>12</td> </tr> <tr> <td>7</td> <td>Wells Fargo 2</td> <td>Mr. Schoenholz' 03-28-03 Memo to Mr. Atkins - HHS 03473155</td> <td>48</td> </tr> <tr> <td>8</td> <td>Wells Fargo 3</td> <td>04-02 Notes to Project Blazer Board Presentation - WF 006082</td> <td>50</td> </tr> <tr> <td>9</td> <td>Wells Fargo 4</td> <td>Mr. Atkins' 4-01-02 Fax to Mr. Schoenholz - HHS 03473147 - 49</td> <td>51</td> </tr> <tr> <td>10</td> <td>Wells Fargo 5</td> <td>04-02 Letter to Board of Directors - WF 006080 - 81</td> <td>51</td> </tr> <tr> <td>11</td> <td>Wells Fargo 6</td> <td>Blazer 04-23-02 Board of Directors - WF 006004 - 006039</td> <td>58</td> </tr> <tr> <td>12</td> <td>Wells Fargo 7</td> <td>Mr. May's 04-11-02 Email WF 009256 - WF 009288</td> <td>58</td> </tr> <tr> <td>13</td> <td>Wells Fargo 8</td> <td>Project Blazer Timelines - Options 1 &amp; 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<p>1 MR. KLOECKER: To the extent you 2 understand you can answer. 3 A I don't know. 4 Q (By Mr. Davis) That's fair enough. Do you know 5 what "not FFIEC OK", means with respect to Private 6 Label? 7 A My recollection is that it meant that they were not 8 FFIEC compliant for this product. 9 Q And the next phrase reads, "Estimated impact 10 \$250MM, based on 60% of \$460MM accruing &gt;90 DPD 11 loans reported by Blazer", do you know what that 12 sentence means? 13 A My belief of what it means is that the cost was 14 estimated at 250 million to make this product FFIEC 15 compliant. 16 Q Okay. The next product down it says Personal 17 Unsecured. Do you know what that means? 18 A It is again a specific business product of 19 Household. 20 Q And, again, it says, "Not FFIEC OK". Do you know 21 what that means? 22 A It would just mean that it's not FFIEC compliant. 23 Q Okay. And then it says, "Combination of recency 24 and contractual rules". Do you know what that 25 references?</p>	<p>1 A No. 2 Q Do you know what the underlined 500 million figure 3 refers to? 4 A Not specifically. 5 Q Do you have a general understanding? 6 A My belief is that it is an estimated cost to make 7 this portfolio FFIEC compliant. 8 Q The last sentence in that cell reads, "Significant 9 range of risk depending on exact composition of 10 portfolio and adherence to reage policy." Do you 11 know what that means? 12 A Yes. 13 Q And what does it mean? 14 A It means that there can be significant variability 15 in this estimate. 16 Q I'd like to ask you to flip the page if I may to 17 785. The heading reads Information Required Prior 18 to Executive Review. Could you just scan that list 19 for a moment, please. 20 A Okay. 21 Q Okay. Do you know whether --. Did you have a role 22 in obtaining any of this information from 23 Household? 24 A I don't know if specifically this information. 25 Q Do you know whether Wells Fargo obtained any of the</p>
Page 123	Page 124
<p>1 information referenced here from Household? 2 A I don't know what specific information we received. 3 Q Okay. Did you receive -- strike that. Did Wells 4 Fargo follow FFIEC rules? 5 MR. KLOECKER: Object to the lack of 6 foundation. To the extent you understand you can 7 answer. 8 MS. BEST: Objection as well. 9 A You're going to have to define it. 10 Q (By Mr. Davis) Okay. Define what? 11 A Did we follow it. 12 Q Oh, okay. So I'd like to focus your attention back 13 on Exhibit 24, which we're still on. And I'd like 14 to take you to the first paragraph. And it says, 15 "Blazer delinquency and loss rates reflect a 16 finance company/subprime customer base and are 17 generally consistent with results in Wells Fargo 18 Financial." 19 The first question I have is: Was Wells 20 Fargo Financial subject to FFIEC regulations? 21 A At this time? 22 Q Correct. 23 MR. KLOECKER: Let me just throw in an 24 objection here. I think when you talk about Wells 25 Fargo, overall there's a lot of different</p>	<p>1 operations and legal compliance is a --. I think 2 you're asking for a legal conclusion. To the 3 extent you understand the standards for particular 4 operations and can testify about that, you can 5 answer. 6 A My belief is they were not operating under FFIEC 7 compliant standards at the time. 8 Q (By Mr. Davis) I'd like to focus your attention on 9 a new exhibit which is marked Exhibit 25, Bates 10 stamped WF 001531. And --. Well, could you just 11 take a moment to review the document, please. 12 Do you recognize this? 13 A No. 14 Q If you focus on the bottom E-mail, the original 15 message, there's a From line and it says May, Todd 16 and there's some brackets. Is that your E-mail 17 address? 18 A Yes. 19 Q Okay. Does that mean that you sent this E-mail? 20 A Most likely, yes. 21 Q Okay. Do you remember why you sent this E-mail? 22 A Not specifically. 23 Q Okay. The court reporter just handed you a 24 document marked Exhibit 26. I'd like you to just 25 set that to one side for a moment, please.</p>

TAB 3

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
4 on behalf of itself and all )  
5 others similarly situated, )  
6 Plaintiff, )  
7 vs. ) No. 02 C 5893  
8 HOUSEHOLD INTERNATIONAL, INC., )  
9 et al., ) Chicago, Illinois  
10 ) March 12, 2009  
11 Defendants. ) 1:30 p.m.

12 VOLUME 1  
13 TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE  
14 BEFORE THE HONORABLE RONALD A. GUZMAN

15 APPEARANCES:

16 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
17 ROBBINS LLP  
18 BY: MR. SPENCER A. BURKHOLZ  
19 MR. MICHAEL J. DOWD  
20 MR. DANIEL S. DROSMAN  
21 MS. MAUREEN E. MUELLER  
22 655 West Broadway  
23 Suite 1900  
24 San Diego, California 92101  
25 (619) 231-1058

COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. DAVID CAMERON BAKER  
MR. LUKE O. BROOKS  
MR. JASON C. DAVIS  
MS. AZRA Z. MEHDI  
100 Pine Street  
Suite 2600  
San Francisco, California 94111  
(415) 288-4545



1 your Honor.

2 I guess the one issue is this issue of reliance and  
3 classwide reliance. And the -- they have one -- they have an  
4 opportunity to rebut that presumption through the  
5 truth-on-the-market defense. And that's something that they  
6 should put on in this trial, and they intend to put on in this  
7 trial. They sought some of the plaintiffs' discovery; and  
8 your Honor's January 29, 2007, order made clear that they did  
9 not need plaintiffs' discovery in order to rebut the  
10 presumption reliance on the issue of the truth-on-the-market.  
11 So that -- we envision that being litigated in this case. So  
12 that's a reliance element that needs to be litigated on a  
13 classwide basis.

14 With respect to the second phase, we envision -- if  
15 we're successful with a verdict, liability verdict, a per  
16 share damages calculation by this jury, we would envision  
17 expert input into a formula on how you calculate damages for  
18 the class members in this case. Whether you use LIFO, FIFO,  
19 whether you have in-and-out traders, how you would calculate  
20 the damages, that formula, that would go into a notice that  
21 would go to class members that would then fill out the claim  
22 forms.

23 And then the real issue is what do we do after that.  
24 Do we have what they've wanted, which is full-blown discovery  
25 on all of the class members in order to rebut that presumption

1 motion for summary judgment, Judge, well, we don't think  
2 that's relevant; we're not going that route. We're sort of  
3 doing this miasma kind of fraud, that if you fail to tell  
4 people that you were a bad actor, that's the fraud.

5           So -- but whether or not that was appropriate, we  
6 could discuss separately. But for purposes of Professor  
7 Fischel, their loss causation expert, the guy that a jury  
8 would look to to say here's the fraudulent statement -- on  
9 this fraudulent statement, the stock -- the inflation went up  
10 this way. When that statement was shown to be false, it came  
11 down this way. He just worked on the down leg for some  
12 reason. But he did say, your Honor, that he found no new  
13 artificial inflation, no introduction of artificial inflation  
14 into the price of Household stock from the very first day of  
15 the class period, where he assumed that there was some already  
16 in place -- and, as you know, your Honor, we have statute of  
17 repose problems with that. From the very first day of the  
18 class period for two-and-a-quarter years, until November 15,  
19 2002 -- no, I'm sorry, 2001, that same artificial inflation  
20 that he was assuming came in the door at the start of the  
21 class period stayed exactly in place, didn't go up, didn't go  
22 down, stayed exactly as is. That could not be further in --  
23 that could not be further from the real stock --

24           THE COURT: If their expert fails to show that there  
25 was inflation in price, you win. But right now that's not

TAB 4

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
4 others similarly situated, )  
 )  
5 Plaintiff, )  
 )  
6 vs. ) No. 02 C 5893  
 )  
7 HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
8 ) March 18, 2009  
Defendants. ) 11:15 a.m.

9 VOLUME 5  
10 TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE  
11 BEFORE THE HONORABLE RONALD A. GUZMAN

12 APPEARANCES:

13 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
14 BY: MR. SPENCER A. BURKHOLZ  
MR. MICHAEL J. DOWD  
15 MR. DANIEL S. DROSMAN  
MS. MAUREEN E. MUELLER  
16 655 West Broadway  
Suite 1900  
17 San Diego, California 92101  
(619) 231-1058

18 COUGHLIN STOIA GELLER RUDMAN &  
19 ROBBINS LLP  
BY: MR. DAVID CAMERON BAKER  
20 MR. LUKE O. BROOKS  
MR. JASON C. DAVIS  
21 MS. AZRA Z. MEHDI  
100 Pine Street  
22 Suite 2600  
San Francisco, California 94111  
23 (415) 288-4545

24  
25

1 "Scienter requires an extreme departure from the standards of  
2 ordinary care."

3 THE COURT: Do you agree with that?

4 MR. BURKHOLZ: Not necessarily, I don't.

5 I'm just looking at the Ernst quote that they cited  
6 in their opposition to our scienter and it doesn't exactly say  
7 that. It says, "The term 'scienter' refers to a mental state  
8 -- "

9 THE COURT: I'm sorry. A little louder, please.

10 MR. BURKHOLZ: Yes.

11 The term -- the case -- that they cite -- at least  
12 the quote they cite from Ernst -- is, "The term 'scienter'  
13 refers to a mental state embracing intent to deceive,  
14 manipulate or defraud."

15 MS. BEER: Ernst is -- this is at Page 193 of Ernst &  
16 Ernst vs. Hochfelder, which is 425 U.S. 185: "In this  
17 opinion, the term 'scienter' refers to a mental state  
18 embracing intent to deceive, manipulate or defraud. In  
19 certain areas of the law, recklessness is considered to be a  
20 form of intentional conduct for purposes of imposing liability  
21 for some act."

22 So, it's not an issue of not needing to prove intent.  
23 It's a question of how intent is proved.

24 And the Court of Appeals for the Seventh Circuit  
25 answered that question in Higginbotham vs. Baxter

TAB 5

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
4 others similarly situated, )  
Plaintiff, )  
6 vs. ) No. 02 C 5893  
7 HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
8 Defendants. ) March 20, 2009  
9 ) 8:30 a.m.

10 VOLUME 7  
TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE  
11 BEFORE THE HONORABLE RONALD A. GUZMAN

12 APPEARANCES:

13 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
14 BY: MR. SPENCER A. BURKHOLZ  
MR. MICHAEL J. DOWD  
15 MR. DANIEL S. DROSMAN  
MS. MAUREEN E. MUELLER  
16 655 West Broadway  
Suite 1900  
17 San Diego, California 92101  
18 (619) 231-1058

19 COUGHLIN STOIA GELLER RUDMAN &  
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20 BY: MR. DAVID CAMERON BAKER  
MR. LUKE O. BROOKS  
21 MR. JASON C. DAVIS  
MS. AZRA Z. MEHDI  
100 Pine Street  
22 Suite 2600  
San Francisco, California 94111  
23 (415) 288-4545

1 Different from each other or in addition to?

2 MS. SMITH: In addition to.

3 THE COURT: Okay.

4 Which one has the additional cover?

5 MS. SMITH: 550 has the additional cover e-mails,  
6 your Honor.

7 THE COURT: Is that 16 or 17?

8 MR. DROSMAN: Your Honor, if you'd like, I can hand  
9 you up Exhibit 550.

10 THE COURT: You don't need to. You guys can do this.  
11 I want to know if there's any difference between the  
12 document that I excluded, which is D17, and this document.

13 MR. DROSMAN: Yes. The answer is "Yes."

14 THE COURT: What is the difference?

15 MR. DROSMAN: The difference is the first -- the  
16 first -- four pages of this document, Exhibit 550, were not  
17 contained on the document that you excluded.

18 So, to the extent that the remaining pages of Exhibit  
19 550 are contained, we can take those off.

20 THE COURT: Okay. That will be the ruling.

21 MR. DROSMAN: This is -- Exhibit 596, your Honor, is  
22 -- the next one.

23 THE COURT: What's the objection?

24 MS. SMITH: The objection is, your Honor, that in  
25 light of your ruling on the spoliation motion, this document



TAB 6



1 which would be used likely with Dr. Litan if he testifies, the  
2 underlying disclosures that are referenced here with the big  
3 green check marks, I believe plaintiffs are aware, are  
4 discussed at great length in Dr. Litan's report and in the  
5 exhibits to his report.

6 MR. DOWD: With that representation, we'll evaluate  
7 it and double check, if it's going to be used only with Litan  
8 and the source to his report.

9 I think our next -- we have the same concern with  
10 Exhibits 541-01 through 04. I'm just not sure if these are  
11 used with a particular witness or --

12 MS. COHN: These would also be used with Dr. Litan.

13 MR. DOWD: With that, we'll just save it for cross,  
14 your Honor.

15 MR. BURKHOLZ: Next objection we have is to 541 --  
16 545-01 through 05.

17 THE COURT: I'm sorry. These are 5- --

18 MR. BURKHOLZ: 545-01.

19 THE COURT: 545. Okay.

20 MR. BURKHOLZ: Our basic objection is this is a  
21 hypothetical that is not in Dr. Bajaj's report. He does have  
22 a different hypothetical involving an oil well and disclosure  
23 of news regarding fire that he describes twice in his report.  
24 But this is something new that's come from the defendants.

25 MR. HALL: Your Honor, I understand Mr. Burkholz'

1 point to be that the experts should be constrained essentially  
2 to the words that are in their report and not simply the  
3 concepts that are in their report. And we can agree to that.  
4 And with the Court's permission, we'll reevaluate our  
5 demonstratives in that context.

6 THE COURT: It sounded wonderful, but I'm not sure  
7 what it meant.

8 MR. HALL: Your Honor, the point being, in light of  
9 your Honor's earlier instructions that the experts, under Rule  
10 26, will be limited to what they actually say in their reports  
11 construed narrowly instead of construed broadly is my point.

12 THE COURT: Well, I don't know about that point. But  
13 with respect to experts who have been hired to give opinions,  
14 who have written reports and have been deposed, the use of  
15 previously undisclosed hypotheticals to make their points at  
16 trial is -- unless there are some unusual circumstances -- not  
17 going to be allowed.

18 MR. HALL: Yes, your Honor.

19 THE COURT: Okay.

20 MR. HALL: We can withdraw this exhibit, your Honor.  
21 I believe we can probably productively, in light of that  
22 guidance, your Honor, meet and confer with the plaintiffs and  
23 eliminate several issues.

24 MR. BURKHOLZ: Okay.

25 THE COURT: Okay.

TAB 7

1 PROSPECTIVE JUROR EGAN: Correct.

2 MR. KAVALER: A bank?

3 PROSPECTIVE JUROR EGAN: Correct.

4 MR. KAVALER: Sir?

02:24:56 5 PROSPECTIVE JUROR GALVAN: No mortgage.

6 PROSPECTIVE JUROR VELIZ: I have a mortgage,  
7 refinanced once for better rates. Don't know -- my wife  
8 handled all that. She just said, "Pay the bill."

9 (Laughter.)

02:25:07 10 MR. KAVALER: I know that speech. I've heard that  
11 speech.

12 I noticed something interesting. All of you except  
13 one said "banks." One of you said "finance company."

14 Do you all know the difference between a bank and  
02:25:22 15 finance company?

16 (Some prospective jurors nodded and some shook their  
17 heads.)

18 MR. KAVALER: I see some Yes'es and some No's.

19 We all know what a bank is. A bank takes deposits.

02:25:32 20 Tellers -- when I was a kid, banks had tellers. Now they have  
21 machines. People deposit their money in a bank; and, then,  
22 the bank lends their money to, for example, people buying  
23 homes.

24 Does anyone know what a finance company is -- what  
02:25:44 25 the difference is?

1 (No response.)

2 MR. KAVALER: Sir, you're a banker.

3 PROSPECTIVE JUROR GALVAN: It's not a bank.

4 MR. KAVALER: It's not a bank. There you go.

02:25:53 5 A finance company does not take deposits. Did you  
6 realize will that? A finance company is a company that  
7 borrows money in the market wholesale, if you will, and rents  
8 it out to customers retail. And it makes its money on the  
9 differential between the rate at which it borrows the money  
02:26:14 10 and it sells the money -- rents it to the customers.

11 Is that clear to everybody?

12 (Prospective jurors nodding.)

13 MR. KAVALER: Okay.

14 Household was never a bank. Household International,  
02:26:24 15 the big parent company, owned a couple of banks -- a small  
16 portion of the business. Basically, the business Mr. Gilmer  
17 ran was a finance company -- a consumer loan business.

18 Is everybody comfortable with that? Do you  
19 understand the difference?

02:26:37 20 (Prospective jurors nodding.)

21 MR. KAVALER: So, when you think of bank as this case  
22 unfolds, I want to you remember it's all fine and good to  
23 think of banks, but you're not thinking of Household.

24 Household is a different kind of company governed by  
02:26:54 25 different rules.

TAB 8



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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
 on behalf of itself and all        )  
 4 others similarly situated,         )  
   )  
 5                   Plaintiff,         )  
   )  
 6       vs.                                 ) No. 02 C 5893  
   )  
 7 HOUSEHOLD INTERNATIONAL, INC., )  
 et al.,                                 ) Chicago, Illinois  
 8   ) March 31, 2009  
    ) 9:00 a.m.  
 9                   Defendants.            )

                                  VOLUME 2  
 10                   TRANSCRIPT OF PROCEEDINGS - TRIAL  
 11                   BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

12 APPEARANCES:

13 For the Plaintiff:                   COUGHLIN STOIA GELLER RUDMAN &  
   ROBBINS LLP  
 14 BY: MR. SPENCER A. BURKHOLZ  
   MR. MICHAEL J. DOWD  
 15   MR. DANIEL S. DROSMAN  
   MS. MAUREEN E. MUELLER  
 16   655 West Broadway  
   Suite 1900  
 17   San Diego, California 92101  
   (619) 231-1058

  COUGHLIN STOIA GELLER RUDMAN &  
 19   ROBBINS LLP  
 BY: MR. DAVID CAMERON BAKER  
 20   MR. LUKE O. BROOKS  
   MS. AZRA Z. MEHDI  
 21   100 Pine Street  
   Suite 2600  
 22   San Francisco, California 94111  
   (415) 288-4545

23  
 24  
 25

1 Q. Did you also graduate from Georgia State University Law  
2 School?

3 A. I did.

4 Q. And that was in June of 1991?

02:08:08 5 A. Yes.

6 Q. When did you attend the University of -- or the Georgia  
7 State University Law School?

8 A. I attended it in Atlanta for four years at night.

9 Q. And why did you attend at night?

02:08:20 10 A. Because I was working full-time. I had a senior position  
11 at the Comptroller of the Currency, which is the OCC.

12 Q. Are you also licensed to practice law in Georgia?

13 A. I am.

14 Q. And you're licensed to practice law in Washington, D.C.,

02:08:35 15 as well?

16 A. Yes.

17 Q. And both those licenses are inactive currently; is that  
18 right?

19 A. That's correct.

02:08:39 20 Q. Now, let's talk a little bit about your experience.

21 You've spent -- you spent -- 25 years as a state and  
22 federal regulator in the banking industry; is that correct?

23 A. That's correct.

24 Q. And you began your tenure as a Regulator at the OCC; is

02:08:57 25 that right?

1 A. Yes.

2 Q. What does the "OCC" stand for?

3 A. It's the "Comptroller of the Currency," which is the  
4 regulator of national banks in the country.

02:09:03 5 Q. And you worked for the OCC from 1974 to 1992; is that  
6 right?

7 A. Yes.

8 Q. From 1974 to 1982, you worked as a National Bank Examiner  
9 in Chicago, Illinois; is that right?

02:09:17 10 A. That's right.

11 Q. And tell me what you were responsible for doing while you  
12 were the National Bank Examiner in it Chicago?

13 A. Well, actually, I was based in Joliet, Illinois; and, as a  
14 field examiner, I would go from bank to bank and examine their

02:09:32 15 books and records, making sure they were complying with the  
16 law and checking on the quality of their assets, to make sure  
17 they were solvent.

18 And I did that for approximately seven years.

19 Q. Okay.

02:09:45 20 And what was your jurisdiction during that time?

21 What states were you responsible for?

22 A. I was based in Joliet and I examined banks in the  
23 Chicagoland area and, also, the upper peninsula of Michigan;  
24 and, then, they would call us in to do the big banks in

02:10:00 25 Detroit and Kalamazoo.

1 Q. Okay.

2 Were you responsible for a team of examiners at that  
3 point?

4 A. After I got commissioned as a National Bank Examiner, I  
02:10:08 5 was.

6 Q. Now, did you determine compliance with national banking  
7 laws in that position?

8 A. Yes.

9 Q. And did you also teach courses at the OCC schools in the  
02:10:19 10 areas in investment securities during that time?

11 A. Yes. And, also, white collar crime.

12 Q. Now, let's fast forward to 1982.

13 You mentioned that your position changed at that  
14 time; is that right?

02:10:29 15 A. Yes.

16 Q. You were still with the OCC in 1982?

17 A. Yes.

18 And I went to Washington.

19 Q. And, at that point, you became a Special Projects Examiner  
02:10:37 20 in Washington, D.C., with the OCC?

21 A. Yes.

22 Q. And you worked in that position from 1982 to 1985; is that  
23 correct?

24 A. Yes.

02:10:45 25 Q. What did you do as a Special Projects Examiner in

1 Washington?

2 A. And, actually, it was 1982 to 1984.

3 As a Special Projects Examiner, I was responsible for  
4 a certain area of the country and I supervised the failing  
02:10:59 5 banks.

6 And, so, I would monitor them; and, when it was time  
7 to close them, I would actually go out and close it on behalf  
8 of the Comptroller of the Currency.

9 Q. Did you also formulate a book called the "Administrative  
02:11:12 10 Action Book" during that time?

11 A. Yes.

12 During that time, we started to see a rise in the  
13 number of problem banks. And the person that was in charge of  
14 our division said, "We have to have consistency in the  
02:11:24 15 enforcement actions that we're taking against banks."

16 And, so, he gave me the responsibility of pulling  
17 together a sample enforcement articles, so that everyone in  
18 the United States would have some consistency when they were  
19 formulating enforcement actions.

02:11:37 20 Q. And was that administrative action book, was it actually  
21 published and distributed to people in the field?

22 A. Not in the field, but in the offices. And the legal staff  
23 would actually use this to draft up the enforcement actions.

24 And it's still being used in an updated version, of  
02:11:55 25 course, today.

1 Q. Now, you mentioned that you left your position as Special  
2 Projects Examiner in 1984; is that right?

3 A. Yes.

4 Q. And, at that point, you stayed with the OCC; is that  
02:12:06 5 correct?

6 A. Yes.

7 I was promoted to be the Executive Assistant to the  
8 top policy maker, the Senior Deputy Controller For Bank  
9 Supervision.

02:12:15 10 Q. And where was that position?

11 A. In Washington, D.C., also.

12 Q. Okay.

13 And did you act as the Senior Policy Adviser to the  
14 Senior Deputy Comptroller at that time?

02:12:24 15 A. Yes.

16 Q. What did that involve?

17 A. I advised him on all policymaking issues regarding bank  
18 supervision policy; and, I also coordinated all of the senior  
19 level policy issues with the FDIC and the Federal Reserve and  
02:12:40 20 the Conference of State Bank Supervisors and the foreign  
21 governments, as well, through the Basel Committee.

22 Q. Was there an emphasis on enforcement matters at that time?

23 A. Yes. And I would review every document that he would  
24 sign, including numerous enforcement actions.

02:12:58 25 Q. What does that mean, "an enforcement action"?

1 A. An enforcement action is what regulators have the  
2 authority to take when they find practices that they want to  
3 change in the banks; and, the state regulators and the federal  
4 regulators have the same sort of enforcement authority.

02:13:14 5 They can take a cease-and-desist action and say, "You  
6 have to stop doing what you're doing," or they can take a  
7 lesser action.

8 It's always in writing, so that's why we wanted the  
9 Administrative Action Book, so they could pull sample articles  
02:13:29 10 from that for those enforcement actions.

11 Q. Now, you left your Executive Assistant to the Senior  
12 Deputy Comptroller in 1986; is that right?

13 A. Yes.

14 Q. And you remained with the OCC still; is that correct?

02:13:39 15 A. I did.

16 Q. What was your next position?

17 A. I was promoted to the Director For Bank Supervision and we  
18 had six districts at the OCC at the time, and there were six  
19 Directors For Bank Supervision and I was the Director For Bank  
02:13:52 20 Supervision in the Southeastern District in Atlanta.

21 Q. And what jurisdiction did that cover?

22 A. We had nine states in our district and my responsibilities  
23 were over all the large banks -- the ones that were over a  
24 billion dollars -- and, then, another portfolio was all the  
02:14:08 25 problem banks.

1 Q. And, then, in 1988, you left that position and you  
2 remained with the OCC still; is that correct?

3 A. Yes.

4 Q. And you moved on to act as the Atlanta Field Office  
02:14:19 5 Director; is that right?

6 A. That's right.

7 My boss came to me and said, "Would you mind taking a  
8 lateral and be the Atlanta Field Office Director because we're  
9 going to shut down our Richmond office and we're going to  
02:14:30 10 consolidate them, and this is going to be the largest one that  
11 we have in the country?"

12 And since I already started law school, this was a  
13 perfect opportunity for me to finish law school and do  
14 something different.

02:14:41 15 Q. What were your responsibilities when you acted as the  
16 Atlanta Field Officer?

17 A. The Atlanta Field Office Director was responsible for all  
18 the community banks in a five-state area and all the  
19 examiners. So, I would hire the examiners. I would train  
02:14:59 20 them. I would supervise them, along with this portfolio of  
21 banks.

22 Q. Now, in 1992, you left the office of the Comptroller of  
23 the Currency; is that correct?

24 A. That's correct.

02:15:09 25 Q. And you took a position as the Texas State Banking



1 Commissioner; is that right?

2 A. Yes.

3 Q. And, in that position, did you supervise over 56 billion  
4 dollars in banking assets?

02:15:20 5 A. Yes.

6 Q. And is the Texas state banking -- is that the third  
7 largest state banking system in the country?

8 A. At the time, it was the third largest behind New York and  
9 California, in terms of assets -- in terms of size of banks,

02:15:35 10 dollar-wise. But it was only the second largest behind

11 Illinois, in terms of numbers of banks, because both of those  
12 states came late to intrastate branching.

13 Q. Were you appointed to that position or how did you obtain  
14 that position?

02:15:49 15 A. I was asked to apply for the position.

16 They were looking for a banking commissioner and I  
17 went over and interviewed and they hired me. And I reported  
18 to an oversight board, which was gubernatorial appointee.

19 So, I was not appointed by the governor, but I worked  
02:16:06 20 for an oversight board that was appointed.

21 Q. Did you manage employees when you were the Texas State  
22 Banking Commissioner?

23 A. Yes, I did.

24 Q. How many employees did you oversee?

02:16:16 25 A. I had -- I think I had -- 150 employees; and, then, I also

1 managed, from an administrative standpoint, the activities of  
2 the other two sister agencies: The Savings and Loan  
3 Department and the Consumer Credit Department.

4 Q. Did you also manage a \$12 million budget as the Texas  
02:16:35 5 State Banking Commissioner?

6 A. Yes.

7 Q. As the Texas State Banking Commissioner, were you involved  
8 in the statutory modernization of certain statutes or laws  
9 that existed at that time?

02:16:45 10 A. Yes. The Banking Code was from 1943; and, when I got  
11 there, I thought, "You know, the first thing I need to do is  
12 see if we can't update these laws -- these banking laws -- to  
13 bring them into the modern era."

14 And, so, I formed a committee and we worked for two  
02:17:02 15 years and we were able to get our banking laws updated.

16 Q. Did you also coordinate supervisory efforts for problem  
17 institutions?

18 A. Yes.

19 Q. Tell me about that.

02:17:12 20 A. Well, all of the banks in the state of Texas -- in the  
21 United States, we have a dual banking system. And, so, if you  
22 want a bank, you can either go to the federal government,  
23 which is the Comptroller of the Currency, or you can go to  
24 your State Banking Commissioner, which there's one in every  
02:17:28 25 state.

1                   And, so, anybody that had a state bank, I was  
2 responsible for overseeing. And, of course, if they got into  
3 trouble, then I was responsible for trying to rehabilitate  
4 them or taking an enforcement action or whatever needed to be  
02:17:44 5 done.

6 Q. Did you serve at the same time as Executive Director of  
7 the Texas Finance Commission?

8 A. Yes.

9 Q. What did that involve?

02:17:51 10 A. It, basically, what it involved -- for the Finance  
11 Commission, which was the oversight board, there was the  
12 Banking Department, and I was the Commissioner of the Banking  
13 Department; there was a Savings and Loan Department; and, the  
14 Consumer Credit Department.

02:18:04 15                   And just from an administrative standpoint, I would  
16 sort of manage the meetings.

17                   They had public meetings and various studies that  
18 they had to do. So, I would do the -- manage that work on an  
19 administrative basis.

02:18:19 20 Q. During all this time, were you also the Secretary and  
21 Treasurer of the Conference of State Bank Supervisors?

22 A. Yes.

23 Q. And what did that -- what did the Conference of State Bank  
24 Supervisors consist of?

02:18:31 25 A. I was the Secretary/Treasurer during one of the years I

1 was Banking Commissioner for seven-plus years. And the  
2 Conference of State Bank Supervisors is the national  
3 organization of all the banking commissioners. And some of  
4 the Commissioners have different titles, like "Director" or  
02:18:48 5 whatever.

6 But, basically, there's one from every state in the  
7 four territories and we had an organization that would monitor  
8 laws across the country. We would go and testify before  
9 Congress on various issues that affected the state banking  
02:19:07 10 systems.

11 Q. Now, in 1999, you left your position as the Texas State  
12 Banking Commissioner; is that right?

13 A. That's right.

14 Q. And you founded your own company; is that correct?

02:19:18 15 A. Yes, I did.

16 Q. What's the name of your company?

17 A. It's Ghiglieri & Company.

18 Q. Tell us what Ghiglieri & Company does?

19 A. Well, I do basically three things. I do a lot of bank  
02:19:29 20 consulting. And I do, for example, if they run afoul of the  
21 regulators, and the regulators are asking them to do certain  
22 things, I will go in and do a management study or a strategic  
23 planning session or something for them.

24 I also do expert witness work, such as I'm doing here  
02:19:45 25 today.

1 portfolio, since that's the largest asset.

2 And the past due percentages are very important, to  
3 see what the quality of the loan portfolio is.

4 So, the regulators don't want the lenders to be  
02:24:51 5 masking that number to them. And, so, that's one of the  
6 things that I would look at when I was a field examiner.

7 Q. Let's now turn to the opinions you actually reached in  
8 this case.

9 Did you reach any conclusion about whether Household  
02:25:05 10 engaged in predatory lending practices during the 1999 to 2002  
11 time frame?

12 A. I did reach an opinion.

13 Q. And tell us what that is.

14 A. My opinion is, after looking at everything, that Household  
02:25:18 15 engaged in company-wide systemic predatory lending.

16 Q. Now, did you also reach any opinion or conclusion as to  
17 whether Household hid the quality of its loans during the 1999  
18 to 2002 time frame?

19 A. I did reach an opinion.

02:25:35 20 Q. And please tell the jury what that opinion is.

21 A. My opinion, after looking at everything that I looked at,  
22 is that Household utilized re-aging practices to mask their  
23 delinquencies.

24 Q. Let's -- before we talk in more detail about how you  
02:25:51 25 arrived at those opinions and what you found that supported

1           And, then, I would formulate how many loans I wanted  
2 to look at and whatever else I wanted to look at on their  
3 balance sheet. So, I would look at the books, the records,  
4 internal memos, board minutes, things like that.

02:37:33 5 Q. What procedure did you use to arrive at your conclusions  
6 in this case?

7 A. I used a similar procedure. Some of the documents were  
8 different, but I looked at the loan-type documents that were  
9 available. I looked at complaints. I looked at the  
02:37:52 10 Household's responses to the complaints. I looked at  
11 examination reports -- the ones that were available. I looked  
12 at the company's responses to those examinations.

13           And, then, I also was able to have access to the  
14 deposition testimony, which is where the employees of  
02:38:10 15 Household were questioned. And I had the ability to read  
16 their -- the answers that they had.

17 Q. Did you prepare a demonstrative exhibit to assist you in  
18 explaining the procedure or process that you used in this case  
19 to develop your opinions?

02:38:27 20 A. I did.

21 Q. I'll show you what has been marked as plaintiffs'  
22 demonstrative Exhibit 34 for identification.

23           What does this exhibit show?

24 A. This exhibit shows the different materials that I looked  
02:38:56 25 at: Loan documents, internal e-mails and memos and reports.

1 tell the jury what that term means?

2 A. Well, "predatory lending" is sort of an umbrella term  
3 that's come into vogue in the last ten years or so, to  
4 encompass a variety of practices that are either deceptive to  
02:43:19 5 the customer or unfair -- contain unfair terms.

6 In the olden days, we used to call it mortgage fraud;  
7 but, these days they call it predatory lending. And a lot of  
8 the practices that we looked at in the '70s -- for example,  
9 insurance packing, compliance with Reg Z, things like that --  
02:43:39 10 a lot of these practices are brought under this umbrella of  
11 predatory lending.

12 Q. Now, when you performed your analysis in this case, did  
13 you review any documents to sort of survey the definition of  
14 "predatory lending" that existed in the 1999 to 2002 time  
02:43:54 15 frame?

16 A. I did.

17 Q. What documents did you survey to sort of see what material  
18 was available at that point?

19 A. Well -- and this is something that I always do when I'm  
02:44:06 20 serving as an expert -- I want to know what the regulatory  
21 landscape was like at the time.

22 And, so, in this time frame, I looked at any  
23 issuances from the Comptroller of the Currency. I looked at  
24 any issuances from the Office of Thrift Supervision, because  
02:44:21 25 both of them regulated Household. I looked at anything that

1 settlement is not admitted to show that Household was at fault  
2 or that Household engaged in any wrongdoing in the matter that  
3 was settled. Again, the evidence is admitted only for the  
4 limited purpose of showing whether the settlement affected the  
03:42:19 5 price of Household stock and should be considered and may be  
6 considered only for that purpose.

7 I guess I want to make sure that I have this correct  
8 from the attorneys. The instruction regarding the information  
9 assumed by the various expert opinions, do you want that  
03:43:17 10 instruction given at this point as well?

11 MR. HALL: Yes, your Honor.

12 THE COURT: All right. I believe I have the language  
13 that you folks agreed to. If it is, it's acceptable to me and  
14 I will deliver it to the jury. If I misspeak, let me know and  
03:43:36 15 we will make the appropriate correction.

16 During the course of testimony by expert witnesses  
17 who you may hear, you may hear evidence regarding the category  
18 of documents I have already told you about. Evidence  
19 regarding publicity, notice, price, and things of that nature  
03:44:21 20 will be explained to you during the course of the expert's  
21 testimony.

22 The underlying information that you receive in this  
23 manner must not be considered by you for the purpose of  
24 determining -- must not be considered by you as evidence of  
03:44:42 25 the truth of the information but rather is being admitted for



1 the limited purpose of showing you -- or assisting you to  
2 evaluate the expert witness' opinion and how sound that  
3 opinion is.

4 The underlying opinion must not be used by you for  
03:45:03 5 any other purpose than to evaluate the opinion of the expert  
6 witness.

7 You may proceed.

8 MR. DROSMAN: Thank you, your Honor.

9 BY MR. DROSMAN:

03:45:15 10 Q. Ms. Ghiglieri, before the break I asked you whether you  
11 prepared a demonstrative exhibit to assist you in explaining  
12 your conclusion that Household engaged in a variety of  
13 predatory practices during the 1999-to-2002 time frame.

14 Did you prepare such an exhibit?

03:45:33 15 A. I did.

16 Q. Would that assist you in explaining your testimony?

17 A. Yes, it would.

18 Q. At this time I will show you what has been marked as  
19 Plaintiffs' Demonstrative Exhibit 29 for identification.

03:45:45 20 What are the entries on Plaintiffs' Exhibit 29?

21 A. These are the various predatory lending practices that I  
22 found when I was reviewing all of the documents.

23 Q. Let's take the first predatory lending practice listed,  
24 the effective or equivalent rate.

03:46:06 25 Can you tell the jury what that is?

1 Down one more paragraph it says, "The Penalty Trap."

2 "One of Kahr's favorite strategies was to trap  
3 customers with penalty fees for late payments or going over  
4 credit limits. That had the virtue not only of providing  
04:13:55 5 direct fee income but also of permitting Providian to raise  
6 interest rates as high as 24 percent annually."

7 So there were similarities between what I saw at  
8 Household on his suggestions and what he had suggested to  
9 Providian.

04:14:16 10 Q. I will show you what has been marked as Plaintiffs'  
11 Exhibit 347 for identification.

12 (Document tendered.)

13 BY MR. DROSMAN:

14 Q. Ms. Ghiglieri, do you recognize Plaintiffs' Exhibit 347?

04:14:47 15 A. I do.

16 Q. What is it?

17 A. This is one of the documents that I used to formulate my  
18 opinions that Household engaged in widespread and systemic  
19 predatory lending.

04:14:58 20 Q. What is the document?

21 A. This is a document that Paul Creatura -- it has a little  
22 note to Gary Gilmer, and this is a summary of a meeting that  
23 was held with Andrew Kahr on December 18th, 1998.

24 MR. DROSMAN: Your Honor, at this time plaintiffs

04:15:23 25 offer Exhibit 347 into evidence. I believe there has been no

TAB 9

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
4 others similarly situated, )  
 )  
5 Plaintiff, )  
 )  
6 vs. ) No. 02 C 5893  
 )  
7 HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
8 ) April 1, 2009  
Defendants. ) 9:55 a.m.

9  
10 VOLUME 3  
TRANSCRIPT OF PROCEEDINGS - TRIAL  
11 BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

12 APPEARANCES:

13 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
14 BY: MR. LAWRENCE A. ABEL  
MR. SPENCER A. BURKHOLZ  
15 MR. MICHAEL J. DOWD  
MR. DANIEL S. DROSMAN  
16 MS. MAUREEN E. MUELLER  
655 West Broadway  
17 Suite 1900  
San Diego, California 92101  
18 (619) 231-1058

19 COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
20 BY: MR. DAVID CAMERON BAKER  
MR. LUKE O. BROOKS  
21 MR. JASON C. DAVIS  
MS. AZRA Z. MEHDI  
22 100 Pine Street  
Suite 2600  
23 San Francisco, California 94111  
(415) 288-4545  
24  
25

1 A. I reviewed a document called First Mortgage Sales. And it  
2 had a couple different iterations over the time period that I  
3 looked at it. And in there, it trained the employees how to  
4 derive that effective rate that concealed the true annual  
11:22:04 5 percentage rate from the customer.

6 And then I also looked at a document regarding  
7 insurance sales. And in there, it taught the employees how to  
8 assume that the customer wanted the insurance, called the  
9 assumptive close. And it taught them how to just  
11:22:22 10 automatically put that insurance on the loan documents.

11 Q. Did you review any training by a man named Lew Walter?

12 A. Yes, I did.

13 Q. And who is Lew Walter?

14 A. He was a training officer in the northwestern division of  
11:22:39 15 Household.

16 Q. Now, let's take a look at Exhibit 379, which I placed  
17 before you and defense counsel.

18 Do you recognize that document?

19 A. I do.

11:22:50 20 Q. What is it?

21 A. This is a document -- it's a multipage document. There's  
22 a fax cover on top. And it's from Rob O'Han to Tom Detelich.  
23 It's dated May 20, 2002. And there is an e-mail attachment to  
24 it on the second page, and there's some other pages here too.

11:23:14 25 Q. Why do you recognize Plaintiffs' Exhibit 379?

1 A. This is one of the documents that I've looked at in  
2 formulating my opinions.

3 MR. DROSMAN: Plaintiff's offer Exhibit 379 into  
4 evidence.

11:23:25 5 MR. KAVALER: Your Honor, I believe this is a limited  
6 purpose document.

7 THE COURT: It will be admitted. The jury has  
8 already been instructed on the limited purpose evidence.

9 MR. DROSMAN: Thank you, your Honor.

11:23:33 10 BY MR. DROSMAN:

11 Q. Let's talk about Plaintiffs' Exhibit 379. You mentioned  
12 that this was a fax from Rob O'Han to Tom Detelich. Who is  
13 Rob O'Han?

14 A. Rob O'Han was one of the district general managers at  
11:23:51 15 Household, I believe was his title.

16 Q. Was he a sales officer?

17 A. Yes. The sales staff reported up through him.

18 Q. And what about Tom Detelich?

19 A. Tom Detelich was a senior officer at Household. I can't  
11:24:05 20 remember his exact title.

21 Q. And he was an officer in the consumer lending business  
22 unit; is that right?

23 A. I believe so.

24 Q. A managing director in that unit?

11:24:14 25 A. Yes.

1 Q. Could you take a look at the second page of the document,  
2 page ending 075.

3 Is there anything on that page that appears to be an  
4 e-mail that supports your opinions in this case?

11:24:28 5 A. Yes.

6 Q. And can you tell me what that is?

7 A. Yes. This is an e-mail regarding a discussion about  
8 how -- what they're doing in Florida. It says Florida review  
9 is the subject. And it was written from someone in human  
11:24:44 10 resources to Scott Schneider, and it was forwarded to Rob  
11 O'Han.

12 And if you look at the -- it says, Here is the  
13 summary of the timeline of the issues, July 1999. And that's  
14 hard to read, but I'll see if I can read it for you.

11:25:02 15 It says, Lew Walter rolled out the First Mortgage  
16 Sales workshop to all HFC sales divisions, with the exception  
17 of southwest, July 1999 to August 1999. The southeast  
18 division was rolled out approximately July 1999. The workshop  
19 workbook or -- I think there's a word missing there. I think  
11:25:27 20 it should say contained -- a worksheet on the biweekly plan  
21 versus the 30-year program, equivalent rate. The equivalent  
22 rate would be described as the rate that would be needed if  
23 they were to pay the same amount of interest over a 30-year  
24 term at a bank compared to our proposed loan. The form was  
11:25:44 25 designed as a tool for the AEs -- and that's account

1 executives -- to work up the numbers so that they could do  
2 comparisons. The worksheet was not to be distributed to the  
3 customers.

4 Q. So this shows that the equivalent rate training was rolled  
11:26:02 5 out in July of 1999; is that right?

6 A. Yes. It was part of that First Mortgage Sales document  
7 that I looked at.

8 Q. And why is that significant to your opinions in this case?

9 A. Well, because Household always said in its responses to  
11:26:15 10 the regulators and its public discussions in the press that  
11 this particular practice among others were the result of a  
12 rogue employee or a rogue branch. And that wasn't true. This  
13 was what the employees were trained to do nationwide. And I  
14 saw evidence of it all over the country in many locations.  
11:26:40 15 And, here, they're talking about it in Florida.

16 Q. Now, when you say rogue employee, you're talking about  
17 some bad apple at Household; is that what you mean?

18 A. Well, that's what I assume Household meant by saying rogue  
19 employee or rogue branch. It only happened over there.

11:26:56 20 Q. And if you turn to page ending 077, there appears to be  
21 another e-mail with a catalog of some customer complaints.

22 Can you tell me whether that's significant to your  
23 opinion?

24 A. Yes, it is.

11:27:19 25 Q. And what's significant about page ending 077 to your



1 opinion?

2 A. Well, this is a -- let's see if we can --

3 Q. You can just testify to it.

4 A. Okay. This is an articulation of several complaints.

11:27:36 5 On -- the customer was complaining that -- one, for example,  
6 was a customer named Edwards. And it says, Customer claims  
7 HFC promised a fix rate of 7.38 for an 18-year mortgage. The  
8 contract states 30 years for 13.7 APR.

9 And several more like that.

11:27:59 10 A customer named Osmel, customer says -- said sales  
11 office told him the rate would be 6.4 for 16 years, but  
12 instead the contract shows a rate of 10.554 for 30 years.

13 So this is just an example of how -- and it's up  
14 there now -- the effective rate was being given to the  
11:28:19 15 customer instead of the annual percentage rate, which is the  
16 APR, which is the only rate that's supposed to be given to the  
17 customer.

18 Q. And why is that significant to your opinion?

19 A. Well, especially in the location, this was in the  
11:28:32 20 southeast, in Florida and South Carolina -- and, again,  
21 Household would say, well, it's only one branch or it's only  
22 one employee. But what I saw from the complaints, this was  
23 taking place in a lot of places. And it was the same -- the  
24 same scheme. They would say they told me this for a shorter  
11:28:54 25 period of years when, in fact, the contract rate was higher

1 for 30 years. So it was the effective rate training that the  
2 employees received in the Lew Walter training First Mortgage  
3 Sales.

4 Q. If you turn to page ending 080.

11:29:13 5 Can you tell us what this is?

6 A. This is actually -- this is actually a document that  
7 some -- even though it says that they weren't supposed to get  
8 it, that some customers did receive the effective rate in  
9 writing. And that's pretty hard to read, but it says, The  
11:29:38 10 above-referenced account 15-year contractual agreement is  
11 17.99 percent. Upon entering the EZ Pay Plus Program -- and  
12 that's where you paid twice -- half of your mortgage payment  
13 every other week; that's what Household called it, the EZ Pay  
14 Plus Program -- the account will only incur a 10.15 percent  
11:30:01 15 effective rate for the duration of the payment period, which  
16 will be 11.2 years.

17 So here they're giving the effective rate actually in  
18 writing, and this -- there are several of these that I've  
19 seen.

11:30:14 20 Q. So what is the contract -- can you determine what the  
21 contract rate is from this document?

22 A. It says that the contract rate was 17.99 percent. This is  
23 on a 15-year amortization.

24 Q. And what did Household list the effective rate at?

11:30:30 25 A. 10.15 for 11.2 years.

1 Q. Now, if, in fact, this customer -- I believe it's  
2 Mr. Ortega -- paid his loan off over a shorter period of year  
3 than 15 years, would his rate actually decline?

4 A. No. Your rate never goes down. Paying more quickly than  
11:30:50 5 the amortization schedule does not affect your interest rate.  
6 Your interest rate is your interest rate. If I take a loan  
7 out and two months later I pay it off, I still have the same  
8 APR; but I didn't pay as much interest as I would have if I  
9 had it over 30 years.

11:31:06 10 So this is just a way of deceiving the customer into  
11 thinking that Household had more competitive rates because  
12 their rates were higher than their competitors.

13 Q. If you could turn to page ending 085.

14 And can you tell me what this document is?

11:31:26 15 A. This is a letter sent by an account executive to this  
16 borrower who was questioning why the loan balance hasn't gone  
17 down. And what he's saying to her is what the effective rate  
18 training was. If you pay half of your \$945 payment -- so that  
19 is the second to the last sentence there. If you could  
11:32:06 20 highlight that and then the last sentence. See if you can  
21 read that a little better.

22 By simply sending half of your \$945 payment every two  
23 weeks, your mortgage will be paid off in 18 years; and you  
24 will be paying a comparable 6.5 APR.

11:32:27 25 Sometimes they use effective rate. Sometimes they

1 use comparable rate. It's the same thing.

2           You will actually save 99,965 throughout the loan by  
3 simply paying 472.50 every two weeks.

4 Q. So you mentioned that sometimes they call the equivalent  
11:32:43 5 rate a comparable rate?

6 A. Yes, equivalent, comparable, effective. Those were  
7 different terms that I saw for this same program, to deceive  
8 the customers into thinking they were getting a lower rate  
9 when, in fact, they were being charged a higher rate.

11:32:59 10 Q. And how is this text that you've just read significant to  
11 your opinion in this case?

12 A. Well, here you have someone actually putting it in  
13 writing. And at one point, Household went through and took  
14 everything out of the files that had to do with effective  
11:33:15 15 rate. So it's hard to find a document like this because of  
16 the document destruction that they did. But this is where a  
17 customer actually got in writing what the effective rate was.

18 Q. Could you turn to page ending 090.

19           This appears to be an e-mail from a person named  
11:33:39 20 Ronald Davis at Household; is that right?

21 A. Yes.

22 Q. And the subject is Ortega; is that correct?

23 A. Yes.

24 Q. Does the first paragraph there have any significance to  
11:33:48 25 your opinion?

1 A. Let's see. Yes. Highlight the first -- okay.

2 It says, We gave this customer a written statement,

3 which I will fax to you, that clearly stated that their

4 effective interest rate would be 10.15 if they paid the EZ

11:34:08 5 way -- and that's the EZ Pay Plus. This letter was sent prior

6 to us destroying all sales material other than HFC-approved

7 material. Our branches had previously approved tax charts as

8 well as real estate master booklets that encouraged them to

9 use effective rates, which is where this letter derived from.

11:34:29 10 Q. Now, if you take a look at the second to last sentence on

11 this page.

12 Does that have any significance to your opinion?

13 A. Yes. This says, No corrective action was given, as this

14 was enforced from HFC training materials that existed at the

11:34:45 15 time.

16 Q. Why is that significant?

17 A. Well, it's significant because the training was authorized

18 by the headquarters. And the -- Lew Walter went to all the

19 districts except the southwest, which had some separate

11:35:02 20 training. But all of the ideas were the same; and, that is,

21 come up with this effective rate to show that the Household

22 rates were competitive, when they were not.

23 Q. And then the indication that no corrective action was

24 given, what do you understand that to mean?

11:35:16 25 A. That the employee was not disciplined is how I interpret

1 this because it was an authorized activity or it was something  
2 that was condoned by Household.

3 Q. And go ahead and turn if you would to page ending 092.

4 This appears to be a letter regarding Antonio Ortega  
11:35:40 5 or to -- from Antonio Ortega. I'm sorry. Do you recognize  
6 this letter?

7 A. I do.

8 Q. And is this significant to your opinion?

9 A. Yes. This is -- again, this is a complaint. This is a  
11:35:53 10 good example of a complaint where Mr. Ortega from Florida  
11 filed a complaint with the state comptroller's office. And  
12 that's where the banking commissioner resides. The state  
13 comptroller actually has the title instead of banking  
14 commissioner.

11:36:11 15 So he complained to the Florida, basically,  
16 Department of Financial Institutions, that -- and I think --  
17 my copy is very hard to read, but I think if you look at the  
18 second or third -- yes. I'm sorry. It says, if you can read  
19 that, She went back and -- first, he went in for a debt  
11:36:38 20 consolidation loan and was told he could get one for 18  
21 percent. But the account executive, it says here, She went  
22 back and checked and came back and told me if you can make  
23 payments every two weeks, we can get you a loan for 10.15  
24 percent, but remember you must pay every two weeks or it will  
11:36:57 25 revert back to 18 percent.

1 Q. Why is that significant to your opinion?

2 A. Because, once again, the annual percentage rate must have  
3 been 18 percent. And what they were trying to do was deceive  
4 the customer into thinking if you make your payment every  
11:37:15 5 other week -- half of your payment every other week, your  
6 effective rate will be 10.15 percent, when that's not true.  
7 It was never going to be anything other than 18 percent.

8 Q. Now, we've talked about some training that Lew Walter  
9 provided in this case. Why don't I show you Plaintiffs'  
11:37:43 10 Exhibit 899 for identification.

11 (Tendered.)

12 THE COURT: I'm sorry. What number was that?

13 MR. DROSMAN: 899, your Honor.

14 THE COURT: Thank you.

11:38:08 15 BY MR. DROSMAN:

16 Q. Ms. Ghiglieri, do you recognize Plaintiffs' Exhibit 899?

17 A. I do.

18 Q. What is it?

19 A. This is a training material called First Mortgage Sales.

11:38:16 20 And this one says HFC northeastern division. They had  
21 different ones, and it would have a different division; but  
22 this one says northeastern division.

23 Q. And why do you recognize this?

24 A. I reviewed these training manuals in formulating my  
11:38:32 25 opinions.

1 been an increasing number of complaints in this area, and all  
2 the customer remembers is that they thought they were getting  
3 a lower rate. This is one of the many issues he is addressing  
4 in Washington.

11:44:20 5           So I found it unbelievable that -- and Mr. Schneider  
6 was in charge of policy and compliance, I think was his  
7 title -- unbelievable that he would say, well, you can tell  
8 them that you're going to get this effective rate, but you  
9 just can't give it to them in writing. I mean, that's still  
11:44:37 10 deceiving the customer.

11 Q. And this e-mail is dated May 25, 2001; is that correct?

12 A. Yes.

13 Q. And the training that we saw earlier from Lew Walter on  
14 the effective rate, what was the date of that training?

11:44:53 15 A. That was in mid 1999. So two years later, they're still  
16 having this issue of the effective rate, equivalent rate,  
17 comparable rate.

18 Q. Was there any other -- we talked about the Lew Walter  
19 training and so forth. Was there any other training materials  
11:45:11 20 that you considered in reaching your conclusions in this case?

21 A. Well, I looked at the other documents like this that were  
22 from around the country or that's what they were entitled.  
23 And I also looked at insurance training that they received.

24 Q. Did you look at any training videos in reaching your  
11:45:26 25 conclusions in this case?



1 A. Yes. And I also looked -- I viewed a training video that  
2 was prepared by the manager of the southwestern division. His  
3 name was Dennis Hueman. And he prepared a video that  
4 contained many of the same elements as this selling first  
11:45:45 5 mortgages document -- training document that I looked at that  
6 was developed by Lew Walter.

7 MR. DROSMAN: I'm showing the witness a DVD that has  
8 been marked as Plaintiffs' Exhibit 1383 for identification.

9 (Tendered.)

11:46:11 10 BY MR. DROSMAN:

11 Q. Now, have you had an opportunity to review the contents of  
12 Plaintiffs' Exhibit 1383, this DVD?

13 A. Yes, I watched this DVD.

14 Q. And after you watched the DVD, were you able to determine  
11:46:31 15 who created it?

16 A. Yes, Dennis -- well, and also I read his deposition and he  
17 has stated -- he testified that he created this as a sales  
18 tool for his staff.

19 Q. And so what is Plaintiffs' Exhibit 1383?

11:46:45 20 A. This is a video training on various ways of selling  
21 Household's mortgages. And it was developed in 2001, which is  
22 almost two years after the training that Lew Walter developed  
23 here on First Mortgage Sales.

24 Q. And did you consider this DVD in reaching the conclusions  
11:47:13 25 in your case -- in this case?

1 A. I did.

2 MR. DROSMAN: At this time, plaintiffs offer 1383  
3 into evidence.

4 THE COURT: It will be admitted.

11:47:22 5 MR. KAVALER: May I have voir dire?

6 THE COURT: Sure.

7 MR. DROSMAN: There's no objection to this, your  
8 Honor.

9 THE COURT: Was there an objection?

11:47:31 10 MR. KAVALER: I just wanted to know if she viewed the  
11 entire DVD.

12 THE COURT: Was that objection stated in the pretrial  
13 order?

14 MR. KAVALER: No, your Honor.

11:47:39 15 THE COURT: Okay. Objection is overruled.

16 MR. KAVALER: Thank you, your Honor.

17 BY MR. DROSMAN:

18 Q. Approximately how long is this training video?

19 A. I think it's about an hour. It's been a while since I  
11:47:49 20 looked at it.

21 Q. And do you know to whom this video was distributed, 1383?

22 A. It was distributed to the branch -- I believe it was  
23 distributed to the branch -- branches in the southwest.

24 Q. Are there parts of the video that you'd like to show the  
11:48:08 25 jury to assist you in explaining your conclusions in this

1 it is. And, you know, they had to do something in order to  
2 make their rates more competitive. As Mr. Hueman said, we  
3 charge 8 -- 11 percent; our competitors charge 8 percent.  
4 They're never going to be able to book a loan with that unless  
12:04:17 5 they do something to deceive the customer into thinking that  
6 they could get a lower rate.

7 Q. Have you prepared one last short clip you'd like to show  
8 the jury?

9 A. Yes. This is only a three-minute clip. And it's where  
12:04:29 10 Mr. Hueman compares the customers to a fish and reeling them  
11 in.

12 Q. Why don't we take a look at that.

13 (Whereupon said tape was played in open court.)

14 BY MR. DROSMAN:

12:08:13 15 Q. So this guy, Dennis Hueman, he was in charge of the entire  
16 southwest division of Household?

17 A. Yes.

18 Q. Training all the people who worked in the various branches  
19 in the entire southwest; is that right?

12:08:24 20 A. Yes.

21 Q. And why is this significant, what we just watched, to your  
22 opinion?

23 A. Well, I think it's significant for a couple of reasons.

24 One is, it had the same sort of effective rate training -- and  
12:08:35 25 he was doing it verbally -- that was developed two years

1 prior. So for those two years, this is what was being done in  
2 Household. And he decided that he needed to have some sort of  
3 a training mechanism to train his staff in to better deceiving  
4 the customers into thinking that they were going to have a  
12:08:54 5 better rate, so he developed this video. So it -- it just  
6 showed me that the training was pervasive in Household and  
7 wasn't just the work of a rogue employee or a rogue branch.

8 Q. Did you prepare a demonstrative to assist you in  
9 explaining the geographic breadth of this effective rate  
12:09:16 10 training?

11 A. Yes.

12 Q. Why don't I show you what we'll mark as Plaintiffs'  
13 Demonstrative Exhibit 28.

14 Can you tell us what this exhibit shows?

12:09:23 15 A. Yes. That's Mr. Walter there. He rolled out his  
16 training -- and that's what's highlighted there. Lew Walter  
17 rolled out the First Mortgage Sales workshop to all HFC sales  
18 divisions, with the exception of the southwest, in July and  
19 August of 1999. And then the video we just saw was

12:09:39 20 Mr. Hueman, who is in the southwest -- the left-lower corner  
21 of the United States there that we just saw on the tape --  
22 speaking to his employees about how to put this in place in  
23 the branches.

24 Q. So there were six sales divisions at Household; is that  
12:09:58 25 right?

1 A. Yes.

2 Q. And does this demonstrative show that Mr. Walter rolled  
3 out his effective rate training to five of the six?

4 A. Yes.

12:10:06 5 Q. And then the sixth, was that covered by Mr. Hueman's  
6 training?

7 A. Yes. But the training had to already be there somehow  
8 because the concepts were the same as what Mr. Walter rolled  
9 out.

12:10:20 10 MR. DROSMAN: Your Honor, is this a good time for a  
11 lunch break or would you like to go later?

12 THE COURT: How much longer do you have to go?

13 MR. DROSMAN: I can start on a new topic.

14 THE COURT: And the new topic will take how long?

12:10:34 15 MR. DROSMAN: As long as you like. I can stop at any  
16 point.

17 THE COURT: If you continue through, how much longer  
18 do you have with this witness? That's all I'm asking.

19 MR. DROSMAN: Oh, she'll be on after lunch as well,  
12:10:44 20 for probably the remainder of the day.

21 THE COURT: Okay. Then we'll break for lunch at this  
22 point. No use waiting.

23 We'll break for lunch, ladies and gentlemen. We'll  
24 resume the testimony at 1:15. Have a good lunch. We'll see

12:10:56 25 you then.

1 up with?

2 A. Yes.

3 Q. Did the states agree with Andrew Kahr's idea to ignore  
4 state law and impose these prepayment penalties?

01:39:17 5 A. No. Many states did not agree with that.

6 And this is a listing of some of the states that  
7 either, at one time or another, this e-mail says has strongly  
8 questioned our ability to do this.

9 And the e-mail above it says, "Has Virginia  
01:39:35 10 complained, also?"

11 So, there were a number of states that said, "We do  
12 not agree with that."

13 Q. I'll show you -- before I show you the next document, I'd  
14 like to sort of change gears and talk about the predatory  
01:39:52 15 lending practice that you talked about earlier -- the failure  
16 to properly disclose.

17 Did you review additional documents relating to  
18 "failure to properly disclose"?

19 A. Yes.

01:40:02 20 Q. Let me show you what's been marked as Plaintiffs' Exhibit  
21 964 for identification.

22 (Document tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Plaintiffs' Exhibit 964?

01:40:29 25 A. I do.

1 Q. What is it?

2 A. This is an Examination Information Correspondence from the  
3 state of New Jersey to Household.

4 Q. And what's the date of it?

01:40:42 5 A. April 23rd, 2002.

6 Q. And to whom is it addressed?

7 A. It's addressed to "Tom Schneider, Policy and Compliance."

8 Q. And is that somebody who works at Household?

9 A. Yes.

01:40:52 10 He was in charge of coordinating information with the  
11 regulators, as I understand it.

12 Q. And why do you recognize this document?

13 A. This is one of the documents that I looked at in  
14 formulating my opinions.

01:41:06 15 MR. DROSMAN: Plaintiffs offer Exhibit 964 into  
16 evidence.

17 THE COURT: It will be admitted.

18 (Plaintiff' Exhibit 964 received in evidence.)

19 BY MR. DROSMAN:

01:41:15 20 Q. Now, you mentioned that this is from the State of New  
21 Jersey to Household's Director of Policy, Compliance and  
22 Support.

23 What's significant about this document to your  
24 opinions?

01:41:25 25 A. This document talks about various concerns that the State

1 of New Jersey had with Household's practices.

2 Q. Okay.

3 And, specifically, if I could direct your attention  
4 to the page ending "805."

01:41:47 5 Actually, "804," if you'd look at that page.

6 If you look at that page, it appears to be another  
7 letter to Tom Schneider, the Director of Policy and Compliance  
8 of Household, mfrom the State of New Jersey; is that right?

9 A. Yes.

01:41:59 10 And I'd like to point out something in the first  
11 paragraph, too of that.

12 The last sentence says, "These findings are furnished  
13 to the licensee for your confidential information and  
14 consideration and the understanding that it's not to be made  
01:42:16 15 public."

16 And I talked about that yesterday -- that these  
17 examination reports are confidential -- and that the licensees  
18 are not supposed to make them public.

19 Q. And this is a -- is this a -- Report of Examination?

01:42:27 20 A. Yes.

21 This document it says, "Official Examination."

22 Q. Okay.

23 And if you turn to the next page of the report, Page  
24 805.

01:42:39 25 Is there anything of significance to your opinion on



1 that page?

2 A. Yes. They're talking about the criticisms that they have  
3 regarding Household.

4 Q. And, specifically, the first criticism?

01:42:52 5 A. Yes. This is regarding AMTPA and the prepayment  
6 penalties. And it says, "Prepayment penalties equivalent to  
7 six months interest at the contract rate on the original  
8 amount of the loan are being charged on closed-end, Pay Right  
9 Reward first and second mortgage loans that are paid off in  
01:43:06 10 advance.

11 "This is predicated upon Household's position that  
12 these loans are variable rate loans covered by the preemptive  
13 authority of the Alternative Mortgage Transactions Parity  
14 Act."

01:43:17 15 Q. So, this is that same Act that would allow Household to  
16 ignore state law that prohibits prepayment penalties and  
17 impose them, anyway?

18 A. Yes.

19 If they comply with the federal law, they can ignore  
01:43:31 20 state law to the contrary and impose certain fees and  
21 prepayment penalties.

22 Q. What about the State of New Jersey? Did they believe that  
23 Household could ignore state law under their Andrew Kahr  
24 product?

01:43:43 25 A. No. They were saying that they don't believe that it

1 qualifies under AMTPA.

2 Q. What about No. 5 -- the criticism No. 5 -- there? Is that  
3 significant to your opinion?

4 A. Yes.

01:43:53 5 And I talked about the wide range of closing costs  
6 that Household would give to the applicants on a good-faith  
7 estimate that's required by RESPA. And this says, "Points  
8 charged to borrowers at closing exceeded the amount reflected  
9 on the good-faith estimate in 55 percent of the cases  
01:44:14 10 reviewed."

11 And, so, not only did they give them a wide range,  
12 but they, in 55 percent of the cases that New Jersey  
13 reviewed -- the State of New Jersey -- they exceeded it.

14 Q. Okay.

01:44:24 15 So, they'd give them a range of zero to \$8,000, for  
16 example, on their good-faith estimate and, then, they would  
17 impose fees or points that were higher than \$8,000?

18 A. That's right, in 55 percent of the ones that they  
19 reviewed.

01:44:36 20 Q. Why don't I show you what has been marked as Plaintiffs'  
21 Exhibit 324 for identification.

22 (Document tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Exhibit 324?

01:45:09 25 A. I do.

1 Q. What is it?

2 A. This is correspondence and examination information being  
3 transmitted to Household from the State of Minnesota.

4 Q. Why do you recognize this document?

01:45:21 5 A. This is a document that I considered in formulating my  
6 opinions.

7 Q. And was this an Examination --

8 A. Yes.

9 Q. -- Report?

01:45:29 10 What was the date of it?

11 A. It was actually a compliance examination.

12 And the date -- let's see.

13 The date of the cover letter -- let's see if there's  
14 a date of the examination here.

01:45:41 15 The date of the cover letter was September 23rd,  
16 2002; and, the examination, the close of business March 31st,  
17 2002.

18 Q. And to whom was it sent?

19 A. To the Board of Directors of Household.

01:45:57 20 Q. And to whose attention at Household was it sent?

21 A. Mr. Schneider.

22 Q. That's the Tom Schneider we spoke of before?

23 A. Yes.

24 Q. The Director of Policy and Compliance?

01:46:05 25 A. Yes.

1 MR. DROSMAN: Plaintiffs move Exhibit --

2 BY MR. DROSMAN:

3 Q. Let me ask you: Did you consider this document in  
4 formulating your opinions in this case?

01:46:14 5 A. I did.

6 MR. DROSMAN: Plaintiffs move Exhibit 324 into  
7 evidence.

8 THE COURT: It will be admitted.

9 (Plaintiffs' Exhibit No. 324 received in evidence.)

10 BY MR. DROSMAN:

11 Q. Now, if you could turn to the page ending "007."

12 Is there any significance of the information on Page  
13 007 to the opinions you rendered in this case?

14 A. Yes.

01:46:42 15 If you -- these are all violations of Minnesota  
16 statute regarding the good-faith estimate.

17 Q. Specifically, if you look at the heading, "Good-Faith  
18 Estimate" in the middle of the page, and there appears to be a  
19 range underneath it of zero to \$7,650.

01:47:06 20 Do you see that?

21 A. Yes.

22 Q. Is that significant to your opinion?

23 A. Yes. This is -- this is -- typical of what Household was  
24 doing. They were giving a wide range of closing costs. So,

01:47:17 25 in this case, this customer, Mr. Cain, received a range of

1 from zero to 7,650. And they were actually charged, if you  
2 look at the next column over -- if you could highlight that,  
3 so maybe they could see it -- it's 9,591.90.

4 And Minnesota actually calculated the percent above  
01:47:41 5 the range of 25.38 percent. So, it was about 25 percent  
6 higher than they were charged than the range.

7 Q. If you could turn to the next page, the page ending "078."

8 Is there anything significant about the information  
9 on that page to your opinion?

01:48:02 10 A. Yes.

11 I mean, these good-faith estimate ranges -- and  
12 there's many pages of them, where they're showing for each  
13 customer the good-faith estimate range and, then, what they  
14 actually got charged -- and the first one is a high  
01:48:20 15 percentage, but it's a low dollar amount. But it's a hundred  
16 dollars to three hundred dollars is the range.

17 And, then, they were actually charged \$531, and it  
18 was 77 percent above the range.

19 There are some other ones in here that are large  
01:48:36 20 dollar amounts, that they were charged over the range.

21 If you look to the fourth one down, for example,  
22 Mr. Merzwski -- or something -- the range was from zero to  
23 11,250, and they were actually charged 12,945.

24 And there's just page after page of that in this  
01:49:02 25 Report of Examination.

1 Q. What about the next page, Page 079?

2 A. 079, the same thing.

3 The first one, Mr. Gray, was charged -- the range was

4 disclosed on the good-faith estimate, of from zero to 4912;

01:49:20 5 and, he was actually charged 9,349, which is a 90 percent

6 above the range.

7 And, remember, the range of closing costs must be

8 given to the applicant three days after the completed

9 application is accepted by the lender. They're supposed to

01:49:37 10 give this good-faith estimate, so that the borrower has three

11 days to consider whether they want to do the loan.

12 Q. Now, this document that they're provided is called a

13 "Good-Faith Estimate," correct?

14 A. Yes.

01:49:45 15 Q. Sometimes it's abbreviated as "GFE"?

16 A. "GFE."

17 Q. Is it your opinion that when you give somebody a range of

18 zero to \$11,000, that that's a good-faith estimate of their

19 closing costs?

01:49:57 20 A. No.

21 In fact, if, on a large percentage basis, during a

22 compliance exam that I would do as a bank examiner, if I would

23 see that the good-faith estimate was always either at the very

24 top of the range or above the range, then that would tell me

01:50:12 25 that there wasn't good faith in giving this estimate.

1 Q. I'm going to show you what has been marked as Plaintiffs'  
2 Exhibit 333 for identification.

3 (Document tendered.)

4 BY MR. DROSMAN:

01:50:44 5 Q. Do you recognize Plaintiffs' Exhibit 333 for  
6 identification?

7 A. I do.

8 Q. And what is this document?

9 A. This is Examination Report issued by the Commonwealth of  
01:50:55 10 Virginia.

11 Q. What's the date on it?

12 A. And the date is March 11th, 2002.

13 Q. And to whom did Virginia send a Report of Examination?

14 A. Mr. Schneider, the head of Policy and Compliance.

01:51:09 15 Q. That's at Household -- Mr. Schneider at Household?

16 A. Yes.

17 Q. Why do you recognize this document?

18 A. This is one of the documents that I reviewed in  
19 formulating my opinions.

01:51:18 20 MR. DROSMAN: Plaintiffs move 333 into evidence, your  
21 Honor.

22 THE COURT: It will be admitted.

23 (Plaintiffs' Exhibit No. 333 received in evidence.)

24 BY MR. DROSMAN:

01:51:25 25 Q. Now, on the first page of this document, the second to the

1 last paragraph, does that have any significance to your  
2 opinion?

3 A. The second to the last paragraph? It talks about citing  
4 previous examination violations as a previous examination.

01:51:51 5 Q. And it indicates that the violations cited in this report  
6 are similar to violations cited in previous examinations?

7 A. That's right.

8 Q. Okay.

9 Is that significant to your opinion?

01:52:00 10 A. Well, repeated violations are frowned upon by the  
11 regulators.

12 When the regulators identify violations of law, they  
13 expect that the institution will take corrective action; and,  
14 if they don't, they will consider taking enforcement

01:52:14 15 authority. And we talked about that yesterday -- doing a  
16 cease and desist order, for example; fining them; making them  
17 do refunds or even changing management.

18 Q. Why is it significant, then, that apparently this is  
19 similar to other violations for which the Commonwealth of

01:52:31 20 Virginia has already told Household about?

21 A. Because they expect compliance and they don't expect to  
22 see repeat violations of law.

23 Q. And if you turn to the page ending "741," there's a number  
24 of different loan customers listed on that page.

01:52:54 25 Starting with customer Ambrister, is that significant



1 to your opinion at all?

2 A. Yes.

3 On this one, it says, "Licensee failed to disclose  
4 points charged to borrower on the good-faith estimate

01:53:06 5 disclosure."

6 So, this is where they didn't disclose them at all.

7 And, as I said yesterday, there were many failure-to-disclose

8 issues. I only talked about the range of good-faith estimate

9 closing costs and prepayment penalties, but there were

01:53:21 10 instances that I noted where they didn't disclose the good-

11 faith estimate at all.

12 Q. What about the next customer, customer Ayers?

13 A. And on this one it says, "Licensee failed to disclose a

14 reasonable estimate of the points charged." This is the range

01:53:36 15 issue.

16 The points charged were 6,930 -- I'm sorry, 6,393;

17 and, the points disclosed, the range was -- or in this one it

18 wasn't actually a range. They actually disclosed one dollar

19 amount and they disclosed 3,522.

01:53:52 20 Q. So, they told this customer Ayers that they were going to

21 charge \$3500 in points, and how much did they actually charge?

22 A. 6,393.

23 Q. What about the other customers on that page, Barbour and

24 Blaney?

01:54:07 25 A. Well, Mr. Barbour didn't receive the good-faith estimate

1 at all; and, then, Mr. Blaney, the same thing. He was  
2 disclosed 2,380 and he was charged 4,139.

3 Q. If you turn to the next page, the page ending "742."

4 Can you tell us the significance of the information  
01:54:25 5 on that page to your opinions?

6 A. Yes. Two of the loan files that they looked at did not  
7 have any disclosure, and that was the fourth one down and the  
8 sixth one down. And, then, the rest of them were given a  
9 specific dollar amount and charged higher than that dollar  
01:54:45 10 amount, with the exception of the third one.

11 And they were given a range of four to five thousand  
12 and charged 10,519.

13 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
14 956 for identification.

15 (Document tendered.)

16 BY MR. DROSMAN:

17 Q. Do you recognize Plaintiffs' Exhibit 956?

18 A. I do.

19 Q. What is it?

01:55:32 20 A. This is the Kansas Examination Report.

21 Q. And is there a fax cover sheet on top of the Kansas --

22 A. Yes.

23 Q. And what does that show?

24 To whom was it sent?

01:55:48 25 A. The fax cover sheet is from Carla Madura to Robin Allcock.

1 The date, July 25th, 2002.

2 Q. And are these both Household employees?

3 A. Yes.

4 Q. Why do you recognize Plaintiffs' Exhibit 956?

01:56:02 5 A. This is one of the documents that I reviewed in  
6 formulating my opinions.

7 Q. And what is the date of this particular examination on  
8 Page 184?

9 A. Yeah.

01:56:22 10 The examination date is April 29th, 2002.

11 Q. And, then, if you turn to the page ending "192"; and, if  
12 you'd look at the last sentence of the first paragraph -- I'm  
13 sorry, the second paragraph -- and tell us whether that's of  
14 any significance to your opinion?

01:56:45 15 The last sentence of the --

16 A. Yes.

17 Q. -- second paragraph.

18 A. It says -- excuse me -- "HUD," which is the Housing and  
19 Urban Development -- "believes that a pattern or practice of  
01:57:02 20 quoting GFE" -- good-faith estimate -- "amounts that are lower  
21 than the corresponding amounts later shown on the settlement  
22 statements, may serve as evidence that the disclosures were  
23 not made in good faith."

24 Q. So, still on the page ending "192," tell me what that  
01:57:19 25 means.

1 A. On the sentence that I just read?

2 Q. Yeah. Tell me why that's significant.

3 A. Yeah.

4 And just what I said previously. When you see a  
01:57:29 5 pattern where the lender is disclosing the closing costs in a  
6 range; and, if all the -- especially when the range is from  
7 zero to a high number, when the closing costs are always at  
8 the top end of the range or exceeding the range, then you have  
9 to conclude that it's not good faith in giving the estimate of  
01:57:49 10 the closing costs.

11 And that's what HUD concluded here. HUD believes  
12 that a pattern or practice of quoting GFE amounts that are  
13 lower than the corresponding amounts later shown on the  
14 settlement statements may serve as evidence that the  
01:58:05 15 disclosures were not made in good faith.

16 Q. Is the next sentence of this Examination Report of any  
17 significance to your opinion?

18 A. Yes.

19 And, so, in Kansas, when they were looking at loan  
01:58:17 20 files, if -- you can highlight the group of loans below it,  
21 also.

22 It says, "The following loans have good-faith  
23 estimates with origination fees that were consistently lower  
24 than those actually charged on the settlement statement."

01:58:34 25 Q. And what is -- what do those groups of loans show?

1 A. And the next sentence is, "Estimates that are consistently  
2 lower may serve as proof that the estimates are not made in  
3 good faith."

4 And, so, these are a list of the loans that they  
01:58:48 5 articulated in the Examination Report.

6 So, for example, the first one is Mr. Barbieri. His  
7 good-faith estimate was 12,700, and he was actually charged  
8 13,194.

9 And, so, there's three ways that the regulators will  
01:59:09 10 cite violations of the good-faith estimate: Failure to give  
11 it at all; the instance that we show here, where you give it  
12 at a certain number, but you charge more than that; or, where  
13 you give it in a range, and the range is either too wide or  
14 you charge more than the range.

01:59:27 15 So, there are various iterations of why they cite  
16 violations of the good-faith estimate.

17 MR. DROSMAN: Plaintiffs move Exhibit 956 into  
18 evidence.

19 THE COURT: It will be admitted.

20 (Plaintiffs' Exhibit No. 956 received in evidence.)

21 BY MR. DROSMAN:

22 Q. I'd like to show you Plaintiffs' Exhibit 269 for  
23 identification.

24 Before we do that -- now, we've talked about some of  
01:59:49 25 the predatory lending practices in which Household engaged.

1 objectives and you're asking them to check themselves.

2 So, you're saying, "We want you to grow the loans.

3 We're going to compensate you for growing the loans. We're

4 going to train you how to grow the loans in these predatory

02:20:27 5 ways. And, at the same token, we want you to check for

6 compliance with the laws and policies of the company," and

7 they conflict. And it increases risk to the company.

8 Q. Now, in addition to the documents that we've already

9 reviewed, have you seen any customer complaints that suggest

02:20:44 10 that defendants were aware of the predatory lending practices

11 during the 1999 to 2002 time frame?

12 A. Yes. I reviewed a number of complaints.

13 Q. Let's look at a couple.

14 I'll show you a document that has been marked as

02:20:58 15 Plaintiffs' Exhibit 276 for identification.

16 (Document tendered.)

17 BY MR. DROSMAN:

18 Q. Do you recognize Plaintiffs' Exhibit 276?

19 A. I do.

02:21:30 20 Q. And what is it?

21 A. This is a complaint filed by José Nanez to the Arizona

22 Attorney General's office. And this is a document that I

23 looked at in formulating my opinions.

24 Q. What's the date of the complaint?

02:21:41 25 A. February 20th, 2002, it was signed.

1 MR. DROSMAN: Your Honor, plaintiffs move Exhibit 276  
2 into evidence.

3 MR. KAVALER: I believe this is one of those limited  
4 documents, your Honor.

02:21:56 5 THE COURT: It will be admitted.

6 MR. DROSMAN: Thank you, your Honor.

7 (Plaintiffs' Exhibit No. 276 received in evidence.)

8 BY MR. DROSMAN:

9 Q. Now, can you tell us what this is -- what this shows?

02:22:06 10 A. This is a typical complaint. When someone has a complaint  
11 against a regulated entity and they call the regulator -- and  
12 I used to have staff in Atlanta that would take all the  
13 complaints for National Bank in the southeast -- the first  
14 thing that you tell them do is, "Put it in writing."

02:22:24 15 And the purpose for that is because not only does a  
16 regulator want to be able to look at it -- the person in the  
17 office -- but they'll send it to the examiner for the scope of  
18 the next examination. But, also, they want to send it to the  
19 regulated entity, so that they can get their side of the  
02:22:41 20 story.

21 And, so, this is a typical complaint form that  
22 regulators use across the country. We used it at the OCC and  
23 in Texas -- something similar -- and it lays out what their  
24 complaint was regarding their particular loan.

02:22:58 25 Q. When you say that you'd also want to send it to the

1 regulated entity, what's that?

2 A. Well, the regulator's not going to just take this  
3 complaint and say, "Everything in here is true." They want to  
4 get the regulated entity's side of the story; and, then,  
02:23:13 5 they'll take the two and figure out if a violation has  
6 occurred or not.

7 Q. What is the regulated entity?

8 A. Well, in this case, it's Household.

9 In the case when I was in Atlanta, it would be the  
02:23:23 10 National banks in the nine southeastern states.

11 Q. So, whatever --

12 A. Whatever your jurisdiction is.

13 Q. So, whatever lender a person's complaining about would  
14 also get a copy of this complaint; is that right?

02:23:34 15 A. Yes, with a specific request from the regulator to say,  
16 "Please respond to this complaint. Tell us what your side of  
17 the story is."

18 Q. This particular complaint is filed by a man named José  
19 Nanez; is that right?

02:23:49 20 A. Yes.

21 Q. And let's take a look at the first entry he has -- or the  
22 first number on his complaint.

23 A. This person lives in Phoenix, Arizona, and he's Hispanic,  
24 he says, and his primary language is Spanish. And his  
02:24:08 25 daughter was serving as interpreter.



1                   And he says, "Our home was purchased in February,  
2 1997, and financed with a 30-year home loan at a 7 percent  
3 fixed interest rate."

4 Q. And No. 2, what's his --

02:24:25 5 A. And, then, he received a solicitation from Household with  
6 a \$5,000 check, which they later cashed; and, then, they  
7 called Household about refinancing.

8 Q. And what does No. 3 indicate?

9 A. No. 3 indicates that they went to talk to Household and:  
02:24:43 10 "Beulah Jordan, a Household sales representative, told us that  
11 Household had a special loan program under which we could  
12 consolidate all our bills into one loan; get the cash we  
13 wanted; and, save a lot of money in paying off our bills.  
14 Jordan gave us a quote for Household's biweekly payment (or EZ  
02:25:00 15 Payment Plus) plan.

16                   "Under this plan, Jordan said that if we made  
17 payments every two weeks, our loan would be paid out like a  
18 7.58 percent 30-year loan, only we would get to pay it off  
19 much sooner than 30 years.

02:25:14 20                   "She also told us that we could get single premium  
21 credit insurance in order to get the loan."

22 Q. Is there a --

23 A. I'm sorry, I misspoke.

24                   She said, "We had to get single premium credit  
02:25:28 25 insurance in order to get the loan."

1 Q. Now, is there anything significant about that complaint to  
2 your opinions in this case?

3 A. Well, what I found interesting about this complaint was,  
4 first of all, non-English speakers, if you remember the OCCs  
02:25:46 5 issuance, it talked about sometimes you have non-English  
6 speakers, and that's a particular class that can be taken  
7 advantage of.

8 And here we have the Hispanic non-English speaker,  
9 the daughter serving as an interpreter. So, that kind of  
02:26:03 10 perks your ears up for possible predatory lending.

11 And, then, of course, again, we've got the biweekly  
12 payment plan with the EZ Pay. This is in Phoenix, Arizona.

13 You know, we've seen these in different places around  
14 the country. And, you know, the effective rate presentation,  
02:26:20 15 again.

16 Q. Why do you think that this is the effective rate  
17 presentation?

18 A. Because they're talking about, "If you pay off your loan  
19 every two weeks, it will pay out like a 7.58 percent 30-year  
02:26:32 20 loan, only you pay it off much sooner."

21 The one thing that's missing here from the  
22 presentation is how many years sooner is it paid off? 18?  
23 17? Whatever.

24 And, then, they talk about single premium credit  
02:26:44 25 insurance, which is a particularly predatory product because,

1 remember, it tacks on to your 30-year loan, but it goes away  
2 in five years. And, so, that's been prohibited by a lot of  
3 states.

4 Q. So, they were told that they would have this 7.58 percent  
02:27:04 5 interest rate with their loan?

6 A. Yes.

7 Q. Turn to the next page, the page ending "765".

8 A. The first sentence says, "Respondents did not tell us  
9 their biweekly payment quote did not include transaction fees,  
02:27:21 10 property taxes or homeowners insurance on their home."

11 That's something I saw in a lot of the complaints --  
12 and we haven't really talked about that -- but when you're  
13 making a comparison of apples to apples, you want to make sure  
14 that your mortgage payment, in fact, is the same -- contains  
02:27:33 15 the same -- things as your current mortgage payment.

16 And this was a complaint that a lot of consumers had,  
17 was that Household would not include their taxes and  
18 insurance, and that's what their current one included.

19 So, when they were saying, "We'll give you a smaller  
02:27:50 20 payment," that wasn't true.

21 And, then, the second sentence says, "Respondents  
22 also did not explain that our loan included substantial loan  
23 origination fees, substantial upfront insurance premiums and  
24 an actual interest rate of 11.79 percent, a prepayment penalty  
02:28:08 25 if we tried to pay off our loan before five years."

1 Q. So, what predatory practices were employed by Household  
2 with respect to this person, José Nanez?

3 A. Well, they have the effective rate presentation given to  
4 them. They had single premium insurance being required -- and  
02:28:25 5 that's particularly predatory. They had failure to disclose  
6 the -- that the insurance and taxes were not in the new  
7 payment, as were on the old, so they could compare. And they  
8 didn't -- failure to disclose the prepayment penalty.

9 Q. And what does the last sentence of this complaint say?

02:28:46 10 A. The last sentence says, "We believe the respondents  
11 targeted us for predatory loans due to our national origin:  
12 Hispanic. As a result of their predatory lending, respondents  
13 have stripped away part of our loan equity and we are in  
14 danger of losing our home."

02:29:00 15 So, that's the equity stripping, again, that we  
16 talked about.

17 Q. Why don't I show you what's been marked as Plaintiffs'  
18 Exhibit 1096 for identification.

19 (Document tendered.)

02:29:30 20 BY MR. DROSMAN:

21 Q. Do you recognize Plaintiffs' Exhibit 1096?

22 A. I do.

23 Q. What is it?

24 A. This is a complaint from Amy Adams in New Cumberland,  
02:29:39 25 Pennsylvania. It's dated September 10th, 2002, and it's

1 addressed to Household.

2 Q. And why do you recognize 1096?

3 A. This is one of the documents that I looked at in  
4 formulating my opinions.

02:29:51 5 MR. DROSMAN: Plaintiffs offer Plaintiffs' Exhibit  
6 1096 into evidence.

7 MR. KAVALER: Your Honor, this is another one of  
8 those limited documents.

9 THE COURT: Okay.

02:29:59 10 It will be admitted.

11 MR. DROSMAN: Thank you, your Honor.

12 THE COURT: The jury has been instructed on the  
13 documents.

14 MR. KAVALER: Thank you, your Honor.

15 (Plaintiffs' Exhibit No. 1096 received in evidence.)

16 BY MR. DROSMAN:

17 Q. Let's take a look at the first page of the document. You  
18 said that this document was sent to Household.

19 What was the date it was sent to Household?

02:30:15 20 A. September 10th, 2002.

21 Q. If you look at the second paragraph of the letter, what --

22 A. Now, this is a complaint that's not on the complaint form,  
23 that -- she actually wrote this letter herself.

24 Q. And if you look at the last page of the letter -- the page

02:30:34 25 ending "448" -- why don't we look at the page ending "448" of

1 the letter? It's the third page in.

2 Can you tell me: Did she it to anybody in particular  
3 at Household?

4 A. Yes. She sent it to Mr. Aldinger, Mr. Gilmer,  
02:30:52 5 Mr. Schoenholz and Mr. Stroom.

6 Q. She cc'd all those people?

7 A. Yes.

8 Q. Why don't we take a look again at the first page of 1096,  
9 the second paragraph, and tell us if that's of any  
02:31:09 10 significance to your opinion.

11 A. Yes.

12 This is a case where she questioned the prepayment

13 penalty at the time of the closing. And she says, "The

14 salesman who was handling our refinance very nonchalantly

02:31:23 15 glossed over this issue and communicated to my husband and me

16 that this would typically be about a \$3,000 fee, given our 6

17 percent interest rate, which really turned out to be 9.49

18 percent -- more on this later -- and that these fees can be

19 waived for job-related relocations. As we are now facing

02:31:39 20 selling our house due to relocation, I have since found this

21 not to be the case."

22 Q. What does that mean?

23 A. Well, this is the failure to disclose what's going on with  
24 the prepayment penalty.

02:31:51 25 Here's someone that sees the prepayment penalty,

1 asked about it and they say, "We can waive it." And this  
2 was -- I saw this in other complaints -- this very action.

3 Q. Why don't we take a look at the next page, the page ending  
4 "447."

02:32:10 5 And if you look at the first non-indented paragraph,  
6 it begins, "To add insult to injury," can you tell us if  
7 there's any significance of that information to your opinion?

8 A. Yes.

9 And this says, "To add insult to injury, the salesman  
02:32:26 10 who sold us this deal capitalized on the fact that we were  
11 receiving a 6 percent interest rate by participating in the  
12 biweekly EZ Pay Program.

13 "When I questioned the 9.49 percent rate listed on  
14 our contract at the signing, I was told that was the rate for  
02:32:40 15 people not participating in the biweekly payment program.

16 When I asked where the 6 percent interest rate was quoted in  
17 the agreement, I was told it was assumed in the EZ Pay  
18 Program, so that was why I wouldn't find it in the contract."

19 So, this is the whole effective rate presentation,  
02:32:58 20 where the customers were being deceived into thinking it was  
21 lower rate than they were actually getting.

22 Here was a customer questioning, you know: "Why is  
23 this different than my contract rate," and the employee's  
24 telling them from Pennsylvania that, "Don't worry. That's for  
02:33:16 25 people that aren't participating in this biweekly payment

1 program."

2 Q. Then it looks like there's a series of bullet points on  
3 that page and, then, another paragraph underneath that.

4 Can you take a look at that?

02:33:27 5 A. Yes.

6 Q. It begins --

7 A. "I am responsible -- "

8 Q. "I am a responsible consumer."

9 A. "I'm a responsible consumer with good credit who was duped  
02:33:38 10 through your slick sales techniques into refinancing a 7  
11 percent FHA mortgage to your 9.49 percent unconventional loan,  
12 losing \$12,000 equity I had built up in my home and now I am  
13 facing being further penalized for selling my home to support  
14 a job move."

02:33:57 15 Q. What significance is that to your opinion?

16 A. So, she had a 7 percent mortgage. She was told that she  
17 could get a 6 percent interest rate through the biweekly  
18 payment program; and, in fact, it turns out to be 9.49  
19 percent. And that's a typical --

02:34:14 20 Q. She went from a 7 percent loan to a 9-point-something  
21 percent loan?

22 A. Yes, 9.49 percent.

23 Q. And why does she say she did that?

24 Why would anybody go from a lower rate loan to a  
02:34:25 25 higher rate loan?



1 A. You wouldn't do it.

2 Plus, she had an FHA mortgage and now she has an  
3 unconventional. And the FHA would be more attractive.

4 So -- well, you wouldn't do it. You wouldn't

02:34:37 5 willingly pay more money on your loan. I mean, for, what?

6 What would be the point of that?

7 Q. Does this support your opinion that this woman, Ms. Adams,  
8 was deceived by Household?

9 A. Yes.

02:34:48 10 Q. What predatory lending practices do you see reflected in  
11 this complaint?

12 A. Well, the non-disclosure or the -- discussing that the  
13 prepayment penalty would be waived, that's one. And, then,  
14 the effective rate presentation would be two. Equity

02:35:03 15 stripping would be three.

16 Q. And did Ms. Adams attach anything to this complaint that  
17 she sent to Mr. Aldinger and Mr. Gilmer and Mr. Schoenholz?

18 A. Yes.

19 She attached a newspaper article -- actually, a

02:35:17 20 magazine article -- from Forbes entitled, "Home Wrecker" and  
21 it's dated September 2nd, 2002.

22 Q. Have you reviewed this article?

23 A. Yes.

24 I actually reviewed this article separate from this

02:35:33 25 complaint because I was taking the -- I was canvassing

1 everything that was out there regarding predatory lending  
2 during the 1999/2002 time frame. And I came across this  
3 myself.

4 But she goes through and highlights some things in  
02:35:44 5 here that are similar to what I found in looking at this file.

6 Q. And the first thing that she highlights in the "Home  
7 Wrecker" article in Forbes Magazine, what's that?

8 A. Well, she's talking about a William Meyers, a borrower,  
9 paid off his credit card debt by refinancing his loan with  
02:36:07 10 Household.

11 "He says his new lender, Household International,  
12 charged him 11 percent interest, not the 7.2 percent interest  
13 as promised. Then it added 14,400 in fees and insurance to  
14 his \$80,100 loan, and stuck him with a \$15,000 second mortgage  
02:36:23 15 at 20 percent. He didn't notice it until the first bill," a  
16 lot of the issues we've been talking about yesterday and  
17 today.

18 Q. What about, in particular, in Ms. Adams' complaint? Is  
19 there any similarities between Ms. Adams' complaint and this  
02:36:37 20 information in Forbes Magazine; specifically, with the 11  
21 percent interest --

22 A. Yeah.

23 Q. -- promised?

24 A. Right.

02:36:44 25 Q. I'm sorry, the 7.25 percent interest promised, when it's

1 really an 11 percent interest rate?

2 A. Yes.

3 This was the effective rate presentation, where  
4 they're trying to make their rates look more competitive.

02:36:56 5 And, so, they're saying, "If you pay half of your mortgage  
6 every other week, your rate's going to be 7.2," but really it  
7 was 11 percent.

8 Q. Let's look at the next spot. I think it's the fourth  
9 paragraph in the article that Ms. Meyers highlighted,  
02:37:11 10 apparently to show similarities.

11 Can you tell us what that says?

12 A. It's the one up above that.

13 Q. The fourth paragraph down?

14 A. Yeah.

02:37:19 15 There you go.

16 Now, this is what happened -- this is what she claims  
17 happened -- to her. "Household is under fire for myriad  
18 tactics. In addition to the bait-and-switch on interest  
19 rates, it charges high prepayment penalties and service fees.  
02:37:36 20 It lures clients with proposals showing monthly savings that,  
21 at times, fail to materialize."

22 So, she's talking about the high -- or this article  
23 is talking about the high -- prepayment penalties; and, then,  
24 the effective rate presentation, which she talks about, too.

02:37:54 25 Q. The next spot in the article -- the Forbes article -- that

1 Ms. Adams highlighted, can you tell us about that?

2 A. Actually, the last part of that sentence also is things  
3 that we were talking about today, too, if you'd go back to  
4 that.

02:38:08 5 And it says, "And it structures mortgages to include  
6 last-minute second loans that make it difficult for borrowers  
7 to defect and get refinancing elsewhere. Household agents  
8 call it 'Closing the Back Door.'"

9 So, that's -- we've been talking about closing the  
02:38:21 10 back door here.

11 Q. Did you call it "Blocking the Back Door"?

12 A. "Blocking the Back Door," yes.

13 Q. Is there a difference between "Blocking the Back Door" and  
14 "Closing the Back Door"?

02:38:29 15 A. No, it's the same thing.

16 Q. Take a look at the next paragraph that Ms. Adams  
17 highlighted.

18 A. In this -- this -- is something else that we've been  
19 talking about: "But Household's questionable practices seem  
02:38:40 20 to be in far wider use than that. For one thing, Meyers lives  
21 in Dayton, Ohio, not Bellingham, Washington."

22 And this refers to the paragraph above which says,  
23 "Household says such complaints represent a minuscule fraction  
24 of its 100 billion in outstanding loans."

02:38:59 25 It also says, "Gripes about the interest-rate-trick

1 that fooled Meyers are largely confined to its office in  
2 Bellingham, Washington."

3 Q. So, that's the few-bad-apple argument?

4 A. The rogue branch, rogue employee.

02:39:10 5 If you go down, then -- going back to what's  
6 highlighted here -- "The Household pitch was so effective, it  
7 even lured customers with good credit, including Meyers.  
8 Customers and some ex-employees tell of the same interest rate  
9 trick in a dozen states."

02:39:24 10 So, Ms. Adams has good credit and, so, she's  
11 highlighting this because it says, "Even some people with good  
12 credit are being lured by this."

13 Q. The next sentence, I think, is a quote from a regulator in  
14 Minnesota. What does he have to say about the few-bad-apple

02:39:44 15 argument that Household made?

16 A. The Commissioner in Minnesota -- the Commerce Commissioner  
17 -- says, "Household encourages -- or at least tolerates --  
18 these abuses. It's not just an occasional rogue loan officer  
19 or rogue office. It has to do with corporate culture."

02:40:05 20 Q. Is that consistent with or different from the conclusions  
21 you drew in this case?

22 A. No, it's consistent.

23 Q. Okay.

24 Let's look at the next page, the page ending "450."

02:40:18 25 And, then, it looks like Ms. Adams has highlighted

1 some more paragraphs from the Forbes article on that page.

2 Let's talk about the first one.

3 A. Okay.

4 This one says, "Household also began EZ Pay Plus, a  
02:40:32 5 program under which many borrowers, like Meyers, were lured  
6 with lower interest rates, but were really charged higher  
7 ones. EZ Pay Plus also quotes Karina Galindo, a Teacher's  
8 Assistant in Phoenix.

9 "In April, 2000, Household offered to replace her  
02:40:49 10 \$67,300 mortgage -- a Chase Manhattan Bank loan at 8.5  
11 percent -- with a bigger, but seemingly cheaper one: \$86,300  
12 at an effective rate of 7.6 percent, enough to pay off the old  
13 mortgage, and a \$12,200 personal loan she was paying off at  
14 15.7 percent. At least this is how she read a worksheet from  
02:41:11 15 a Household loan officer.

16 "Galindo signed up. Four days later, she says she  
17 got nervous and reviewed the 80-page agreement, signed and  
18 initialed in two dozen places, and spotted the real interest  
19 rate: 12.2 percent.

02:41:25 20 "How did it happen? Galindo says her agent, José  
21 Avila, handed her the worksheet entitled 'Biweekly Payment  
22 Quote" with this sentence at the bottom: 'If I can put  
23 together a loan that pays out like a 7.579 percent a year  
24 loan, but has a total term of 18.63 years, would you be  
02:41:45 25 interested?"

1 Q. Let me stop you there.

2 That language that you just read, do you recognize  
3 that language?

4 A. That's from the Dennis Hueman video.

02:41:55 5 Q. Okay.

6 And what is this article talking about? What's the  
7 passage you just read?

8 A. This is the effective rate presentation on how Household,  
9 in trying to make their mortgages look for competitive, would  
02:42:09 10 do this effective rate presentation and lure these people in,  
11 thinking they were going to get a lower interest rate. Then  
12 they find out that they have, in fact, a higher interest rate.

13 And here, you know, there's more interest and fees  
14 and premiums tacked on. So, it strips out your equity; it  
02:42:25 15 keeps you there because no one else will refinance you, so  
16 that the back door is blocked.

17 So, this paragraph goes to a lot of the things that  
18 we've been talking about today.

19 Q. Now, in your evaluation of Household's lending practices,  
02:42:40 20 did you also review Reports of Examinations written by state  
21 and federal regulators?

22 A. I did.

23 Q. Why did you review Reports of Examinations by regulators?

24 A. Well, I wanted to see what the regulators thought. I  
02:42:55 25 looked at the documentation and I wanted to see if they -- if

1 their findings supported my opinions.

2 Q. Which regulators issued Reports of Examination that you  
3 reviewed?

4 A. I reviewed the OTS reports for the Federal Thrift that  
02:43:11 5 Household had -- Household Bank FSB -- and, then, I reviewed  
6 the State Examination Reports from the finance company.

7 And I also reviewed -- FDIC did a separate exam and,  
8 then, I think they did a joint one with the OTS.

9 So, I reviewed any of the examination reports that  
02:43:35 10 were available.

11 Q. And how many State Examination Reports did you review  
12 approximately?

13 A. I would say maybe 30.

14 I'm not sure. I know at one point I reviewed some  
02:43:46 15 and, then, had to send some back. So, I'm not exactly sure  
16 how many. Maybe 30.

17 Q. And from what different states did these Examination  
18 Reports come?

19 A. New Jersey, Virginia, Kansas, Washington, Minnesota -- all  
02:44:03 20 over the country.

21 Q. Other states you haven't mentioned?

22 A. Yes, uh-huh.

23 Q. Why don't I show you what's been marked as Plaintiffs'  
24 Exhibit 1205 for identification.

25 (Document tendered.)



1 BY MR. DROSMAN:

2 Q. Do you recognize Plaintiffs' Exhibit 1205?

3 A. I do.

4 Q. And what is 1205?

02:44:47 5 A. This is the Special Compliance Examination that was  
6 performed by the Office of Thrift Supervision, which is the  
7 regulator of the Federal Thrift, dated January 16th, 2003.

8 Q. And did this examination also examine the finance company  
9 at Household?

02:45:06 10 A. Yes.

11 Q. So, it examined both the Thrift and the Finance Company?

12 A. That's right.

13 Q. And why do you recognize this document?

14 A. This was one of the documents that I reviewed in  
02:45:16 15 formulating my opinions.

16 Q. And who authored the document?

17 A. The Office of Thrift Supervision.

18 MR. DROSMAN: Plaintiffs offer Exhibit 1205 into  
19 evidence.

02:45:27 20 THE COURT: It will be admitted.

21 (Plaintiffs' Exhibit 1205 received in evidence.)

22 BY MR. DROSMAN:

23 Q. So, why don't we take a look at the first page. It  
24 indicates that the subject concerns both the bank and the

02:45:39 25 finance company; is that right?

1 A. Yes.

2 If you look at the bottom, it says, "Household Bank,  
3 FSB," that's the Federal Thrift, and, then, "Household Finance  
4 Corporation."

02:45:47 5 This is a Special Compliance Exam and the federal  
6 regulators have the authority to go beyond the entity that  
7 they regulate, if it's affiliated with the regulate -- the  
8 entity that they regulate.

9 And the OTS decided to do that in this case because  
02:46:03 10 of concerns that they had.

11 Q. So, even though they wouldn't ordinarily regulate the  
12 finance company, they decided to do a special examination of  
13 Household Finance Company in this case?

14 A. That's right.

02:46:14 15 And we used to do that at the OCC if we were worried  
16 about an affiliate. We would go on and examine that  
17 affiliate.

18 Q. Go ahead, if you would, and turn to the page ending "063."

19 It looks like the heading on that page is, "Special  
02:46:31 20 Compliance Examination."

21 And, then, the date is June 3rd, 2002?

22 A. Yes.

23 Q. Does the first sentence of that document have any  
24 significance to your opinion?

02:46:41 25 A. "A Special Compliance Examination of Household Bank FSB

1 commenced on June 3rd, 2002"? That sentence?

2 Q. Right.

3 Does this tell you when the actual examination took  
4 place?

02:46:54 5 A. Yes.

6 Q. When was that?

7 A. June 3rd, 2002.

8 Q. So, in the middle of 2002, they performed this  
9 examination?

02:47:01 10 A. Yes.

11 Q. And when did they issue their report, then?

12 Does the first page indicate January 16th, 2003?

13 A. Yes, January 16th, 2003.

14 Q. Okay.

02:47:20 15 If you could go down to the bottom of the page ending  
16 "063," where it talks about the "overall findings for the  
17 exam," and look at the first arrow there.

18 A. Yes.

19 And, first, the second sentence of the first  
02:47:33 20 paragraph at the top of the page says, "The focus of this  
21 Special Examination was a variety of predatory lending and  
22 insurance sales issues."

23 And, so, they're articulating what the scope of their  
24 Special Compliance Examination was.

02:47:49 25 Q. And what was the scope?

1 A. The scope is: "The focus of this Special Examination was  
2 a variety of predatory lending and insurance sales issues."

3 Q. Okay.

4 If you take a look, then, at the bottom of that first  
02:48:02 5 page, under, "Overall Examination Summary and Findings."

6 A. Okay.

7 So, the first one is: "There is evidence of  
8 insurance packing. HFC" -- and "HB" is Household Bank. So,  
9 that's the Federal Thrift.

02:48:16 10 "HFC/HB sold insurance products, personal property,  
11 disability, life and involuntary unemployment to a very high  
12 percentage of borrowers for both real estate and non-real  
13 estate-secured lending. There -- " I think that's the wrong  
14 word. It should be "T-h-e-i-r."

02:48:36 15 But, anyway, "There most egregious issue is sales of  
16 personal property insurance for, essentially, unsecured  
17 non-real estate loans."

18 Q. Does that text that you just read have any significance to  
19 your opinions in this case?

02:48:47 20 A. Well, yes.

21 My conclusion is that Household engaged in insurance  
22 packing. And this is what the OTS is saying, also.

23 Q. Okay.

24 If you'd turn to the page ending "065."

02:49:02 25 It looks like the second arrow on that page indicates

1 that, "Some of the most significant concerns"; is that right?

2 A. (No response.)

3 Q. The second arrow on Page --

4 A. Yes.

02:49:14 5 Q. -- 065?

6 A. And, then, they're articulated here.

7 Q. So, let's talk about some of the most significant concerns

8 that the federal regulator -- in this case, the Office of

9 Thrift Supervision -- found.

02:49:28 10 A. Okay -- excuse me.

11 So, the first box -- they have little boxes on this

12 side -- "Many cases of multiple -- " the first box there

13 (indicating) -- "Many cases of multiple and frequent

14 refinancing/debt consolidations in short time frames."

02:49:46 15 So, this would be loan flipping.

16 Q. What's the next box or bullet that they have indicated?

17 A. "Routine payment of high levels of loan fees associated  
18 with frequent refinancings.

19 "In many instances, refinances offered marginal

02:50:02 20 benefit."

21 That would be to the borrower. This is another issue

22 about loan flipping and charging the high level of loan fees.

23 Q. This talks about -- the next one -- the next bullet on

24 that page -- what is that?

02:50:16 25 A. This is on insurance. It says, "Aggressive sales

1 practices, with frequent sales of single payment credit life  
2 insurance."

3 And, remember, that was the one that got tacked onto  
4 your loan for 30 years, but it ran out after five years, in  
02:50:31 5 terms of the term of it. And you were still paying for the  
6 next 25.

7 It says, "Also, frequent sales of personal property  
8 insurance, involuntary unemployment insurance and disability  
9 insurance. Loans commonly rolled into new or additional loans  
02:50:44 10 with credit insurance routinely included. The credit life  
11 insurance was typically for a maximum of five years, with a  
12 single payment fee collected up front."

13 And, of course, tacked on the loan and amortized over  
14 the 30 years.

02:50:58 15 Q. And these are all OTS' significant concerns; is that  
16 right?

17 A. Yes.

18 Q. What's the next significant concern that the OTS had?

19 A. The next one is: "High Loan to Value Lending. Household  
02:51:07 20 offered loans well in excess of a hundred percent of the  
21 underlying collateral."

22 And that's, of course, equity stripping, where the  
23 value of your house is a hundred thousand and they would lend  
24 up to a hundred percent of the value of your house.

02:51:23 25 So, you would have no equity when you walked out of

1 there.

2 Q. And is that a predatory lending practice?

3 A. Yes.

4 Q. Is that also known as equity stripping?

02:51:33 5 A. Equity stripping.

6 Q. What's the next significant concern that the OTS had?

7 A. The next one is: "Cases of significantly declining home  
8 equity due to increasing consumer debt."

9 And that's, basically, equity stripping, again.

02:51:47 10 Q. Tell us what that means.

11 A. It means that if you are consolidating your loans or if  
12 you go to Household and you refinance your loan and they add  
13 on points and fees and premiums to your loan, and you walk out  
14 of there with a hundred percent loan to value, you've,

02:52:05 15 essentially, stripped away any equity that you had in your  
16 house.

17 Q. Turn to the next page -- the page ending "066" -- and look  
18 at -- there's a "Significant Concern" in the box at the top of  
19 the page?

02:52:17 20 A. "Use of Household's EZ Pay Plus electronic payment product  
21 through Fort Knox National Bank as a means of misinforming  
22 applicants about the realities/benefits of increased biweekly  
23 payments."

24 This is the effective rate presentation.

02:52:38 25 Q. And that was a significant concern of the OTS?

1 A. Yes.

2 Q. If you'd turn to the page ending "091," it looks like that  
3 page indicates, "Examination Summary and Findings"; and, then,  
4 there's some summary of the findings that were provided to

02:52:57 5 HFC, the finance company.

6 Can you look at the first arrow on Page 091 and tell  
7 me whether that's significant to your opinion?

8 A. It says, "There is evidence of insurance packing. This is  
9 based on loan file reviews, as well as analysis of data

02:53:14 10 relating to insurance sales. HFC sold insurance products,

11 personal property, disability, life and involuntary

12 unemployment at its HFC/Beneficial offices to a very high

13 percentage of eligible borrowers for both real estate and

14 non-real estate secured lending. There is a major concern

02:53:33 15 with the practice of selling personal property insurance on

16 what are, essentially, unsecured loans."

17 Q. Why is that significant to your opinion?

18 A. It just -- it supports my opinion that they engaged in

19 insurance packing.

02:53:47 20 Q. If you turn to the page ending "093," on the third arrow

21 on that page, if you can tell me whether that's significant to

22 your opinion?

23 A. Yes. This concerns the good-faith estimate issues that

24 we've been talking about.

02:54:04 25 "A review of various loan files found that good-faith



1 estimates often disclosed a very wide range of costs when  
2 estimating the potential charges to the borrower. The use of  
3 such wide ranges easily led to confusion for the applicants.  
4 The examiners believe that the regular use of wide ranges for  
02:54:21 5 loan cost estimates is an unfair and deceptive practice. A  
6 recent policy change at Household should correct this  
7 situation."

8 Q. Okay.

9 And why is that significant to your opinion?

02:54:32 10 A. Because this supports my opinions that Household used the  
11 wide range to mislead the borrowers and, then, charged them at  
12 the high end of the range or above the range.

13 Q. If you'd turn to the page ending "095," it looks like, in  
14 this case, the federal regulators are listing a number of  
02:54:59 15 different civil complaints and state investigations, and  
16 they're set forth in the arrows?

17 A. Yes.

18 Q. Do those -- are those relevant to your opinions?

19 A. Yes. And these are many of the same things that we've  
02:55:10 20 been talking about here.

21 Q. Let's look at the first arrow.

22 A. "Many cases of multiple and frequent refinancings, debt  
23 consolidations in short time frames."

24 That's loan flipping.

02:55:21 25 Q. And what are all these things?

1 A. These are concerns that various civil complaints and state  
2 regulators -- they're summarizing what their concerns are.

3 Q. So, the OTS has looked at the various complaints in the  
4 state investigations and they're sort of summarizing what they  
02:55:39 5 found?

6 A. Yes.

7 Q. And what's the next thing they summarize?

8 A. "Routine payment of high levels of loan fees associated  
9 with frequent refinancings."

02:55:47 10 Q. What is that?

11 A. And that's where you pack on points and fees and insurance  
12 premiums every time you flip the loan.

13 So, it's what we've been talking about today: Equity  
14 stripping and loan flipping, insurance packing.

02:56:04 15 Q. So, the frequent refinancings, that's the loan flipping  
16 that you've been speaking --

17 A. Loan flipping, yes.

18 Q. What's the next arrow on the page?

19 A. "Borrowers paying a high price for frequent refinancings.

02:56:16 20 In many instances, refinances offered marginal or  
21 insignificant benefit."

22 And that's the loan flipping; and, every time you  
23 flip it, adding on -- or every time Household would flip the  
24 loan, they would add on -- insurance, points and high fees.

02:56:29 25 Q. And was that -- did that benefit the borrower -- these

1 frequent refinancings?

2 A. No.

3 Q. What's the next arrow?

4 A. "Aggressive Sales Practices."

02:56:41 5 Q. And the next one?

6 A. "Loans commonly rolled into new or additional loans and  
7 credit insurance routinely included with the loan product."

8 So, this would be insurance packing every time the  
9 loan was flipped.

02:56:52 10 Q. And the next concern that the federal regulators found  
11 when they were looking at all the different state  
12 investigations, what's that?

13 A. This is: "Frequent sales of single payment credit life  
14 insurance. Also, frequent sales of personal property  
02:57:07 15 insurance, unemployment insurance and disability insurance."

16 So, this is the egregious practice of selling that  
17 single payment credit life insurance, which many states have  
18 outlawed; and, then, insurance packing.

19 Q. And the next arrow?

02:57:21 20 A. "The credit life insurance was typically for a maximum of  
21 five years, with a single payment collected upfront."

22 That's what they said before of what they found; and,  
23 of course, that's the egregious part of this product.

24 Q. The next summarized concern from all the state

02:57:36 25 investigations, what is that?

1 A. "High Loan to Value Lending. Household offered loans well  
2 in excess of a hundred percent of the underlying collateral."

3 Of course, we talked about that -- stripping away the  
4 equity. Even -- they even offered one that went above a  
02:57:51 5 hundred percent.

6 Q. And, then, the next summarized concern from all the state  
7 investigations?

8 A. "Cases of declining home equity because of increasing  
9 consumer debt."

02:58:05 10 That's equity stripping.

11 Q. What is that?

12 A. Pulling out the equity because of adding on high points in  
13 insurance premiums and other closing costs.

14 Q. And, then, if you look at -- we'll skip a few of them.

02:58:23 15 If you look at the bottom arrow -- I know there's  
16 many -- what is that bottom arrow:

17 A. This is that good-faith estimate issue: "Use of wide  
18 ranges on good-faith estimate disclosures."

19 This practice was determined to be an unfair and  
02:58:37 20 deceptive practice.

21 Q. And the "GFE" in that sentence refers to, what?

22 A. "Good-faith estimate."

23 Q. And the state investigations found that --

24 A. That's what they concluded, yes.

02:58:45 25 Q. If you could turn to the page ending "120."

1                   And it looks like there's a heading, No. 5:  
2   "Examiner Review of Real Estate Secured Lending: High Loan  
3   Fees."

4                   Can you tell me what the last paragraph on that page  
02:59:07 5   -- "120" -- shows?

6   A. I'm sorry, I'm on the wrong place. Let me get it.

7   Q. "120."

8   A. Can you tell me what -- where -- you're directing me?

9   I --

02:59:22 10   Q. Sure. If you'd look at the page ending "120"?

11   A. Okay.

12   Q. And, then, there's a heading on that page: "Examiner  
13   Review of Real Estate Secured Lending"?

14   A. Oh, okay.

02:59:31 15   Q. "High Loan Fees."

16   A. Yes.

17   Q. Is the last paragraph on that page of any significance to  
18   your opinion?

19   A. The last paragraph says, "The distinguishable pattern from  
02:59:48 20   this sample is the high number of loans, 15 of 21 -- or 71.4  
21   percent -- with origination fees of 7 percent or more. Loan  
22   fees of 7 percent are considered extremely high and are  
23   indicative of a high fee structure."

24   Q. Can you tell us what because that means?

03:00:05 25   A. Yes.

1 Now, we talked about Household charging discount  
2 points, and that would normally be a negotiation between the  
3 borrower and the lender, and the borrower may decide to pay  
4 one discount point to lower the discount rate, say, 25 basis  
03:00:24 5 points.

6 Household would charge -- the majority of their loans  
7 were charged at the high end of what state law would allow.  
8 Usually, either 5 percent or 7 to 7-and-a-half percent. And  
9 what the regulators are saying here -- the OTS is saying  
03:00:39 10 here -- is that they consider loan fees of 7 percent to be  
11 extremely high and indicative of a high fee structure.

12 So, just to put it in perspective.

13 Q. So, if you had loan fees of 7 percent on a \$100,000 loan,  
14 what would your fee be?

03:00:56 15 A. \$7,000.

16 So, a discount point is one percent of the loan  
17 balance.

18 Q. And the regulators considered that to be, in their words,  
19 extremely high?

03:01:06 20 A. Extremely high.

21 Q. If you turn to the next page, the page ending "121," take  
22 a look at the top -- the heading at the top.

23 No. 6 is: "Deceptive Acts." Do you see that?

24 A. Yes.

03:01:20 25 Q. And, then, if you look down into that paragraph under

1 "Deceptive Acts," the second paragraph -- the second sentence  
2 of that paragraph -- is that of any significance to your  
3 opinion?

4 A. The second sentence says, "However, examiners believe that  
03:01:38 5 HFC has engaged in unfair and deceptive acts, as described in  
6 Section 3, relating to insurance sales."

7 Q. What about the next sentence?

8 A. "Also, although not a technical RESPA violation, the  
9 examiners believe that the wide ranges for good-faith  
03:01:54 10 estimates was also a deceptive act."

11 Q. Is this significant -- this information significant -- to  
12 your opinions in this case?

13 A. Yes.

14 Q. How?

03:02:01 15 A. It supports my opinions that not only were they engaged in  
16 insurance packing; but, also, that they -- the range, the wide  
17 range that they -- gave borrowers, and, then, charged either  
18 at the high end of the range or in excess of the range --  
19 which would be a violation of RESPA -- supports my opinions.

03:02:22 20 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
21 1333 for identification.

22 (Document tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Plaintiffs' Exhibit 1333?

03:02:57 25 A. I do.

1 Q. What is it?

2 A. This is a letter from the Washington Department of  
3 Financial Institutions to Household dated May 17th, 2002.

4 Q. Why do you recognize it?

03:03:07 5 A. This is one of the documents that I looked at in  
6 formulating my opinions.

7 MR. DROSMAN: Plaintiffs move Exhibit 1333 into  
8 evidence.

9 THE COURT: It will be admitted.

10 (Plaintiffs' Exhibit No. 1333 received in evidence.)

11 BY MR. DROSMAN:

12 Q. Let's take a look at this document.

13 To whom was the letter addressed?

14 A. To Tom Schneider.

03:03:27 15 Q. And what's the subject of the letter?

16 A. "Expanded Report of Examination."

17 Q. And who is Mr. Schneider?

18 A. He is in charge of Policy and Compliance for Household.

19 Q. What is Policy and Compliance?

03:03:38 20 A. My understanding was that he -- his area coordinated  
21 Household's activities with the regulators.

22 And, then, it also at one point he would look at some  
23 of the complaints from the Better Business Bureau and the AG's  
24 office and things like that.

03:03:55 25 Q. And, then, if you look at the second paragraph of the



1 letter, is that significant to your opinion?

2 A. Yes.

3 Q. Tell me why.

4 A. It says, "This report identifies significant patterns and  
03:04:11 5 practices that the Department finds unacceptable. The report  
6 also carries serious allegations of wrongdoing with Washington  
7 consumers.

8 "Contrary to Household's prior explanations, the  
9 Department has found that the patterns, practices and alleged  
03:04:25 10 harmful acts are not isolated to an individual office in  
11 Washington.

12 "Further, the patterns and practices discussed in the  
13 report appear to occur from Household offices across the  
14 country."

03:04:38 15 Q. This paragraph that you just read, is this relevant to  
16 your conclusion that this wasn't one or two bad apples at  
17 Household?

18 A. Yes. It supports my opinion that Household engaged in  
19 predatory lending practices company-wide, nation-wide, and it  
03:04:55 20 was a systemic practice -- a systemic issue.

21 Q. Now, the subject here is: "Expanded Report of  
22 Investigation" -- or "Examination," I apologize.

23 And the letter indicates that there's an enclosure.

24 Did you review the expanded Report of Examination  
03:05:11 25 from the Department of Financial Institutions at Washington?

1 A. Yes.

2 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
3 290 for identification.

4 (Document tendered.)

03:05:32 5 THE COURT: I think that probably at this point,  
6 before we get into the new exhibit, it might be a good time to  
7 take our afternoon break. We're five minutes past 3:00  
8 o'clock. So, we'll do that at this time.

9 We will take a 20-minute break, ladies and gentlemen,  
03:05:43 10 and resume at 25 after.

11 (Jury out.)

12 THE COURT: Before we break, I think it's a good time  
13 to ask if the attorneys have any suggestions with respect to  
14 the outstanding timing issues with the jurors, and the one  
03:06:37 15 question regarding training logs, et cetera.

16 MR. DOWD: I think, your Honor, it sounded like the  
17 Court was inclined to break a little early today, anyway. But  
18 if we're going to break earlier for the jurors, then I think  
19 it would make sense to start earlier.

03:06:57 20 And I think one time, when you were speaking to the  
21 jury this morning, you said, "We're going to start at 10:30."  
22 I think you just misspoke.

23 THE COURT: I misspoke. It should have been "10:00  
24 o'clock," if I said that.

03:07:06 25 MR. DOWD: I understood that. I just think we should

1 based upon that, you must make your determination.

2 Proceed.

3 MR. DROSMAN: Thank you, your Honor.

4 BY MR. DROSMAN:

03:37:27 5 Q. When we broke, I had provided you with Plaintiffs' Exhibit  
6 290 for identification.

7 Do you recognize Plaintiffs' Exhibit 290?

8 A. I do.

9 Q. And what is this?

03:37:37 10 A. This is the Washington Department of Financial  
11 Institutions expanded report of examination, dated as of April  
12 30, 2002.

13 Q. We saw a cover letter a moment ago, Plaintiffs' Exhibit  
14 1333. Is this the report of -- expanded report of examination

03:38:00 15 that the cover letter, 1333, referred to?

16 A. Yes.

17 Q. And why do you recognize Plaintiffs' Exhibit 290?

18 A. This was a document that I considered in formulating my  
19 opinion.

03:38:14 20 MR. DROSMAN: Plaintiffs offer Exhibit 290 into  
21 evidence.

22 MR. KAVALER: This is another one of those limited  
23 documents, your Honor.

24 MR. DROSMAN: Actually it isn't, your Honor. There's  
03:38:22 25 no objection to this document, your Honor.

1 MR. KAVALER: I believe it's covered by limiting  
2 instruction No. 2, your Honor.

3 THE COURT: Let's take a look.

4 MR. DROSMAN: Withdrawn, your Honor. There's another  
03:38:43 5 exhibit that's identical to this to which there was no  
6 objection. So that's my mistake. This one, however, has a  
7 limiting instruction.

8 THE COURT: Very well. The jury has been instructed  
9 on the limited use of evidence as to certain documents. The  
03:38:55 10 document will be admitted with that instruction.

11 BY MR. DROSMAN:

12 Q. Now, let's look at the first page of Exhibit 290.

13 What is an expanded report of investigation?

14 A. Well, in this case, instead of just doing a regular  
03:39:14 15 examination, they expanded it to take into consideration  
16 certain things that they were interested in looking at.

17 Q. And what was the date that they conducted this  
18 examination?

19 A. It says it's dated April 30, 2002.

03:39:29 20 Q. And if you turn to -- we'll take a look inside the  
21 expanded report of examination. If you take a look at the  
22 page ending 668, the first paragraph on that page.

23 Is that significant to your opinions in this case?

24 A. Yes. Is it the first -- my copy doesn't show -- the first  
03:40:01 25 full paragraph starts with, While the misrepresentation.

1 Q. Yes, the first partial paragraph.

2 A. Okay.

3 Q. Is that significant to your opinion in this case?

4 A. Yes.

03:40:16 5 Q. Can you tell us why?

6 A. Well, it says -- let's see if we can --

7 Q. The sentence there begins, After reviewing the complaints.

8 A. Yeah, I was just looking at the previous sentence here.

9 After reviewing the complaints, HFC's responses to  
03:40:39 10 the complaints and documents relative to the complaints, the  
11 Department believes that HFC representatives have employed  
12 sales tactics intended to mislead, misdirect or confuse the  
13 borrower. As discussed below, this belief is supported by the  
14 Department's own test originations of loans at three different  
03:40:56 15 HFC branches in Washington.

16 Q. What about the first sentence that you read, why is that  
17 supportive of your opinion in this case?

18 A. After reviewing the complaints, because the -- my opinions  
19 go to misleading, misdirecting or confusing the borrower; and  
03:41:17 20 so this would support my opinions.

21 Q. And did the Washington Department of Financial  
22 Institutions come to that same conclusion?

23 A. Yes.

24 Q. What about the second sentence that you read?

03:41:27 25 A. Well, the second sentence is very unusual. The Department

1 in Washington State actually went out and did mystery  
2 shopping, if you know what that is, where you go into the  
3 store to see if -- you know, how the sales staff treats you  
4 and report back to the company. They were getting so many  
03:41:47 5 complaints, they decided to go out and do some mystery  
6 shopping themselves. But when you do this as an examiner, you  
7 actually apply for a loan. And it actually makes your credit  
8 rating go down. So this is a very extreme step to take as a  
9 regulator. We did it at the OCC a handful of times in the 18  
03:42:05 10 years I was there.

11 And so this is what they did. That's what this  
12 sentence means, As discussed below, this belief is supported  
13 by the Department's own test originations of loans at three  
14 different HFC branches in Washington.

03:42:19 15 So they went a really extra step in actually applying  
16 for loans at three different branches to see what their sales  
17 techniques were going to be.

18 Q. And what did they conclude when they went and engaged in  
19 this mystery shopping?

03:42:32 20 A. Well, in some respects, the disclosures that were supposed  
21 to be given to them were not given to them. Or in another  
22 respect, somebody put their arm over the disclosures. But  
23 they found many of the same practices that we've discussed  
24 here in the last couple of days.

03:42:49 25 Q. Did they conclude when they engaged in this mystery

1 shopping that the Household/HFC sales representatives engaged  
2 in sales tactics intended to mislead, misdirect or confuse the  
3 borrower?

4 A. Yes.

03:43:03 5 Q. If you take a look down at the heading number two,  
6 confusion over rates, points and fees.

7 A. Yes.

8 Q. Does that have any bearing on your opinion in this case?

9 A. It does. And it says, Consumers complain that they were  
03:43:18 10 somehow confused or misled about the rates, points or fees  
11 offered by HFC. Some consumers apparently believed that their  
12 rate would either be lower than what it was or that somehow  
13 the effective rate would be lower due to the payment  
14 structure. Other consumers were alarmed at the amount of fees  
03:43:35 15 they were required to pay in the transaction, indicating that  
16 they must have somehow been confused about the fees they would  
17 pay.

18 Q. So why is that supportive of your opinion?

19 A. Well, because this whole effective rate scheme was  
03:43:52 20 developed to make -- so that Household could compare their  
21 otherwise high interest rate loan with a competitor's lower  
22 interest rate loan. And we've seen examples of effective rate  
23 presentations being made around the country. So it further  
24 supports my opinions that Household engaged in systemic  
03:44:13 25 predatory practices.

1 Q. Did it bear on your opinion that the predatory practice  
2 specifically in this case, the use of effective rate or  
3 equivalent rate, was widespread?

4 A. Yes.

03:44:25 5 Q. And how does it support -- in what way does it support  
6 your opinion?

7 A. Well, they went -- they actually went and did tests  
8 themselves to see if what the complaints that they were  
9 receiving about this effective rate presentation were true.

03:44:40 10 And they've concluded that, in fact, that the way that  
11 Household was structuring their rates were intended to  
12 mislead, misdirect and confuse the borrower or deceptive sales  
13 practices, which is part of the definition of predatory -- or  
14 covers -- the predatory lending term covers deceptive sales  
03:45:04 15 practices.

16 Q. If you look at the next paragraph, third sentence in, it  
17 begins, A subpattern of this pattern of confusion.

18 A. Yes.

19 Q. Does that have any bearing on your conclusions in this  
03:45:16 20 case?

21 A. It does. It says, A subpattern of this pattern of  
22 confusion has been identified by the Department in HFC's  
23 misuse of the good faith estimate and what appears to be  
24 intentional confusion about discount points charged on certain  
03:45:30 25 loans. This subpattern of confusion has been identified by



1 the Department in over half of the recent complaints and is  
2 discussed in greater depth below.

3 Q. How does that bear on your opinion in this case?

4 A. Well, my opinion is that they used the good faith estimate  
03:45:45 5 to confuse the borrower by showing a wide range of closing  
6 costs when, in fact, they were going to be charged at the  
7 higher rate or possibly greater than the range. And this  
8 supports my opinion.

9 Q. If you could turn to page ending 670. And I guess the  
03:46:03 10 first -- the second full paragraph on that page. It begins,  
11 The Department has also identified three additional concerns.

12 Does that have any significance to your opinions in  
13 this case?

14 A. Yes.

03:46:18 15 Q. Why?

16 A. This says that, The Department has identified three  
17 additional concerns resulting from borrower confusion over the  
18 biweekly and bimonthly program. One, borrowers have been told  
19 that by accepting the biweekly payment program, they can  
03:46:32 20 effectively reduce the interest rate on their loan from  
21 approximately 14 percent down to 7 percent. The Department  
22 has encountered reference to this 14 to 7 percent statement a  
23 number of times and addressed the problem directly with HFC  
24 management in mid 2001. HFC informed the Department that the  
03:46:50 25 practice was isolated to a single branch in Washington and

1 that the matter was not a corporate practice. However, the  
2 Department has identified the practice to other branches in  
3 Washington and has received reports from other regulators in  
4 other states concerning the practice. Contrary to HFC's

03:47:06 5 claims, the Department does not believe the practice is  
6 isolated.

7 Q. How is that relevant or significant to your opinions in  
8 this case?

9 A. They're concluding that this effective rate presentation  
03:47:18 10 is cropping up in other than just the Bellingham, Washington,  
11 office, which is what HF- -- Household would always say that's  
12 the rogue office, Bellingham, Washington; and that they're  
13 hearing from regulators around the country that this is  
14 cropping up there too. And that supports my opinion that  
03:47:35 15 Household engaged in systemic and companywide predatory  
16 lending practices.

17 Q. If you turn to the page ending 671. It's a continuation  
18 of identify patterns that the Department of Financial  
19 Institutions in Washington has observed. If you look at  
03:47:55 20 number five on that page. It's the second paragraph there.  
21 It's entitled prepayment penalty.

22 A. Yes.

23 Q. The first sentence of that paragraph, does that support  
24 your opinion in this case?

03:48:06 25 A. Yes. It says, Consumers complained that they were unaware

1 of a prepayment penalty or that they were told they did not  
2 have a prepayment penalty. However, their loans did contain a  
3 prepayment penalty.

4 Q. And if you take a look at the next page, page ending 672.

03:48:26 5 The heading number six indicates an insurance packing. Do you  
6 see that?

7 A. Yes.

8 Q. Did the Washington DFI or Department of Financial  
9 Institutions also find indications of insurance packing?

03:48:40 10 A. Yes.

11 Q. And if you take a look down at seven, upselling loans.

12 A. Yes.

13 Q. The first sentence under seven, upselling loans, does that  
14 support your opinion in this case?

03:48:53 15 A. It does. And this is basically the loan splitting. The  
16 Department found that HFC attempts to provide both a first and  
17 a second mortgage to borrowers regardless of the borrower's  
18 desire or need for two loans.

19 And that's the loan splitting that we talked about.

03:49:10 20 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
21 445 for identification.

22 (Tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Plaintiffs' Exhibit 445?

03:49:38 25 A. I do.

1 Q. What is it?

2 A. This is a memo. It's been -- it's an attachment to an  
3 e-mail from Stephen Hicks to a variety of people at Household.  
4 And the subject is Meeting with Michigan regulators. And it's  
03:49:58 5 dated June 18, 2002.

6 Q. Why do you recognize this document?

7 A. This was a document that I looked at in formulating my  
8 opinions.

9 MR. DROSMAN: Plaintiffs offer Exhibit 455 in  
03:50:14 10 evidence.

11 THE COURT: It will be admitted.

12 BY MR. DROSMAN:

13 Q. And, specifically, this particular document, this was sent  
14 by Stephen Hicks, it indicates?

03:50:24 15 A. Yes.

16 Q. And if you look at the page ending 592, it appears to be a  
17 memo that Mr. Hicks sent?

18 A. Yes.

19 Q. Who is Mr. Hicks?

03:50:34 20 A. He was an official at Household.

21 Q. And was he in the policy and compliance department?

22 A. I believe so.

23 Q. And that's the department that interfaces with the  
24 regulators?

03:50:44 25 A. Yes, Mr. Schneider's department.

1 Q. And the subject indicates Meeting with Michigan  
2 regulators?

3 A. Yes.

4 Q. On what date was the meeting with the Michigan regulators?

03:50:53 5 A. June 7, 2002, it says.

6 Q. And if you look at the second to last sentence of the  
7 first paragraph, were there two significant issues for the  
8 Michigan regulators?

9 A. Yes. They talked about the good faith estimate and proper  
03:51:10 10 disclosure, and they talked about prepayment penalties.

11 Q. The first significant issue for the Michigan regulators  
12 reads GFE and proper disclosure there?

13 A. Yes.

14 Q. Can you tell us whether that's significant to your  
03:51:25 15 opinion?

16 A. It's similar findings to what I saw in other states. And  
17 it says, The examiners -- and this is Michigan regulators now.  
18 The examiners reviewed approximately 60 loan files and  
19 identified six where the GFE was missing, fees were not  
03:51:41 20 disclosed or the difference in fees disclosed versus the  
21 HUD-1 -- which is the good faith estimate -- or which is  
22 the -- the HUD-1 is your closing document -- was significant.  
23 So let me read that again.

24 The examiners reviewed 60 loan files and identified  
03:51:56 25 six where the GFE -- which is the good faith estimate given

1 three days after the completed application -- was missing,  
2 fees were not disclosed or the difference in the fees  
3 disclosed versus the HUD-1 -- which is the closing document --  
4 was significant.

03:52:11 5 Q. What does the next sentence say?

6 A. With a 10 percent error rate, they indicated that they  
7 would require corrective action.

8 Q. And why is this significant to your opinion?

9 A. Because this is the type of activity that I saw in other  
03:52:26 10 states to draw the conclusion that Household engaged in  
11 systemic and companywide predatory lending practices.

12 Q. And in this case, specifically, with failure to disclose  
13 and the good faith estimate?

14 A. Yes.

03:52:40 15 Q. Can you look at the last full paragraph on that page. It  
16 begins, This repeat examination issue.

17 A. This repeat examination issue was also noted in their  
18 March 2000 examination. The examiners expressed concern over  
19 our lack of action in getting this issue resolved.

03:52:57 20 Q. Is that significant to your opinion in this case?

21 A. Yes. Examiners expect -- and regulators expect if they  
22 find something, that it's going to be corrected at the next  
23 examination. And here, this is a repeat examination, which  
24 can lead to an enforcement action, anywhere from a cease and  
03:53:16 25 desist order, requiring refunds, civil money penalties or even

1 change in management.

2 Q. So a year earlier, they found the same things, is that  
3 essentially what these people are saying?

4 A. Yes.

03:53:31 5 Q. If you could turn to the next page, page ending 593. One  
6 of the concerns that the Michigan regulators expressed -- it's  
7 the third one on the page -- is credit insurance  
8 cancellations?

9 A. Yes. It says, The examiners indicated that they are  
03:53:44 10 alarmed with significant numbers of cancellations of mortgage  
11 insurance. They indicated that the cancellation rate  
12 suggested our sales practices may be inappropriate. They  
13 indicated that the rate was much higher than any of their  
14 other regulated lenders. They estimated that our cancellation  
03:53:59 15 rate was 50 percent within the first three months of the loan.  
16 They asked us to look into it.

17 Q. How is that significant?

18 A. If you remember, the free look that the Household sales  
19 staff was trained to do -- so, in other words, if -- assume  
03:54:16 20 that the customer wants the insurance, the insurance would be  
21 put on the loan documents. When the borrower would look at it  
22 and say, well, what is that? Is that credit insurance? I  
23 don't want that; they were trained to say, don't worry, you  
24 can keep it for 30 days and then cancel it.

03:54:34 25 So what as a regulator you're trained to do is you

1 look at the penetration ratios to see if insurance is  
2 required; and, that is, how many loans that were booked in a  
3 given time frame had insurance. Or you look to see if there's  
4 an excessive number of cancellations. And that's what they  
03:54:52 5 did in Michigan. They noticed that there's an excessive  
6 number of cancellations, and that could be indicative that  
7 there's insurance packing going on and these people are  
8 canceling it.

9 Q. And then the next item there, prepayment penalties?

03:55:06 10 A. Prepayment penalties. It says here, The examiners  
11 indicated that based on a review of our complaints, we need to  
12 better disclose to our customers the terms of the loan. They  
13 indicated that there seems to be a lot of confusion among our  
14 customers regarding terms. They indicate that several  
03:55:21 15 complaints mention that our branch personnel make many  
16 inappropriate comments when questioned about prepayment  
17 penalties. For example, it was noted that our branch  
18 personnel say, Don't worry about the penalty.

19 And I've seen that in other places where they say

03:55:36 20 don't worry, it will be waived. And we saw that in one of the  
21 complaints from Ms. Adams, that she was told it would be  
22 waived for a job relocation.

23 Q. And Ms. Adams was from Pennsylvania, right?

24 A. I believe so.

03:55:49 25 Q. And this is the Michigan regulators?



1 A. This is Michigan.

2 Q. Identifying the same practice --

3 A. Yes.

4 Q. -- that Ms. Adams complained about?

03:55:55 5 A. That's right.

6 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
7 19 for identification.

8 (Tendered.)

9 BY MR. DROSMAN:

03:56:24 10 Q. Do you recognize Plaintiffs' Exhibit 19?

11 A. Yes.

12 Q. And what is it?

13 A. This is an FDIC/OTS concurrent examination report.

14 Q. What's the date of it?

03:56:35 15 A. August 27, 2001.

16 Q. Why do you recognize it?

17 A. This is one of the documents that I looked at in  
18 formulating my opinions.

19 MR. DROSMAN: Your Honor, plaintiffs offer Exhibit 19

03:56:47 20 into evidence.

21 THE COURT: It will be admitted.

22 BY MR. DROSMAN:

23 Q. Let's take a look at the first page.

24 What does the FDIC stand for?

03:56:56 25 A. The FDIC is the Federal Deposit Insurance Corporation.

1 And they are the federal agency that insures the deposits of  
2 depository institutions in the United States.

3 Q. And then if you look below -- apparently that's their  
4 seal?

03:57:16 5 A. Yes.

6 Q. If you look below the seal, it says FDIC review concurrent  
7 with OTS exam?

8 A. That's right.

9 Q. What does that mean?

03:57:22 10 A. That means that the FDIC has backup regulatory authority  
11 for any entity that they are insuring the deposits. In this  
12 case Household's bank, FSB stands for Federal Savings Bank.  
13 And so the FDIC went in concurrently with the OTS to do a  
14 joint examination.

03:57:42 15 Q. And concurrently means at the same time?

16 A. At the same time.

17 Q. If you turn to page ending 689. There looks like there  
18 have been some portions of this document which have been  
19 redacted or deleted. But if you look at the bottom portion of

03:58:00 20 the document, the first two sentences there, is that  
21 significant to your opinion?

22 A. Yes. It says, The thrift appears to be involved in -- to  
23 some extent in predatory lending. Further, a consumer  
24 advocacy group has named Household organization the 2001

03:58:19 25 predatory shark lender of the year.

1 Q. And then if you go ahead and turn to page ending 699. And  
2 there's a small section of text on that page. I think the  
3 rest has been deleted or redacted.

4 Can you tell me whether that's significant to your  
03:58:38 5 opinion?

6 A. The OTS and the FDIC examiners believe that insurance  
7 sales practices are predatory. Community affairs specialist  
8 Glenn Brewer is currently reviewing practices and will be  
9 preparing a memo. The penetration rate of insurance sales of  
03:58:54 10 property, credit, life, unemployment and disability insurance  
11 are all considered high, as illustrated in the table below.

12 Q. And unfortunately we don't have that table. But what does  
13 the OTS refer to in that sentence?

14 A. That's the Office of Thrift Supervision. That's the  
03:59:10 15 primary federal regulator of the Federal Savings Bank.

16 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
17 550 for identification.

18 (Tendered.)

19 BY MR. DROSMAN:

03:59:43 20 Q. Do you recognize Exhibit 550?

21 A. I do.

22 Q. What is it?

23 A. It is a document attached to an e-mail. The e-mail is  
24 dated August 15, 2002. It's from David Huey, which is -- he's  
04:00:08 25 at the Washington State AG's office, to Kathleen Curtin and

1 others. And it's -- the subject is multistate working group  
2 reply to HFC.

3 Q. Why do you recognize this document?

4 A. This is one of the documents I reviewed in formulating my  
04:00:26 5 opinions.

6 MR. DROSMAN: Plaintiffs offer Exhibit 550 into  
7 evidence.

8 THE COURT: It will be admitted.

9 BY MR. DROSMAN:

04:00:34 10 Q. Let's take a look at the first page. You said that it was  
11 from David Huey from the Washington State AG. What does AG  
12 stand for?

13 A. Attorney general.

14 Q. And it looks like on the right there to Mr. Huey's name,  
04:00:47 15 there's a cc to a number of other people. Do you see that?

16 A. Yes.

17 Q. Who are those other people?

18 A. I think those are all of the other members of the  
19 multistate working group, it looks like to me.

04:01:03 20 Q. Are those others attorneys general?

21 A. Yes.

22 Q. And you mentioned a multistate working group. Can you  
23 tell us what that is?

24 A. Well, in the case -- in this case, the attorneys general  
04:01:18 25 from various states got together because they were all

1 receiving this -- similar complaints regarding Household. And  
2 they got together to discuss what they needed to do. And so  
3 this is part of that discussion with Household on the  
4 complaints and the regulatory issues that they were seeing in  
04:01:38 5 various states.

6 Q. So the right-hand column there lists the names and e-mail  
7 addresses of different attorneys generals from states all  
8 across the United States?

9 A. Yes.

04:01:50 10 Q. Iowa is there; is that right?

11 A. Iowa, New York, Michigan, Ohio, New Mexico, California,  
12 Florida, Minnesota, Michigan.

13 Q. And then if you take a look, it appears that the e-mail  
14 attaches a memo, is that correct, on page ending 756?

04:02:24 15 A. Yes.

16 Q. And this memo was addressed to Kathleen Curtin; is that  
17 right?

18 A. Yes.

19 Q. Who is Kathleen Curtin?

04:02:32 20 A. She was the lawyer for -- general counsel for the consumer  
21 finance section of Household. It says HFC/Beneficial.

22 Q. So she's the vice president and general counsel of HFC?

23 A. Yes.

24 Q. And what was the date of the memo?

04:02:52 25 A. The date is -- August 15 is the e-mail. And the memo is

1 August 14 --

2 Q. And --

3 A. -- 2002.

4 Q. And who is writing this particular memo?

04:03:06 5 A. And the memo is being written by David Huey on behalf of  
6 the multistate working group.

7 Q. And David Huey was the assistant attorney general from the  
8 State of Washington?

9 A. Right, from Washington State.

04:03:20 10 Q. And he was sort of the representative of all the different  
11 attorneys generals across the United States?

12 A. Right.

13 Q. And if you take a look at the second -- third paragraph on  
14 that page, it's the third sentence in, can you tell us whether

04:03:38 15 that has any significance to your opinions in this case?

16 A. It says, Household's hope that the states would reconsider  
17 their position that some of Household's practices are

18 problematic is understandable. However, we believe that your  
19 company may have underestimated our understanding of how its

04:03:55 20 practices are actually implemented where it counts, at the  
21 interface with your customers.

22 The explanations and rationales Household articulated  
23 on July 9 and in the July 17 letter have not given us any

24 reason to reconsider our position that the practices we

04:04:11 25 earlier identified present serious problems under a variety of

1 consumer protection and regulatory laws.

2 Further, the responses provided no information which  
3 has led us to change our position that those identified  
4 practices warrant changes in the future and relief for

04:04:27 5 Household's customers who suffered from them in the past.

6 Q. Is that significant to your opinion in this case?

7 A. Yes.

8 Q. Why?

9 A. Because my opinions are that Household engaged in systemic  
04:04:41 10 and companywide predatory lending. And that's what they were  
11 saying, it's more pervasive than Household wants to admit.

12 Q. If you could turn to the page ending 757 and take a look  
13 at the fourth paragraph on that page.

14 A. And it begins with what? I want --

04:05:08 15 Q. We had hoped for the -- that the July 17 letter would have  
16 been more responsive.

17 A. We had hoped that the July 17 letter would have been more  
18 responsive to the proposed framework for settlement rather  
19 than purely defensive. Indeed, the letter seems to indicate a  
04:05:23 20 continued denial concerning what we have found to be

21 nationwide common practices. While Household might like to  
22 maintain the belief that these are isolated instances with  
23 rogue offices and loan officers, the coast-to-coast usage of  
24 common forms and sales techniques belie any such position.

04:05:41 25 Q. Tell us why that's significant to your opinion.

1 A. And it supports my position -- my opinions that Household  
2 engaged in companywide and systemic predatory lending; that  
3 the excuse that it's a rogue officer or a rogue branch in  
4 Bellingham, Washington, for example, doesn't hold water when  
04:06:02 5 you look at the sum total of the documentation.

6 Q. So this is essentially the multistate AGs, the attorneys  
7 generals from all across the United States, rejecting  
8 Household's explanation that it was just a few bad apples?

9 A. Yes.

04:06:17 10 Q. Then if you could turn to the next page, page ending 758,  
11 and look at the first paragraph there. It's a partial  
12 paragraph. It begins, These figures are, to put it mildly,  
13 large.

14 Can you tell us whether the rest of that paragraph  
04:06:33 15 supports your opinion in this case?

16 A. Yes. We note that several of the most insidiously  
17 deceptive sales practices, which attracted regulatory  
18 attention to Household practices at the outset, relate to  
19 products and practices initiated by Household in 1999.

04:06:48 20 Industry figures indicate that since 1999, Household's  
21 originations have nearly doubled. Almost assuredly the  
22 misleading sales practices the states have identified have  
23 contributed to that growth. Ultimately the value of  
24 restitution and reformation must be viewed against that  
04:07:12 25 backdrop.



1 Q. Why does this particular information support your opinion  
2 in this case?

3 A. Well, because my opinions outline that when Gary Gilmer  
4 came to Household in 1998, the focus turned to growth; and  
04:07:31 5 that for 1999, there was an obsession about growth. And they  
6 hired Andrew Kahr. They developed these predatory products  
7 and services, which they implemented. And they did grow. As  
8 it shows here, Household's originations nearly doubled. And  
9 the conclusion of the regulators supports my conclusion that  
04:07:56 10 they engaged in predatory lending practices and that they were  
11 systemic and companywide.

12 Q. This growth that you said, that they doubled their loan  
13 originations, right? What are loan originations?

14 A. Those are new loans that they booked. And we talked about  
04:08:10 15 how the employees were being compensated for booking more  
16 loans and for booking more dollars. And that's what they're  
17 talking about. The number of new loans, the dollar amount of  
18 new loans that they booked doubled and -- since 1999. And the  
19 date of this was August of 2002.

04:08:27 20 Q. And what does the Washington State attorneys generals  
21 attribute that huge doubling of loan originations to?

22 A. To these deceptive sales practices that have -- that they  
23 implemented and that they were using.

24 Q. And is that consistent with your opinion in this case?

04:08:45 25 A. Yes.

1 MR. KAVALER: Objection, your Honor.

2 THE COURT: Sustained.

3 BY MR. DROSMAN:

4 Q. What's your understanding as to how major issues and  
04:19:37 5 obstacles relates to predatory lending on that page?

6 A. They were listing the major issues and obstacles to their  
7 loan growth and their profitability. And so they have several  
8 listed here, and one of them is predatory lending.

9 Q. So they highlighted that as a major issue and obstacle to  
04:19:58 10 loan growth?

11 A. Or to their operating plan, what their goals were for  
12 2001.

13 Q. Let's talk a little bit about ways in which you went about  
14 reaching your conclusions in this case.

04:20:19 15 Did you ever look at, for example, the total number  
16 of Household's loans, on the one hand, and then the number of  
17 complaints on the other and try to calculate some sort of  
18 complaint-to-open-loan ratio or percentage?

19 A. No.

04:20:35 20 Q. Why not?

21 A. Because that ratio is meaningless. Regulators look at  
22 complaints on a complaint-by-complaint basis because it's very  
23 difficult for people to file a complaint. It takes a lot of  
24 energy. They have to put something in writing. They have to  
04:20:52 25 get all their documentation together. And so when someone

1 complains, the regulators take it seriously. Even if there's  
2 a handful of complaints, the regulators take them seriously.

3 They look at each complaint. They get the response  
4 from the lender, in this case Household. And they come to  
04:21:12 5 some conclusion whether laws had been violated or deceptive  
6 practices have been foisted on the borrower, whatever the  
7 issue might be. And so the -- the complaint framework and the  
8 complaint-based review of a lender does not lend itself to a  
9 ratio analysis of complaints to open loans. It's -- that's  
04:21:41 10 not meaningful.

11 Q. Now, when you were -- you were a lender for 25 -- I mean  
12 you were a regulator for 25 years; is that right?

13 A. Yes.

14 Q. And first you were a regulator with the OCC, the federal  
04:21:52 15 government; is that right?

16 A. That's right, the regulator of national banks.

17 Q. And then a regulator for the Texas State Banking  
18 Commission; is that right?

19 A. Right. I was the Texas banking commissioner.

04:22:02 20 Q. You headed that department?

21 A. Yes.

22 Q. Did you ever calculate this ratio of complaints to open  
23 loans during your 25 years of regulatory experience?

24 A. No.

04:22:12 25 Q. Did you ever have anybody underneath you say calculate

TAB 10

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

LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
others similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 02 C 5893  
 )  
HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
 ) April 2, 2009  
Defendants. ) 9:45 a.m.

VOLUME 4  
TRANSCRIPT OF PROCEEDINGS - TRIAL  
BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

APPEARANCES:

For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. LAWRENCE A. ABEL  
MR. SPENCER A. BURKHOLZ  
MR. MICHAEL J. DOWD  
MR. DANIEL S. DROSMAN  
MS. MAUREEN E. MUELLER  
655 West Broadway  
Suite 1900  
San Diego, California 92101  
(619) 231-1058  
  
COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. DAVID CAMERON BAKER  
MR. LUKE O. BROOKS  
MR. JASON C. DAVIS  
MS. AZRA Z. MEHDI  
100 Pine Street  
Suite 2600  
San Francisco, California 94111  
(415) 288-4545

1 open loans.

2 Do you recall that?

3 A. I do.

4 Q. And you talked about the fact that you looked at the  
09:55:30 5 seriousness of the allegations, the geographic dispersion or  
6 spread of those allegations.

7 Did you look at anything else when assessing  
8 complaints, customer complaints?

9 A. Well, in the Household case or just as a regulator?

09:55:45 10 Q. As a regulator.

11 A. As a regulator, I would look at the nature of the  
12 complaint, what type of a complaint was it, what were the  
13 allegations in terms of violations of law; and, of course,  
14 then how widespread was it in the particular lender, how  
09:56:00 15 serious was it, what was the response of the company. So you  
16 try and take everything into consideration.

17 Q. Did you also look at the trend of complaints, whether they  
18 were increasing or decreasing over time?

19 A. Yes.

09:56:12 20 Q. And why did you do that?

21 A. Well, because if -- whenever a complaint would come in, we  
22 would always send it to the regulated entity. In the case --  
23 in my case, that would be national banks or state banks. And  
24 we would ask, you know, how -- what do you think about this  
09:56:29 25 complaint; and if it's valid, how are you going to resolve it.

1 And so you would expect if it was a legitimate issue, for it  
2 to be corrected. So if we continued to see complaints of the  
3 same nature, you know, then we might send an examiner out to  
4 do a special investigation, for example. Or we would  
09:56:49 5 definitely send the complaints to the examiners in case they  
6 wanted to expand the scope of their examination.

7 Q. And in this particular case, when you were examining the  
8 documents to arrive at your conclusions, did you look at all  
9 three of these issues with respect to the complaints that  
09:57:07 10 customers made about Household?

11 A. Yes.

12 Q. Are there other reasons that a ratio of complaints to open  
13 loans wouldn't provide you with useful information?

14 A. Well, it doesn't lend itself to a ratio analysis, such as  
09:57:27 15 looking at how many loans in a loan portfolio are past due,  
16 because people who have been taken advantage of often don't  
17 know they've been taken advantage of so they don't know to  
18 complain. And a lot of people that are mad about something,  
19 for example, I've been taken advantage of, won't go to the  
09:57:44 20 effort to write it down and send it in. And that's what we've  
21 known over the course of time. So it's just not something  
22 that lends itself to a ratio analysis.

23 You have to take every complaint seriously. You have  
24 to analyze every complaint. And you have to get the  
09:58:00 25 explanation from the lender to find out why are we getting

1 conclusions in this case?

2 A. Yes, I did.

3 Q. And did Household's denials of predatory lending, did that  
4 alter or change your view that Household engaged in widespread  
10:12:10 5 systemic predatory lending practices?

6 A. Well, I looked at the documents prior to formulating my  
7 opinions. I took all of the information into consideration in  
8 formulating my opinions. And the more documents that I looked  
9 at, the less persuasive that argument became in my mind. And  
10:12:31 10 I concluded at the end of looking at all the information that  
11 Household engaged in widespread and systemic and companywide  
12 predatory lending, notwithstanding their claims that it was --  
13 you know, that they didn't or that it was a rogue employee or  
14 a rogue branch.

10:12:49 15 Q. Why didn't the Household's denials that they engaged in  
16 predatory lending, why didn't that change your view that they  
17 did, in fact, engage in widespread, systemic predatory lending  
18 practices?

19 A. Well, there were several reasons why that didn't change my  
10:13:07 20 view. The first one is because, as these complaints started  
21 to escalate, I didn't see from Household any attempt at trying  
22 to identify the root causes of these complaints. I would see  
23 an issuance here or an e-mail there that would say we don't  
24 engage in predatory lending or everyone else in the industry  
10:13:29 25 engages in it but us.



1 A. So as re-aging goes up, as loans are re-aged, which is  
2 taken out of the two-plus bucket and put back in current, the  
3 number of two-plus delinquencies goes down. So this is taking  
4 loans from the two-plus bucket and putting them over into the  
10:33:30 5 current bucket. So there's an inverse relationship between  
6 re-aging and delinquent -- two-plus delinquencies.

7 Q. What if two-plus delinquencies go up instead of down, what  
8 is the effect on re-aging?

9 A. Well, if they -- if Household stopped re-aging, for  
10:33:48 10 example, or diminished the amount of their re-aging, the  
11 re-aging would go down and the delinquencies would go up  
12 because then the -- there was no way to make those loans  
13 current. So here re-aging is going down and the two-plus  
14 numbers are going up, so it's a direct inverse relationship.

10:34:05 15 Q. And is re-aging of loans significant to a regulator?

16 A. Yes. When I was a field examiner, this is one of the  
17 things that we looked at in particular to determine if a  
18 lender was masking their delinquencies. We would look at a  
19 variety of tactics that they could use, for example, rewriting  
10:34:27 20 the loan, forbearance, a variety of things. And we would look  
21 to see how prevalent that was in the loan portfolio because  
22 the more they were doing that, the more it would lead us to  
23 conclude that they were masking delinquencies.

24 Q. Now, during your reviews as an expert in this case, did  
10:34:47 25 you determine whether Household used re-aging to manipulate

1 its two-plus delinquency number?

2 A. Yes, that was one of my conclusions, was that Household  
3 used various re-aging tactics and practices to mask their  
4 delinquencies.

10:35:02 5 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
6 1387 for identification.

7 (Tendered.)

8 BY MR. DROSMAN:

9 Q. Do you recognize Plaintiffs' Exhibit 1387?

10:35:34 10 A. I do.

11 Q. What is it?

12 A. This is an e-mail from Elaine Markell to Rich Peters and  
13 others at Household -- she was at Household -- regarding the  
14 Re-aging Fitch Servicer Presentation Slides, dated November  
10:35:48 15 12, 2002.

16 Q. Why do you recognize this document?

17 A. This was one of the documents that I looked at in  
18 formulating my opinions on the re-aging issues.

19 MR. DROSMAN: Plaintiffs move Exhibit 1387 into  
10:36:02 20 evidence.

21 THE COURT: It will be admitted.

22 BY MR. DROSMAN:

23 Q. Why don't we start at the bottom e-mail, I guess, the  
24 first in the string. And can you tell us, first, who Elaine

10:36:12 25 Markell is in this e-mail?

1 A. Elaine Markell is a woman who worked in the mortgage  
2 services division, which was kind of the sister division of  
3 consumer lending.

4 Q. And was she the vice president of default services in that  
10:36:29 5 mortgage services business unit?

6 A. Yes.

7 Q. And it looks like she's sending an e-mail to Rich Peters.  
8 Was he the vice president of credit risk for Household  
9 mortgage services?

10:36:40 10 A. Yes.

11 Q. What's significant to you about this e-mail that  
12 Ms. Markell is sending?

13 A. Well, if the -- if you could highlight this -- the  
14 paragraph here. It says, Rich, you need to change the slides  
10:36:56 15 for the presentation.

16 And this is for the presentation to Fitch.

17 First of all, what you have on the slides does not  
18 represent the policies in place since September 27 when I was  
19 directed to add back EZ pay restructures and restructures on  
10:37:13 20 bankruptcies 13.

21 That means Chapter 13 bankruptcies.

22 The bankruptcy 13 restructures were done upon receipt  
23 of the plan without the payment of funds. In addition to  
24 that, restructures were done on any Chapter 13 where one  
10:37:29 25 payment was made in the past 60 days. Since there was no

1 other reason for the implementation of these restructure  
2 policies other than to make the predetermined delinquency  
3 number, you must take the bullet point out that restructures  
4 are not done to defer loss recognition since it clearly does.

10:37:47 5 Presenting the true facts about restructures to Fitch is  
6 equally as important as stating the true and unadjusted  
7 delinquency which we have discussed before.

8 Q. One of the sentences you read there said, Since there's no  
9 other reason for the implementation of these restructure  
10:38:06 10 policies other than to make the predetermined delinquency  
11 number.

12 What's the difference between restructuring and  
13 re-aging?

14 A. Household used them interchangeably.

10:38:15 15 Q. So why is that significant to you, that Ms. Markell  
16 thought that there was no other reason for the implementation  
17 of these re-aging or restructuring policies other than to make  
18 the predetermined delinquency number?

19 A. Because Household was trying to hit a delinquency target.  
10:38:31 20 Because at this point in time, in November 2002, they were  
21 reporting certain delinquency numbers and certain of their  
22 policies. And Fitch is a reporting agency that was coming in  
23 to give them a more fuller investigation.

24 Q. Does this suggest or support your opinion that Household  
10:38:56 25 was using re-aging to manipulate its two-plus delinquency

1 number?

2 A. Yes.

3 Q. How does it do that?

4 A. Well, because she's saying here there's no other reason

10:39:03 5 for us to be doing these restructures with Chapter 13

6 bankruptcy accounts and doing all these shenanigans if it

7 wasn't to make a certain number.

8 Q. And the delinquency number in this case, is that the

9 two-plus delinquency number?

10:39:20 10 A. Yes.

11 Q. I'll show you what has been marked as Plaintiffs' Exhibit

12 77 for identification.

13 (Tendered.)

14 BY MR. DROSMAN:

10:39:49 15 Q. Do you recognize Exhibit 77?

16 A. I do.

17 Q. What is it?

18 A. This is an e-mail string regarding the re-aging, on how

19 many loans had been re-aged one time versus multiple times,

10:40:01 20 with a chart attached showing that very thing.

21 Q. What's the date of the e-mail?

22 A. The date is September 11, 2002.

23 Q. And why do you recognize this document?

24 A. This is one of the documents that I looked at to analyze

10:40:19 25 and formulate my opinions regarding re-aging.

1 MR. DROSMAN: Plaintiffs offer Exhibit 77 into  
2 evidence.

3 THE COURT: It's admitted.

4 BY MR. DROSMAN:

10:40:30 5 Q. Why don't we take a look -- you said it's two pages, an  
6 e-mail with an attachment. Why don't we look at the e-mail.

7 Can you tell us the significance of the e-mail to  
8 your opinion?

9 A. Yes. The bottom says, For your information.

10:40:44 10 Mr. Schoenholz asked for a ratio -- and that should say of --  
11 domestic multiple re-ages as a percentage of total re-age.  
12 The question came to me via Gary -- which I assume is  
13 Gilmer -- and we provided Mr. Schoenholz with the ratio of  
14 47.9 percent over the phone.

10:41:02 15 And then if you look at the second page and look at  
16 the bottom line. If you could highlight the very bottom line,  
17 you can see -- let's see if -- okay. This line right here  
18 shows total re-age loans of \$15 billion of a total portfolio  
19 of \$98 billion.

10:41:35 20 Q. What does that mean?

21 A. Or 47.9 percent of these loans have been re-aged multiple  
22 times. So of the re-age section -- let me start all over  
23 again.

24 Of the loans that Household had that had been  
10:41:56 25 re-aged, 47.9 percent of them had been re-aged more than one

1 time.

2 Q. So let's start -- starting in this \$98 billion number,  
3 this signifies all of the loans that Household had at that  
4 time?

10:42:09 5 A. Yes.

6 Q. And then what does this \$15.9 billion number signify?

7 A. And that signifies how many had been re-aged. And that  
8 would have been 16 percent of their whole portfolio had been  
9 re-aged.

10:42:23 10 Q. And then this 47.9 percent number, what does that mean?

11 A. Of the 15 billion, 47.9 percent had been re-aged, almost  
12 half of the 15 billion had been re-aged multiple times.

13 Q. And what does that mean, re-aged multiple times?

14 A. Well, it's really -- when you re-age something, you know,  
10:42:44 15 you're taking it out of the delinquency and you're putting it  
16 into the current bucket. And then they're not paying again,  
17 and then you re-age it again and you re-age it again. And so  
18 you are, in effect, masking your past due because there's no  
19 way for the customer -- the customer is not paying. You're  
10:43:02 20 just re-aging it to take it out of the delinquency bucket.

21 And that's what Household was doing.

22 Q. So re-aging multiple times means you've re-aged a loan  
23 once already, you're re-aging it again, perhaps again and  
24 again --

10:43:14 25 A. Right.

1 Q. -- just to take it out of the delinquent bucket repeatedly  
2 and put it back in the current?

3 A. Right. And the time frame is, it's in the two-plus bucket  
4 and you re-age so it goes back to current. So it takes a  
10:43:26 5 number of months. It takes two months to get it back in the  
6 two-plus bucket. Then you re-age it and it goes into the  
7 current. Then it takes a couple of months to get back there.  
8 So once they re-age, they have a little bit of time before  
9 they have to deal with it again.

10:43:41 10 Q. And who is asking for this information, this ratio of how  
11 many loans had been re-aged multiple times?

12 A. It says Mr. Schoenholz is asking for it.

13 Q. And that's David Schoenholz, the CFO of the company?

14 A. Yes.

10:43:58 15 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
16 654 for identification.

17 (Tendered.)

18 BY MR. DROSMAN:

19 Q. Do you recognize Plaintiffs' Exhibit 654?

10:44:28 20 A. I do.

21 Q. And what is this?

22 A. This is an e-mail from Dave Stockdale to various managers  
23 or senior -- senior managers at Household. And the subject is  
24 retail services re-age policy. And the date is September 4,

10:44:51 25 2001.



1 Q. And why do you recognize this document?

2 A. This is one of the documents I looked at in formulating my  
3 opinions.

4 MR. DROSMAN: Plaintiffs offer Exhibit 654 into  
10:45:03 5 evidence.

6 THE COURT: It's admitted.

7 BY MR. DROSMAN:

8 Q. Why don't we take a look at this. The bottom e-mail  
9 appears to be from Dave Stockdale; is that right?

10:45:15 10 A. It looks like it's from Dave Stockdale to Paul  
11 "Markawitz."

12 Q. Paul Makowski?

13 A. I'm sorry. I'm mispronouncing his name. Makowski, yes.

14 Q. Mr. Makowski was the chief credit officer; is that  
10:45:30 15 correct?

16 A. Yes.

17 Q. If you take a look at the second paragraph of the e-mail,  
18 does that have any significance to your opinion?

19 A. Yes. This is what I was talking about. This says, For  
10:45:41 20 maximum benefit to year-end, retail sales should perform the  
21 re-age between the customer cycle date and the month-end with  
22 a sweep at month-end. This will ensure that all September  
23 re-ages will be unable to reach two-plus by year-end.

24 In other words, they're going to take all of them at  
10:45:57 25 a certain time because then it would prevent them from

1 progressing back to the two-plus number by year-end when they  
2 have to report it on their 10-K.

3 Q. So is this significant to your opinion that Household  
4 manipulated its two-plus delinquency number through the use of  
10:46:13 5 re-aging?

6 A. Yes.

7 Q. Why?

8 A. Well, because they're discussing how they're going to  
9 manipulate their delinquency number by using the re-age  
10:46:21 10 practice at a certain -- and they're even planning when  
11 they're going to use it so that these loans won't then become  
12 delinquent and show up again in the two-plus bucket at  
13 year-end.

14 Q. Then the last sentence there says, This will ensure that  
10:46:36 15 all September re-ages will be unable to reach two-plus at  
16 year-end.

17 A. Yes.

18 Q. Do you see that?

19 What do you understand that to mean?

10:46:44 20 A. Well, they were timing the re-ages so that they could  
21 prevent the ones in this particular category from becoming  
22 delinquent again, such that it reaches that two-plus bucket at  
23 year-end so they don't have to disclose it as delinquent.

24 Q. They have to disclose all the delinquent loans at the  
10:47:03 25 year-end in their form 10-K, their annual report?

1 A. Yes.

2 Q. And so what's your conclusion about why -- what this means  
3 here?

4 A. So they're timing these re-ages so that this group of  
10:47:12 5 loans will not show up as two-plus delinquent at year-end.

6 Q. And they do that by re-aging those loans?

7 A. Yes, at a certain time. They're timing it because they  
8 know that the progression will be that it will go to 30 days  
9 past due, then 60 days past due, in which case it's going to  
10:47:29 10 end up in the two-plus bucket. So they're timing it so that  
11 doesn't happen until January so they don't have to disclose  
12 it.

13 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
14 454 for identification.

10:47:47 15 (Tendered.)

16 BY MR. DROSMAN:

17 Q. Before we actually get to 454, there was one issue on that  
18 last exhibit that we were talking about that I wanted to  
19 discuss with you.

10:48:01 20 If we can put back up 654, the first page.

21 And this is the example of the timing of the re-ages  
22 so that they wouldn't be delinquent at year-end. If you look  
23 at the top e-mail, it looks like it was forwarded by  
24 Mr. Makowski?

10:48:21 25 A. Yes.

1 Q. And was it forwarded to Mr. Schoenholz?

2 A. Yes. He was cc'd on it.

3 Q. Perhaps we can zoom in on that so we can see whether it  
4 was forwarded to Mr. Schoenholz.

10:48:35 5 So you said Mr. Schoenholz received a copy of this  
6 e-mail?

7 A. Yes.

8 Q. Why don't we turn now to Plaintiffs' Exhibit 454 for  
9 identification.

10:48:52 10 Do you recognize Plaintiffs' Exhibit 454?

11 A. I do.

12 Q. What is it?

13 A. This is a document. It's an e-mail string. And it's got  
14 some handwritten notes and then a chart attached to it.

10:49:08 15 Q. And the e-mail string that you talked about, who is the  
16 e-mail from?

17 A. Well, there are several e-mails, but some of them are from  
18 Gary Gilmer.

19 Q. And what are the dates?

10:49:22 20 A. The date of the bottom e-mail is February 22, 2000.

21 Q. And what's the subject of the e-mail?

22 A. And the subject is "cut."

23 Q. Why do you recognize Plaintiffs' Exhibit 454?

24 A. This was one of the documents that I looked at in  
10:49:39 25 formulating my opinions.

1 MR. DROSMAN: Plaintiffs offer Exhibit 454 into  
2 evidence.

3 THE COURT: It will be admitted.

4 BY MR. DROSMAN:

10:49:50 5 Q. Let's take a look at the bottom e-mail on page ending 417  
6 that you said is entitled "cut."

7 That's from Dick Schaffer; is that right?

8 A. Yes, and he's sending this to Gary Gilmer.

9 Q. And that's the defendant in this case?

10:50:06 10 A. Yes.

11 Q. And Dick Schaffer is the managing director of operations  
12 for the consumer lending division; is that correct?

13 A. Yes.

14 Q. Can you tell me what's significant about the text of that  
10:50:18 15 e-mail?

16 A. Well, he's saying here, I just revisited the two-plus  
17 forecast with each of my guys. Bottom line looks like a \$25  
18 million cut without the magic, parentheses, grace period, and  
19 75,000 with it. We are a little afraid of the 29-day month so  
10:50:32 20 we aren't being overly aggressive with this forecast. It  
21 looks pretty solid.

22 Q. Let's just focus on the first two sentences of that  
23 e-mail. Bottom line looks like a \$25 million cut without the  
24 magic, parens, grace period, and \$75 million with it.

10:50:57 25 Is he talking about the two-plus delinquency number

1 in this case?

2 A. Yes.

3 Q. And is he talking about a cut to the two-plus delinquency  
4 number?

10:51:04 5 A. Yes.

6 Q. So what do you understand this to mean here?

7 A. Well, what Household did is they would give their  
8 borrowers 15 days after the date that the payment was due as a  
9 grace period to make their payment. And so, unlike other  
10:51:19 10 lenders who just report delinquencies straight up, what they  
11 would do is, say, for example, a loan was 74 days past due,  
12 they would deduct 15 days from that and that would bring it  
13 back down to 59 days and so they wouldn't report that as a  
14 two-plus number, a loan that's in the two-plus bucket.

10:51:40 15 So they would use grace periods as a way to mask past  
16 due by deducting 15 days from how many ever days the loans  
17 were past due in the two-plus bucket and bringing them back  
18 into the current bucket.

19 And so what he's saying here is that without the  
10:51:56 20 magic of the grace period, they would not be -- it would look  
21 like their delinquencies would be cut 25 million; but with  
22 using this grace period tactic, they would be able to cut  
23 two-plus numbers 75 million.

24 Q. So they could cut \$50 million from their two-plus numbers  
10:52:17 25 by using the magic of the grace period; is that right?

1 A. Yes, yes.

2 Q. And does this -- is this significant to your opinion that  
3 Household used re-aging practices like the grace period to  
4 manipulate its two-plus numbers?

10:52:31 5 A. Yes. I mean, there's no reason to do that unless you were  
6 manipulating your delinquencies.

7 Q. Who is receiving this particular e-mail?

8 A. Mr. Schaffer was sending it to Gary Gilmer.

9 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
10:52:53 10 262 for identification.

11 (Tendered.)

12 BY MR. DROSMAN:

13 Q. Do you recognize Plaintiffs' Exhibit 262?

14 A. I do.

10:53:17 15 Q. And what is Plaintiffs' Exhibit 262?

16 A. This is a series of e-mails that describes the cut in  
17 delinquencies using this tactic for the grace periods, of  
18 deducting the 15 days and pushing it back into the current  
19 bucket. And they're quantifying it from a dollar perspective  
10:53:39 20 each month. There's a series of them.

21 Q. And who is the recipient of these e-mails?

22 A. Let's see here. It looks like Douglas Friedrich.

23 Q. And he's the managing director, the head honcho, of  
24 mortgage services at Household; is that right?

10:54:00 25 A. Yes.

1 Q. And why do you recognize Plaintiffs' Exhibit 262?

2 A. This is one of the documents that I reviewed in  
3 formulating my opinions.

4 MR. DROSMAN: Plaintiffs offer Exhibit 262 into  
10:54:12 5 evidence.

6 THE COURT: Admitted.

7 BY MR. DROSMAN:

8 Q. Why don't we take a look at the first page of this series  
9 of e-mails.

10:54:19 10 What's the title of the e-mail?

11 A. So the title of the e-mail is two-plus reconciliation.

12 Q. And what does this particular e-mail show?

13 A. It shows that the adjustment for the 15-day grace period  
14 was \$19 million in this case for this month, the month of --  
10:54:42 15 it would be the prior month, so January 2001.

16 Q. So that the re-aged number was actually 431, is that  
17 right, according to Sarah's figure?

18 A. Yes.

19 Q. And then they're deducting or lowering that re-age number  
10:54:56 20 by 19.7 million; is that right?

21 A. Actually the number is the two-plus number and so then  
22 they're taking out the 15-day grace period. So they're  
23 adjusting the two-plus number.

24 Q. And what are the parens around the 19.7 million?

10:55:11 25 A. That means they're taking it out. It's negative.



1 Q. The final two-plus delinquency number that they come up  
2 with after taking out the grace period is what?

3 A. 418 million.

4 Q. And you said that this e-mail was sent on 2/6/01, so it  
10:55:24 5 would be for the month of January, right?

6 A. Right.

7 Q. Let's look at the next page, page ending 842.

8 And this e-mail was sent on March 7, 2001; is that  
9 right?

10:55:40 10 A. Yes.

11 Q. Again, sent to Doug Friedrich, the head of Household's  
12 mortgage services unit; is that right?

13 A. Right.

14 Q. And what's this showing here?

10:55:48 15 A. And this is the two-plus reconciliation again. So it  
16 shows that the two-plus numbers for the grace period  
17 adjustment were being reduced by 16 million.

18 Q. Again, lowering the two-plus numbers by 16.1 million  
19 for --

10:56:04 20 A. Right, for that month.

21 Q. For that month.

22 What about the next page?

23 A. This is similar. These are all these same sort of  
24 reconciliations. So here the grace period adjustment is

10:56:17 25 17,483,000. So two-plus numbers are being reduced by this

1 grace period adjustment.

2 Q. And what's the date of this e-mail?

3 A. August 7, 2001. So this would be for July.

4 Q. And do the rest of the e-mails show the same thing?

10:56:36 5 A. Yes.

6 Q. Does this -- is this significant to your opinion that

7 Household used re-aging tactics like the use of the grace

8 period to manipulate its two-plus delinquency numbers?

9 A. Yes.

10:56:48 10 Q. Why?

11 A. Well, because there's no reason to make this kind of

12 adjustment. Other lenders just do a straight-up deal. Here,

13 what they were doing is using their grace period to move loans

14 from the two-plus bucket back to current. And the pass --

10:57:03 15 these sorts of delinquency numbers are very important to

16 regulators and others because it shows the condition of the

17 loan portfolio.

18 Q. Is this grace period right here, is this the same grace

19 period we heard referred to earlier in an earlier e-mail as

10:57:21 20 the magic?

21 A. Yes.

22 Q. Now, is there a relationship between predatory lending on

23 the one hand -- we talked quite a bit about that yesterday --

24 and the use of practices like re-aging to hide the true

10:57:34 25 quality of Household's loans on the other?

1 A. Yes, there is a relationship.

2 Q. Did you prepare a demonstrative to assist you in  
3 explaining the relationship between predatory lending  
4 practices on the one hand and hiding the quality of

10:57:46 5 Household's loans on the other?

6 A. I did.

7 Q. I'll show you what has been marked as Plaintiffs'  
8 Demonstrative Exhibit 31 for identification.

9 Can you tell us what this exhibit shows?

10:58:05 10 A. Yes. Household starts out making a predatory loan. And  
11 remember, they're packing on fees and insurance premiums and  
12 stripping away the equity. And what happens is, the borrower  
13 cannot pay the loan. It's too large for the borrower to pay.

14 So Household has one of two choices. They can either  
10:58:26 15 re-age it so that it's not showing up on their two-plus  
16 bucket. Or they can refinance it or rewrite it down below,  
17 which is flipping it, adding more insurance, adding more fees  
18 to it.

19 And then --

10:58:39 20 Q. Let me just pause there. To refinance it or rewrite it,  
21 does that take it out of the two-plus bucket as well?

22 A. Right. And it brings it back to current. So they can  
23 either re-age it using some sort of tactic that we've already  
24 talked about or they can actually rewrite it and make a new

10:58:56 25 loan and start over.

1 Q. Okay.

2 A. And then, no matter what, the borrower still can't pay  
3 because the loan is so packed full of products, premiums and  
4 fees and can't go anywhere else because the equity has been  
10:59:11 5 stripped and the loan to value is too high so they're stuck.  
6 And Household then has one of two choices. They can either  
7 rewrite it on the top, which is flip it again and add more  
8 fees and premiums, insurance premiums to it, or they can  
9 re-age it using one of the tactics, like the grace period or  
10:59:30 10 one of their other tactics.

11 Q. So if they rewrite it right here, does that -- again, that  
12 takes it out of the delinquent bucket; now all of a sudden  
13 they have a brand new loan so it's current again?

14 A. Yes. So whether they re-age it or they rewrite it, that's  
10:59:47 15 going to bring it to the current bucket. But rewriting it  
16 allows them to pack on more fees and insurance premiums. So  
17 they can do -- they can either re-age it or rewrite it.

18 Q. And you talked -- is there a predatory lending practice  
19 that this implicates right here?

11:00:02 20 A. Yes. I mean, it implicates all sorts of predatory lending  
21 practices, loan flipping because they're re-aging it multiple  
22 times, insurance packing, equity stripping. If they rewrite  
23 it into two loans, that would be loan splitting. You know,  
24 originally they're reeling them in with the effective rate, as  
11:00:22 25 Dennis Hueman would say, and blocking the back door with the

1 prepayment penalty so that -- and because they've stripped out  
2 the equity, there's nowhere for them to go to refinance.

3 Q. So what's the last step?

4 A. So the borrower still can't pay, and the cycle starts over  
11:00:39 5 again and go on one of two paths. So there's a correlation  
6 between predatory lending practices and the need for Household  
7 to re-age and mask their delinquencies.

8 Q. Thank you, Ms. Ghiglieri.

9 MR. DROSMAN: I have no further questions at this  
11:00:57 10 time.

11 THE COURT: You may cross-examine.

12 MR. KAVALER: Thank you.

13 CROSS-EXAMINATION

14 BY MR. KAVALER:

11:01:22 15 Q. Good morning, Ms. Ghiglieri.

16 As you know, I'm Tom Kavalier, and I represent the  
17 defendants. And we've met before, correct?

18 A. Yes.

19 Q. Okay. I'm going to ask you a few questions today about  
11:02:07 20 the same subject matter you've been talking about for the past  
21 couple of days. And my time is sort of limited, so I'm going  
22 to try and ask you questions that can be answered yes or no.  
23 If I do that, will you answer them yes or no?

24 A. If I can answer them with a yes or a no.

11:02:20 25 Q. Perfect. Thank you.

1 Q. Do you know what percentage of the assets or the revenue  
2 were accounted for by those three banks?

3 A. I didn't calculate that, nor did I see that in the  
4 documents.

11:05:39 5 Q. Was it a small percentage?

6 A. I don't know.

7 Q. What percentage was accounted for by the finance company?

8 A. I didn't see any of those percentages in the documents.

9 Q. And you had never been a securities regulator; is that  
11:05:54 10 correct?

11 A. That's correct.

12 Q. And you're offering no opinions here today regarding  
13 movements in the price of Household stock, correct?

14 A. That's correct.

11:06:02 15 Q. And you're offering no opinions here about the impact of  
16 any public statements on the group of investors that are  
17 bringing this action against Household; is that correct?

18 A. Yes.

19 Q. Now, you told us yesterday -- or I think the day before,  
11:06:19 20 Tuesday, I think -- about 40 Bankers Boxes. You remember  
21 counsel pointing to this box here and identified that as a  
22 Bankers Box?

23 A. Yes.

24 Q. All right. And that's the universe of documents that you  
11:06:31 25 reviewed other than the depositions you talked about?

1 A. Well, if you recall, we had this conversation before. I  
2 reviewed a lot of documents in hard copy. And then there were  
3 approximately 75 depositions, some of which I printed out and  
4 some of which I didn't, and then the exhibits to those  
11:06:49 5 depositions. So I reviewed a large number of documents that I  
6 didn't print out, if -- if that's what you're asking me, how  
7 many documents I looked at.

8 Q. Let's focus on the 40 Bankers Boxes. Approximately how  
9 many documents does that comprise?

11:07:08 10 A. I have no idea.

11 Q. Okay. Do you know roughly how many sheets of paper come  
12 in a Bankers Box?

13 A. No.

14 Q. About 2,000?

11:07:17 15 A. I have no idea.

16 Q. No idea. Okay.

17 Do you know that Household, the defendants in this  
18 case, produced to investors' counsel approximately five  
19 million documents?

11:07:26 20 A. I don't know how many they produced.

21 Q. Did you select the contents of those 40 boxes from a  
22 larger universe of millions and millions of documents?

23 A. Well, the plaintiffs' lawyers sent me some documents. I  
24 requested some documents. And I had access to a database that

11:07:44 25 had depositions and exhibits. So some of -- some of each I

1 would say.

2 Q. Putting aside the depositions and exhibits, you didn't  
3 personally see the five million document universe and cull it  
4 down to those 40 boxes, did you?

11:07:59 5 A. I didn't personally see it.

6 Q. Right. Investors' counsel gave you the 40 boxes, right?

7 A. No. I asked for some documents that I knew, based on my  
8 experience of regulating lenders, that Household would have;  
9 and then they sent me some. So it was a combination of me

11:08:18 10 asking for some documents and them sending me some documents.

11 Q. But the end result was 40 boxes?

12 A. Well, approximately, plus all -- everything that I had  
13 access to online.

14 Q. All right. It certainly was not five million documents?

11:08:33 15 A. I'm sure I didn't look at five million documents.

16 Q. Okay. And you're giving us here your opinions about  
17 things that you've read in that universe of documents,  
18 correct?

19 A. Yes.

11:08:51 20 Q. You're not testifying to any facts, that is, you don't  
21 know actually what occurred? You only know what you gleaned  
22 from the documents you reviewed, right?

23 A. That's correct.

24 Q. Mr. Schoenholz would be able to tell us what he did,

11:09:06 25 Mr. Aldinger would be able to tell us what he did and



1 Mr. Gilmer would be able to tell us what he did, correct?

2 A. Yes.

3 Q. And you'd be able to express opinions on that?

4 A. Well, it's the same thing that I did as a regulator. You  
11:09:19 5 know, I would look at certain things and formulate opinions.

6 That's what I did here. I'm not a fact witness. I'm an  
7 expert witness.

8 Q. That's my point.

9 A. Okay. I agree with that.

11:09:28 10 Q. And you understand that we've also hired an expert, and  
11 our expert is going to have a different opinion?

12 A. I'm sure.

13 Q. Now, a few minutes ago, you told us about -- you were  
14 talking about re-aging; and you said -- you were talking about  
11:10:08 15 the two-plus number, and you said Household reported this  
16 information in its 10-K. Do you recall that?

17 A. Yes.

18 Q. The 10-K is the annual report?

19 A. Yes.

11:10:16 20 Q. That's filed with the SEC?

21 A. Yes.

22 Q. And that's publicly available to anyone who wants to read  
23 it?

24 A. Yes.

11:10:24 25 Q. Does the SEC have a Web site where people can access those

1 documents?

2 A. Yes.

3 Q. Did you read Household's annual reports filed with the  
4 Securities and Exchange Commission?

11:10:33 5 A. I looked at some of the charts where they disclosed their  
6 past due, but I didn't read the full documents. That was  
7 outside of really what I was asked to opine on.

8 Q. So you just accessed a part of them?

9 A. I just looked at them, the delinquency charts.

11:10:49 10 Q. But you could have accessed all of them?

11 A. Sure.

12 Q. And so can anyone?

13 A. So can anyone.

14 Q. That's public information?

11:10:56 15 A. Yes.

16 Q. And you are not here -- and you haven't focused on  
17 anything having to do with the disclosures that Household made  
18 in those public reports or elsewhere, correct?

19 A. Yes.

11:11:26 20 Q. Now, you used some words several times in your testimony.  
21 I'd like to explore with you what you meant by them.

22 You said certain things were systemic. Do you recall  
23 that?

24 A. I do.

11:11:40 25 Q. Tell me what you meant, please, by systemic.

1 A. Companywide.

2 Q. Okay. And you used the word companywide also. So those  
3 both mean the same thing?

4 A. Yes.

11:11:49 5 Q. And you said widespread. What does that mean?

6 A. Companywide, pervasive.

7 Q. And --

8 A. They all mean the same thing.

9 Q. I'm sorry. I didn't mean to interrupt you. Are you  
11:11:55 10 finished?

11 A. I guess.

12 Q. Okay. So all three of those words mean the same thing?

13 A. Yes.

14 Q. Okay. Can you define those three words without using  
11:12:06 15 those three words? In other words, what does systemic or  
16 companywide or widespread mean? Does it mean it's everywhere?  
17 Does it mean there's a lot of it? What does it mean?

18 MR. DROSMAN: Objection, compound.

19 THE COURT: Overruled as to that.

11:12:22 20 BY THE WITNESS:

21 A. Well, I -- what I was trying to portray by those words was  
22 that the practices that I found that were predatory, for  
23 example, were occurring in more than just one location by more  
24 than just one employee. They were occurring around the

11:12:45 25 country.

1 BY MR. KAVALER:

2 Q. Okay. And yesterday -- or Tuesday I guess -- we looked at  
3 Demonstrative Exhibit 29. Let's see if we can put that up  
4 again.

11:12:57 5 MR. KAVALER: Your Honor, can we have the switch,  
6 please.

7 THE COURT: Where do you want it directed, counsel?

8 MR. KAVALER: If I knew more about technology, I  
9 would know. I want these gentlemen to be able to put up on  
11:13:14 10 the screen something.

11 THE COURT: Technology is tough.

12 MR. KAVALER: Thank you, your Honor. You're dealing  
13 with Mr. Low Tech here.

14 BY MR. KAVALER:

11:13:23 15 Q. Now, do you recall this chart that was prepared by either  
16 yourself or counsel?

17 A. Yes.

18 Q. Okay. And these are some of the practices that you talked  
19 about on Tuesday, maybe over into Wednesday?

11:13:35 20 A. Yes.

21 Q. And let's start with the effective/equivalent rate. Do  
22 you know how many complaints there were altogether about  
23 effective/equivalent rate during the period 1999 to 2002?

24 A. I don't know how many complaints there were and -- on the  
11:14:15 25 effective rate?

1 Q. Yes.

2 A. I don't know how many complaints they had on effective  
3 rate in total.

4 Q. Do you know what percentage of their loans generated  
11:14:25 5 complaints about effective rate?

6 A. I didn't see a percentage, but I do know that Household  
7 calculated refunds of \$1.2 billion for the effective rate  
8 presentation that they made. So I'm assuming it was a large  
9 number of loans and must have been a pretty substantial  
11:14:47 10 percentage.

11 Q. But you can't tell me what that percentage is?

12 A. No.

13 Q. You know that Household had, during the relevant time, in  
14 Mr. Gilmer's business unit about 3.2 million accounts?

11:15:01 15 A. I don't know if that's true or not.

16 Q. You don't know that.

17 Okay. You know that that's set forth in Household's  
18 10-K for the year 2001?

19 A. It could be. I looked at the -- some of the past due  
11:15:17 20 charts. I didn't analyze the 10-Ks.

21 Q. Do you have any reason to question the number that  
22 Household put in its 10-K describing how many accounts they  
23 had?

24 A. I don't have any reason to question it.

11:15:27 25 Q. Okay.

1 MR. KAVALER: Can we see Exhibit 852.

2 BY MR. KAVALER:

3 Q. This -- you recognize this as Household's 10-K for 2001?

4 A. That's what it says.

11:15:48 5 Q. Okay.

6 Can we pull up where it shows the number of loans.

7 You see there, it's talking about this business has  
8 approximately 1,400 branches located in 46 states, 3.2 million  
9 open customer accounts, 39.5 billion in managed receivables

11:16:26 10 and 13,000 employees.

11 Do you see that?

12 A. I see that.

13 Q. Do you understand that to be describing the business unit  
14 that Mr. Gilmer ran?

11:16:35 15 A. Yeah. I mean, that's what it says.

16 Q. Okay. You have no reason to doubt that?

17 A. No.

18 Q. All right. So half of 1 percent of 3.2 million accounts  
19 would be 16,000 accounts?

11:16:56 20 A. If you say so.

21 Q. I'm reluctant to say so because the other thing I'm not  
22 good at is math. But I've been told that. I think that's  
23 right.

24 Did you see 16,000 effective rate or equivalent rate  
11:17:10 25 complaints?

1 A. I didn't see 16,000. I looked at over a hundred  
2 complaints, and they had various complaints. That's what I  
3 looked at.

4 Q. Did you ever manage a large public company?

11:17:28 5 A. No.

6 Q. Did you ever work at a large public company?

7 A. No.

8 Q. Are you aware that large public companies have a tendency  
9 to measure almost everything that can be measured?

11:17:42 10 MR. DROSMAN: Objection.

11 THE COURT: Sustained.

12 BY MR. KAVALER:

13 Q. Did you notice when you were looking at Household's  
14 documents that Household had a tendency to measure many things  
11:17:55 15 and express things in terms of percentages?

16 A. Well, I saw a lot of percentages in the documents I looked  
17 at.

18 Q. Have you ever heard the phrase in your experience as a  
19 regulator "you can't manage what you can't measure"?

11:18:20 20 A. I don't know if I've ever heard that before or not.

21 Q. Okay. So you can't tell me how many effective rate  
22 complaints there were and you can't tell me what percentage of  
23 Household's open accounts were; is that correct?

24 A. Well, Household can't either. I mean, because not all the  
11:18:42 25 complaints were tracked. So I for sure can't, and I question

1 whether Household can.

2 Q. That was my question, whether you could.

3 A. I don't know how I could have because they weren't all  
4 tracked. I didn't see a document showing all of them.

11:18:58 5 Q. Short answer is you can't tell me either how many they are  
6 or what percentage of the open loans they represent; is that  
7 right?

8 A. I would only be able to tell you if I saw a document like  
9 that.

11:19:09 10 Q. So, therefore, you can't tell me?

11 A. Well, I didn't see anything to be able to tell you that,  
12 no.

13 Q. And you can't tell me whether they were more than one-half  
14 of 1 percent of the open loans, can you?

11:19:23 15 A. I didn't -- I don't have a basis to tell you because I  
16 didn't see anything like that.

17 Q. That means you can't tell me, correct?

18 A. Well, I can't tell you what I haven't seen.

19 Q. I agree with that.

11:19:37 20 Now, you said a couple of times in the last couple of  
21 days that Household had to come up with a way of describing  
22 its rates, its effective rates, because its rates were higher  
23 than the rates of competitors. Do you recall that?

24 A. Yes.

11:20:01 25 Q. What competitors were you comparing Household to?



1 A. Well, I was looking at, for example, the Dennis Hueman  
2 video where he's talking about competitor rates being higher.  
3 And I saw some other documents discussing Household's rates  
4 versus competitors. So I didn't really analyze whether it  
11:20:18 5 would have been a bank or a finance company or anything like  
6 that. I'm just looking at what was in the documents from  
7 Household employees.

8 Q. The competitor Mr. Hueman talked about was Billy Bob's  
9 Loan Company, right?

11:20:31 10 A. Yes.

11 Q. Did you think there really is a company called Billy Bob's  
12 Loan Company or did you think he was just using that as an  
13 example?

14 A. Well, there would be no way to tell -- there would be no  
11:20:40 15 reason to tell a consumer that their rate was lower than it  
16 really was if their rates weren't -- if their rates were  
17 competitive because they could just be straight up with them.

18 Q. That's your opinion, right?

19 A. Yes.

11:20:53 20 Q. I'm trying to find out if you know any facts. Do you know  
21 which competitors charged what rates?

22 A. I didn't do a survey of the time period and Household's  
23 rates.

24 Q. Therefore, the answer to my question is, no, you don't,  
11:21:10 25 correct?

1 A. Unless I saw something in one of the documents. I can't  
2 recall sitting here. I may have looked at something. But  
3 just sitting here, I can't think of --

4 Q. You mentioned a moment ago in your answer -- you mentioned  
11:21:22 5 the word banks. You understand that finance companies and  
6 banks are different?

7 A. Well, they have to comply with the same lending laws, but  
8 they are different with how they fund their operations. I  
9 agree with that.

11:21:34 10 Q. Banks have deposits; finance companies do not?

11 A. That's right.

12 Q. And that affects their cost of funds?

13 A. Right.

14 Q. So finance companies generally charge rates different than  
11:21:43 15 banks?

16 A. Their cost of funds are generally higher and so they  
17 generally charge more, yes.

18 Q. So, therefore, for you to say that Household charged  
19 higher rates than banks would be nothing more than to say  
11:21:55 20 Household is a finance company and a bank is a bank, right?

21 A. Well, that would be one of the reasons, yes.

22 Q. So putting aside banks, do you have a list for me of  
23 finance companies who had lower rates than Household?

24 A. I think I just said that I didn't do a survey of who  
11:22:11 25 charged what rate.

1 Q. Okay. So every time you told us throughout your testimony  
2 that Household had to use effective rate techniques because  
3 its rates were higher than someone else, if I ask you who the  
4 someone else is, you don't know?

11:22:27 5 A. Well, I remember reading in Andrew Kahr's information  
6 where he talked about how they needed to show Household's  
7 rates being more competitive. And so I concluded that their  
8 rates were higher than their competitors. But I didn't do an  
9 analysis of the time frame. I didn't go back in time and try  
11:22:47 10 and figure out who was charging what rate.

11 Q. So your basis was something Andrew Kahr said?

12 A. I -- well, Andrew Kahr, the Dennis Hueman video and other  
13 documents that I saw.

14 Q. Let's take them one at time.

11:22:59 15 The Dennis Hueman video, you mean the portions that  
16 this jury saw?

17 A. Yes.

18 Q. Where he referred to Billy Bob's Loan Company?

19 A. Well, he was using an example; but he was teaching his  
11:23:09 20 sales staff to sell the loans when they otherwise wouldn't be  
21 able to because their rates were higher.

22 Q. I'm trying to find out higher than whose.

23 A. Well, I don't have their competitors' names for you or the  
24 interest rates.

11:23:25 25 Q. You think Mr. Gilmer knows what his competitors' rates

1 were?

2 A. Hopefully.

3 Q. Okay. You said Mr. Kahr -- you got some information from

4 Mr. Kahr. Was he ever an officer of Household?

11:23:37 5 A. No, he was a consultant.

6 Q. Was he an employee of Household?

7 A. He was a consultant.

8 Q. A consultant is someone that you pay money to to get an

9 opinion from, sort of like an expert witness, right?

11:23:47 10 A. Or you get help in figuring out how to grow your loan

11 portfolio, I mean, different suggestions.

12 Q. Did Mr. Kahr provide -- did you see somewhere in

13 Mr. Kahr's materials a list of the competitors of Household

14 who charged lower rates that you've talked about for the last

11:24:03 15 three days?

16 A. I don't recall that, seeing that in his information.

17 Q. You didn't conduct a survey of any other competitors? You

18 didn't do any analysis? You don't have a chart to show us

19 that says this competitor charged this and Household charged

11:24:28 20 that? Nothing like that?

21 A. No.

22 MR. KAVALER: Let's see the list again.

23 BY MR. KAVALER:

24 Q. The next thing up there is insurance packing.

11:24:43 25 Can you tell me how many claims of insurance packing

1 there were throughout all of Household?

2 A. Well, Household -- the internal documents from Household  
3 showed approximately \$160 million in refunds, and so I'm  
4 assuming that that was quite a large number.

11:25:05 5 Q. Well, my question was: Can you tell me either as a number  
6 or a percentage how many claims there were of insurance  
7 packing during the time period you examined?

8 A. Not precisely.

9 Q. Do you think there was 16,000?

11:25:21 10 A. I don't know. I didn't see a number. I only saw what the  
11 estimate of the refunds based on insurance packing would be.

12 Q. If Household says that its calculations showed the number  
13 was less than half of 1 percent, do you have any basis to  
14 suggest they're incorrect?

11:25:41 15 A. No.

16 Q. You testified that it's your opinion that when a customer  
17 got to a loan closing, the insurance would already be added  
18 on. Do you remember that?

19 A. Yes.

11:25:51 20 Q. Did you ever attend even one loan closing at Household?

21 A. No.

22 Q. Do you know if Mr. Gilmer ever attended any house closings  
23 at Household -- or loan closings? Let me start again.

24 Do you know if Mr. Gilmer ever attended any loan

11:26:09 25 closings at Household during his career?

1 you'll tell me you didn't look at them?

2 A. Right.

3 Q. So you just went to the SEC filing and looked for what you  
4 were looking for?

11:28:40 5 A. I was just looking at their past due charts.

6 Q. Right. You weren't looking to see generally what one  
7 could learn about Household by looking at the SEC filings?

8 A. No, I didn't read the SEC filings. That was beyond what I  
9 was asked to do.

11:28:55 10 Q. Beyond what you were asked to do. You were asked to come  
11 here and talk to this jury about a very specific subject, and  
12 you didn't look at anything beyond that?

13 A. I looked at the documents in the case regarding predatory  
14 lending and re-aging, but I didn't analyze the SEC filings,

11:29:10 15 no.

16 Q. But you are a member of the Georgia bar and the D.C. bar,  
17 I think you said, inactive?

18 A. Uh-huh.

19 Q. You understand that this case is a securities fraud case,  
11:29:19 20 don't you?

21 A. Yes.

22 Q. You understand it's about the disclosure that Household  
23 made to the investors, correct?

24 A. Yes.

11:29:25 25 Q. And you understand the issue in the case is whether that

1 disclosure was complete or not complete, true or false,

2 correct?

3 A. Yes.

4 Q. You looked at nothing having to do with that disclosure,

11:29:35 5 correct?

6 A. No, because they have another expert looking at that.

7 Q. Who is that?

8 A. I don't know.

9 Q. I see.

11:29:42 10 A. It's not me.

11 Q. Okay.

12 A. I was looking at the predatory lending and the re-aging.

13 Q. So you have nothing to contribute to this jury on those

14 subjects, nothing about disclosure, nothing about the public

11:29:54 15 filings of the company, nothing about what the analysts said,

16 correct?

17 A. Yes.

18 Q. Okay. But you did read newspapers you said?

19 A. No, I didn't say newspapers. There were a couple of

11:30:11 20 articles in Forbes and -- well, I take that back. The San

21 Francisco Chronicle, yes.

22 Q. So you read some newspapers?

23 A. Yes.

24 Q. Did you see an article in the St. Louis Post-Dispatch

11:30:25 25 about Household?

1 A. I don't remember that.

2 Q. Let me show it to you and see if that refreshes your  
3 recollection.

4 Can we have Exhibit 397.

11:30:38 5 THE COURT: Is this the plaintiffs' or defendants'  
6 exhibit?

7 MR. KAVALER: This is defendants', your Honor.

8 BY MR. KAVALER:

9 Q. This is an article on August 25, 2000, in the St. Louis  
11:30:50 10 Dispatch, talking about, Protestors say Household, one of the  
11 nation's largest consumer lenders, through its subsidiary  
12 Household Financial Corp. and Beneficial, sells borrowers  
13 single premium insurance policies without their knowledge.

14 Do you see that?

11:31:06 15 A. I see what you're pointing to.

16 Q. And that's your point?

17 A. Well, yes.

18 Q. Okay.

19 A. It's insurance packing.

11:31:13 20 Q. Right. And then it says, This policy pays off the  
21 borrower's loan in case of death, but industry experts view  
22 the policy as overpriced because many borrowers would be  
23 better served by buying life insurance that would cover the  
24 cost of the loan.

11:31:26 25 Do you see that?



1 A. Yes.

2 Q. You agree with that, don't you?

3 A. I do.

4 Q. And you know that this subject, the wisdom of selling  
11:31:34 5 single premium credit life insurance in conjunction with  
6 loans, was a controversial subject which was covered in the  
7 press during these years, correct?

8 A. I don't know how widespread it was being covered in the  
9 press. I haven't researched that issue.

11:31:50 10 Q. You know that there was controversy about this subject?

11 A. In the regulatory community there was.

12 Q. And there were differing views amongst the regulators on  
13 the one hand and the various lenders on the other hand,  
14 correct?

11:32:01 15 A. Well, I know that the regulators thought it was predatory  
16 in nature and overpriced.

17 Q. Right. And you know that Household was far from the only  
18 company that sold this product, right?

19 A. I don't have any basis to be able to say how many  
11:32:18 20 companies sold it.

21 Q. Are you aware of any other companies selling this product?

22 A. Well, I know that some of the banks sold it initially  
23 before the regulators clamped down on them; but I don't have a  
24 basis to be able to say how many companies sold it.

11:32:32 25 Q. The banks used this product and then they stopped,

1 correct?

2 A. Yes.

3 Q. Household used this product and it stopped, correct?

4 A. Yes.

11:32:42 5 Q. You know that Household voluntarily stopped selling single  
6 premium credit life insurance at a point in 2001, don't you?

7 A. Yes.

8 Q. So there was a point in time when this was a product that  
9 was commonly used by people, including Household; then there  
11:32:56 10 was a point in time when this was a product that was less  
11 commonly used; and one of the company's that stopped using it  
12 was Household, correct?

13 A. I don't know if that's a correct characterization, but it  
14 was a product that people stopped using.

11:33:10 15 Q. And before they stopped using it, they must have been  
16 using it, correct?

17 A. But I don't know how widespread. I mean, that's what I'm  
18 saying. I have no basis to be able --

19 Q. So this is another one of those areas where you don't know  
11:33:23 20 the numbers; you just have an impression; but the impression  
21 is, at a point in time, people, including Household, sold this  
22 product; and at a later point in time, people, including  
23 Household, stopped selling this product, correct?

24 A. What was the first part of your question?

11:33:37 25 Q. You have a sense -- you can't quantify for me, but

1 nevertheless you have a sense that there was a point in  
2 history where various lenders sold this product; and then  
3 there was a later point in history where various lenders  
4 stopped selling this product, correct?

11:33:53 5 A. Yes.

6 Q. And when people were selling this product, Household sold  
7 it; and at a later point when people weren't selling this  
8 product, Household stopped selling it, correct?

9 A. I mean, I don't have the basis for saying yes to that. I  
11:34:08 10 don't know at what point Household stopped selling it versus  
11 everyone else stopping selling it.

12 Q. Okay. You have a basis for saying no to that?

13 A. No, I don't have a basis for being able to put Household's  
14 decision to stop selling it in context with everyone else.

11:34:23 15 Q. Fair enough. Fair enough. On that we'll have to ask  
16 somebody who actually knows, right? Mr. Gilmer, for instance?

17 A. You'll have to ask somebody other than me, whoever you  
18 want.

19 Q. Okay. Now, from the period of mid 1999 through 2001, were  
11:34:47 20 there states that prohibited the sale of single premium credit  
21 insurance?

22 A. Yes.

23 Q. How many?

24 A. Well, I know there were many, but I don't know the exact  
11:35:03 25 number.

1 it's a five-year prepayment penalty, then it would be  
2 considered illegal under the Deceptive Trade Practices Act.  
3 So anything that's legal, either under the statute or under  
4 the Deceptive Trade Practices Act, would not be predatory. So  
11:43:31 5 I think I'm consistent on that.

6 Q. Okay. And while we're talking on the subject of credit  
7 insurance, the question of whether or not Household disclosed  
8 to its shareholders that it sold credit insurance, that's  
9 outside the scope of what you were asked to look at; isn't  
11:43:48 10 that correct?

11 A. Yes.

12 Q. All right.

13 Go back to the chart, please.

14 The next item there on your demonstrative is failure  
11:44:03 15 to properly disclose. Do you see that?

16 A. I do.

17 Q. This was also something that you found to be widespread  
18 and systemic and companywide?

19 A. Yes.

11:44:15 20 Q. Okay. How many instances of this did you find in your  
21 review of the 40 Bankers Boxes?

22 A. Well, I didn't count them specifically.

23 Q. Well, whether you counted them specifically, do you think  
24 there were 16,000 of them?

11:44:29 25 A. 16,000? I'm sure I didn't find 16,000.

1 Q. 15,000?

2 A. I didn't count them. I have --

3 Q. Are you under the impression you found 15,000?

4 A. I have no way of giving you a specific number. I found  
11:44:41 5 them in a number of states. I looked at the regulatory  
6 material, which also told me that the regulators agreed with  
7 my opinion that it was systemic because they were coming from  
8 a variety of states.

9 Q. But you didn't find examples of this problem that impacted  
11:45:01 10 anywhere near even one-half of 1 percent of Household's 3.2  
11 million outstanding consumer loans, correct?

12 A. Well, this is like the complaint ratio analysis. If I  
13 found deception in 50 instances across the country as a  
14 regulator, that would concern me; and I would conclude that  
11:45:24 15 it's a widespread practice if it's happening in a  
16 geographically dispersed area. But I didn't sit down and  
17 figure out a ratio percentage because I don't find that to be  
18 persuasive.

19 Q. I listened to what you said about ratios. That's why I'm  
11:45:42 20 not asking you about percentages. I appreciate what you said.

21 What I'm asking you about, however, is raw numbers.  
22 You didn't find anything remotely approaching 16,000 instances  
23 of failure to properly disclose, did you?

24 A. I didn't count them, but I'm sure I didn't find 16,000.

11:45:57 25 Q. Right. I listened pretty carefully to your testimony, and

1 Q. And you're not offering any testimony on whether or not  
2 the fact that Household used prepayment penalties was or was  
3 not disclosed to Household's investors, correct?

4 A. Yes.

11:56:52 5 Q. Do you have any knowledge on that subject?

6 A. No.

7 Q. Okay. The next subject up there is excessive points and  
8 fees. And, again, this is something you found to be  
9 widespread, systemic and companywide?

11:57:19 10 A. Yes.

11 Q. How many instances of this problem did you see in the  
12 various documents you looked at?

13 A. I didn't count the number of instances for any of these  
14 activities. So my answer is the same. I didn't count the  
11:57:37 15 number of times that Household charged excessive fees.

16 Q. But whatever number it was, it was nothing remotely  
17 approaching 16,000 times, correct?

18 A. I didn't count them, so I don't know what the number would  
19 be, plus I only looked at a subset of, you know, the total  
11:57:56 20 loans obviously. I didn't look at every loan they made over  
21 that course of time.

22 Q. But you looked at everything you wanted to look at, right?

23 A. Yes, I looked at everything I felt like I needed to look  
24 at.

11:58:06 25 Q. And you looked at everything you felt you needed to look

1 at to come here and give this jury your opinion, correct?

2 A. Yes.

3 Q. And having done that -- and let me back up.

4 I certainly didn't put any restrictions on what you  
11:58:19 5 could look at, did I?

6 A. No.

7 Q. Okay. Having done that, you're unable to say that the  
8 rate or the number -- I apologize. I take your point about  
9 ratios -- the number of instances of excessive points and fees  
11:58:34 10 is anywhere remotely close to one-half of 1 percent of the  
11 volume of Household's loans outstanding, correct?

12 A. I didn't count them, so I have no way of being able to  
13 answer that question.

14 Q. Yes, you do. You can say, no, I can't say it's anywhere  
11:58:50 15 near one-half of 1 percent, correct?

16 MR. DROSMAN: Objection, your Honor, argumentative.

17 THE COURT: Sustained.

18 MR. KAVALER: Okay.

19 BY MR. KAVALER:

11:59:02 20 Q. Now, you testified on this subject that Household charged  
21 points within what the state would allow, correct?

22 A. I think I -- I think my testimony was not exactly that.

23 Q. Let me read you your testimony. This is from Page 441,  
24 Lines 9 to 13 of this trial transcript from two days ago.

11:59:22 25 One is they would -- it was their goal to charge 7 to

1 Household; and there was a dialogue, right?

2 A. Well, that's an interesting way to describe it, a  
3 dialogue.

4 Q. Well, did you see any documents reflecting Household's  
01:42:27 5 dialogue with the State of California on this subject?

6 A. I did.

7 Q. And did you see that Mr. Detelich and Mr. Schneider met  
8 with representatives of the California Department of  
9 Corporations to discuss the AMTPA prepayment penalty late fee  
01:42:43 10 preemption situation, and someone came and reported that the  
11 meeting went very well and that the response from the  
12 Department of Corporations was guardedly positive for the  
13 prepayment penalty provision and the State of California did  
14 not object to the preemption? Did you see that document?

01:43:00 15 A. Well, I think what that document said was that they were  
16 going to look into it further. I don't think that document  
17 that you're reading from, if it's the same one I remember,  
18 said that they blessed it.

19 My impression after reading that document was, they  
01:43:13 20 went in and talked about it. California said -- and I used to  
21 do this as a regulator too -- well, I can't think of anything  
22 at the moment, but let me do some further research; you send  
23 me some additional material. And I don't have a letter or  
24 anything from California that blessed it.

01:43:30 25 Q. All right. Let's look at that document. It's Defendants'



1 Exhibit 219.

2 MR. KAVALER: May I approach the witness, your Honor?

3 THE COURT: Yes.

4 (Tendered.)

01:43:41 5 BY MR. KAVALER:

6 Q. Is this the document you were thinking of?

7 A. Yes, it is.

8 Q. Okay. And there's a memo at the bottom, an e-mail from  
9 Patrick Zenzola, government relations, California. And he

01:44:04 10 sends it to a bunch of people, including Mr. Detelich,  
11 Ms. Allcock, Mr. Schneider, Ms. Curtain and other people.

12 Do you see that?

13 A. Yes.

14 Q. And the first paragraph says, Tom Detelich, Tom Schneider  
01:44:17 15 and I met with representatives of the California Department of  
16 Corporations on Monday to discuss the AMTPA prepayment  
17 penalty/late fee preemption. The meeting went very well. The  
18 response from the DOC was guardedly positive for the  
19 prepayment penalty preemption. They did not object to the  
01:44:39 20 preemption.

21 Do you see that?

22 A. I do.

23 Q. Okay. And this is Household having a dialogue with the  
24 State of California about this situation, correct?

01:44:47 25 A. Yes. But the remainder of the sentences go to what I was

1 talking about, which is they went into California; they said  
2 this is what we want to do; California said we don't see  
3 anything at the moment, but we want you to send us additional  
4 information.

01:45:05 5 I did not see a follow-up from this discussion where  
6 California blessed it. In fact, I think California  
7 participated in the settlement regarding prepayment  
8 penalties -- well, I guess that was a couple of years later.

9 Q. But this document reflects Household executives meeting  
01:45:25 10 with California and openly and freely discussing the  
11 situation, putting forth their position, listening to  
12 California's position and being responsive, correct?

13 A. Yes. And, I mean, that's what this says. This is what I  
14 would expect to have seen in every state because normally when  
01:45:44 15 you're going to do something that may violate state law, you  
16 go to the regulators first and you get them to bless it. And  
17 I didn't see that in all the states, and I didn't see what the  
18 final outcome was of this.

19 Q. "I didn't see" is another way of saying I have no  
01:46:00 20 information to give this jury on that subject, right?

21 A. Say that again.

22 Q. Sure. When you say I didn't see something, that means I  
23 have no substantive testimony to give this jury on that  
24 subject? I'm not here to say you did it right; I'm not here  
01:46:12 25 to say you did it wrong; I just don't know?

1 A. Well, I thought you asked me if I saw where they met with  
2 California and they blessed them doing this particular thing.

3 Q. I don't believe I used the word "blessed."

4 A. And I said, no, I didn't see that.

01:46:28 5 Q. If that's what you heard, I apologize for any confusion I  
6 might have caused. I don't think I used the word "blessed."  
7 I asked about a dialogue.

8 They were having a dialogue with California, correct?

9 A. Yes, if you want to couch it like that, a dialogue.

01:46:43 10 Q. And you weren't at that meeting?

11 A. No, I wasn't.

12 Q. Mr. Detelich and Mr. Schneider were at that meeting?

13 A. That's what it says here.

14 Q. Right.

01:46:55 15 A. I have no way of knowing.

16 Q. But you have no reason to doubt it?

17 A. I mean, I have no -- no knowledge whatsoever if they were  
18 there or not.

19 Q. Okay. Let's go to loan flipping. I think that's the next  
01:47:07 20 one.

21 You said loan flipping is simply continuous  
22 refinances, correct?

23 A. Yes.

24 Q. And you said each time Household would refinance a loan,  
01:47:22 25 they would flip a loan?

1 A. I don't know if I said each time. Are you reading from my  
2 testimony?

3 Q. I'm reading from your testimony in this courtroom on March  
4 31, at Page 444, Line 24 to Page 445, Line 1. Quote: Each  
01:47:43 5 time Household would refinance a loan, they would flip a loan.

6 Is that what you meant to say?

7 A. Well, I guess what I meant to say was, in doing loan  
8 flipping, they would refinance a loan and add more fees and  
9 products. I'm sure that in all the loans that they made, we  
01:48:04 10 could find one or two or how many ever where they refinanced  
11 that it wasn't considered loan flipping. But a lot of the  
12 documents that I've looked at had loans refinanced more than  
13 one time, where they would add the points all over again and  
14 they would add the insurance premiums all over again. And  
01:48:25 15 that's what I was referring to there.

16 Q. So your position is not it's each time, but it's a very  
17 high level of incidence?

18 A. Where they were doing loan flipping.

19 Q. That's what I'm trying to find out. What you testified  
01:48:37 20 is, each time Household would refinance a loan, they would  
21 flip a loan.

22 Let's start with refinance. A refinance means a  
23 customer has a loan. He comes back to the same lender, and he  
24 comes out with a new loan with new terms; and he pays whatever  
01:48:50 25 costs are associated with that, correct?

1 A. Right.

2 Q. That's a common practice, isn't it?

3 A. Yes.

4 Q. Is --

01:48:55 5 A. It's not a common practice to charge points all over again  
6 or it's not a common practice to add insurance all over again  
7 or every time or as many times as you can. That's the  
8 difference between just doing a refinance and actually doing a  
9 predatory loan flipping. That was sort of the distinction I

01:49:14 10 was just trying to make to you just now.

11 Q. So you have no quarrel with a plain vanilla refinance,  
12 right?

13 A. Right.

14 Q. What percentage of Household loans are you now saying --  
01:49:23 15 what percentage of Household refinances are you now saying  
16 constitute flipping?

17 A. I don't know the number, but I do know that when they  
18 looked at it internally for refunding for loan flipping, it  
19 came out to -- I think it was \$60 million. So it was a large  
01:49:39 20 number of loans that they flipped.

21 Q. But yesterday it sounded like you were saying it was a  
22 hundred percent; today it sounds like you're off the hundred.  
23 I'm trying to find out where you are now.

24 A. I don't know what the exact number is. But based on  
01:49:52 25 internal documents at Household with how much they calculated

1 that they were going to have to refund for loan flipping,  
2 which totaled \$60 million, I'm assuming that it's a large  
3 number. Now, what the exact number is, I don't know. I did  
4 not calculate the specific number of loan flippings or equity  
01:50:12 5 strippings or anything like that. I didn't feel that was  
6 necessary for me to reach conclusions regarding whether they  
7 did or did not do predatory lending.

8 Q. But certainly if what anyone took from your testimony  
9 yesterday that -- when you said each time Household would  
01:50:26 10 refinance a loan, you're clearly saying today you didn't mean  
11 each time?

12 A. Well, I think I was talking in context of loan flipping.  
13 And so if you take sentences in isolation, it's easy to, you  
14 know, decide what you're going to say about it. But what I  
01:50:44 15 think I was referring to in this section was loan flipping.  
16 And where they were loan flipping, each time they did a  
17 refinance, they would add those points and fees.

18 Q. So taking sentences in isolation doesn't give you a fair  
19 view of what was actually said; is that your point?

01:51:02 20 A. No. I'm just saying you have to take it in context of  
21 what you're saying. And that's what I tried to do in this  
22 case, where I tried to look at as many documents as I could.  
23 Of course, I didn't look at every single one. I understand  
24 that. But I tried to look at quite a few so I could draw some  
01:51:17 25 conclusions.

1 Q. Taking it in context, as you just said, would be like  
2 looking at the entire company to make a judgment about what  
3 kind of company it was as opposed to looking at things that  
4 exist up and in one-half or less of 1 percent of the company's  
01:51:32 5 operations; would you agree with that?

6 A. Well, you're focused on the percent or the number of  
7 complaints or the number of loans or whatever you're saying.  
8 I took a broader view of that, and I looked at the type of  
9 lending practices they engaged in. I looked at what their  
01:51:49 10 training was. I looked at what their -- how were their  
11 employees compensated. I looked at the internal audit. I  
12 looked at their compliance function. I looked at complaints.  
13 I looked at the investigations and the examinations by the  
14 regulators.

01:52:04 15 So I looked at and used the methodology that I would  
16 use as a bank regulator. When we would go in to examine First  
17 National Bank of Chicago, for example, it was impossible for  
18 us to look at every single solitary loan that they had. So we  
19 had to make some judgments as far as how many loans we were  
01:52:25 20 going to look at, how many, you know, depository accounts we  
21 were going to look at so that we could check compliance with  
22 the laws. And where we found problems, we would expand that.  
23 And so it -- it -- it -- that sort of an analysis doesn't lend  
24 itself to calculating the exact number of loans in each of  
01:52:50 25 those categories. I looked at a much broader spectrum of

1 things for the company.

2 Q. I think the next thing on your list was blocking the back  
3 door. And the last thing on your list. Okay. We're making  
4 progress.

01:53:10 5 And you said that if Household makes a loan and the  
6 customer only stays for a short time, they're not going to be  
7 as profitable as if the customer would stay and pay, correct?

8 A. Are you reading from my testimony?

9 Q. I am reading from the trial transcript on March 31 at Page  
01:53:31 10 464, Line 21 to 465, Line 1. The question was:

11 Question: Why is that significant to your opinion?

12 You said, Answer: Well, because Household is in the  
13 business of making loans. And if they make a loan and the  
14 customer only stays for a short time, you know, they are not  
01:53:46 15 going to be as profitable as they would be if the customer  
16 would stay and pay. I left out the "you know?"

17 A. Thank you for doing that. So -- and your question is?

18 Q. The question is: Do you recall that testimony?

19 A. Yes.

01:53:59 20 Q. Okay. When you talk about the profitability of customers,  
21 you're talking about the profitability to the owners of the  
22 company, which is the investors, correct?

23 A. When I made that statement, I was focused on the amount of  
24 income that Household was going to generate. And ultimately

01:54:25 25 when you talk about the company, you talk about its investors,



1 I suppose. That's not generally what I focus on. But, yes.

2 But here I was just trying to discuss the income stream of the  
3 company.

4 Q. You say that's not generally what you focus on. You've  
01:54:43 5 never been the CEO of a public company, have you?

6 A. Not the CEO.

7 Q. You don't know what Mr. Aldinger focused on during the  
8 years he was CEO of Household?

9 A. Well, I know Household focused on growth in the 1999, you  
01:54:59 10 know, to 2000 time frame. But, of course, every company has  
11 to focus on profitability, whether you're publicly traded or  
12 not, because otherwise you would go out of business.

13 Q. There you go.

14 And so that's what you were saying here, that --  
01:55:17 15 let's talk -- a profitable loan is better for the company,  
16 better for the shareholders, better for everybody than an  
17 unprofitable loan, correct?

18 A. Yes. And from my standpoint, a sound loan is better for  
19 the company than an unsound loan or a good loan is better than  
01:55:35 20 a bad loan because if it's a bad loan, you don't get paid.

21 Q. And you mentioned the word income. In addition to income,  
22 the company has to focus on costs, right?

23 A. You mean just generally their costs or --

24 Q. Sure.

01:55:52 25 A. Sure.

1 Q. And profit is the difference between income and costs?

2 A. Income less expenses, right.

3 Q. Okay. And do you understand that when a loan is priced,  
4 the company takes into account certain costs, including the

01:56:10 5 cost of getting that money it's going to lend -- if it's not a

6 bank, it doesn't have deposits -- and it makes certain

7 assumptions as to how long the loan will last?

8 A. Yes.

9 Q. Okay. And let's assume they've -- they've assumed a

01:56:25 10 length of five years, and the customer pays off after one

11 year. The company will not make the profit it assumed it

12 would make on that loan, correct?

13 A. Yes.

14 Q. Okay. So to protect the profit for the company's

01:56:37 15 shareholders, the company has two choices. They can raise the

16 prices to all borrowers thereby increasing income and then one

17 borrower or another will pay off early and so be it and the

18 company will still make enough profits for its shareholders

19 because everybody pays more; or they could try to focus the

01:56:58 20 incremental cost on the fellow who pays off early, correct?

21 A. I just have never seen something like that. I've seen

22 other frameworks, but I'm not familiar with that.

23 Q. You're not familiar with what I'm describing?

24 A. Well, I understand what you're trying to say; but the

01:57:20 25 specifics of what you're saying, I haven't --

1 Q. Okay.

2 A. -- ever heard a lender say that we are focusing on people;  
3 we're going to charge someone more if they pay off early.  
4 I've never heard that before.

01:57:34 5 Q. Do you know what that's called in the lending trade?

6 A. I don't know.

7 Q. Prepayment penalty. Have you ever heard that?

8 A. I've heard the term prepayment penalty.

9 Q. Isn't what I just told you, the business case for a  
01:57:49 10 prepayment penalty is to focus the cost of an early  
11 termination of a loan on the person who causes that loss in  
12 revenue without focusing the cost on all the other borrowers  
13 who are not causing any loss in anticipated revenue?

14 A. I guess you could explain it like that. I've never heard  
01:58:07 15 a lender say that before. But, I mean, I guess you can couch  
16 it like that.

17 Q. And you understand that the market niche of a finance  
18 company, Household and others, starts off with people  
19 who major banks like Wells Fargo don't choose to lend to  
01:58:37 20 because they don't have the credit criteria that that bank is  
21 looking for?

22 A. Right.

23 Q. Okay. Now, in looking at these various documents, did you  
24 come across a document where Mr. Gilmer put out his list of  
01:59:06 25 predatory practices, which might be similar to, might be

1 different than this?

2 I'm sorry. Are you okay?

3 A. I'm okay.

4 Q. You need a break or something?

01:59:17 5 A. No. I can keep going. I just might cough a little.

6 Q. Did you come across a list of Mr. Gilmer's assembly of  
7 practices he thought were predatory?

8 A. I saw several memos from him where he discussed predatory  
9 lending practices. I'm not sure I know what you're referring

01:59:37 10 to.

11 Q. Let me show you Defendants' 29 -- I'm sorry, 209.

12 I'll ask you if this is one of the memos of  
13 Mr. Gilmer's that you recall seeing?

14 A. I do.

02:00:00 15 Q. Okay. Let's go through it together. It's dated May 1,  
16 2000. And it was sent to all Household employees, correct?

17 A. Yes.

18 Q. And the subject is predatory lending. Mr. Gilmer writes,  
19 Predatory lending is a very high-profile subject in the

02:00:13 20 financial services industry today; and, unfortunately, there  
21 is some good reason for that. Clearly, some companies,

22 although few in number, have committed outrageous acts that  
23 appear to have been driven by greed. As I mentioned in an

24 earlier note to you, our aim and, frankly, our commitment is

02:00:34 25 to drive these unscrupulous players from our business. You

1 may rest assured that we are doing all we can, including  
2 forming coalitions and working with our friends in the state  
3 and federal legislative branches, to curb their activity. You  
4 will be hearing more about these efforts in the coming weeks.

02:00:53 5 Do you see that?

6 A. I do.

7 Q. Okay. And then he goes on. He's got another paragraph  
8 there. I'll skip it in the interest of moving along. And  
9 then he says in the third paragraph, As you may know, there  
02:01:04 10 are a few activities that are often mentioned in reports on  
11 predatory lending.

12 And then he goes on to say, Below I have listed these  
13 activities along with a brief description of each, as well as  
14 our internal policies that relate to each one. I thought you  
02:01:20 15 might find the stark differences in these policies and  
16 processes interesting.

17 And the first bullet point he has is stripping. Do  
18 you see that?

19 A. I do.

02:01:29 20 Q. He says, Stripping: The practice of making RE -- that's  
21 real estate?

22 A. Yes.

23 Q. Okay. Thank you. Practice of making real estate loans to  
24 customers where the lender, using a variety of unscrupulous  
02:01:41 25 tactics, hopes to ultimately foreclose on property, sell it

1 and pocket the equity. HFC -- that's Household Finance  
2 Corporation?

3 A. Yes.

4 Q. HFC/Beneficial policy: We do not permit hard equity  
02:01:57 5 loans.

6 Do you see that?

7 A. I do.

8 Q. He's writing this to all Household employees in May of  
9 2000, correct?

02:02:04 10 A. Yes.

11 Q. He says, In every case, we review our customers'  
12 circumstances and conclude that the customer has the intent  
13 and the ability to repay the debt. Further, every effort is  
14 made to avoid foreclosure, to include renegotiations of terms,  
02:02:23 15 payment extensions, et cetera. Finally, in those few  
16 circumstances when foreclosure becomes our only alternative,  
17 we always refund any and all excess funds, parenthesis, any  
18 money from the sale of the property in excess of the amount  
19 necessary to clear the debt, close parenthesis, back to the  
02:02:45 20 borrower.

21 Do you see that?

22 A. I do.

23 Q. He is stating Household's policy on this subject to all  
24 employees?

02:02:52 25 A. That's what he's saying, yes.

1 Q. I agree.

2 Next bullet point, packing.

3 A. I don't necessarily agree with it, but that's what it says  
4 here.

02:03:00 5 Q. That was my question. He is stating Household's policy to  
6 all employees as of May 2000, correct?

7 A. Well, he's stating what he's stating. What I have said in  
8 my prior testimony and in the reports is that I don't think  
9 that they don't do equity stripping.

02:03:21 10 Q. Nevertheless, this is Mr. Gilmer writing to every single  
11 employee in the company telling them what the company's policy  
12 is, correct?

13 A. Well, he's saying what he's saying in this memo.

14 Q. The next bullet point says, Packing: The practice of  
02:03:39 15 requiring a customer to accept credit -- I'm sorry -- to  
16 accept credit-related insurance as a condition for obtaining a  
17 loan or hiding the fact that insurance is a part of the  
18 transaction.

19 And underneath that, he says, HFC/Beneficial policy:  
02:03:55 20 Under no circumstances will we ever require customers to buy  
21 credit insurance from us as a condition for obtaining a loan.  
22 Beyond that, our customers receive a 30-day free look, during  
23 which time they may cancel their insurance and obtain a full  
24 refund. Beyond that, a customer may cancel insurance at any  
02:04:17 25 time and receive a refund of all unearned premiums.

1           Again, this is Mr. Gilmer in May of 2000 saying this  
2 to all Household employees, correct?

3 A. Well, that's what it says here.

4 Q. Flipping, next bullet. The practice of rapidly renewing  
02:04:36 5 RE secured loans, each time collecting points, parenthesis,  
6 sometimes 20 or more, close parenthesis, on the full amount  
7 financed for the purpose of gouging customers.

8           HFC/Beneficial policy: Rapid refinancing of RE loans  
9 for this purpose is forbidden. Further, the maximum number of  
02:04:58 10 points allowed under any circumstance is seven and a half.  
11 Beyond that, for loans refinanced within a year, our policy  
12 prohibits charging any points whatsoever on the refinanced  
13 amount.

14           Do you see that?

02:05:14 15 A. I do.

16 Q. That's Mr. Gilmer telling every single Household employee  
17 in May of 2000 that that's our policy, that's the company's  
18 policy, correct?

19 A. Well, this is what he's writing to them, yes.

02:05:26 20 Q. Okay. And then he says, As you can see from this summary,  
21 we stand far apart from the unscrupulous lenders that we've  
22 all read about in the press. In fact, HFC/Beneficial is often  
23 cited as, quote, the standard, close quote, for high ethics  
24 and fair customer dealings by our regulators and legislators.  
02:05:50 25 I know that you share my pride in our position and will



1 support our efforts to maintain our standing in the years  
2 ahead.

3 And that's also what he wrote to every single  
4 employee of the company on May 1, 2000, correct?

02:06:03 5 A. That's what the memo stated, yes.

6 Q. That's my question.

7 Now, here's my next question: Did you ever see a  
8 memo from Mr. Gilmer to all the employees saying please ignore  
9 my memo of 5/1/00 and do something completely different; I  
02:06:21 10 just sent that memo out so that I have it available to point  
11 to if someone said to me you're a predatory lender? Did you  
12 see a memo like that?

13 A. No.

14 Q. And Household had approximately 14,000 employees in this  
02:06:36 15 particular business and 32,000 overall during these years?

16 A. I don't know the exact number. I know you pointed it out  
17 in the 10-K. If you say so.

18 Q. You have no reason to question what's in the 10-K?

19 A. No.

02:06:51 20 Q. Did you ever see something that suggests to you Mr. Gilmer  
21 had a conference call with these 14,000 employees and said  
22 don't pay any attention to my memo?

23 A. I didn't see anything that indicated he had a conference  
24 call with them.

02:07:03 25 Q. Did you see anything that indicated Mr. Gilmer went around

1 the country meeting with these 14,000 people saying don't pay  
2 attention to this memo?

3 A. I didn't see anything like that.

4 Q. And I think I heard you say a minute ago, this is one of  
02:07:17 5 numerous memos that you saw from Mr. Gilmer to all the  
6 employees to the same general effect, correct?

7 A. Well, I didn't say numerous; but I know there was at least  
8 three that I saw, one per year approximately during that time  
9 frame that I was looking at these documents.

02:07:35 10 Q. All right. We might get to look at some more, but I'll  
11 pass for the time being.

12 A. I'm sorry?

13 Q. I said we might get to look at some more, but for the  
14 moment, I'll pass on to something else.

02:07:48 15 I apologize. I take that back. Let me show you --  
16 let me ask you, you said you saw one of these a year. Did you  
17 see one entitled "ethical behavior" issued by Mr. Gilmer on or  
18 about October 3, 2001?

19 A. I'll have to look at the memo --

02:08:19 20 Q. Absolutely.

21 A. -- to tell you if I saw it or not.

22 Q. Absolutely.

23 MR. KAVALER: Your Honor, may I approach.

24 Let the record reflect I'm handing the witness a copy  
02:08:30 25 of Defendants' 165.

1 (Tendered.)

2 BY MR. KAVALER:

3 Q. And this is, again, to all consumer lending employees.

4 That's Mr. Gilmer's business group, correct?

02:08:41 5 A. I'm sorry? May I have a moment to look at this?

6 Q. Sure. Take all the time you need to read this document.

7 (Brief pause.)

8 BY THE WITNESS:

9 A. I'm not -- I don't think I saw this memo.

02:09:13 10 BY MR. KAVALER:

11 Q. Let me see if I can refresh your recollection. Focus on  
12 the bottom paragraph because there's some distinctive words in  
13 there you might recall.

14 A. Okay.

02:09:22 15 Q. He says, Let me say, I take pride in the fact that 99.9  
16 percent of our people uphold and support our company  
17 standards. As I have communicated before, I also take pride  
18 in the fact we maintain a zero tolerance for inappropriate and  
19 unethical behavior and demonstrate that with swift action.

02:09:42 20 The introduction of the employee integrity tip line is simply  
21 an additional tool you can use to help us maintain our great  
22 company name.

23 Do those words refresh your recollection that you saw  
24 this memo?

02:09:54 25 A. I don't think I did. But I know that he sent out a few

1 that were similar to this.

2 Q. Right. And the phrase "zero tolerance" was one that he  
3 used quite frequently?

4 A. I don't remember that.

02:10:04 5 Q. Okay. And you understand the phrase "demonstrate with  
6 swift action" means people who violate his policies will be  
7 punished?

8 A. Well, that would be a good explanation of it, I think.

9 Q. And, in fact, from your review of the documents, you know  
02:10:19 10 that people who violated Household's policies were, in fact,  
11 punished?

12 A. I didn't hear the last part of your question. Were what?

13 Q. I'm sorry. You know from your review of the documents  
14 that people who violated Household's policies in this area  
02:10:35 15 were, in fact, punished by Household?

16 A. I did see a few of those documents.

17 Q. All right. Including some people being fired?

18 A. I saw one or two of those, I think.

19 Q. Including instances where the account executive who made a  
02:10:52 20 bad loan was fired and sometimes the branch manager who  
21 supervised that account executive was also fired?

22 A. I can't remember their positions, but I did see a handful  
23 of those types of documents.

24 Q. And that was for violating Household's policies as  
02:11:07 25 articulated by Mr. Gilmer and others?

1 A. Yes.

2 Q. Okay. Now, you talked yesterday about a person named  
3 Andrew Kahr -- I'm sorry -- the day before yesterday, I think  
4 it was. Anyway, in the last couple of days, you told us about

02:12:00 5 Andrew Kahr, correct?

6 A. Yes.

7 Q. And you told us he was a founder of a company called  
8 Providian, correct?

9 A. Yes.

02:12:06 10 Q. He was not a founder of Household?

11 A. No, not that I know of.

12 Q. Well, you know Household is 125 years old, don't you?

13 A. Is it 125 years old? I don't know if I knew that.

14 Q. Assuming that's true, then you don't think he was a

02:12:19 15 founder of Household?

16 A. I'm not sure how old he is really.

17 Q. Okay. And Providian is not a company related to  
18 Household?

19 A. No.

02:12:29 20 Q. All right. So he was the founder of some other company.

21 And he was -- I think I might have asked you this. If I did,  
22 I apologize. I'm getting senile in my old age. He was not a  
23 senior executive of Household?

24 A. He was a consultant for Household.

02:12:42 25 Q. Not an employee?

1 A. No.

2 Q. So if you were drawing a table of organization -- do you  
3 know what a table of organization is?

4 A. Yes.

02:12:49 5 Q. If you were drawing a table of organization for Household,  
6 where would you put him on it?

7 A. Well, you could put him on a dotted line to Mr. Gilmer or  
8 something like that. Sometimes you see consultants on there  
9 or not at all.

02:13:01 10 Q. Not at all or a dotted line. What does a dotted line  
11 usually mean?

12 A. Well, that they're either not an employee or they are  
13 reporting sort of outside the framework.

14 Q. And on this table of organization of Household as you  
02:13:14 15 understand it, where would you put Mr. Aldinger?

16 A. Above Mr. Gilmer.

17 Q. At the top?

18 A. Yes.

19 Q. You certainly wouldn't put Mr. Kahr at the same level as  
02:13:34 20 Mr. Aldinger, would you?

21 A. Well, I mean, you asked me where you would put him on an  
22 org chart. And I would think it would only make sense if he's  
23 not an employee to put him on a dotted line reporting to  
24 Mr. Aldinger or Mr. Gilmer because I think he was actually

02:13:51 25 hired to promote the growth for the finance --

1 Q. For giving advice?

2 A. Consumer finance.

3 Yes.

4 Q. By giving advice, not by running the company?

02:13:57 5 A. No, no. And that's not what I'm saying.

6 Q. Now, you read to the jury from Plaintiffs' Exhibit 1388,

7 which is in evidence, which is an article about Mr. Kahr's

8 company, Providian, in the San Francisco Chronicle.

9 Do you remember that?

02:14:18 10 A. Yes.

11 Q. That's the article that's up there on the screen now.

12 And this article says various negative things about

13 Mr. Kahr, correct?

14 A. Yes.

02:14:29 15 Q. And the point of that was to say that when Household  
16 engaged Mr. Kahr, they should have been aware of these things?

17 MR. DROSMAN: Objection, calls for speculation.

18 THE COURT: Overruled.

19 BY THE WITNESS:

02:14:50 20 A. So -- can you ask me the question again?

21 BY MR. KAVALER:

22 Q. Sure. The point of your reading from this article was to

23 suggest that when Household engaged Mr. Kahr as a consultant,

24 they should have been aware of its contents?

02:15:02 25 A. Are you saying the contents of the article?

1 Q. Sure.

2 A. Well, the article was dated in 2002, which was sort of  
3 towards the end of when Mr. Kahr was helping them.

4 Q. It was four years after you testified that they engaged  
02:15:17 5 him as a consultant, right?

6 A. They engaged him at the end -- or, well, three, three and  
7 a half. They engaged him at the end of 1998.

8 Q. The article is dated May 5, 2002, correct?

9 A. I can't see the date, but, yes, 2002.

02:15:30 10 Q. Okay.

11 A. Yes.

12 Q. So Mr. Aldinger couldn't possibly have read this article  
13 before Household engaged Mr. Kahr, correct?

14 A. Well, it hadn't been written yet.

02:15:39 15 Q. The answer is correct?

16 A. Yes.

17 Q. And Mr. Schoenholz couldn't have read this article before  
18 Household engaged Mr. Kahr?

19 A. Right.

02:15:45 20 Q. And Mr. Gilmer couldn't have read this article before  
21 Household engaged Mr. Kahr?

22 A. Right.

23 Q. And you have no reason to believe Mr. Aldinger,  
24 Mr. Schoenholz or Mr. Gilmer ever read this article, correct?

02:15:55 25 A. I have no idea if they read it or not.



1 Q. You don't know whether they read it or not. For all you  
2 know, the first time they ever saw it was yesterday on the  
3 screen?

4 A. Well, unless they were following Mr. Kahr because right  
02:16:08 5 after this, there were some internal memos saying that they  
6 wanted to start -- they blocked Mr. Kahr's e-mail; and they  
7 deleted all of the e-mails internally regarding Mr. Kahr. And  
8 then -- I don't know if it was Mr. Aldinger, one of the senior  
9 officials, said we better get rid of all the memos too. So I  
02:16:29 10 think someone at Household read this because right after that,  
11 they did a document destruction regarding Andrew Kahr.

12 Q. The answer to my question is you don't know if any of them  
13 ever saw this memo earlier than yesterday, do you?

14 A. I don't.

02:16:49 15 Q. Do you know how Mr. Kahr came to Household's attention?

16 A. As I'm sitting here, I don't. I may have looking at the  
17 documents three years ago. But I just don't know sitting  
18 here.

19 Q. I think you just told me you read a bunch of Mr. Kahr's  
02:17:07 20 memos, correct?

21 A. Yes.

22 Q. We'll look at a couple in a minute.

23 Do you know what Mr. Kahr was famous for before he  
24 came to consult at Household?

02:17:16 25 A. Predatory lending practices at Providian.

1 Q. Well, that would have been well known after this article  
2 in May of 2005. Do you know what he was known for before  
3 1998?

4 A. Well, his relationship with Providian. I don't know about  
02:17:32 5 before that.

6 Q. Did you ever hear of a company called Merrill Lynch?

7 A. Yes.

8 Q. Did you ever hear of a product called a cash management  
9 account?

02:17:40 10 A. Oh, I think that's described in here or in one of the  
11 articles, yes.

12 Q. Do you know what a cash management account is?

13 A. Yes, I do.

14 Q. And today they're very prevalent in the finance industry.

02:17:51 15 It's the linkage of a credit card and a brokerage account.

16 The credit card might be a debit account. You can use it as a  
17 checking account. It's very common, correct?

18 A. Yes.

19 Q. You're not as old as I am so you won't remember when it

02:18:02 20 first came out, but it was a big stir in the financial

21 industry when Merrill Lynch rolled out the first one, wasn't  
22 it?

23 A. I'm too young to remember that.

24 (Laughter.)

02:18:11 25 BY MR. KAVALER:

1 Q. But you've heard of it?

2 A. I heard a tale at my father's knees.

3 Q. People older than you told you this?

4 A. Yes.

02:18:18 5 Q. And people who are in the finance business sometimes say  
6 it was a revolutionary moment in the finance industry; you've  
7 heard that?

8 A. I haven't heard that, but --

9 Q. And you've heard that the person who is credited with  
02:18:29 10 having invented this product, this revolutionary product, at  
11 Merrill Lynch is Andrew Kahr?

12 A. I have no knowledge about that except for what I read in  
13 that article about that he developed that product.

14 Q. You were very kind enough to share with us the other  
02:18:42 15 knowledge you got from that article yesterday, so you think  
16 the article is reliable, don't you?

17 A. Yes.

18 Q. So if the article says something about Merrill Lynch and  
19 the CMA, that rings a bell? You've heard that before?

02:18:54 20 A. Yes.

21 Q. Would you describe Mr. Kahr as an innovator based on his  
22 invention of the cash management product at Merrill Lynch?

23 A. You know, you could describe him as that.

24 Q. Do you think senior managers of a company might think it's  
02:19:08 25 a good idea to bring someone in to give them innovative

1 thoughts which they can bat around?

2 A. Sure.

3 Q. Would you expect that a responsible company would  
4 nevertheless put a fence around that guy because he's not an  
02:19:20 5 employee or an officer and make sure that the guys who are  
6 employees and officers watch him and make sure he doesn't come  
7 up with any silly ideas?

8 A. Sure.

9 Q. You know that that's exactly what Household did, don't  
02:19:31 10 you?

11 Household surrounded Mr. Kahr with all of their  
12 senior management; and they said to him, you generate ideas  
13 and we'll decide if they're right for Household because they  
14 need to be consistent with our culture and good for our  
02:19:45 15 customers and good for our employees and good for our  
16 investors. And what happened was, in all these e-mails you  
17 read, Mr. Kahr constantly fought with senior management  
18 because he thought they wouldn't let him do what he wanted to  
19 do and they thought he was crazy.

02:20:02 20 Isn't that what happened?

21 A. I didn't see anything that said "I think Mr. Kahr is  
22 crazy," so I have no knowledge of those last statements that  
23 you made.

24 Q. Okay. Let's see what you did see.

02:20:15 25 A. Okay.

1 Q. Let's start with Plaintiffs' Exhibit 1007, which counsel  
2 for the investors put up on the screen during the opening  
3 statements.

4 MR. KAVALER: Your Honor, may I approach?

02:20:44 5 THE COURT: Yes.

6 (Tendered.)

7 BY MR. KAVALER:

8 Q. This is a memo dated March 12, 2001, to files from  
9 Mr. Schoenholz. I know -- I don't believe you were here for  
02:20:59 10 the opening statements, but you've seen this memo before,  
11 correct?

12 A. Let me take a minute to look at it.

13 Q. Please, please.

14 A. And see if I've seen it.

02:21:05 15 (Brief pause.)

16 THE COURT: While she's doing that, why don't we take  
17 just a couple of minutes to do a little switch here. We can  
18 stay right where we are, folks. It will just take a minute.

19 (Brief pause.)

02:24:16 20 THE COURT: You may resume.

21 MR. KAVALER: Thank you, your Honor.

22 BY MR. KAVALER:

23 Q. Have you had enough time to read this document?

24 A. I did.

02:24:22 25 Q. Okay.

1           And counsel for the shareholders read some portions  
2 of it to the jury during his opening. He didn't read this  
3 portion. Let me read it to you. It's in the bottom of the  
4 second paragraph. It begins with the word "However."

02:24:33 5           "However, Andrew Kahr also made proposals that have  
6 not passed review by the Office of General Counsel and/or have  
7 not been viewed favorably by the senior business executives.  
8 Consequently, these proposals have never been implemented."

9           Do you see that?

02:24:49 10          A. I see it.

11          Q. You saw, in reviewing these various memos of Mr. Kahr's,  
12 that there was an ongoing tension between Mr. Kahr and other  
13 senior executives about a lot of his proposals, didn't you?

14          A. You know, I didn't focus on that. I was just focusing on  
02:25:06 15 what the proposals were.

16          Q. Right.

17          A. So --

18          Q. I think another document that you showed us yesterday --  
19 and I'll come to it in a minute -- said that Mr. Kahr  
02:25:16 20 originally made 60 proposals and it was whittled down to ten?

21          A. I think that's right.

22          Q. And of the ten, I think you told us two were implemented?

23          A. I think more than two were implemented.

24                   There were two on a listing of some, but I believe  
02:25:31 25 there were more than two implemented.

1 Q. We'll get to that.

2 But the point is: He was an idea generator who threw  
3 out 60 ideas. At least 50 of them died, correct?

4 A. Yes.

02:25:40 5 Q. Some of them died as a result of some ugly memos back and  
6 forth between Mr. Kahr and senior executives of Household who  
7 said, in essence, "Not here you don't"; isn't that right?

8 A. I don't know. I didn't see all those types of memos.

9 Q. Well, you saw -- how many Kahr memos did you see?

02:26:00 10 A. I probably saw maybe five or so.

11 Q. Let's see which ones you saw.

12 Let me show you Plaintiffs' Exhibit 533. I believe  
13 this is one of the documents we looked at yesterday or the day  
14 before yesterday, correct?

15 A. (No response.)

16 Q. Correct?

17 MR. KAVALER: May I approach the witness, your Honor?

18 THE COURT: You may.

19 MR. KAVALER: Thank you.

20 (Document tendered.)

21 BY THE WITNESS:

22 A. Thank you.

23 BY MR. KAVALER:

24 Q. So, this is a document investors' counsel showed to you  
02:26:39 25 and you testified about a couple days ago?

1 A. Yes.

2 Q. Do you remember that?

3 A. Yes.

4 Q. Okay.

02:26:47 5 And it's to Joe Vozar, with copies to Paul Creatura,  
6 Gary Gilmer, Martha Pampel, Kay Curtin, Dave Schoenholz, Ken  
7 Robin and Susan Jewell.

8 Do you know who Ken Robin is?

9 A. I know who almost all these people are, but I can't  
02:27:04 10 remember all their titles.

11 Q. Let me see if I -- sorry.

12 A. But you can tell me.

13 Q. I'll try to refresh your recollection.

14 A. Okay.

02:27:09 15 Q. Mr. Robin was the General Counsel of the company?

16 A. Yes.

17 Q. Susan Jewell was the Deputy General Counsel of the  
18 company?

19 A. I'm not familiar with her.

02:27:18 20 Q. Okay.

21 When I say "the company," I mean Household  
22 International, the parent, the public company.

23 Kay Curtin was the General Counsel of Household  
24 Finance?

02:27:25 25 A. Yes.



1 Q. Do you recall that?

2 A. Yes.

3 Q. Martha Pampel was a lawyer on Kay Curtin's staff --

4 A. Yes.

02:27:32 5 Q. -- I believe.

6 She might have been on Mr. Robin's staff.

7 In any event, she was in the Law Department.

8 All right.

9 And if you look down into the third paragraph, about  
02:27:41 10 the third line beginning with "Since" -- there it

11 is (indicating) -- he says, "Since I have been working

12 personally with the HFC -- " that's Household Finance -- "and

13 HI -- " that's Household International, correct?

14 A. Yes.

02:27:59 15 Q. " -- lawyers on this, please let me handle any requests

16 from you and HFC for legal approval of specific actions and

17 forms relating to this project for the time being.

18 "Please do not" -- underscored -- "put such requests

19 into any routine legal approval process.

02:28:16 20 "I met with the lawyers on Friday and thanked them

21 for their efforts, which have made this breakthrough

22 possible."

23 Do you see that?

24 A. I do.

02:28:22 25 Q. And, then, in the next paragraph, three lines from the

1 Q. And there are many other regulators who don't share those  
2 opinions, correct?

3 A. I'm not sure I understand. That didn't think they engaged  
4 in predatory lending?

02:40:07 5 Q. Correct.

6 A. There were a few states that issued reports that didn't  
7 show those types of violations. And I don't know how  
8 expansive their -- the scope of their -- examination.

9 But, ultimately, all 50 states came to an agreement  
02:40:25 10 with Household and fined them \$484 million for these predatory  
11 lending practices.

12 So, ultimately, all of the states ended up signing  
13 onto that.

14 Q. You reviewed a number of state regulatory exams of  
02:40:40 15 Household, which were complimentary of Household, which you  
16 didn't mention in your direct testimony, correct?

17 A. Not a number. I know there were a few that I reviewed,  
18 that had violations of other types of things, but not of  
19 predatory -- you know, the types of practices.

02:40:56 20 I didn't do a complete review of everything that  
21 Household might have violated in that time period. I focused  
22 on whether or not they engaged in predatory lending.

23 So, the examination reports had much other  
24 information in there, requiring corrective action, that went  
02:41:15 25 to other things besides predatory lending.

1 A. I mean, I don't know -- I don't have it in front of me to  
2 be able to say --

3 Q. Okay.

4 Let's see if we can put it up on the board.

02:46:16 5 A. -- to see what it is.

6 MR. KAVALER: Tab 43.

7 (Brief pause.)

8 BY MR. KAVALER:

9 Q. This is an excerpt of the deposition of Mr. Cross.

02:46:39 10 Do you recall reading the deposition of Mr. Cross?

11 A. I do.

12 Is he referring to -- are you saying that he's  
13 referring to -- 290?

14 Q. He's referring to the Expanded Report of Examination.

02:46:52 15 Do you recall at his deposition he was asked about  
16 this report?

17 A. I read it a while ago, but I thought they looked at more  
18 than 19 in this expanded report.

19 Q. Okay.

02:47:05 20 Let's --

21 MR. DROSMAN: Your Honor, are they offering the depo  
22 into evidence? I'm not sure --

23 MR. KAVALER: No, your Honor.

24 The witness said her recollection would be refreshed  
02:47:15 25 if I showed her Mr. Cross' testimony.

1 I'm asking whether this refreshes her recollection  
2 about what he testified about.

3 THE COURT: The way to do that is to show it to the  
4 witness --

02:47:22 5 MR. KAVALER: Okay.

6 THE COURT: -- not to publish it to the courtroom or  
7 the jury.

8 So, please remove that.

9 MR. KAVALER: I'll do that.

02:47:28 10 Take that down, please.

11 (Brief pause.)

12 MR. KAVALER: Thank you.

13 May I approach the witness, your Honor?

14 THE COURT: Yes.

15 BY MR. KAVALER:

16 Q. I'm handing you Pages 397 through 400 of Mr. Cross'  
17 deposition; and, I'm directing your attention, ma'am, to the  
18 bottom of 398, where I put the red tick through the top of  
19 "3999." It's a total of nine lines.

02:48:19 20 My question is: Does that refresh your recollection

21 that that's the testimony that Mr. Cross gave?

22 (Document tendered.)

23 BY THE WITNESS:

24 A. So, your question to me is: Is this his testimony?

02:48:46 25 BY MR. KAVALER:

1 Q. No, my question is: Does that refresh your recollection  
2 that you read Mr. Cross' testimony, where he said that the 19  
3 complaints, out of a population of thousands that he looked at  
4 to form his conclusions in this report, were a woefully  
02:49:02 5 inadequate population to draw from?

6 A. I see what he says here, but I don't see how it connects  
7 to this report.

8 He -- because what you asked him before that is what  
9 he majored in in college. So, I'm not sure about the  
02:49:21 10 connection there.

11 I see what he says about a statistical significance  
12 or --

13 Q. All right.

14 A. That he's not a statistician. So, I don't know.

02:49:34 15 Q. Let's look at 2090, which is the report that counsel for  
16 the investors showed you a couple days ago and you testified  
17 about, which is now in evidence.

18 A. Okay.

19 Q. All right.

02:49:41 20 Do you have that up there?

21 MR. DROSMAN: I think it's 290, your Honor.

22 MR. KAVALER: Sorry.

23 BY THE WITNESS:

24 A. 290?

02:49:47 25 BY MR. KAVALER:

1 Q. 290. I apologize.

2 All right. We'll go to Page -- the production number  
3 at the bottom "HHS," ending in "667."

4 THE COURT: Let me just make sure I have this. This  
02:50:01 5 is Plaintiffs' Exhibit 290?

6 MR. KAVALER: 290, your Honor.

7 THE COURT: In evidence?

8 MR. KAVALER: In evidence.

9 THE COURT: Proceed.

02:50:08 10 MR. KAVALER: Two days ago.

11 BY MR. KAVALER:

12 Q. And we're at the page ending in "667," and the production  
13 numbers are in the lower right-hand corner.

14 Do you see that?

02:50:18 15 A. (No response.)

16 Q. And where it says, "Identify patterns and recent complaint  
17 history," it says: "The complaints filed with the Department  
18 reflect transactions originated in several branch locations  
19 from varying locales in Washington. While most of the  
02:50:33 20 complaints show similar patterns of consumer abuse, the

21 Bellingham branch stands out with over 30 percent of the  
22 complaints, (6 of 19), discussed in detail in this report."

23 Do you see that?

24 A. I do.

02:50:48 25 Q. Okay.

1           And, then, Mr. Cross, the author of this report, was  
2 asked in his deposition about those 19 complaints. And he  
3 said that that was a "woefully inadequate population to draw  
4 from."

02:50:58 5           Do you see that in his testimony?

6 A. I see that in his testimony.

7 Q. Okay.

8           And my question is: You recall reading his  
9 deposition testimony, correct?

02:51:05 10 A. Yes.

11 Q. And do you recall testifying extensively about the  
12 Washington Report a couple days ago, correct?

13 A. Yes.

14 Q. Okay.

02:51:15 15           And you understood, when you testified about that  
16 report, that it was based on a sample of 19 complaints, which  
17 Mr. Cross said that it was a woefully inadequate population to  
18 draw from, correct?

19 A. I see that that's what he testified; but, based on the  
02:51:31 20 number of complaints, they did this expanded investigation and  
21 they did the mystery shopping.

22           So, you know, I don't know what the context is  
23 exactly of how -- you know -- what these questions were, but I  
24 know they thought something was significant, to go to this  
02:51:49 25 much trouble -- to do this investigation.

1 Q. Okay.

2 Let's look at Minnesota. You testified about some  
3 complaints in Minnesota two days ago?

4 A. Yes.

02:52:03 5 Shall I get that?

6 Q. I'm working on it. Give me a second.

7 (Brief pause.)

8 BY MR. KAVALER:

9 Q. Let me show you what's been marked as Defendants' 296.

02:52:36 10 MR. KAVALER: May I approach, your Honor?

11 THE COURT: You may.

12 BY THE WITNESS:

13 A. Is that not this one (indicating)?

14 BY MR. KAVALER:

02:52:44 15 Q. Is this one of the documents that you reviewed?

16 A. Yes.

17 Q. Okay.

18 And this is a letter to Mr. Jordan Ash, the Loan

19 Counselling Director of Acorn Housing Corporation, from

02:53:11 20 Mr. Kevin M. Murphy, the Deputy Commissioner of the Minnesota

21 Department of Commerce, correct?

22 A. Yes.

23 Q. Okay.

24 And Mr. -- Deputy Commissioner -- Murphy is writing

02:53:24 25 to Mr. Ash about certain complaints against Household.



1 Do you see that?

2 A. Yes.

3 Q. And he says -- he lists the complaints by name and he says

4 -- "I have personally reviewed all of the complaints and the

02:53:39 5 response documentation provided by Household Beneficial. To

6 date, we find no evidence of law by Household Beneficial with

7 respect to these complaints."

8 Do you see that language?

9 A. I see that language.

02:53:50 10 Q. Okay.

11 And he says there are two more complaints as to which

12 he doesn't yet have documentation, correct?

13 A. Where are you reading from?

14 Q. I think I'm reading from the wrong place.

02:54:15 15 (Brief pause.)

16 BY MR. KAVALER:

17 Q. I'm reading from the bottom of the first page, but I

18 withdraw the question.

19 A. Okay.

02:54:30 20 Okay.

21 So, at least in Minnesota, on this occasion, although

22 there were complaints, Commissioner Murphy found that in the

23 case of five of them, there was no evidence of any violations

24 of law by Household/Beneficial, correct?

02:54:43 25 A. Right.

1                   And that predates by a year and a little bit the  
2 examination that we looked at yesterday.

3 Q. Right.

4                   But it follows by two or three years the time when  
02:54:52 5 you said two days ago everything began to change when Gary  
6 Gilmer decided to focus on growth, correct?

7 A. Well, if you remember Mr. Cross' testimony in his  
8 deposition, he said, "You know, in the beginning we believed  
9 Household when they said it was either a rogue employee or a  
02:55:11 10 rogue branch," or whatever; and, it took us a while to put  
11 together that they were, in fact, engaging in predatory  
12 lending.

13                   And, then, he started talking to other regulators  
14 around the country and they were all having the same sorts of  
02:55:26 15 issues.

16                   So, some of this information predates when they  
17 finally put it all together and figured out what was going on.

18 Q. Okay.

19                   But, in any event, this is an instance of a state  
02:55:40 20 regulator investigating a complaint and coming to the  
21 conclusion that, notwithstanding the customer complained,  
22 there was no merit to the complaint, correct?

23 A. Yes.

24 Q. And that happens sometimes, doesn't it?

02:55:51 25 A. Sure.

1 Q. Did you see, in the records that you looked at,  
2 Household's response to Mr. Ortega's complaint?

3 A. I may have. I don't remember.

4 Q. Let me show you that document and see if that refreshes  
03:31:51 5 your recollection.

6 MR. KAVALER: Your Honor, could we mark this for  
7 identification as Defendant Exhibit 1079?

8 (Document tendered.)

9 (Brief pause.)

10 BY MR. KAVALER:

11 Q. Ready?

12 A. Uh-huh.

13 Q. Does that refresh your recollection that you saw  
14 Household's response to Mr. Ortega's complaint setting forth  
03:33:45 15 its position and describing what it had done to remedy his  
16 complaint?

17 A. Yes.

18 Q. Okay.

19 MR. KAVALER: Your Honor, I offer Defendants' 1079.

03:33:59 20 THE COURT: Any objection?

21 MR. DROSMAN: No objection, your Honor.

22 THE COURT: It will be admitted without objection.

23 MR. KAVALER: All right.

24 (Defendants' Exhibit 1079 received in evidence.)

25 BY MR. KAVALER:

1 Q. Let's look at 1079 together.

2 It's a letter from Household signed by Tom Schneider,  
3 who you identified earlier, I believe, as the Director of  
4 Policy and Compliance Support, correct?

03:34:19 5 A. Yes.

6 Q. And it's addressed to the: "Office of the Comptroller of  
7 the Department of Banking and Finance of the state of  
8 Florida."

9 And the reference is to Antonio Ortega, correct?

03:34:30 10 A. Yes.

11 Q. And Mr. Schneider writes and he says, "Dear Ms. Dawes,  
12 thank you for the opportunity to respond to Mr. Ortega's  
13 concerns in his correspondence. Mr. Ortega has stated that he  
14 did not receive the interest rate that he was promised. In  
03:34:49 15 the letter provided to Mr. Ortega by our branch office, the  
16 Branch Sales Manager was not quoting the interest rate, but an  
17 'equivalent rate' based on the effect of having the loan paid  
18 biweekly instead of monthly."

19 And, then, he says, "It is not our policy to quote an  
03:35:12 20 equivalent interest rate associated with a biweekly payment  
21 program.

22 "We believe Mr. Ortega was quoted the equivalent  
23 interest rate for potential interest savings over the life of  
24 his loan when payments are made on a biweekly schedule.

03:35:30 25 "As stated previously, this type of communication is

1 not condoned nor approved. As a result, we have referred the  
2 documentation enclosed in Mr. Ortega's complaint to senior  
3 management for review and immediate action."

4           And, then, he continues in a new paragraph. He says,  
03:35:50 5 "Due to any misunderstandings that may have occurred and, as a  
6 good-faith gesture, Mr. Ortega received a refund check in the  
7 amount of \$1,134.19 on June 29, 2001. The amount of the check  
8 represented the cost of the origination fee that was assessed  
9 to his account.

03:36:16 10           "In addition, we have reduced the contract rate of  
11 interest on Mr. Ortega's account to 10.15 percent effective as  
12 of March 30, 2001."

13           And this letter is being written on October 18, 2001,  
14 correct?

03:36:34 15 A. Yes.

16 Q. All right.

17           "Due to the reduced rate of interest, Mr. Ortega's  
18 principal balance was reduced by an additional \$1,188.92 for  
19 the period of March 30, 2001, through 10-15-2001."

03:36:54 20           And Mr. Schneider concludes, "We deeply regret the  
21 circumstances surrounding this situation. Please convey our  
22 sincere apologies to Mr. Ortega."

23           Do you see that?

24 A. I do.

03:37:04 25 Q. Okay.

1           So, in this case, which you mentioned to us  
2 yesterday, you told us about Mr. Ortega's complaint; and, now,  
3 we see Household's response, correct?

4   A.   Yes.

03:37:12 5   Q.   Okay.

6           Household is apologizing, correct?

7   A.   Yes.

8   Q.   It is acknowledging that one of its employees made a  
9 mistake, correct?

03:37:20 10  A.   Yes.

11   Q.   It is asserting that the mistake was contrary to  
12 Household's policy, correct?

13   A.   That's what it says here.

14   Q.   That's what it says.

03:37:31 15           It is saying that the matter will be referred to  
16 senior management for review and immediate action; and, the  
17 clear complication is against the employee, correct?

18   A.   I don't know what the implication is there.

19   Q.   Okay.

03:37:42 20           And, finally, it reports that they have made a  
21 financial restitution to Mr. Ortega in three separate ways.

22           They sent him a refund check in the amount of  
23 \$1,134.19, which represents the cost of his origination fee,  
24 correct?

03:38:01 25  A.   That's what it says here.

1 Q. Well, when you say "That's what it says," do you think  
2 they didn't send him the check?

3 A. All I'm -- I agree with you, that's what it says here.

4 Q. All right.

03:38:12 5 And, then, they also say they reduced the contract  
6 rate of interest to a lower rate of interest.

7 Do you see that?

8 A. I see it.

9 Q. Okay.

03:38:20 10 And, thirdly, as a result of that, they've reduced  
11 his principal balance by another \$1888.92.

12 Do you see that?

13 A. I see that.

14 Q. As a regulator, if you came in and you saw Mr. Ortega's  
03:38:35 15 complaint letter and Household's response letter, would you be  
16 satisfied that Household had responded to the Ortega  
17 complaint?

18 A. Taken in isolation, yes.

19 Q. Okay.

03:38:46 20 Now, the next thing you told us about yesterday was a  
21 complaint -- another complaint -- by Mr. Nanez.

22 Am I pronouncing that correctly; do you think?

23 A. That's how I pronounce it.

24 Q. That's where I got it from.

03:39:03 25 And you remember that testimony?

1 A. I do.

2 Q. Okay.

3 And, in the course of reviewing the files that you  
4 reviewed, did you come across the underlying documents related  
03:39:14 5 to Mr. Nanez's complaint?

6 A. I reviewed some documents. I'm not sure which ones you're  
7 talking about.

8 Q. Let me show you a couple and see if it refreshes your  
9 recollection.

03:39:26 10 Let's start with a document which I will mark as  
11 Defendants' 1080 for identification.

12 (Document tendered.)

13 BY MR. KAVALER:

14 Q. Is this one of the documents you looked at?

03:39:55 15 A. It might have been. I've seen this type of document  
16 before.

17 Q. Okay.

18 And this document has Mr. Nanez's name on it --  
19 Ms. Nanez and Mr. Nanez?

03:40:08 20 A. Yes.

21 Q. All right.

22 And it says on the top --

23 MR. KAVALER: I'm sorry, your Honor, I offer  
24 Defendants' 1080 in evidence.

03:40:17 25 MR. DROSMAN: This isn't on the exhibit list, your



1 Honor.

2 MR. KAVALER: That's why it's 1080, your Honor.

3 THE COURT: Yes, I guess it's not.

4 Is there an objection?

03:40:30 5 MR. DROSMAN: It's hearsay, your Honor.

6 THE COURT: What's it being offered to prove?

7 MR. KAVALER: Your Honor, it's offered -- she says

8 she reviewed it. It's offered in response to the testimony

9 she gave yesterday, to show the response that Household made

03:40:41 10 to the very complaint that she testified about yesterday.

11 THE COURT: Overruled.

12 MR. KAVALER: Thank you, your Honor.

13 (Defendants' Exhibit 1080 received in evidence.)

14 BY MR. KAVALER:

03:40:54 15 Q. Now, you see on the top --

16 MR. KAVALER: Withdrawn.

17 BY MR. KAVALER:

18 Q. If I recall your testimony correctly yesterday, your point

19 was that Mr. Nanez -- or Ms. Nanez -- said she had to take

03:41:13 20 single premium credit insurance in order to get a loan; is

21 that correct?

22 A. I'd have to look at that complaint, again, to see exactly

23 what it says on the complaint.

24 Q. Okay.

03:41:20 25 Let me try it this way. I can show you your

1 testimony yesterday.

2 MR. KAVALER: I am having difficulty with the  
3 transcript.

4 BY MR. KAVALER:

03:42:29 5 Q. Let me do it this way: This document, 1080, is headed  
6 "Optional Credit Insurance Disclosure."

7 Do you see that?

8 A. I see that.

9 Q. And first thing it says after the name of the creditor,  
03:42:37 10 the name of the borrowers and some boxes with some amounts in  
11 it, is a sentence that begins in capital letters, "No credit  
12 insurance is required to obtain this loan."

13 Do you see that?

14 A. I do.

03:42:46 15 Q. All right.

16 And this is the document signed by the borrowers --  
17 the Nanezes -- on the next page, correct?

18 A. Yes.

19 Q. So, they received a written disclosure from Household  
03:42:58 20 which says on the top, it's an "Optional Credit Insurance  
21 Agreement" and says in the beginning of the text in capital  
22 letters, "No credit insurance is required to obtain this  
23 loan."

24 Do you see that?

03:43:10 25 A. I see it.

1 Q. Okay.

2 And that would alert them to the fact this credit  
3 insurance is both optional and not required to obtain the  
4 loan, correct?

03:43:18 5 A. If they spoke English. They're Spanish speakers.

6 Q. Do you know that for a fact or you just assuming that?

7 A. Well, I'm reading it from the complaints. I pulled the  
8 complaint out.

9 Q. Okay.

03:43:30 10 A. "We are Hispanic and our primary language is Spanish."

11 Q. Okay.

12 And your point is: This document is in English?

13 A. It is in English.

14 Q. Okay.

03:43:38 15 So, as a regulator, what would you like to see?

16 Would you like to see Household provided them with a  
17 disclosure in Spanish?

18 A. Well, there are a couple things.

19 One, if you are lending money to someone that doesn't  
03:43:55 20 speak English, at least I know -- from the bank's

21 standpoint -- they've got forms. All of their documents are  
22 in all the different languages of the clients that they serve.

23 The second thing is Household always claimed that  
24 their insurance was optional; but, if you remember, I talked

03:44:12 25 about the penetration ratios.

1           When you look at how many loans were made and how  
2 many insurance policies were written on those loans, if it  
3 gets above 50 percent, the regulators think that credit  
4 insurance is actually required.

03:44:29 5           In this complaint, it actually says that: "The  
6 Household's representative told us that we had to get single  
7 premium credit insurance."

8           So, it conflicts with the language in this document,  
9 which, if they spoke English, they would have been able to  
03:44:47 10 read and maybe ask a question about.

11           But, notwithstanding that, this is symptomatic of  
12 insurance packing that was complained of in various states  
13 around the country.

14 Q. All right.

03:44:59 15           So, part of the problem is the document is in English  
16 and you believe they spoke Spanish?

17 A. Well, they said they spoke Spanish. I'm just looking at  
18 their complaint.

19           I don't know them personally.

03:45:10 20 Q. Understood.

21           So, let's look at the other document in the loan  
22 file, which is the Loan Payment and Security Agreement.

23           We'll mark this as Defendants' 1081 for  
24 identification.

25           (Document tendered.)

1 BY MR. KAVALER:

2 Q. Did you see that document, as well, when you were looking  
3 at the documents relating to the claim of Mr. and Mrs. Nanez?

4 A. I'm not sure. I have seen documents that look like this.

03:45:50 5 I don't know if I saw this particular one.

6 Q. Let me see if I can refresh your recollection.

7 It has Mr. Nanez's name and Ms. Nanez's name on the  
8 first page?

9 A. That doesn't help.

03:46:02 10 I've seen documents like this, but I can't tell you  
11 for sure if I saw this particular document.

12 Q. Okay.

13 It's called a "Loan Payment and Security Agreement"?

14 A. That's what it says at the top, yes.

03:46:10 15 Q. Now, on the last page, next to the Nanez's signatures, it  
16 has a paragraph in Spanish.

17 Do you see that?

18 A. Yes.

19 Q. Do you happen to read Spanish?

03:46:22 20 A. No, I don't.

21 Q. Do you see the paragraph right above it? It translates it  
22 in English.

23 A. Okay.

24 Q. Okay.

03:46:26 25 The English says, "Notice the borrowers may request

1 the Truth in Lending Disclosures be provided in the Spanish  
2 language before signing any loan documents."

3 And the Spanish, I won't even try, but it says -- the  
4 first word is "Aviso," which I think means something very  
03:46:45 5 similar to "Notice."

6 My guess is the language in Spanish and English is  
7 the same.

8 Does that sound reasonable to you?

9 A. Sure.

03:46:52 10 Q. Okay.

11 Does that refresh your recollection that when you  
12 looked at the Nanez loan file, you saw that the Nanezes were  
13 provided with a disclosure document which contained a notice  
14 in Spanish that they were entitled to request that all of  
03:47:05 15 their documentation be provided in Spanish, if they wanted?

16 A. I can't read Spanish, but the English translation says,  
17 "Truth in Lending Disclosures."

18 So, this optional credit insurance, I don't know if  
19 that's part of the "Truth in Lending Disclosure."

03:47:23 20 Q. Okay.

21 A. But it does have something here in Spanish that says that  
22 they have the opportunity to get their Truth in Lending  
23 Disclosures. That would be Regulation z.

24 Q. In Spanish?

03:47:54 25 A. It is in Spanish, yes; but, it doesn't have anything to do

1 with this document that you showed me that's in English,  
2 regarding optional credit insurance.

3 Q. Right.

4 Let me be clear. There's a statement in Spanish that  
03:47:55 5 says, "You can get the disclosures in Spanish," right?

6 A. It says, "Truth in Lending Disclosures." That's different  
7 than disclosures.

8 Q. Okay.

9 And you saw documents like this in the course of your  
03:48:04 10 investigation?

11 A. Yes.

12 MR. KAVALER: I offer Defendants' 1081, your Honor.

13 MR. DROSMAN: No objection, your Honor.

14 THE COURT: Admitted without objection.

15 (Defendants' Exhibit 1081 received in evidence.)

16 BY MR. KAVALER:

17 Q. So, it says on the front, "Loan Repayment and Security  
18 Agreement"?

19 MR. KAVALER: And go to the last page.

20 BY MR. KAVALER:

21 Q. And you see the box in the upper left (indicating) --  
22 that's what we're talking about.

23 It says in English, "Notice: The borrowers may  
24 request that the Truth in Lending Disclosures be provided in  
03:48:37 25 the Spanish language before signing any loan documents."

1           And then it has a sentence that appears to say the  
2 same thing in Spanish, to the extent that either one of us can  
3 tell since neither one of us reads Spanish.

4           Now, the third customer complaint you talked about  
03:49:08 5 yesterday was a letter from a woman named Adams.

6           Do you recall that?

7   A. Yes.

8   Q. And in the course of reviewing the files, did you happen  
9 to see -- do you recall seeing -- the response of Household, a  
03:49:21 10 letter back to Mrs. Adams?

11   A. I may have. I'm not sure.

12   Q. All right.

13           Let me see if I can refresh your recollection.

14           Do you recall seeing a six-page, single-spaced letter  
03:49:51 15 to Mrs. Adams from Steven Hicks, the Director of Compliance  
16 Risk Management, addressing every element of her claim,  
17 explaining what happened, what transpired, how the situation  
18 arose, what Household's response was going to be, what  
19 Household's position is, what Household's policy is?

03:50:11 20           MR. DROSMAN: Your Honor, if he's going to lay a  
21 foundation, I just ask that he ask the foundational questions  
22 and not discuss the contents of the document.

23           MR. KAVALER: Sure.

24   BY MR. KAVALER:

03:50:20 25   Q. Do you recall a letter like that?



1 A. I just don't remember if I saw it or not. You'll have to  
2 show it to me.

3 Q. Absolutely.

4 Let me show it to you and see if it refreshes your  
03:50:27 5 recollection.

6 I'm handing you Defendants' 1082 for identification.

7 (Document tendered.)

8 BY THE WITNESS:

9 A. I don't -- this doesn't look familiar to me.

10 BY MR. KAVALER:

11 Q. Would you expect Household to have written a response to  
12 Mrs. Adams?

13 A. Do I expect them to?

14 Q. Would you have expected them to respond --

03:51:08 15 A. Sure.

16 Q. -- to the letter?

17 A. Sure.

18 Q. Did you look for a response when you reviewed the Adams  
19 complaint letter?

03:51:13 20 A. Well, I had a lot of complaints and I looked at the -- I  
21 looked at what documents were produced surrounding those  
22 complaints.

23 So, if I didn't have a response, I may not have  
24 specifically asked the plaintiffs' lawyers for one because I  
03:51:30 25 had quite a few responses.

1 I know that they responded -- or they responded back  
2 -- to the regulators -- Household did.

3 Q. Did you know Household regularly responded back to the  
4 regulators and you asked the plaintiffs' counsel for letters  
03:51:42 5 responsive to the complaints you were going to testify about?

6 A. Well, I had so many documents and so many complaints, I  
7 didn't, you know, like, specifically, say, "Okay, I've got a  
8 complaint here. Where's Household's response?"

9 I just took them all together and started looking  
03:51:58 10 through them.

11 I may have seen this. I just -- I just -- don't  
12 remember, as I'm sitting here, that I saw it.

13 Q. But, as a general matter, your intent was to get  
14 Household's response to the --

03:52:06 15 A. Yes.

16 Q. -- complaint letters, if there was one?

17 A. Yes.

18 Q. All right.

19 And certainly if it was one of the ones you were  
03:52:10 20 going to testify about at trial?

21 A. Well, I looked at the complaints three years ago. So, I  
22 didn't know if this case was going to trial or not.

23 I wasn't thinking that far ahead.

24 Q. But in preparing to come here and testify, you knew which  
03:52:25 25 complaints you were going to testify about?

1 A. I pulled a few out, yes.

2 Q. And when you pulled out the Adams' complaint, did you pull  
3 out the response to the Adams' complaint?

4 A. No, I -- I -- didn't pull out the response. So, I don't  
03:52:39 5 know if I actually have it or not.

6 It doesn't look familiar, but that's not to say I  
7 didn't see it.

8 Q. You might have seen it?

9 A. I might have seen it.

03:52:46 10 MR. KAVALER: Your Honor, I offer 1082.

11 MR. DROSMAN: It's hearsay, your Honor.

12 Objection.

13 THE COURT: What's it being offered to prove?

14 MR. KAVALER: Your Honor, it's being offered to --  
03:52:54 15 under 106 -- for the doctrine of completeness, in response to  
16 the testimony she gave yesterday where she put the Adams'  
17 complaint letter into evidence.

18 This is the response to the Adams' complaint letter.

19 It's for the proposition that Household responded.

03:53:12 20 THE COURT: Well, the doctrine of completeness is how  
21 you get it in, but I know what know what you're offering it to  
22 prove.

23 MR. KAVALER: Your Honor, very simply. She told us

24 all the things that Mrs. Adams complained about. I want to

03:53:26 25 show that Household promptly and completely responded in

1 writing to each and everything Mrs. Adams said.

2 THE COURT: If you're offering it to establish the  
3 foundation or lack of foundation for her opinion or opinions,  
4 I'll admit it.

03:53:45 5 Is that what you're offering it for?

6 MR. KAVALER: Yes, your Honor. I think it goes  
7 beyond that; but, it certainly --

8 THE COURT: Overruled.

9 MR. KAVALER: -- goes to her opinion.

03:53:51 10 THE COURT: The objection is overruled.

11 MR. KAVALER: Thank you, your Honor.

12 (Defendants' Exhibit 1082 received in evidence.)

13 BY MR. KAVALER:

14 Q. All right, Ms. Ghiglieri, if you look at this letter --  
03:54:00 15 Exhibit 1082 in evidence -- it's a letter from Mr. Hicks, the  
16 Director of Compliance Risk Management, to Ms. Amy M. Adams in  
17 New Cumberland, Pennsylvania, dated September 27, 2002,  
18 correct?

19 A. Yes.

03:54:12 20 Q. And Mr. Hicks says, "We are responding to your letter of  
21 September 10, 2002, and your subsequent e-mails. We have  
22 investigated the allegations stated in the complaint and our  
23 responses are indicated below."

24 And, then, his first heading is, "Prepayment  
03:54:32 25 penalty;" and, in the second paragraph, he says, "The

1 prepayment penalty was fully, conspicuously and accurately  
2 described in your Loan Repayment and Security Agreement ('Loan  
3 Agreement') under the paragraph titled, 'Prepayment Penalty.'

4 And, then, he quotes from the language of the  
03:54:54 5 agreement.

6 Do you see that?

7 A. I do.

8 Q. And, then, he says, "To clarify the above, please refer to  
9 Page 1 of your rate" (attached). The date of your loan was  
03:55:06 10 2-20-02, and this was stated on Page 1 of the Loan Agreement  
11 in the box titled, 'Date of Loan.' The contract rate is 9.490  
12 percent, and this is stated on Page 1 of the Loan Agreement in  
13 the box titled 'Contract Rate Per Year.'

14 And skipping down to the end of that paragraph, he  
03:55:28 15 says, "Your signature on the Loan Agreement signifies s your  
16 acceptance of the terms contained therein, including the  
17 prepayment penalty."

18 And, then, he says in the next paragraph, "In  
19 addition, because your loan was secured by your property, we  
03:55:44 20 are required by law to give you three business days to review  
21 your loan documents and determine whether the loan meets your  
22 needs, whether you agree to the terms and conditions and  
23 whether you want to keep or cancel the loan.

24 "Please refer to the document titled 'Notice of Right  
03:56:02 25 to Cancel' attached."

1           And, then, he continues: "Your loan closed on  
2 2-20-02. You had until midnight on 2-23-02 to decide whether  
3 to rescind the loan.

4           "The second page of the notice, signed by both you  
03:56:19 5 and your husband, not only confirms that you had those three  
6 days, but confirms that we allowed you two additional days.  
7 Your loan did not fund until 2-25-02, which means we gave you  
8 five days to consider your loan.

9           "Unlike other lenders, we do not immediately fund a  
03:56:40 10 loan after three days, but wait until the customers actually  
11 confirm they want the loan. We believe that five days was  
12 ample time to consider the pricing, terms and conditions of  
13 your loan."

14           Do you see that?

03:56:55 15 A. I do.

16 Q. In the next paragraph, he says, "Please refer to the  
17 Customer Satisfaction Survey attached. On this form, we  
18 clearly asked the question: 'Do you understand the terms and  
19 conditions of your prepayment penalty?' On this survey, you  
03:57:12 20 checked the 'Yes' box, confirming that you understood the  
21 prepayment penalty. You checked 'Yes' to confirm that we  
22 listened to your concerns and responded appropriately to your  
23 questions. You checked 'Yes' that we gave you a good  
24 explanation of your loan terms, features and benefits. You  
03:57:38 25 also checked -- "

1 MR. DROSMAN: Your Honor, objection.

2 Is there a question? That's what I object to. He  
3 said he was putting it in to test the foundation of the  
4 witness' opinions. I just see him reading the document.

03:57:47 5 THE COURT: Is there a question?

6 MR. KAVALER: Yes, your Honor.

7 When I get finished reading parts of the letter to  
8 her, I'm going to ask her whether, in her view, Household  
9 responded satisfactorily to the question -- to the complaint  
03:57:59 10 -- of Amy Adams.

11 THE COURT: Proceed.

12 MR. KAVALER: Thank you, your Honor.

13 BY MR. KAVALER:

14 Q. I'm sorry, I think this is where I was.

03:58:07 15 " -- you checked 'Yes" that we gave you a good  
16 explanation of your loan terms, features and benefits. You  
17 also checked 'Yes' to the question of whether the loan product  
18 provided met your financial needs.

19 "In addition, you also wrote a comment on the survey  
03:58:22 20 indicating that you were able to 'advance the payoff of both  
21 your mortgage'" -- I'm sorry -- "'advance the payoff of both  
22 our mortgage as well as our credit card bills.'

23 "You also viewed our customer orientation video at  
24 loan close. To ensure that our branch personnel are providing  
03:58:44 25 complete and accurate information to our customers, we have

1 produced a video, which is provided to every customer prior to  
2 closing their loan.

3 "The customer viewed this customer orientation video  
4 prior to loan closing. The video further explains the process  
03:59:01 5 and begins by stating that an application has been taken and  
6 approved. The video also explains the following:"

7 Bullet: "The customer was provided with a good-faith  
8 estimate of the costs of the loan."

9 Bullet: "The customer should have received other  
03:59:18 10 documents three days prior to closing."

11 Bullet: "The loan documents will be presented to the  
12 customer include -- " " -- the loan documents that will be  
13 presented to the customer include -- " indented bullet --  
14 "Truth In Lending Disclosure, which disclosed the APR -- "

03:59:35 15 that's the "Annual Percentage Rate," is it?

16 A. Yes.

17 Q. " -- payments, amount financed, costs and loan rate."

18 Indented bullet: "Mortgage or Deed of Trust."

19 Indented bullet: "HUD 1 Settlement Statement

03:59:49 20 disclosing details of the transaction."

21 "HUD" stands for "Housing and Urban Development"?

22 A. Yes.

23 Q. It's a government form?

24 A. Yes.

03:59:56 25 Q. Sub-bullet: "Loan Agreement, which includes details



1 regarding the prepayment penalty, late charges, interest rate,  
2 points and fees, monthly payment amount, payoff date and  
3 optional insurance chosen."

4 Final sub-bullet: "At the end of this section, the  
04:00:15 5 customer is encouraged to stop and ask questions of the  
6 account executive if anything is unclear."

7 And it continues.

8 Now, I don't want to spend a lot of time reading the  
9 entire letter.

04:00:27 10 He goes through the entire process that was followed  
11 at the closing. He says, "You were encouraged to ask  
12 questions. You signed an acknowledgment that you viewed the  
13 video."

14 He encloses a copy of the signature pages where she  
04:00:38 15 says, "We saw the video."

16 He says, "We produced this video so that to be sure  
17 that our customers are fully aware of the process and are told  
18 where, in various documents, they can find these terms."

19 He talks about the result of his investigation:  
04:00:55 20 "Didn't find any evidence that the terms or pricing of your  
21 loan, including the prepayment penalty, were not fully  
22 disclosed to both you and your husband."

23 He says, "It's our position you were advised of the  
24 loan, you understood the loan, there was no deception  
04:01:09 25 regarding the sale of the loan."

1 He then goes on in another heading called, "Refinance  
2 -- "

3 THE COURT: At some point, you have to ask a  
4 question.

04:01:17 5 MR. KAVALER: Your Honor --

6 THE COURT: This is a good time.

7 MR. KAVALER: Okay.

8 BY MR. KAVALER:

9 Q. He lays out all these reasons why he thinks she got full  
04:01:24 10 disclosure.

11 Do you feel that Household acted properly, as a  
12 regulator, in responding in writing in a seven-page --  
13 six-page -- single-spaced letter to this lady's complaint,  
14 addressing each and every element of the transaction as it  
04:01:40 15 went down, and enclosing for her various documents that she  
16 was shown and then she signed?

17 A. Do I feel it was appropriate?

18 Q. Yes.

19 A. No, I don't.

04:01:49 20 Q. Okay.

21 He also talks about the ways in which the loan  
22 benefitted her.

23 If you go to Page 5 under the heading called,  
24 "Interest Rate of 7 Percent," he says, "You stated in your  
04:02:04 25 letter you were duped into refinancing a 7 percent FHA

1 mortgage to 9.49 percent unconventional loan. We have  
2 performed a thorough investigation of this allegation and we  
3 discovered the following: Through closing our loan, you  
4 achieved the following:"

04:02:21 5           Bullet: "You paid off Wells Fargo \$95,557.67 and  
6 Capital One \$4,982."

7           Bullet: "You received cash of \$250.40."

8           Bullet: --

9           MR. DROSMAN: He's just testifying. I object, again.

04:02:43 10           THE COURT: You have to break up your references to  
11 the document with questions. Otherwise, it does become  
12 rather --

13           MR. KAVALER: Very good, your Honor.

14           THE COURT: -- a narration of the document.

04:02:55 15           MR. KAVALER: I will break it into smaller pieces.

16 BY MR. KAVALER:

17 Q. Is he reciting there the ways in which this loan  
18 benefitted this customer financially?

19 A. And that's what I think he's attempting to do, yes.

04:03:03 20 Q. Okay.

21           He continues, does he not, "Your monthly payments  
22 prior to the loan totalled \$2,453. Your payments, after our  
23 loan, and including \$119 for taxes and insurance (no longer  
24 escrowed close), totalled \$2,392. This saved you \$61 per

04:03:24 25 month."

1           Is he pointing out to the customer how she is better  
2 off on a monthly basis with the new loan than with the old  
3 loans?

4   A.   I think that's what he's attempting to do.

04:03:37 5   Q.   Okay.

6           He says, "Your debt-to-income ratio which measures  
7 gross monthly income against monthly credit payments decreased  
8 from 43.08 percent to 42.01 percent. This is a positive  
9 improvement."

04:03:53 10          Is he, to use your words, attempting to point out to  
11 her how -- another way in which this loan benefitted her?

12   A.   Yes, that's what he's attempting to do.

13   Q.   And, finally, in the final bullet, he says, "Your  
14 disposable income, which is money left over, after credit  
04:04:08 15 payments are made, was \$1,676 before our loan and \$1,737 after  
16 our loan, which is also a positive improvement."

17          Is he, once again, attempting to point out to her how  
18 this loan benefitted her?

19   A.   It looks like that's what he's trying to do.

04:04:31 20   Q.   And in the next paragraph, he addresses how Household  
21 figured out what interest rate she qualified for.

22          Do you see that?

23   A.   I see the paragraph, yes.

24   Q.   And he explains to her that, "Household typically extends  
04:04:50 25 offers of credit to borrowers who, for one reason or another,

1 may not otherwise qualify to obtain credit under lower rate  
2 lending programs."

3 Is that what you understand to be Household's primary  
4 business model?

04:05:03 5 A. Extending credit to subprime --

6 Q. Yes.

7 A. -- borrowers? Yes.

8 Q. And, then, he says, "The cost of extending this credit is  
9 traditionally higher as the likelihood of a customer becoming  
04:05:19 10 delinquent is much greater, resulting in increased risk and  
11 collection costs to the lender in the event of default."

12 Do you understand that that accurately describes  
13 Household's business model, as well?

14 A. Yes.

04:05:32 15 Q. Finally, he says, "Based on your creditworthiness, you  
16 qualified for an interest rate of 11.12 percent. However, our  
17 District General Manager granted a rate exception to 9.49  
18 percent to accommodate your needs."

19 Do you see that?

04:05:52 20 A. I see that.

21 Q. Now, if you go back to the prior page -- the bottom of  
22 Page 4 -- there's a heading called, "Loan Pricing," and  
23 without reading it, he goes through the concept of a FICO  
24 score.

04:06:04 25 You know what a FICO score is, don't you?

1 A. I do.

2 Q. And it says, "A FICO score measures a customer's credit  
3 risk in relation to the rest of the national population," does  
4 it?

04:06:14 5 A. Well, it's a credit-scoring mechanism developed by Fair  
6 Isaac. And it's based on the predictor -- it's a predictor of  
7 the repayment capacity of an individual.

8 And, so, I don't know if that's an accurate statement  
9 or not -- that it compares it to the rest of the national  
04:06:34 10 population; but, I do know how they calculate the FICO score.

11 Q. And higher is better?

12 A. Higher is better.

13 Q. And 850 is perfect?

14 A. Yes.

04:06:43 15 Q. Okay.

16 And he tells her in this letter that, "850 is a  
17 perfect FICO score." And he says at the time of the loan, her  
18 husband had a FICO score of 638. He tells her what percentile  
19 that puts him in; and, he tells her what the risk of  
04:06:58 20 delinquency is for that percentile.

21 Do you see all of that?

22 A. I do.

23 Q. Okay.

24 And, then, he says on the top of Page 5, "The Credit  
04:07:07 25 Bureau Reports for you and Mr. Adams show that, combined, you

1 had 22 delinquencies in the past 30 days and three  
2 delinquencies of past-60 days of your accounts; you had 14  
3 inquiries on your Credit Bureau Report, suggesting you were  
4 aggressively seeking credit."

04:07:22 5 Do you see that?

6 A. I see it.

7 Q. And, then, he says that using Household's internal scoring  
8 models, that's how they came up with the rate.

9 Do you see that?

04:07:30 10 A. I do.

11 Q. Okay.

12 And, then, finally on the last page -- Page 6 of the  
13 letter -- he says in a paragraph called "Summary," "Mrs.  
14 Adams, when our District Sales Manager spoke with you on  
04:07:43 15 September 17, 2002, she advised you that if you provided us  
16 with a copy of your sold contract, we would be willing to  
17 waive one-half of the prepayment penalty. You were to contact  
18 us on September 20, 2002, regarding the contract. To date, we  
19 have still not received a copy of the sold contract."

04:08:02 20 In other words, he's offering her a further  
21 accommodation, notwithstanding everything he has previously  
22 said in his letter about why he believes the transaction was  
23 appropriate, correct?

24 A. That's what he's saying there.

04:08:13 25 Q. And, then, he says under that -- in the next to the last

1 paragraph -- "We regret to hear you are dissatisfied with your  
2 loan. Beneficial prides itself on its commitment to customer  
3 service and is always willing to work toward an agreeable  
4 solution to a customer's concerns. The offer to waive  
04:08:31 5 one-half of the prepayment penalty still stands provided you  
6 sell the house and produce a valid sales contract.

7 "However, the offer is not valid in the event you  
8 refinance this loan with another lender."

9 And what he's saying there is that notwithstanding  
04:08:48 10 that there was a deadline for her to take up this offer of a  
11 further waiver of one-half of the penalty, and the deadline  
12 passed without her having provided the required documentation,  
13 he's extending that offer still further, correct?

14 A. Yes.

04:09:03 15 Q. Okay.

16 Now, this letter is written 17 days after Ms. Adams'  
17 complaint letter?

18 A. Correct. Yes.

19 Q. It explains in great detail how the transaction occurred;  
04:09:22 20 how the loan was priced; why he concludes that she was treated  
21 fairly; it attaches documentation supporting everything he  
22 says; it tells her an offer was made to resolve her grievance.  
23 He extends a further offer.

24 As a regulator, looking at these two documents -- the  
04:09:39 25 complaint and the response in a file -- would you feel



1 Household had responded suitably and appropriately to this  
2 complaint?

3 A. Well, there's a couple of things that they didn't respond  
4 to, even though this is really lengthy and I didn't really --

04:09:55 5 I don't recall reading this.

6 But based on everything that you've said, the one  
7 thing that they didn't respond to is the fact that the account  
8 executive that was closing the loan indicated that the fee  
9 could be waived for job-related relocation.

04:10:13 10 And did Mr. Hicks write this?

11 This really went into great detail -- yes, Mr. Hicks,  
12 he went into a large detail -- about how she had notice.

13 You know, in other words, it was written here, it was  
14 written there, it was written there.

04:10:27 15 Well, she asked the account executive, according to  
16 her complaint, and he said, "Don't worry about it. For  
17 job-related relocations, we'll waive the penalty."

18 So, she was -- she must have been satisfied with that  
19 and went ahead with the transaction; is now facing a job  
04:10:43 20 relocation; and, Household's coming back to her and saying,  
21 "You had plenty of notice. It was written here, here, here  
22 and here."

23 But they don't discuss the issue that I saw in a  
24 number of complaints around the country; and, that is, "Don't  
04:10:58 25 worry, we'll waive it." Or "There isn't one." There was

1 always something that was different than what was written in  
2 the document.

3           The issue about the creditworthiness of this borrower  
4 is a little confusing to me because her -- the loan that she  
04:11:11 5 did have was at 7 percent. And a 7 percent rate is really a  
6 good rate on an FHA loan. And that tells me that she had --  
7 was probably a prime credit.

8           They're indicating in this letter she was a subprime  
9 credit. So, I just don't -- I'm not sure how to harmonize  
04:11:34 10 that.

11           But I don't -- you know, she still is explaining some  
12 predatory practices that were noticed around the country --  
13 the other one is -- the high closing costs: The 7.25 percent  
14 closing costs.

04:11:51 15           So, you know, this complaint contains similar  
16 complaints that people had around the country and Household  
17 did respond very extensively here; and, if I was a regulator  
18 -- and, like Chuck Cross says at first, you know, you believe  
19 what Household says and take it at face value; and, then, the  
04:12:17 20 more complaints you look at, the more, you know, you don't  
21 know what kind of a story they're telling.

22           So, the date of this was September 27th, 2002. That  
23 was right before the big multi-state settlement -- \$484  
24 million -- that they paid for these very kinds of practices.

04:12:34 25           So, you know, that's my response to that complaint

1 and the response to the complaint.

2 Q. You don't know when she took out this FHA 7 percent loan;  
3 you don't know how many years ago it was; you don't know what  
4 changes there were in her credit rating in the interim,

04:12:51 5 correct?

6 A. I don't know if it's in the complaint when she took it  
7 out.

8 Let me see if it is.

9 I don't -- I don't -- see it, just on a quick read.

04:13:04 10 But the discussion in Mr. Hicks' letter about whether  
11 she's better off, was she better off paying 7.25 percent of  
12 the loan balance so she could refinance with Household from a  
13 7 percent FHA loan to a 9.49 percent contract rate?

14 That doesn't sound like she was benefitted.

04:13:29 15 I don't know if his calculations are accurate or not.  
16 There's no way for me to know; but, just on a global basis, it  
17 doesn't look like she benefitted.

18 So, I think there's some things in his letter that,  
19 as a regulator, I would want to look into further.

04:13:44 20 Q. So, even when Mr. Hicks writes a six-page single-spaced  
21 letter responding to the complaint, detailing all of the  
22 things he details in here, in your opinion, that's not enough?

23 A. It's not the volume of response that a regulator looks at.  
24 It's what are they responding to.

04:14:01 25 And she starts out by saying, "I moved my loan,

1 thinking that this prepayment penalty would be waived for a  
2 job relocation. Now I'm facing a job relocation and I'm being  
3 told it's not."

4 And, then, he goes into almost "doth protest too  
04:14:21 5 much." You know, almost two full pages of, "It was here," "It  
6 was there," "It was everywhere," which I'm sure she knew.

7 But the account executive, according to her, had told  
8 her and her husband that it would be waived. And that's  
9 something that I saw in complaints -- in other complaints --  
04:14:40 10 in different parts of the country.

11 Q. You don't know if that's true, though, do you?

12 A. I don't know if it's true, but -- and that's the problem  
13 with complaints is, you know, you want to listen to both sides  
14 of the story. But as Chuck Cross said, from the Department of  
04:14:54 15 Washington, at first they relied on Household. They had a  
16 relationship with Household. They gave them the benefit of  
17 the doubt.

18 But as more and more complaints cropped up around the  
19 State of Washington and, then, when he talked to other  
04:15:06 20 regulators around the country, they realized that Household,  
21 you know, what they were saying just wasn't true: This isn't  
22 just an isolated incident. It's something that they were  
23 taught to do and something that they were doing.

24 Q. And, in this instance, you have absolutely no knowledge  
04:15:23 25 anything Mr. Hicks said is untrue, correct?

1 A. Well, I pointed out a few things that I would question if  
2 I was a regulator.

3 Q. Right.

4 A. And, especially, if I knew about more complaints of a  
04:15:34 5 similar nature.

6 Q. But you don't know, for example, whether the account  
7 executive did or did not say anything to these people at the  
8 closing.

9 They did, however, sign multiple acknowledgements  
04:15:44 10 that they watched the video; they got the disclosures; he  
11 encloses all those things.

12 The paper record is impeccable and you're saying,  
13 "but the possibility exists, on facts I don't know, that  
14 enables me to give an opinion to this jury that maybe,  
04:15:59 15 notwithstanding this extensive paper record, this extensive  
16 letter, this responsive document, nevertheless, I still, at  
17 the end of the week, will not acknowledge that this was a  
18 superb job by Mr. Hicks in responding to this lady's  
19 complaint," correct?

04:16:14 20 A. Well, he made a huge effort in responding to her. I just  
21 don't agree that the quality of the response was good.

22 This was just one month before Household paid \$484  
23 million to settle claims of predatory lending. And, so,  
24 there's no doubt in the regulators' mind that they were  
04:16:37 25 pervasive problems, many of which I've pointed out are in this

1 complaint: The high closing costs; saying that the prepayment  
2 penalty would be waived; being harmed by the fact that they  
3 thought they were going to get a lower effective rate than  
4 they got.

04:16:53 5 So, I understand that this is a long response, but I  
6 think the quality of it is not sufficient to address some of  
7 the predatory lending practices that appear in this complaint.  
8 Q. And you mentioned Household's settlement with the  
9 regulators.

04:17:09 10 Did you know that the market cap of Household's stock  
11 went up, in response to that settlement, by \$3.3 billion the  
12 next two days? Did you know that?

13 A. I have no knowledge of that.

14 Q. I didn't think so.

04:17:22 15 MR. KAVALER: Your Honor, this would be a good time  
16 to break.

17 THE COURT: I think we are going to have stop at this  
18 point. We are going to stop at 4:15.

19 As I already indicated to you, we have some matters I  
04:17:31 20 need to address and I want to be able to let all the jurors go  
21 by the time we indicated.

22 Ladies and gentlemen, we're going to break and quit  
23 for the day. We'll resume tomorrow at 9:45 in the a.m.

24 As always -- oh, gosh, tomorrow's Friday, isn't it?

04:17:52 25 (Laughter.)