

**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,	)	Lead Case No. 02-C-5893
	)	(Consolidated)
Plaintiffs,	)	
	)	CLASS ACTION
- against -	)	
	)	Judge Ronald A. Guzmán
HOUSEHOLD INTERNATIONAL, INC., ET AL.,	)	
	)	
Defendants.	)	

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' RENEWED MOTION  
FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(A)  
AFTER THE CLOSE OF EVIDENCE**

**APPENDIX A: TRANSCRIPTS AND OTHER MATERIALS**

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# **TAB A-1**

1 A. I believe we do.

2 Q. And would that help you to explain how the company was  
3 organized?

4 A. Yes, it would.

04:19:55 5 Q. Let's put up DDX 897-01.

6 Okay. Using this demonstrative, Mr. Aldinger,  
7 explain to us how the company was organized, please.

8 A. Well, the company was organized primarily into five major  
9 businesses with about 48 million customers. Household  
04:20:17 10 literally had one in seven Americans as a customer, so we had  
11 a huge customer base. We had 33,000 employees and covering  
12 multiple businesses.

13 Q. Let me just stop you. 48 million Americans seems like an  
14 incredible number. You must have misspoken. You mean  
04:20:38 15 4,800,000?

16 A. No, it's 48 million customers.

17 Q. Well, we've heard testimony when Mr. Gilmer was here about  
18 a much smaller organization than that. How does Household  
19 come to have 48 million customers?

04:20:49 20 A. Mr. Gilmer had about 3 million customers in the consumer  
21 lending business, but we had a large number, particularly in  
22 our credit card area, had a huge number of customers.

23 And so I think when I look at predatory lending, and  
24 I'm watching this over the last few days, I have a hard time  
04:21:06 25 defining the company as a predatory lender when I look at

1 33,000 people serving 48 million customers and doing it well  
2 and effectively one in seven Americans.

3           And in my case, I can't label this whole company a  
4 predatory lender when I look at a small number of complaints  
04:21:30 5 based on the actions of people who violated our company  
6 policies.

7           And we've talked now for almost two weeks about, oh,  
8 this complaint and that complaint and this state and that  
9 state. All of those together represent a couple of thousand  
04:21:45 10 complaints; and many of them, or we certainly, I believe, will  
11 show were not accurate. Some were, and I'm embarrassed that  
12 we had any, and I'd like to not have any.

13           But when I look at a couple of thousand complaints  
14 opposite 48 million customers, it's not the 1/10 of 1 percent  
04:22:04 15 that Gary pointed to. That's only his business. And I just  
16 can't see labeling this whole company predatory lender based  
17 upon a couple of thousand complaints with 48 million  
18 customers.

19 Q. Mr. Aldinger, when you say it's not the 1/10 of 1 percent  
04:22:18 20 that Gary pointed to, is it bigger or smaller from where you  
21 sat?

22 A. Well, it would be -- the number would be so small I don't  
23 know how to calculate it. What we'd have is a couple of  
24 thousand people on a base of 48 million when I look at it. As  
04:22:31 25 CEO of the company, I look at the whole company, not just one

1 elaborate process that each business unit had its own team,  
2 worked up to the corporate team, and then eventually to the  
3 final work product which was approved by the outside  
4 accountants.

09:17:05 5 Q. You mentioned each of these five separate businesses. Can  
6 you give us some idea of the order of magnitude of the size  
7 that each of these five separate businesses would be if it was  
8 a freestanding company, if it wasn't part of Household?

9 A. Now, each of these five businesses, were they separate and  
09:17:21 10 public, would have been a Fortune 500 company on its own.

11 Q. And --

12 A. So effectively we had five Fortune 500 companies that we  
13 were accounting for here.

14 Q. What does it mean to be a Fortune 500 company?

09:17:32 15 A. It means you're one of the 500 largest companies in  
16 America. So each of these on their own, if they were outside  
17 of our company, would have been one of the 500 largest  
18 companies in America.

19 Q. And where did Household itself with all these companies in  
09:17:45 20 it rank on that list?

21 A. I think from an earnings perspective in this class period,  
22 we would have been in the top hundred or so companies in the  
23 United States.

24 Q. Now, that's how you control things on the financial side.  
09:17:58 25 How did you control things or cause people to be in

# **TAB A-2**

1 At the time that the Barron's article came out,  
2 Professor, did you identify any analyst commentary addressing  
3 this article?

4 A. Yes.

01:15:37 5 Q. All right.

6 MR. KAVALER: And let's look at Defendants' 259.

7 A copy for counsel.

8 BY MR. KAVALER:

9 Q. A copy for your, Professor.

10 (Document tendered to counsel and the witness.)

11 BY MR. KAVALER:

12 Q. Is this one of the items of analyst commentary you found  
13 addressing the Barron's article?

14 A. Yes, I did.

01:15:59 15 MR. KAVALER: I offer 259, your Honor.

16 MR. BURKHOLZ: No objection subject to the limiting  
17 instruction.

18 MR. KAVALER: I agree with that.

19 THE COURT: Admitted, subject to the limiting  
01:16:06 20 instruction.

21 (Defendants' Exhibit No. 259 received in evidence.)

22 BY MR. KAVALER:

23 Q. And the title of this article is, "Ridiculous Bashing by  
24 Barron's."

01:16:12 25 Do you see that?

□

1 A. Yes, I do.

2 Q. And if you look at page ending 692, it goes on to say,  
3 "The cover article on this weekend's Barron's bashed Household  
Page 1



Untitled

4 on accounting issues, almost all of which have been aired  
01:16:27 5 before and most of which are inaccurate."

6 Do you see that?

7 A. Yes, I do.

8 Q. All right.

9 And it goes on to say, "Both Barron's and Business  
01:16:35 10 week carry articles bashing Household this week, both of which  
11 are largely reprints of a report previously published by a  
12 short-selling boutique."

13 Do you see that?

14 A. Yes, I do.

01:16:46 15 Q. Let me just stop you and ask you, what is a short-selling  
16 boutique?

17 A. So, while most investors in the stock market buy stock in  
18 the hope that stock price will go up and they will make money,  
19 there are certain investors who attempt to make money by  
01:17:06 20 selling stock short. Namely, they borrow shares that they do  
21 not own from their broker and sell those shares in the  
22 marketplace hoping that stock price will drop and they will be  
23 able to buy those shares back at a cheaper price to return  
24 them to their broker and make money in this manner.

01:17:33 25 And, of course, for most investors, their interests

1 are aligned to see stock prices go up. Short sellers are  
2 treated with a lot of suspicion on wall street because they  
3 profit if stock prices go down.

4 So, companies and analysts often view short sellers'  
01:17:59 5 statements with suspicion as if they might be designed to  
6 drive the stock price down for their personal gain.

7 Q. Let's go back to the Barron's article. Professor Fischel  
8 picked that as his second disclosure date here. It says,  
9 "Barron's Article."

01:18:15 10 Do you see that (indicating)?

11 A. Yes.

12 Q. Okay.

13 And he claimed that this article disclosed  
14 information which caused inflation to be removed from  
01:18:21 15 Household's stock price; am I right?

16 A. That was his conclusion.

17 Q. Did you analyze this disclosure event, as well?

18 A. Yes, I did.

19 Q. And did you identify a previous report which contained  
01:18:32 20 similar information?

21 A. Yes, I did.

22 Q. Let me show you Defendants' 516.

23 MR. KAVALER: A copy for counsel.

24 BY MR. KAVALER:

01:18:40 25 Q. A copy for you, Professor.

□

1 (Document tendered to counsel and the witness.)

2 BY MR. KAVALER:

3 Q. Is this one of the reports you identified?

Untitled

4 A. Yes.

01:18:51 5 MR. KAVALER: I offer 516 in evidence, your Honor.

6 MR. BURKHOLZ: No objection. Limiting instruction.

7 MR. KAVALER: I agree with that.

8 THE COURT: Admitted with a limiting instruction.

9 (Defendant's Exhibit No. 516 received in evidence.)

01:19:00 10 MR. KAVALER: All right.

11 This is also, ladies and gentlemen, in Tab 2 of your  
12 binder, again, past the blue subdivider behind Tab 2.

13 BY MR. KAVALER:

14 Q. And what is this, Professor?

01:19:09 15 A. Well, this is one of the reports authored by William Ryan  
16 when he was with the short-selling boutique Ventana  
17 Capital, Inc. And the Barron's article that Professor Fischel  
18 cited was largely a reprint of allegations made in Mr. Ryan's  
19 Ventana Capital report, which was published several weeks

01:19:44 20 earlier.

21 Q. Let's get the date of that. Is there a date on the cover,  
22 October 12, 2001?

23 A. Yes.

24 Q. And Professor Fischel was talking about a Barron's article  
01:19:51 25 on December 3, 2001?

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1 A. That is correct.

2 Q. And you found the substance of both reports to be the  
3 same?

4 A. Yes.

01:19:59 5 Q. So, whatever the consequences for Household's stock price  
6 are of this information coming into the market, the market  
7 would have reacted on or about October 12?

Untitled

8 MR. BURKHOLZ: Objection. Leading.

9 BY MR. KAVALER:

01:20:11 10 Q. Would the market have reacted --

11 MR. KAVALER: Withdrawn.

12 BY MR. KAVALER:

13 Q. Would you expect the market to have reacted to the

14 information in the Ventana Capital account story about

01:20:20 15 Household, or not, within a reasonable time after October 12,

16 2001?

17 A. Yes.

18 Q. Would you expect the market to react, again, when the same

19 information is re-published by Barron's on December 3, 2001?

01:20:30 20 A. Not for purposes of any news. And I should also point out

21 that, according to my event study, the market did not

22 significantly react on December 3rd. The price reaction was

23 not significant on that day.

24 Q. Let me show you another exhibit, which is Defendants' 517.

01:20:53 25 MR. KAVALER: A copy for counsel.

1 A. That is correct.

2 Q. And you found the substance of both reports to be the  
3 same?

4 A. Yes.

01:19:59 5 Q. So, whatever the consequences for Household's stock price  
6 are of this information coming into the market, the market  
7 would have reacted on or about October 12?

8 MR. BURKHOLZ: Objection. Leading.

9 BY MR. KAVALER:

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11 MR. KAVALER: Withdrawn.

12 BY MR. KAVALER:

13 Q. Would you expect the market to have reacted to the  
14 information in the Ventana Capital account story about

01:20:20 15 Household, or not, within a reasonable time after October 12,  
16 2001?

17 A. Yes.

18 Q. Would you expect the market to react, again, when the same  
19 information is re-published by Barron's on December 3, 2001?

01:20:30 20 A. Not for purposes of any news. And I should also point out  
21 that, according to my event study, the market did not  
22 significantly react on December 3rd. The price reaction was  
23 not significant on that day.

24 Q. Let me show you another exhibit, which is Defendants' 517.

01:20:53 25 MR. KAVALER: A copy for counsel.

□

1 BY MR. KAVALER:

2 Q. A copy for you.

3 (Document tendered to counsel and the witness.)

Untitled

4 BY MR. KAVALER:

01:20:59 5 Q. It's another Ventana Capital report.

6 Did you review this article, as well, in preparing to  
7 give your opinions, Professor?

8 A. Yes, I did.

9 MR. KAVALER: I offer 517 -- Defendants' 517 -- your  
10 Honor.

11 THE COURT: Admitted --

12 MR. KAVALER: The same limiting instruction, I would  
13 imagine.

14 THE COURT: Admitted with the same limiting  
01:21:20 15 instruction.

16 MR. KAVALER: Thank you, your Honor.

17 (Defendant's Exhibit No. 517 received in evidence.)

18 MR. KAVALER: Ladies and gentlemen, this is the next  
19 blue tab behind Tab 2 in your binders.

20 BY MR. KAVALER:

21 Q. And this one is dated October 18, 2001; is that right,  
22 Professor?

23 A. That is correct.

24 Q. All right.

01:21:33 25 And if you turn to page ending 183 in the first

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1 paragraph, it says, "As noted in our original 'sell'  
2 recommendation, we believe Household, at a minimum, is set up  
3 for a dramatic decline in the quality of the company's  
4 earnings and at most a potential reduction in earnings  
01:21:51 5 estimates and/or credit-related charge."

6 Do you see that?

7 A. Yes, I do.

8 Q. And do you see in this Ventana Capital report where  
9 Mr. Ryan is directing investors to consider Household's public  
01:22:02 10 SEC filings of securitization documents for additional  
11 information about the company's account management policies?

12 A. It is saying that Ventana Capital reached its conclusions  
13 based on Mr. Ryan's review of Household's public filings.

14 Q. Does this give you any view as to whether analysts were  
01:22:25 15 talking about public disclosures of Household's account  
16 management policies that were disclosed in these  
17 securitization prospectuses?

18 MR. BURKHOLZ: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. KAVALER:

21 Q. What conclusion do you draw from seeing this reference to  
22 securitization practices in this Ventana Capital report of  
23 October 18, 2001, Professor?

24 A. Well, Mr. Ryan's criticisms were based entirely on his  
01:22:47 25 review of Household's publicly-filed financial statements and

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1 securitization prospectuses, as he very clearly discusses in  
2 his reports. So, he, himself, was relying on information that  
3 was publicly available years ago.

4 Q. And in his recommendation based on those --

01:23:10 5 MR. KAVALER: Withdrawn.

6 BY MR. KAVALER:

7 Q. And based on his review of those public documents, does he  
8 recommend a buy, a hold or a sell?

9 A. He is recommending a sell.

01:23:17 10 Q. And what is the significance of the fact that you found  
11 these two analyst reports dated October --

12 MR. KAVALER: Withdrawn.

Untitled

13 BY MR. KAVALER:

14 Q. Is it your opinion, Professor, that these two analyst  
01:23:31 15 reports dated October 12 and October 18 convey the same  
16 information to the marketplace as the December 3 Barron's  
17 article?

18 A. Yes.

19 Q. What is the significance, in your opinion, of the fact  
01:23:41 20 that you found these two analyst reports dated October 12 and  
21 18, 2001, which convey the same information as the Barron's  
22 article dated December 3, 2001, in connection with the  
23 validity of Professor Fischel's choosing December 3 as one of  
24 his 14 dates?

01:24:01 25 MR. BURKHOLZ: Objection. Leading.

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1 THE COURT: Sustained.

2 BY MR. KAVALER:

3 Q. Do you have an opinion about the significance of  
4 Defendants' 516 and Defendants' 517 with regard to the  
01:24:14 5 inclusion by Professor Fischel of December 3rd on his list of  
6 14 dates?

7 A. Yes. I believe --

8 Q. What's that opinion?

9 A. -- because there was no news on December 3rd, December 3rd  
01:24:28 10 cannot be properly considered a disclosure date. Besides, in  
11 a properly-conducted event study, the market reaction on  
12 December 3rd was not significant. So, Professor Fischel's  
13 report considered December 3rd as a disclosure date in error.

14 Q. Do you have a demonstrative that makes the -- helps you  
01:24:51 15 demonstrate the point you just made?

16 A. Yes, I do.



Untitled

17 MR. KAVALER: Let's see DDX 559-04, please.

18 BY MR. KAVALER:

19 Q. Professor, tell us what this demonstrative shows us.

01:25:02 20 A. So, if you look at the right-hand side, the Barron's  
21 article refers to Mr. Ryan's opinion -- "We believe Household,  
22 at a minimum, is set up for a dramatic decline in quality of  
23 company's earnings and at most a potential reduction in  
24 earnings estimates and/or credit-related charges -- " charge,  
01:25:33 25 in the singular.

1 THE COURT: Sustained.

2 BY MR. KAVALER:

3 Q. Do you have an opinion about the significance of  
4 Defendants' 516 and Defendants' 517 with regard to the  
01:24:14 5 inclusion by Professor Fischel of December 3rd on his list of  
6 14 dates?

7 A. Yes. I believe --

8 Q. What's that opinion?

9 A. -- because there was no news on December 3rd, December 3rd  
01:24:28 10 cannot be properly considered a disclosure date. Besides, in  
11 a properly-conducted event study, the market reaction on  
12 December 3rd was not significant. So, Professor Fischel's  
13 report considered December 3rd as a disclosure date in error.

14 Q. Do you have a demonstrative that makes the -- helps you  
01:24:51 15 demonstrate the point you just made?

16 A. Yes, I do.

17 MR. KAVALER: Let's see DDX 559-04, please.

18 BY MR. KAVALER:

19 Q. Professor, tell us what this demonstrative shows us.

01:25:02 20 A. So, if you look at the right-hand side, the Barron's  
21 article refers to Mr. Ryan's opinion -- "We believe Household,  
22 at a minimum, is set up for a dramatic decline in quality of  
23 company's earnings and at most a potential reduction in  
24 earnings estimates and/or credit-related charges -- " charge,  
01:25:33 25 in the singular.

□

1 And if you see on the left-hand side, same opinion is  
2 expressed by Mr. Ryan on October 12 and October 18. On  
3 October 12, Mr. Ryan says, "We believe Household, at a  
Page 1

Untitled

01:25:53 4 minimum, is set up for a dramatic decline in quality of  
5 company's earnings and at most a potential reduction in  
6 earnings estimates and/or credit-related charges."

7 And the opinion he expresses on October 18th is,  
8 again, almost verbatim the same.

9 Q. Professor, did Mr. Ryan's statements on October 12 or  
01:26:12 10 October 18 have any impact on the market price of Household  
11 stock?

12 A. The stock did not react significantly on those dates.

13 Q. Do you have an opinion as to the significance of these two  
14 earlier publications -- I already asked you that. I'm sorry.

01:26:35 15 So, on the basis of what you just said, is it  
16 appropriate for Professor Fischel to be counting the December  
17 3rd Barron's article as one of his 14 days or not?

18 A. It's not appropriate.

19 Q. So, I should cross it off this chart?

01:26:50 20 A. Sure.

21 Q. All right. Let's look at the next one, the third day,  
22 December 5, 2001, reporting on comments Bill Aldinger made at  
23 a conference on December 4.

24 MR. KAVALER: Let's look at Plaintiffs' 1433.

01:27:20 25 A copy for counsel.

1 Barron -- American Banker -- article that Professor Fischel  
2 cited as inflationary news. On the left-hand side, you have  
3 Mr. Aldinger's presentation giving the same information to the  
4 market a day earlier, when even in Professor Fischel's event  
01:32:52 5 study the stock did not react significantly.

6 Q. So, if we go back to Plaintiffs' Demonstrative 150, in  
7 your opinion, is this another entry that Professor Fischel  
8 cited that doesn't support his conclusion?

9 A. Yes.

01:33:10 10 Q. Should I cross this one off, as well?

11 A. Okay.

12 Q. Let's go to the fourth day. You were here when Professor  
13 Fischel talked about a news article published after trading  
14 hours on December 11 reporting on Household's restructuring  
01:33:32 15 practices. Let me show you -- were you here that day?

16 A. Yes. I think you said news article. I think you meant  
17 analyst report.

18 Q. I'm sorry, I might have. Let me see if I can speed this  
19 up a little bit.

01:33:44 20 He testified about all these days the same day?

21 A. Yes.

22 Q. And you were here then?

23 A. Yes.

24 Q. All right. So, I won't ask you that every time.

01:33:51 25 Let's look at Plaintiffs' 1410.

□

1 MR. KAVALER: A copy for counsel.

2 BY MR. KAVALER:

3 Q. A copy for you, Professor.  
Page 1

Untitled

4 (Document tendered to counsel and the witness.)

01:34:06 5 MR. KAVALER: This is in evidence, your Honor.

6 Ladies and gentlemen, this is behind Tab 4 in your  
7 binder.

8 BY MR. KAVALER:

9 Q. And what is this, Professor?

01:34:13 10 A. Well, this is an analyst report issued by certain analysts  
11 at Legg Mason investment firm on 11 December, 2001, at 6:04  
12 p.m. Eastern. It says "Part 3" in its title.

13 Q. That's the Legg Mason report referred to by Professor  
14 Fischel as Item 4 here on Plaintiffs' Demonstrative 150?

01:34:43 15 A. Yes.

16 Q. Okay.

17 And if you look at the second page, it says, quote --  
18 last paragraph -- "we find this lenient re-aging policy  
19 disturbing, as it undermines the analytical value of the  
01:34:56 20 reported asset quality statistics."

21 Do you see that language?

22 A. Yes, I do.

23 Q. All right.

24 And what role did this report play, as you understand  
01:35:05 25 it, in Professor Fischel's analysis?

□

1 MR. KAVALER: A copy for counsel.

2 BY MR. KAVALER:

3 Q. A copy for you, Professor.

4 (Document tendered to counsel and the witness.)

01:34:06 5 MR. KAVALER: This is in evidence, your Honor.

6 Ladies and gentlemen, this is behind Tab 4 in your  
7 binder.

8 BY MR. KAVALER:

9 Q. And what is this, Professor?

01:34:13 10 A. Well, this is an analyst report issued by certain analysts  
11 at Legg Mason investment firm on 11 December, 2001, at 6:04  
12 p.m. Eastern. It says "Part 3" in its title.

13 Q. That's the Legg Mason report referred to by Professor  
14 Fischel as Item 4 here on Plaintiffs' Demonstrative 150?

01:34:43 15 A. Yes.

16 Q. Okay.

17 And if you look at the second page, it says, quote --  
18 last paragraph -- "we find this lenient re-aging policy  
19 disturbing, as it undermines the analytical value of the  
01:34:56 20 reported asset quality statistics."

21 Do you see that language?

22 A. Yes, I do.

23 Q. All right.

24 And what role did this report play, as you understand  
01:35:05 25 it, in Professor Fischel's analysis?

□

1 A. Professor Fischel concluded -- incorrectly so, I  
2 believe -- that the market reacted negatively to this report  
3 the next trading day, on December 12, 2001. And he,  
Page 1

Untitled

01:35:32 4 therefore, concluded some \$2.39 of inflation came out of the  
5 stock.

6 Q. And you said he concluded incorrectly. Why do you say  
7 that?

8 A. Because this report was Part 3 of two earlier reports with  
9 the same criticism that were issued by Legg Mason during  
01:35:54 10 trading hours on December 11th. And even according to  
11 Professor Fischel's own event study, the market did not react  
12 on December 11th because this was old news even on December  
13 11th.

14 Q. Let me show you Plaintiffs' Exhibit 318.

01:36:10 15 MR. KAVALER: A copy for counsel.

16 BY MR. KAVALER:

17 Q. A copy for you, Professor.

18 (Document tendered to counsel and the witness.)

19 BY MR. KAVALER:

01:36:18 20 Q. Is this a document you relied upon in forming your  
21 opinions in this case?

22 A. Yes.

23 MR. KAVALER: I offer Defendants' 318, your Honor --  
24 sorry, Plaintiffs' 318. Same limiting instruction.

01:36:28 25 THE COURT: It will be admitted. Same limiting  
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1 instruction.

2 (Plaintiff's Exhibit No. 318 received in evidence.)

3 MR. KAVALER: And, ladies and gentlemen, this is in  
4 your binder behind the next blue tab, behind Tab 4.

5 BY MR. KAVALER:

6 Q. And is this, Professor, a Legg Mason report that you're  
7 talking about?

Untitled

8 A. Yes. This is Part 1 of the three-part report. And this  
9 one was issued at 10:50 a.m. Eastern.

01:36:55 10 Q. During trading hours?

11 A. During trading hours.

12 Q. And if you look at page ending in 378, the first page at  
13 the second bullet, it says, "The company's surprisingly  
14 lenient asset quality policies and the wide variation in how  
01:37:16 15 these policies are implemented among HI's five major business  
16 lines -- partial payments, delinquencies, re-aging, rewrites,  
17 non-accruals, chargeoffs, BK-related losses -- makes us  
18 question the company's impressive performance of solid  
19 earnings growth and stable asset quality and lowers our  
01:37:37 20 confidence going forward."

21 Do you see that?

22 A. Yes, I do.

23 Q. Is there still another analyst report that you're  
24 referring to?

01:37:45 25 A. Yes. There was a Part 2 of this report also issued during



1 BY MR. KAVALER:

2 Q. I'm sorry, Professor, did you finish with the  
3 demonstrative?

4 A. Yes.

02:16:51 5 Q. Okay.

6 On the basis of the testimony you've just given, is  
7 there any basis for Professor Fischel having included the  
8 Bernstein report on September 3, 2002, in his list of  
9 disclosure dates, or dates on which disclosure caused

02:17:09 10 inflation to come out of the price of Household stock?

11 A. No, that's not justified.

12 Q. Should I cross this (indicating) off the list?

13 A. Yes.

14 Q. The next one is No. 11. It's the CIBC report on September  
02:17:28 15 23, 2002.

16 Let me show you Exhibit 1435 in evidence.

17 MR. KAVALER: A copy for counsel and a copy for you,  
18 Professor.

19 (Document tendered to counsel and the witness.)

20 BY MR. KAVALER:

21 Q. Is this the CIBC report that Professor Fischel was talking  
22 about?

23 A. Yes, it is.

24 Q. All right.

02:17:56 25 Page 2 at the top of Exhibit 1435, it says, "We have

□

1 lowered our price target for HI from \$36 -- to \$36 -- from  
2 \$57, as persistent headline risk should continue to pressure  
3 Household's valuation."

Untitled

4 And it skips some words.

02:18:16 5 "Building concerns regarding the company's lending  
6 practices, which have been accused of being predatory in  
7 nature."

8 Do you see that language?

9 A. I do.

02:18:23 10 Q. Does this report reveal any new information about  
11 re-aging?

12 A. No, it does not.

13 Q. Now, Professor Fischel picked this information for his  
14 11th disclosure date, saying that it revealed information to  
02:18:37 15 the market, causing inflation to be removed from Household's  
16 stock price; is that right?

17 A. That's correct.

18 Q. Did you analyze this disclosure, as well?

19 A. I did.

02:18:45 20 Q. Did you identify a previous article with similar  
21 information?

22 A. Yes, I did.

23 Q. All right.

24 Is one of the articles you're referring to  
02:18:53 25 Defendants' 892 -- one of the disclosures you're referring to

Bajaj - direct

4222

1 Defendants' 892?

2 MR. KAVALER: A copy for counsel and a copy for you,  
3 Professor.

4 (Document tendered to counsel and the witness.)

5 BY THE WITNESS:

6 A. Yes, it is.

7 BY MR. KAVALER:

8 Q. And I believe that's in evidence.

9 MR. KAVALER: And, ladies and gentlemen, that's at  
02:19:13 10 Tab 11 -- it should be at Tab 11 -- of your binder.

11 Okay. It's not at Tab 11 of your binder. Sorry.

12 I stand corrected. It is at Tab 11, behind the blue  
13 divider. Sorry.

14 BY MR. KAVALER:

15 Q. Okay.

16 And let's look at Page 1, the third bullet. It says,  
17 "We are reducing our 12-month price target on HI shares from  
18 \$41 to \$54, to reflect the negative sentiments that have  
19 surfaced recently surrounding HI shares specifically, as well  
02:20:28 20 as the financial sector in general."

21 Do you see that?

22 A. I do.

23 Q. And, then, the same page, the fifth bullet says, "In our  
24 view, the preannouncement by Americredit, ACF yesterday, along  
02:20:39 25 with continued concern over potential regulatory action

Bajaj - direct

4223

1 related to predatory lending, contributed heavily to the  
2 weakness."

3 Do you see that?

4 A. Yes.

02:20:48 5 MR. KAVALER: Your Honor, I apologize. I neglected  
6 to offer this. I offer Defendants' 892 in evidence --

7 MR. BURKHOLZ: A limiting instruction.

8 MR. KAVALER: -- with the same limiting instruction,  
9 your Honor.

02:20:56 10 THE COURT: Admitted.

11 (Defendants' Exhibit No. 892 received in evidence.)

12 MR. KAVALER: Sorry about that.

Untitled

13 BY MR. KAVALER:

14 Q. Okay.

02:21:01 15 What does it mean that you found an earlier article,  
16 Professor?

17 A. Well, it means the material Professor Fischel cited as  
18 news, that took inflation out of the stock, was not news at  
19 all. It was old information. This was already something that  
02:21:23 20 the public had learned about earlier.

21 Q. In your opinion, is the information contained in the UBS  
22 Warburg Report, dated September 18, which is Defendants'  
23 Exhibit 892, substantially the same as the information  
24 contained in the CIBC World Markets Report, dated September  
02:21:42 25 22, which is Plaintiffs' Exhibit 1435, which forms the basis

Bajaj - direct

4224

1 for Professor Fischel's 11th entry?

2 A. Yes.

3 Q. So, in your opinion, is he justified in claiming the 11th  
4 entry -- the September 23, 2002, CIBC report -- as a day on  
02:21:58 5 which a disclosure took inflation out of the price of  
6 Household stock?

7 A. No, he is not justified in doing that.

8 Q. Should I cross it off the list?

9 A. Yes.

02:22:08 10 Q. Let's go to the 12th one.

11 This is -- Professor Fischel chose the October 4,  
12 2002, Wall Street Journal article. It's Plaintiffs' Exhibit  
13 1375 in evidence.

14 MR. KAVALER: A copy for counsel and a copy for you,  
02:22:41 15 Professor.

16 (Document tendered to counsel and the witness.)

Untitled

17 BY MR. KAVALER:

18 Q. What's the date of this article?

19 A. October 4, 2002.

02:22:52 20 MR. KAVALER: Ladies and gentlemen, this is Tab 12 in  
21 your binder.

22 BY MR. KAVALER:

23 Q. And this article states, "Household may be near a

24 settlement with State Attorneys General that could total \$350

02:23:07 25 million to \$550 million, according to go a report by wall

# **TAB A-3**

1 A. Yes.

2 So it's significant to me because -- well, first of

3 all, notice -- within this report, there's -- it indicates

4 that the company does one payment -- it may even indicate

03:53:48 5 zero -- no, I'm sorry.

6 In this -- in this document, it indicates that the

7 company does automatic restructures. So now go back to the

8 second part of that disclosure that I talked about that's in

9 the 10-K; that is, the company has evidence that the reason

03:54:07 10 for the delinquency in the first place has been cured.

11 But this document indicates they re-age

12 automatically, which would obviously mean they haven't talked

13 to the customer and -- in most cases and have not been able to

14 get evidence or even try to get evidence that the reason for

03:54:23 15 the delinquency has been cured.

16 Q. And is there any significance to the date of this

17 benchmarking study?

18 A. Yes. I just point out that this -- and, of course, this

19 is the final copy, but this is dated March 12th, 2002, and

03:54:39 20 that, again, is prior to the company actually filing its 10-K

21 for '01, which I believe was filed the next day.

Untitled

22 Q. Okay. And did there come a time that the company changed  
23 its disclosure regarding its re-aging practices?

24 A. The company ultimately did change the disclosure with  
03:55:04 25 respect to this -- these issues, the re-aging issues.

□

Devor - direct

2452

1 Q. Okay. And can you tell us about that.

2 A. Sure.

3 At some point, almost a year after the filing of this

4 10-K, this was March of '02, I believe in March of '03, they

03:55:23 5 issued an amended 10-K, a restated 10-K, which is really

6 correcting this one, and they came out with a new disclosure

7 that I guess I prepared a couple slides to show.

8 Q. Okay. And, sir, let's take a look, if we could, at

9 Plaintiffs' Demonstrative Exhibit 123.

03:56:05 10 A. Okay.

11 Q. And is that a copy of a demonstrative that you prepared?

12 A. It is. One of them.

13 Q. Can you explain the significance of this demonstrative

14 exhibit?

03:56:13 15 A. Yeah. Well, on the left-hand side I've taken those

16 excerpts that we just went over, which I said were false and

17 misleading, I believe, and I've put them out separately on the



Untitled

18 left-hand side in two different cells in a spreadsheet.

19 And the first one, again, you'll remember was that

03:56:33 20 the company re-ages when two things happen: Number one,

21 they've gotten consecutive payments; and, number two, the

22 second thing, when they have evidence that the reason for the

23 delinquency has been cured.

24 And as I noted before in March a year later, they

03:56:50 25 actually restate this 10-K and amend it. And this is their

□

Devor - direct

2453

1 new disclosure, and I'll read it to you: "We are amending our

2 disclosures of our restructure policies to include the

3 following disclosures," and then first they say, "In numerous

4 instances, Household accepts one or zero payments prior to

03:57:12 5 resetting the delinquency status."

6 So, of course, you look at that and you compare that

7 to what they actually disclosed originally, and it's the exact

8 opposite really.

9 Q. Okay. And that's -- and that -- we're not talking about a

03:57:30 10 new 10-K for the year 2000 or 2003. They basically just took

11 their old 10-K that they'd issued in March 2002 and now in

12 March 2003 issued a new one with the same date on it, right?

Untitled

- 13 A. That's correct. And it's actually the 2001 10-K that got  
14 issued in March of '02 but which they correct in March of '03.

**TAB A-4**

1 we can see a remark by a defendant causing the price of the  
2 stock to go up.

3 A. Okay. That's fine.

4 Q. Okay.

01:16:42 5 Now let's look at Plaintiffs' Demonstrative 140.

6 This is a week later. It's a Legg Mason report. And this  
7 time this causes the price to go down, correct?

8 A. That's right.

9 Q. It goes down \$2.39?

01:17:08 10 A. Adjusted for market and industry movements based on the  
11 statistical model that I used, correct.

12 Q. That's your number up there, 2.39?

13 A. That's right.

14 Q. That's all I'm pointing to.

15 A. That's fine.

16 Q. I'm not quarrelling with you at all.

17 A. I'm not quarrelling with you, either.

18 Q. Okay.

19 (Laughter.)

20 BY THE WITNESS:

21 A. We're agreeing on everything.

22 BY MR. KAVALER:

23 Q. Excellent. Very agreeable fellows here.

24 Okay. And this is the Legg Mason report that causes  
01:17:26 25 this decline?

□

1 A. That's correct.

2 Q. And it relates to the same subject matter as

3 Mr. Aldinger's remarks at Goldman Sachs a week earlier?

Untitled

4 A. That's right.

01:17:35 5 Q. Okay. I'm getting the hang of this.

6 And, again, if you look at your Exhibit 1397 at Page  
7 13 -- I'm in the wrong place -- I'm in the right place,  
8 sorry -- for December 12, 2001, what we see there is we see  
9 the price is at three dollars and six- -- I'm sorry.

01:18:11 10 MR. KAVALER: Withdrawn.

11 BY MR. KAVALER:

12 Q. The artificial inflation is at \$3.66 on December 12,  
13 correct?

14 A. I don't want to interrupt you, sir, but could I also have  
01:18:21 15 a copy?

16 Q. Oh, absolutely.

17 A. I prefer that to --

18 Q. I apologize.

19 A. -- looking back and forth.

01:18:24 20 Q. I thought you had the exhibits up there.

21 A. Yeah, but I have to find them every time. It's just  
22 simpler if I have a copy.

23 Q. I apologize.

24 MR. KAVALER: Get me a copy of the other one, too.

01:18:36 25 I thought you had Thursday's exhibits. Sorry.

Fischel - cross

2881

1 (Document tendered.)

2 THE WITNESS: Thank you. Appreciate it.

3 MR. KAVALER: Here's a copy of 1391, as well.

4 THE WITNESS: Got it.

01:18:44 5 (Document tendered.)

6 MR. KAVALER: Figured since I wasn't moving them into  
7 evidence, I'd save the trip.

8 BY MR. KAVALER:

9 Q. Okay. So, we're on Page 13 of 1397. We're looking at the  
01:18:51 10 entry for December 12, 2001. We see that the artificial  
11 inflation is \$3.66, correct?

12 A. Correct.

13 Q. And the day before, the artificial inflation on December  
14 11 was \$6.05, correct?

01:19:04 15 A. That's right.

16 Q. And the difference between those two, if my math serves,  
17 is the \$2.85 we're talking about?

18 A. That's right.

19 Q. \$2.39, which appears on Plaintiffs' Demonstrative 140?

01:19:15 20 A. Correct.

21 Q. Okay. Good.

22 And now if you'll look at your event study, which is  
23 Plaintiffs' 1391 in evidence, and turn to Page 31 and you'll  
24 see the entry there for December 12, 2001. And that shows a  
01:19:38 25 statistically-significant price decrease that resulted in

Fischel - cross

2882

1 inflation on December 12, correct?

2 A. Correct.

3 Q. And that's as a result of the Legg Mason report, correct?

4 A. Correct.

01:19:49 5 Q. And if we go to Plaintiffs' Demonstrative 140, we see,  
6 again, the same format. Up in the box, you've got the dollar  
7 amount of the residual price change; and, in the text, you  
8 explain what it is Legg Mason is saying?

9 A. Correct.

01:20:06 10 Q. All right.

11 So, in this one example, we see the inflation coming  
12 in on December 5, and we see it coming out on December 12,  
Page 3

Untitled

13 correct?

14 A. We see inflation increasing on December 5th and decreasing  
01:20:28 15 on December 12th, that's correct.

16 Q. And the amount of the decrease is larger than the amount  
17 of the increase?

18 A. Correct.

19 Q. So, all of the inflation that increased on December 5 came  
01:20:39 20 out in the decrease a week later?

21 A. I guess you could call it that, but --

22 Q. I'll tell you why I think that.

23 A. Please, go ahead.

24 Q. Sure.

01:20:50 25 MR. BURKHOLZ: Your Honor, he's interrupting the  
Fischel - cross

2883

1 witness.

2 MR. KAVALER: I'm sorry.

3 BY MR. KAVALER:

4 Q. It came in because of whatever Mr. Aldinger said at  
01:21:00 5 Goldman Sachs?

6 A. Well, when you say "came in," there's pre-existing  
7 inflation. So, it increased as a result of the statements  
8 made on December 5th. And, then, because there was a partial  
9 corrective disclosure on December 12th, that decreased the  
01:21:19 10 amount of inflation.

11 I think that's the proper relationship.

12 Q. I appreciate your correcting my terminology. I'll try to  
13 stick to "increased" and "decreased."

14 And the amount of the decrease was greater than the  
01:21:31 15 amount of the increase?

16 A. Based on those two dates, that's correct.

17 Q. Right.

18           So, for example, Professor, if we were to assume --  
19 just like the plaintiff asked you to make an assumption, I'm  
01:21:46 20 asking you to make an assumption -- that's all this case were  
21 about; the only statement by Mr. Aldinger or by Household in  
22 this case were that one; he made it on the 4th; the market  
23 reacted on the 5th; there was what you described as a partial  
24 corrective disclosure on the 12th; the decrease was larger  
01:22:08 25 than the increase, you would say the inflation that -- the

Fischel - cross

2884

1 increased inflation that -- occurred had been dissipated --  
2 at least dissipated -- because the decrease was smaller -- and  
3 we're finished, right?

4 A. Decrease is larger, not smaller.

01:22:24 5 Q. I apologize.

6           You understood my point?

7 A. Well, in your hypothetical, if that were the whole case, I  
8 would say that assuming the -- again, the -- hypothetical jury  
9 found the statement on December 5th to be false and  
01:22:38 10 misleading, then all purchasers of Household stock between  
11 December 5th and December 12th suffered harm because they  
12 purchased at a price that was greater than the true value;  
13 and, then, the price and the true value equaled each other,  
14 again, on December 12th.

01:22:58 15           So, in your hypothetical, any investors before  
16 December 12th wouldn't suffer any harm and any investors after  
17 December 12th wouldn't suffer any harm, but investors between  
18 December 5th and December 12th would suffer harm.

19 Q. I'd be happy to take the gift you just gave me, but I  
01:23:14 20 think you misspoke when you said any investors before December  
21 12 wouldn't suffer harm and any investors after December 12th



Untitled

22 wouldn't suffer any harm. You meant before the 5th and after  
23 the 12th?

24 A. I did. If I misspoke, I appreciate the correction.

01:23:25 25 Q. And when you said Mr. Aldinger's statement on the 5th, you

1 witness.

2 MR. KAVALER: I'm sorry.

3 BY MR. KAVALER:

4 Q. It came in because of whatever Mr. Aldinger said at  
01:21:00 5 Goldman Sachs?

6 A. Well, when you say "came in," there's pre-existing  
7 inflation. So, it increased as a result of the statements  
8 made on December 5th. And, then, because there was a partial  
9 corrective disclosure on December 12th, that decreased the  
01:21:19 10 amount of inflation.

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13 stick to "increased" and "decreased."

14 And the amount of the decrease was greater than the  
01:21:31 15 amount of the increase?

16 A. Based on those two dates, that's correct.

17 Q. Right.

18 So, for example, Professor, if we were to assume --  
19 just like the plaintiff asked you to make an assumption, I'm  
01:21:46 20 asking you to make an assumption -- that's all this case were  
21 about; the only statement by Mr. Aldinger or by Household in  
22 this case were that one; he made it on the 4th; the market  
23 reacted on the 5th; there was what you described as a partial  
24 corrective disclosure on the 12th; the decrease was larger  
01:22:08 25 than the increase, you would say the inflation that -- the

Fischel - cross

2884

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3 we're finished, right?

Untitled

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6 You understood my point?

7 A. Well, in your hypothetical, if that were the whole case, I  
8 would say that assuming the -- again, the -- hypothetical jury  
9 found the statement on December 5th to be false and

01:22:38 10 misleading, then all purchasers of Household stock between  
11 December 5th and December 12th suffered harm because they  
12 purchased at a price that was greater than the true value;  
13 and, then, the price and the true value equaled each other,  
14 again, on December 12th.

01:22:58 15 So, in your hypothetical, any investors before  
16 December 12th wouldn't suffer any harm and any investors after  
17 December 12th wouldn't suffer any harm, but investors between  
18 December 5th and December 12th would suffer harm.

19 Q. I'd be happy to take the gift you just gave me, but I  
01:23:14 20 think you misspoke when you said any investors before December  
21 12 wouldn't suffer harm and any investors after December 12th  
22 wouldn't suffer any harm. You meant before the 5th and after  
23 the 12th?

24 A. I did. If I misspoke, I appreciate the correction.

01:23:25 25 Q. And when you said Mr. Aldinger's statement on the 5th, you

1 Q. Yes.

2 Absolutely. I fully understand that you're not  
3 saying that one word Mr. Aldinger said at Goldman Sachs was  
4 false; and, you're also not saying it was true. You have no  
02:25:10 5 view on that, right?

6 A. That's right.

7 Q. Okay.

8 But you do say that when Mr. Aldinger spoke at  
9 Goldman Sachs on this date (indicating), inflation increased?

02:25:23 10 A. Correct.

11 Q. Give me another date in this case where, based on your  
12 research, Household made a statement like Mr. Aldinger's at  
13 Goldman Sachs -- that I can touch and feel, read to the jury,  
14 examine Mr. Aldinger about -- that increased inflation in the  
02:25:37 15 stock?

16 A. February 27th.

17 And the reason is, just like December 5th, if the  
18 jury were to conclude that Household's statements about its  
19 re-aging practices, how they were perfectly appropriate at all  
02:25:53 20 points in time; that they accurately reflected Household's  
21 financial condition; that they were done only for the purpose  
22 of benefitting the consumer; if the jury were conclude that  
23 those statements were false, going back to the beginning of  
24 the relevant period as early as possibly July 30th, 1999, or  
02:26:12 25 any later date, then Household's statements to the contrary on

1 December 5th of 2001 and February 27th of 2002, would be false  
2 and misleading statements, which would increase the amount of  
3 inflation.

Untitled

4                   But the inflation would date back to the first time  
02:26:33 5 Household made a statement about its re-aging practices --  
6 defending them; saying the accounting was correct; saying  
7 nobody was misled; saying that they accurately reflected the  
8 quality of Household's assets, its delinquencies -- the first  
9 time Household made a statement to that effect, if it later  
02:26:54 10 turned out to be false or if it was false at the time that it  
11 was made, then these statements on December 5th and February  
12 27th were, themselves, false because they reiterated  
13 Household's defense of its re-aging practices. And that's why  
14 inflation increased on those dates.

02:27:10 15 Q. Increased.

16                   But I'm trying to find out what was the base level.

17                   As I read your chart, 1397, for two-and-a-quarter  
18 years during this class period -- during the relevant  
19 period -- starting on July 30, '99, and going all the way up  
02:27:27 20 to October 15, I think you said, of -- November 15 of -- 2001,  
21 it's always \$7.97, correct?

22 A. Under the first quantification method. And the reason is  
23 that when you quantify the valuation effects, the stock price  
24 consequences of the 14 specific disclosures that I identified,  
02:27:49 25 that were fraud-related disclosures that had a statistically-

□

Untitled

19 What I want to ask you is, I think you said in your direct

03:10:11 20 testimony that you understand that there are three claims in

21 this case, shorthanded as predatory lending, re-aging and

22 restatement, right?

23 A. Yes, sir, that's correct.

24 Q. And I'd like to go through this demonstrative, just walk

03:10:23 25 you through these 14 dates and ask you if each one is

□

Fischel - cross

2944

1 predatory lending related, re-aging related or restatement

2 related.

3 Can you do that?

4 A. Yes. Although, what would be helpful is if I could also

03:10:34 5 look at the disclosures that these --

6 Q. Absolutely.

7 A. -- refer to.

8 Q. Would it help if I gave you this notebook?

9 A. Yes, I have one.

03:10:42 10 Q. You have one?

11 A. I'm just going to look simultaneously.

12 Q. You can look at anything you want. I'm not trying to

13 trick you or deprive you of any opportunity to look at your

14 notebook. I don't want to spend a lot of time on this.

Untitled

03:10:53 15 Let's do them one at a time. Let's start with the  
16 disclosure identified on November 15, 2001, which is number  
17 one on this chart, the CDC lawsuit. Is that related to  
18 predatory lending, re-aging or restatement?

19 A. Well, certainly predatory lending. Whether there's  
03:11:14 20 anything in it that relates to re-aging, I'm just not sure. I  
21 would have to look at the entire lawsuit. But the part that I  
22 focused on in my exhibit focuses on -- primarily focuses on  
23 predatory lending.

24 Q. Okay. Well, you've got the -- your notebook there, the  
03:11:34 25 book that plaintiffs' counsel put together and gave me a copy

□

Fischel - cross

2945

1 of, gave you a copy of. Why don't you take a minute, look  
2 through it and see if there's anything that suggests to you  
3 it's about anything other than predatory lending. It looks to  
4 me like it's predatory lending.

03:11:47 5 A. I agree with you, but the problem is I don't have the  
6 lawsuit itself in front of me.

7 Q. I see.

8 A. And without that, I can't answer definitively. But  
9 certainly the part that I emphasized in my testimony dealt

03:11:58 10 with predatory lending.

11 Q. Let me try it this way: Nothing that you have in front of  
12 you now, nothing that's in evidence, nothing that's in the  
13 record suggests that it's about anything other than predatory  
14 lending?

03:12:07 15 A. Certainly that's true with respect to what I have in front  
16 of me. And, again, I don't want to be difficult, but I don't  
17 know what's in evidence, so I can't answer that.

18 Q. I'll take that. Nothing you're aware of?

19 A. Nothing that I'm aware of as I sit here.

03:12:17 20 Q. Suggests that it's anything other than predatory lending?

21 A. That's correct, sir.

22 Q. Let's go to the second one. This is the disclosure  
23 identified on December 3, the Barron's article. You're  
24 familiar with that?

03:12:28 25 A. I am.

□

Fischel - cross

2946

1 Q. And that relates to re-aging; is that right?

2 A. That's correct.

3 Q. Okay.

4 A. And, again, whether there's anything in it that relates to

03:12:40 5 anything else, I can't say definitively. But as I sit here, I



Untitled

6 understand it relates to re-aging.

7 Q. Again, there's nothing that you're aware of that suggests

8 it relates to either predatory lending or restatement?

9 A. As I sit here, correct.

03:12:54 10 Q. Number three, December 5, Aldinger presentation. That's

11 the one thing that wound up on our white board here, the

12 Goldman Sachs presentation. And that relates to re-aging?

13 A. Correct.

14 Q. And, again, as you sit here now, you're not aware of

03:13:09 15 anything that suggests to you that it relates to either

16 predatory lending or restatement?

17 A. Correct. Although, again, to really be fully confident in

18 that answer, I'd have to have the full documents in front of

19 me, which I don't have. But as I sit here, I understand it to

03:13:25 20 be related to re-aging.

21 Q. Right. You could be fully confident in that answer

22 because all you're saying is as you sit here?

23 A. Correct. I just want to qualify it that I'm not reviewing

24 the documents before answering.

03:13:36 25 Q. Understood. Okay.

□

Fischel - cross

2947

Untitled

1 Next one, number four, Legg Mason report a week  
2 later. That's the other one related to the Goldman Sachs  
3 remarks by Mr. Aldinger, which are over here on the white  
4 board, a week later. And that is related to predatory

03:13:55 5 lending, restatement, re-aging? Do we know?

6 A. Well --

7 Q. Same as the first one, re-aging?

8 A. I think it's primarily re-aging, but maybe -- let me just  
9 take a quick look if that's okay.

03:14:10 10 Q. Sure.

11 (Brief pause.)

12 BY THE WITNESS:

13 A. Certainly the part of it that I emphasized focuses on  
14 re-aging.

03:14:28 15 BY MR. KAVALER:

16 Q. Okay. The next one, number five, the February 27  
17 expansion of best practices. And that relates primarily to  
18 predatory lending?

19 A. Yes, sir, that's what appears to be the case.

03:14:48 20 Q. And as you sit here, you're not aware of any connection  
21 between that statement and re-aging or restatement, correct?

22 A. Again, with the important caveat that I'm not reviewing  
23 the documents before answering. But with that caveat,

Untitled

24 correct.

03:15:02 25 Q. And number six, the Bellingham Herald article. That

□

Fischel - cross

2948

1 relates to predatory lending?

2 A. Correct, with the same caveat.

3 Q. Right. And the caveat is, although you haven't reviewed

4 any documents, and you can't be certain, you certainly don't

03:15:17 5 have anything in mind that suggests to you that that relates

6 to either restatement or re-aging?

7 A. That's right. I know what I emphasized in my exhibits and

8 my testimony, but I can't answer about the full document

9 without reviewing the document.

03:15:30 10 Q. But in fairness, you would have emphasized the thing that

11 was most important to you about that event?

12 A. Yes, that is fair. I agree.

13 Q. Number seven is the August 14, 2002, financial

14 restatement. And that would relate -- let me take a wild

03:15:46 15 guess -- to restatement?

16 A. I agree.

17 Q. Not to predatory lending or re-aging?

18 A. Correct.

Untitled

19 Q. And number eight is the Forbes home wrecker article. And

03:15:53 20 that relates to predatory lending, correct?

21 A. Correct.

22 Q. Again, not to re-aging or restatement so far as you're

23 aware?

24 A. Correct.

03:15:59 25 Q. Number nine -- did I cut you off?

□

Fischel - cross

2949

1 A. Well, only in the sense that there was some document about

2 this time that talked about Household's stock price decline

3 being attributable to complaints and lawsuits about predatory

4 lending, as well as the effect of the restatement. I just

03:16:23 5 can't remember whether it's this document --

6 Q. All right.

7 A. -- the home wrecker article.

8 Q. Number nine is the KBW report and the Bellingham Herald.

9 And those related to predatory lending, correct?

03:16:32 10 A. Correct.

11 Q. Not to re-aging or restatement --

12 A. Correct.

13 Q. -- so far as you know?

14 A. With the same caveat.

Untitled

03:16:38 15 Q. And number ten is the September 3 Bernstein report,

16 September 3, '02, Bernstein report. And that related to

17 predatory lending?

18 A. Correct.

19 Q. So far as you currently know, not re-aging or restatement?

03:16:52 20 A. Correct, with the same caveat.

21 Q. And number 11 is the September 23 CIBC report. And that

22 related to predatory lending, correct?

23 A. Correct, with the same caveat.

24 Q. And -- I think you gave me the same caveat answer one

03:17:07 25 question too soon.

□

Fischel - cross

2950

1 You know it related to predatory lending, right?

2 A. Yes, I just don't know if it exclusively related to

3 predatory lending.

4 Q. But that's the answer to my next question.

03:17:15 5 A. I apologize.

6 Q. As far as you know as you sit here now, it did not relate

7 to re-aging or restatement?

8 A. Correct, based on my memory.

9 Q. Number 12, the October 4, 2002, Wall Street Journal

Untitled

03:17:27 10 article. That related to predatory lending, correct?

11 A. Correct.

12 Q. And so far as you know as you sit here now not to re-aging

13 or restatement?

14 A. Correct, with the same caveat.

03:17:35 15 Q. And number 13, the October 10, 2002, attorney general

16 rumors -- attorney general settlement rumors. That related to

17 predatory lending?

18 A. That's right.

19 Q. And so far as you know as you sit here now not to re-aging

03:17:49 20 or restatement?

21 A. Correct, with the same caveat.

22 Q. And finally number 14, the October 11, 2002, attorney

23 general settlement announcement. And that related to

24 predatory lending, correct?

03:18:02 25 A. Correct.

□

Fischel - cross

2951

1 Q. And not so far as you know now to re-aging or restatement?

2 A. Correct, with the same caveat.

3 Q. All right. Let me see if I can summarize those with the

4 same caveat understood in each one.

03:18:14 5 It appears that the only one of the 14 dates in your

Untitled

6 quantification using specific disclosures that related

7 primarily or so far as you currently remember with the caveat

8 et al. to restatement was August 14, 2002?

9 A. Correct.

03:18:28 10 Q. And the earliest of the 14 dates in your quantification

11 using specific disclosures that related to predatory lending

12 was November 15, 2001?

13 A. Correct.

14 Q. Okay. And the latest of the 14 dates in your

03:18:43 15 quantification using specific disclosures that related to

16 predatory lending was October 11, 2002?

17 A. That's right.

18 Q. And the earliest of the 14 dates in your quantification

19 using specific disclosures that related to re-aging was

03:18:57 20 December 3, 2001?

21 A. Correct.

22 Q. And the latest of your 14 dates -- of the 14 dates in your

23 quantification using specific disclosures that related to

24 re-aging was December 12, 2001?

03:19:13 25 A. That's correct, based on my memory.

1 A. That is a relevant event. I do agree.

2 Q. And you testified on direct that there was leakage about  
3 that event, news leaked out about it on one day in October,  
4 the 10th, I think; and then the announcement came out on the  
03:20:56 5 11th about the settlement?

6 A. I think I talked about other leakage dates about the  
7 possible settlement, but there was certainly leakage on the  
8 10th; and then the settlement was announced on the 11th.

9 Q. Okay. And it was your expectation as you thought about  
03:21:13 10 this that the settlement with the attorneys general would have  
11 caused the company's stock price to decline significantly,  
12 correct?

13 A. Not necessarily.

14 Q. Well, you previously have said that one would have  
03:21:26 15 expected the settlement to have caused the company's stock  
16 price to decline significantly, haven't you?

17 A. It just depends on expectations. It depends what else is  
18 announced at the time of the settlement. Every announcement  
19 has to be interpreted in light of the information that's  
03:21:46 20 available to the marketplace previously.

21 It's certainly the case that if you find out for the  
22 first time that you have to pay almost \$500 million, and you  
23 knew nothing before, you'd expect that to be negative.

24 Q. Okay. Fair enough.

03:22:03 25 A. But, on the other hand, if you didn't know whether there

1 was going to be a settlement, if you thought it might be more  
2 than \$500, and if the settlement itself is accompanied by



Untitled

3 other disclosures apart from the settlement, that would all  
4 factor into what you would expect.

03:22:17 5 Q. But you know that in the real world what happened was the  
6 stock price increased \$1.90 on October 11 after increasing  
7 \$5.30 on the previous day, right?

8 A. I don't remember the exact numbers, but it's certainly the  
9 case that the stock price increased on both October 10 and  
03:22:36 10 October 11.

11 Q. And those two days accounted for about a 30 percent  
12 increase in the stock price?

13 A. You know, whatever the arithmetic shows. I haven't  
14 performed the calculation. But they were both statistically  
03:22:48 15 significant and both counted in my 14 specific fraud-related  
16 disclosures.

17 Q. They weren't just statistically significant. They were  
18 the largest up days in the entire period you looked at,  
19 weren't they?

03:22:58 20 A. That's possible. I would have to check.

21 Q. Did that result surprise you?

22 A. Well, again, I would say if I knew nothing, it would  
23 surprise me because paying \$500 million is not a good thing.  
24 But under the facts and circumstances of this case, it didn't  
03:23:18 25 surprise me because there was a lot of speculation in advance

1 Q. And if I were looking at my brokerage statement if I owned  
2 Household stock, I wouldn't see minus \$1.86?

3 A. No. But in all those documents, you might see discussion  
4 of how the stock price movement compared with the overall  
03:28:39 5 market and movements of other firms in the industry. That's a  
6 very common measure that Household itself used in its proxy  
7 statements that's, in effect, required by SEC regulations.

8 Q. I'm making --

9 A. So this is just a quantification of what investors look at  
03:28:57 10 all the time.

11 Q. I'm making a very small point, sir. Stocks are quoted in  
12 a price which is the price usually that they close on the New  
13 York Stock Exchange, right?

14 A. Correct. But there's also frequently comparisons of stock  
03:29:12 15 prices and prices of the overall -- movement to the overall  
16 market, movements in the industry. That's what Household  
17 itself disclosed in its proxy statement. This is just a  
18 quantification of that relationship.

19 Q. You've been very patient all afternoon while we talked  
03:29:28 20 about your first model. I want to turn to your second model.

21 A. Okay.

22 Q. This is the model with the leakage, right?

23 A. Okay.

24 Q. Okay. And you agree there are a bunch of stock price  
03:29:39 25 movements that were significant under your aggression analysis

1 that were not attributable to fraud-related disclosures, don't  
2 you?

3 A. There were probably some, both positive and negative, but  
Page 1

Untitled

03:29:57 4 a lot of the significant movements were combined disclosures  
5 of -- they had some fraud-related aspect and then they had  
6 some other aspect in addition to the fraud-related aspect.

7 Q. And were there some, any, that had no fraud-related  
8 aspect?

03:30:13 9 A. It's a matter of judgment as to whether something has a  
10 fraud-related aspect or not. I would say there were a few,  
11 but there were also, I would say, a significant number of the  
12 statistically significant movements that had this combined  
13 aspect.

14 But just to be clear, under the leakage model,  
03:30:31 15 whether they did -- whether they were purely fraud related,  
16 combined fraud related or not at all fraud related, they were  
17 all included in the leakage model.

18 Q. I understand. But my point is there was some of all  
19 three?

03:30:46 20 A. You probably could -- that would probably be a fair  
21 statement.

22 Q. Okay. Now, this is not on either model. This is a  
23 general question.

24 A. Okay.

03:30:56 25 Q. You assumed that the defendants did make false statements

1 movement.

2 Q. And under your leakage model, the inflation varies

3 throughout the relevant period?

4 A. Correct, from the first day to the last day. It varies

03:41:12 5 every day.

6 Q. And then counsel was quizzing you on some of the specific

7 disclosure dates. I want you to go back to the September 23,

8 2002, date, which is tab 16 in your binder.

9 A. Okay. I have it.

03:41:29 10 Q. And he asked you whether or not that date related to

11 predatory lending. And I think you said it did. But you

12 didn't look at the actual report. Can you look at the second

13 page of the report?

14 A. I have it.

03:41:51 15 Q. Okay. Do you see the first paragraph -- at the end of the

16 first paragraph on the second page, Moreover, skepticism

17 regarding the company's rapid portfolio growth, particularly

18 within the auto business, and mounting credit quality concerns

19 related to Household's loan workout and re-aging practices

03:42:08 20 have also been a drag on the stock.

21 A. Correct, I see that. The correct answer would have been

Untitled

- 22 this disclosure related both to predatory lending practices as  
23 well as a re-aging, not just to predatory lending.

1 now appears this was more accounting-related rather than  
2 driven by fundamentals, and we think Household should trade at  
3 a discount as a result."

4 So when Dr. Bajaj said the market learned the truth  
04:19:25 5 for the first time about Household's reaging policies the day  
6 before, again, if you want to use the word the "truth," the  
7 truth is precisely the reverse. What market participants  
8 concluded, and Household ultimately had to admit, that the  
9 very statement which Dr. Bajaj said gave investors the truth  
04:19:48 10 was itself false and misleading and ultimately had to be  
11 corrected when Household had to correct its 2001 10-K.

12 MR. KAVALER: Your Honor, sidebar?

13 THE COURT: Sure.

14 (The following proceedings were had at sidebar:)

04:20:25 15 MR. KAVALER: Your Honor, this is sounding to me  
16 suspiciously like another instance where an expert is going to  
17 try and sneak up on a document you specifically prohibited,  
18 and that's the SEC consent decree.

19 MR. BURKHOLZ: That's not going to happen. I can  
04:20:39 20 guarantee it.

21 MR. KAVALER: He said Household was required to say  
22 it was untrue. It sounded to me like that's where he is  
23 going.

24 I want to be absolutely certain that this time we  
04:20:48 25 have a clear record.

# **TAB A-5**

1 A. I do.

2 Q. And that was an accurate quote of a statement you made at  
3 that time, isn't that correct?

4 A. I believe so.

03:34:15 5 Q. And the complaints in the Bellingham branch that's  
6 referred to here were regarding the misrepresentation of  
7 interest rates, correct?

8 A. Correct.

9 Q. Regarding the effective rate presentation, correct?

03:34:30 10 A. I believe so.

11 Q. And when you told the reporter that the situation was  
12 "localized to the Bellingham branch," that wasn't because you  
13 knew that for a fact, but that was because somebody else told  
14 you that, correct?

03:34:50 15 A. Somebody else told me that, and I believed that to be  
16 true.

17 Q. Well, how did you know that was true, ma'am?

18 Did you see all the documents, all the complaints  
19 from around the country regarding the effective rate?

03:34:58 20 A. From just talking with the executives or other individuals  
21 at the company that I was interacting with.

22 Q. Right. You didn't see a report that said that, did you?

23 A. I don't remember if I did or didn't.

24 Q. That was something just somebody told you to tell the  
03:35:09 25 press, correct?



16 Q. And, in fact, it's true, isn't it, ma'am, that at this  
17 time, after the Washington DFI report was received by the  
18 company, that you spoke to senior management about telling the  
19 press that the problems were limited to Washington state,  
03:37:50 20 isn't that a fact?

21 A. I don't know if that's a fact or not.

22 Q. In fact, you were told to go and tell the press that this  
23 situation is a situation that's only in Washington state  
24 because the analysts were worried that this was a problem that  
03:38:03 25 would affect Household's operations around the country, isn't

Hayden-Hakes - direct

1527

1 that correct?

2 A. I don't recall that being a specific conversation.

3 Q. Now, at this time, with this report coming out and all the  
4 press that was coming out regarding Household and this  
03:38:41 5 situation, are you telling me that you didn't have any  
6 conversations with Mr. Aldinger regarding how to talk to the  
7 press regarding this situation?

8 A. I had many conversations every day when I worked at  
9 Household with --

10 Q. I'm asking --

11 A. -- a variety of people.

12 Q. I'm sorry to interrupt, but I'm asking specifically  
13 regarding conversations with Mr. Aldinger, the CEO of this  
14 company.

03:39:02 15 You're not telling me you didn't have conversations  
16 with him during this time period right after the DFI report  
17 came out and when the press is going to write a story about it  
18 and the stock's going down. You didn't have any conversations  
19 with him regarding what should I tell the press what the story  
03:39:15 20 is regarding the situation?

21 A. I don't remember. I mean this literally was six,

22 seven years ago. I -- I can't recall specific conversations I  
23 had within a very limited period of time.

24 Q. But it would have been your practice, wouldn't it, to,  
03:39:28 25 when a situation came up like this, to talk to the CEO and say

Hayden-Hakes - direct

1528

1 what do I tell the investing public out there? what should I  
2 tell the media regarding this situation? That would have been  
3 your practice, right?

4 A. Well, I don't talk to the -- part of my job had nothing to  
03:39:41 5 do with talking to investors.

6 Q. Right, but you know that investors rely on statements made  
7 to the public or that are issued through media articles. You  
8 understood that at the time, didn't you?

9 A. Sure, among many other audiences.

03:39:52 10 Q. Okay. And you're not telling me you didn't talk to  
11 Mr. Aldinger during this time to say what are we going to tell  
12 the media regarding this situation? Our stock's going down;  
13 the situation in Bellingham, we're acknowledging it; and the  
14 analysts are wondering whether this is a nationwide problem  
03:40:07 15 that's going to affect our earnings. You're not telling me  
16 you didn't talk to him about this, are you?

17 A. I'm not telling you whether I did or didn't. Again, I  
18 want to be very truthful here. I can't tell you specifically  
19 a conversation I had in a very limited time period.

03:40:17 20 I had many conversations with many different people  
21 over the months that I worked at Household.

22 Q. What about Mr. Aldinger, did you talk to him regarding how  
23 to talk to the media?

24 A. Many times.

03:40:27 25 Q. Right. And during this time period, that would have been

Hayden-Hakes - direct

1529

1 your practice, right, to talk to him about what to say to the  
2 media regarding this situation?

3 A. I'd have to speculate to tell you whether I did or didn't  
4 talk to him in this very specific period of time.

03:40:39 5 I mean had I had many conversations with Mr. Aldinger  
6 over the period of time that I worked at Household? Yes.

7 Q. Right.

8 And this was an important time, wasn't it? I mean  
9 you had a situation where the effective rate was being  
03:40:50 10 acknowledged to be used by the company in Washington state in  
11 one branch they're telling the public. I mean you would have  
12 talked to him about this situation at that time. That would  
13 have been your practice, right?

14 A. Again, I mean I would -- I would assume so, but I can't  
03:41:04 15 confirm for you whether I did or didn't.

16 Q. You just don't have a recollection, right?

17 A. I have no recollection.

18 Q. But that would have been your practice, right?

19 A. Ideally that would be my practice.

1 that correct?

2 A. I don't recall that being a specific conversation.

3 Q. Now, at this time, with this report coming out and all the  
4 press that was coming out regarding Household and this  
03:38:41 5 situation, are you telling me that you didn't have any  
6 conversations with Mr. Aldinger regarding how to talk to the  
7 press regarding this situation?

8 A. I had many conversations every day when I worked at  
9 Household with --

10 Q. I'm asking --

11 A. -- a variety of people.

12 Q. I'm sorry to interrupt, but I'm asking specifically  
13 regarding conversations with Mr. Aldinger, the CEO of this  
14 company.

03:39:02 15 You're not telling me you didn't have conversations  
16 with him during this time period right after the DFI report  
17 came out and when the press is going to write a story about it  
18 and the stock's going down. You didn't have any conversations  
19 with him regarding what should I tell the press what the story  
03:39:15 20 is regarding the situation?

21 A. I don't remember. I mean this literally was six,  
22 seven years ago. I -- I can't recall specific conversations I  
23 had within a very limited period of time.

24 Q. But it would have been your practice, wouldn't it, to,  
03:39:28 25 when a situation came up like this, to talk to the CEO and say

□

1 Q. All right. Now, several times counsel for the investors  
2 asked you about these various newspaper articles.

3           Was that an accurate quote. What did you understand  
4 him to be asking you?

04:17:43 5 A. Whether what I said in the article was something that  
6 truly I did or did not say.

7 Q. Let me ask you a different question: were all the  
8 statements that you made to the press that are reflected in  
9 these articles true when you made them?

04:17:56 10 A. To the extent that I did make them, I believe so. I  
11 wouldn't say anything I didn't believe wasn't true.

12 Q. Why did you believe they were true?

13 A. I believed they were true because of the interactions I  
14 had with various people that I trusted within the company,

04:18:13 15 by -- I mean, it varied per situation.

16           I mean there would be times where I would, you know,  
17 help, you know, look at documents, or I would ask a specific  
18 question that would lead me to believe that something was  
19 true.

04:18:26 20 Q. Did anyone at the company ever tell you to lie to the  
21 press?

22 A. Never.

23 Q. Did anyone at the company ever tell you to conceal any  
24 information from the press?

04:18:35 25 A. No.

□

1 Q. Did anyone at the company ever tell you to mislead anyone?

2 A. No.

3 Q. Did anyone at the company ever tell you to tell only part  
4 of the truth?

04:18:44 5 A. No.

6 Q. Did anyone at the company ever criticize you for anything  
7 you had said to the press by saying anything to the effect of,  
8 "Geez, you shouldn't have told them that"?

9 A. No.

04:18:53 10 Q. Did anyone at the company ever say to you, in words or  
11 substance, "we want to conceal the truth"?

12 A. No.

13 MR. BURKHOLZ: Objection, leading.

14 THE COURT: Overruled.

04:19:02 15 BY MR. KAVALER:

16 Q. Did anyone at the company -- withdrawn.

17 what was your goal in speaking to the press?

18 A. My goal was to help tell the company's side of the story,  
19 which, as you can see by most articles, wasn't really often

04:19:17 20 told.

21 Q. Okay. Was it your goal to mislead anyone?

22 A. No.

23 Q. Was it your goal to omit any important facts?

24 A. No.

04:19:22 25 Q. You say that you obtained information by talking to

□

# **TAB A-6**

1 Household in which it was very critical of various Household  
2 practices, didn't you, sir?

3 A. I'm not sure what the Washington DFI report is.

4 Q. You never saw that report, sir?

11:41:09 5 A. Not to the best of my recollection.

6 Q. Now, between 1999 and the time period we're talking about  
7 in 2002, sir, you're aware of evidence that Household had  
8 misled investors and analysts, weren't you?

9 A. I'm not sure if it would be misled.

11:41:40 10 Q. You're aware in which -- there were situations in which  
11 Household misled investors and analysts about its re-aging  
12 policies. You're aware of that, right?

13 A. I improperly -- I improperly stated what our restructure  
14 policy was to mis -- to investors, yes.

11:41:58 15 Q. You did?

16 A. Yes.

17 Q. When did you do that?

18 A. I wrote a note. In early '02, I asked what the re-age  
19 policy was for real estate. I stated that it was two

11:42:14 20 months -- I'm sorry -- two payments within 12 months, and  
21 there were some exceptions that I had forgotten about. And I



Untitled

22 basically disclosed that to senior management early in April.

23 Q. Right. But I thought you said that you made the statement

24 to investors and analysts that --

11:42:35 25 A. I had been --

□

Rybak - direct

2326

1 Q. Let me finish.

2 -- that you made the statement that was

3 misrepresented to investors and analysts?

4 A. Well, when senior management asked me what the policy was

11:42:46 5 in real estate, I stated it would be two payments -- two

6 payments within two months, once every 12 months, and it was

7 proven to be inaccurate.

8 Q. When did you make this statement to management?

9 A. That it was inaccurate?

11:43:04 10 Q. Yes.

11 A. In April.

12 Q. April of what year?

13 A. 2002.

14 Q. Okay. Let's take a look at the e-mail I think you're

11:43:13 15 referring to. It's Plaintiffs' Exhibit 1100. It's already in

16 evidence.

17 (Tendered.)

Untitled

18 BY MR. BURKHOLZ:

19 Q. Let's highlight the first paragraph, please.

11:43:49 20 This is an e-mail you wrote on April 4, 2002, right,

21 sir?

22 A. Yes.

23 Q. And you wrote it to Gary Gilmer and Joe Vozar, right?

24 A. And Dave Little.

11:43:59 25 Q. Dave Little.

□

Rybak - direct

2327

1 You wrote, As you know, we have stated that in real

2 estate, our restructure policy is once every 12 months with

3 two payments received. This statement has been made

4 externally to investors, as well as buy- and sell-side

11:44:25 5 analysts.

6 That's what you wrote on April 4, 2002, right, sir?

7 A. Yes.

8 Q. You go on to say, As you are aware, we would restructure

9 real estate more often than once every 12 months if we secured

11:44:39 10 an EZ Pay arrangement with the customer.

11 Do you see that?

12 A. Yes.

Untitled

13 Q. And then it says, This situation has been corrected. We  
14 determined that Beneficial legacy accounts -- and Beneficial  
11:44:52 15 was the company that Household acquired in 1998, right?

16 A. Yes.

17 Q. And Household, in your consumer lending division, would  
18 re-age and restructure those accounts during 1999 and 2002,  
19 correct, sir?

11:45:07 20 A. In that period, yes.

21 Q. Okay. So you wrote, We determined that Beneficial legacy  
22 accounts were restructured once every nine months with one  
23 payment. This has been the policy for some time. However, I  
24 did not remember it. Any issues relating -- arising from this  
11:45:24 25 are my responsibility.

□

Rybak - direct

2328

1 And you're referring to the Beneficial legacy now,  
2 right?

3 A. Yes.

4 Q. Okay. And then you -- at the bottom, you write, I will  
11:45:42 5 cover this off with corporate, right?

6 A. Yes.

7 Q. And by that you meant you were going to discuss the fact  
8 that these two statements that had been made externally to

Untitled

9 investors and had been found to be inaccurate, you were going  
11:46:01 10 to discuss that situation with Mr. Makowski, the controller,  
11 and Mr. Schoenholz, right?

12 A. I'm not sure. I believe I discussed it with Mr. Makowski.

13 Q. Right. And he was the controller for Household

14 International, right?

11:46:22 15 A. No.

16 Q. He was the controller for Household, correct?

17 A. Mr. Makowski? No.

18 Q. What was his position?

19 A. He was director of credit risk for Household.

11:46:31 20 Q. Okay. And the five divisions of Household would  
21 communicate with him, right, regarding issues that came up?

22 A. Yes.

23 Q. And he worked for Mr. Schoenholz, right?

24 A. Yes.

11:46:50 25 Q. And you would agree with me that Mr. Schoenholz had input

□

Rybak - direct

2329

1 into restructure policies at Household, right?

2 A. Yes, he did.

3 Q. Okay. Are you aware whether Household issued a press

Untitled

4 release or public statement to investors or analysts to

11:47:14 5 correct the inaccuracy as identified in your e-mail?

6 A. Not to the best of my knowledge.

1 made. You know, typ- -- so, typically, when those payments  
2 were made, that's when they would be restructured. They would  
3 not be restructured without any payments.

4 Q. Now, I'd like you to put in front of you Plaintiffs'  
01:28:02 5 Exhibit 1100, if you would.

6 A. Okay.

7 Q. You recall that counsel for the investors asked you about  
8 this document on direct?

9 A. Yes.

01:28:17 10 Q. Now, I want you to walk me through this document a little  
11 bit more, if you would. Let's start at the first -- well, the  
12 top of it. It says -- and this is from you to Gilmer and  
13 others, Vozar and Little.

14 Do you see that?

01:28:46 15 A. Yes.

16 Q. By the way, who was Little? What was his role?

17 A. David Little was in charge of real estate collections.

18 Q. Did he have anything to do with the Beneficial portfolio?

19 A. He collected both Beneficial and HFC real estate.

01:29:04 20 Q. Okay.

21 So, it says in No. 1 -- under No. 1 -- "As you're  
22 aware, we would restructure real estate more than once -- "  
23 "more often than once every 12 months if we secured an EZ Pay  
24 arrangement with the customer. This situation has been  
01:29:23 25 corrected."

□

1 Now, let me just stop with that first one. That was  
2 an error that was made by you or people working under you?

3 MR. BURKHOLZ: Objection. Leading.

4 BY MR. SLOANE:

01:29:35 5 Q. Do you know who made the error?

6 A. Yes, I --

7 MR. BURKHOLZ: Objection. Leading.

8 THE COURT: Overruled.

9 BY THE WITNESS:

01:29:40 10 A. Yes, I know who made the error. We discussed having an EZ  
11 Pay -- we put a policy in that you could do an EZ Pay  
12 arrangement, require a payment and, then, basically

13 restructure the account. The problem was that when they  
14 implemented the policy, they misunderstood it. And what they  
01:30:04 15 did was they didn't look at -- we -- the policy was you would  
16 restructure once every 12 months. In error, they started  
17 restructuring accounts that were -- it was less than 12 months  
18 since the last restructure.

19 BY MR. SLOANE:

01:30:20 20 Q. When you say "they," who are you talking about?

21 A. The unit managers in Collections. And that's why Little's  
22 on the list. When I found out about this error, I called Dave  
23 Little. He agreed that they had an error, started  
24 restructuring. We called all of the unit managers; corrected

01:30:40 25 them in terms of what was supposed to be done; and, then, they

Rybak - cross

2357

1 changed the policy immediately.

2 Q. I don't --

3 A. They changed the implementation immediately.

4 Q. I don't think we've heard the phrase "unit managers." Who  
01:30:51 5 were they? Maybe there's some other -- another name?

6 A. Well, in Collections, you have a front end, you have a  
7 midrange and you have a back end. So, you have what they call

8 the unit managers would be running each of those groups. So,  
9 "all supervisors" would be a better way.

01:31:07 10 The various supervisors of the group were on a  
11 conference call when we discussed this, and we made sure that  
12 they understood what the process was.

13 Q. Did this have anything to do with -- this error have  
14 anything to do with -- the computers at all?

01:31:20 15 A. Well, the people who programmed the automated transactions  
16 basically coded it incorrectly. They didn't keep the  
17 12-month -- they didn't exclude accounts that were on -- where  
18 they were less than 12 months since the last restructures out  
19 of that EZ rate -- EZ Pay restructure.

01:31:42 20 Q. Mistake?

21 A. Mistake.

22 Q. Let me go to the second item in this. And it says, "We  
23 determined that Beneficial legacy accounts were restructured  
24 once every nine months with one payment," and, then, you go

01:32:07 25 on. I believe counsel started to ask you about that and -- in



1 Household in which it was very critical of various Household  
2 practices, didn't you, sir?

3 A. I'm not sure what the Washington DFI report is.

4 Q. You never saw that report, sir?

11:41:09 5 A. Not to the best of my recollection.

6 Q. Now, between 1999 and the time period we're talking about  
7 in 2002, sir, you're aware of evidence that Household had  
8 misled investors and analysts, weren't you?

9 A. I'm not sure if it would be misled.

11:41:40 10 Q. You're aware in which -- there were situations in which  
11 Household misled investors and analysts about its re-aging  
12 policies. You're aware of that, right?

13 A. I improperly -- I improperly stated what our restructure  
14 policy was to mis -- to investors, yes.

11:41:58 15 Q. You did?

16 A. Yes.

17 Q. When did you do that?

18 A. I wrote a note. In early '02, I asked what the re-age  
19 policy was for real estate. I stated that it was two

11:42:14 20 months -- I'm sorry -- two payments within 12 months, and  
21 there were some exceptions that I had forgotten about. And I  
22 basically disclosed that to senior management early in April.

23 Q. Right. But I thought you said that you made the statement  
24 to investors and analysts that --

11:42:35 25 A. I had been --

□

1 Q. Let me finish.

2 -- that you made the statement that was  
3 misrepresented to investors and analysts?

4 A. Well, when senior management asked me what the policy was

11:42:46 5 in real estate, I stated it would be two payments -- two  
6 payments within two months, once every 12 months, and it was  
7 proven to be inaccurate.

8 Q. When did you make this statement to management?

9 A. That it was inaccurate?

11:43:04 10 Q. Yes.

11 A. In April.

12 Q. April of what year?

13 A. 2002.

14 Q. Okay. Let's take a look at the e-mail I think you're  
11:43:13 15 referring to. It's Plaintiffs' Exhibit 1100. It's already in  
16 evidence.

17 (Tendered.)

18 BY MR. BURKHOLZ:

19 Q. Let's highlight the first paragraph, please.

11:43:49 20 This is an e-mail you wrote on April 4, 2002, right,  
21 sir?

22 A. Yes.

23 Q. And you wrote it to Gary Gilmer and Joe Vozar, right?

24 A. And Dave Little.

11:43:59 25 Q. Dave Little.

Rybak - cross

2357

1 changed the policy immediately.

2 Q. I don't --

3 A. They changed the implementation immediately.

4 Q. I don't think we've heard the phrase "unit managers." who  
01:30:51 5 were they? Maybe there's some other -- another name?

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7 midrange and you have a back end. So, you have what they call  
8 the unit managers would be running each of those groups. So,  
9 "all supervisors" would be a better way.

01:31:07 10 The various supervisors of the group were on a

11 conference call when we discussed this, and we made sure that  
12 they understood what the process was.

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14 anything to do with -- the computers at all?

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16 basically coded it incorrectly. They didn't keep the  
17 12-month -- they didn't exclude accounts that were on -- where  
18 they were less than 12 months since the last restructures out  
19 of that EZ rate -- EZ Pay restructure.

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21 A. Mistake.

22 Q. Let me go to the second item in this. And it says, "We  
23 determined that Beneficial legacy accounts were restructured  
24 once every nine months with one payment," and, then, you go

01:32:07 25 on. I believe counsel started to ask you about that and -- in

Rybak - cross

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1 any event, would you explain that to the jury? What was that  
2 all about?

3 A. Okay. When we -- we acquired Beneficial in 1998. Their  
4 book of real estate business was -- the customers had a higher  
01:32:28 5 probability of default than the rest of HFC. And, so, what we  
6 did was -- in '98, what we said was -- instead of requiring  
7 two payments every 12 months, what we said was that we would  
8 follow this policy where they would be restructured once every  
9 nine months with a single payment.

01:32:49 10 The rule was if Household underwrote that account --  
11 remember, this is '98. The rule was that if we underwrote  
12 that customer and gave him a new loan -- paid off the old one,  
13 just refinanced the mortgage, gave him a new one -- that we  
14 would follow our policies in HFC, which is two payments once  
01:33:08 15 every 12 months would be -- an account could be restructured.

16 But under the legacy, we said if we never underwrote  
17 the loan -- we just bought these loans; if we never underwrote  
18 the loan -- that we would follow the policy that -- policy of  
19 one payment every nine months.

01:33:24 20 That portfolio had gotten fairly small by this time  
21 in 2002. I believe -- I know a billion dollars sounds like a  
22 lot, but it was in the area of a billion to a billion-and-a-  
23 half dollars.

24 We had \$45 billion in real estate. And I had  
01:33:41 25 completely forgotten about this, about the legacy. So, I was

Rybak - cross

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1 telling everybody that we used a two-month restructure. So,  
2 that's why I said I had an error. And any issues arising was  
3 my responsibility. I had simply forgotten about it.

4 It was a small part of the portfolio, again, you  
01:33:58 5 know. And not that a billion-and-a-half -- billion,  
6 billion-and-a-half -- isn't large; but, compared to the whole  
7 book, it was small.

8 And, so, I had misstated that policy to senior  
9 management.

01:34:13 10 Q. And you said it was a small part of the book. Do you have  
11 any idea of what percent of Household International's total  
12 portfolio that involved -- that mistake?

13 A. It was less than two percent.

14 Q. Do you have any understanding of the concept of  
01:34:38 15 materiality at all, Mr. Rybak?

16 A. I understand the concept, yes.

17 Q. And did you think that was a material mistake?

18 A. I did not think --

19 MR. BURKHOLZ: Objection. Foundation.

20 BY THE WITNESS:

21 A. -- it was material, but --

22 THE COURT: Objection, what?

23 MR. BURKHOLZ: Foundation.

24 THE COURT: Sustained.

25 BY MR. SLOANE:

□

1 Q. Did you understand what "material" meant in or about this  
2 time period?  
3 A. I understood what "material" meant, yes.  
4 Q. Did you have any view about whether this mistake was  
01:35:05 5 material?  
6 A. I didn't think it was material. I just didn't think it  
7 was -- we were being accurate. And I wanted to make sure that  
8 people understood about those two situations.  
9 Q. Another mistake?  
01:35:18 10 A. Unfortunately.  
11 Q. Even people who go to the University of Chicago business  
12 school make mistakes?  
13 A. Yes.  
14 Q. Now, counsel for the investors also asked you about a  
01:35:42 15 document, 1103?  
16 A. Yes.  
17 Q. Do you have that in front of you --  
18 A. Yes, I do.  
19 Q. -- or can you see it on the screen?  
01:35:57 20 Now, this talks about -- there are a bunch of e-mails  
21 at the back, and I think counsel for the investors focused on  
22 this e-mail from you.  
23 Do you see that, the top one?  
24 A. Yes, I do.  
01:36:11 25 Q. And, again, I think you were asked a bunch of questions,

1 but just please don't sell insurance on here because we're  
2 trying to reduce the monthly payment."

3 Those were the circumstances around why this process  
4 started and this series of e-mails.

01:37:51 5 Q. Well, you refer here, as counsel pointed out, to packing  
6 insurance. What you were you -- what kind of accounts or --  
7 collection accounts -- were you referring to?

8 A. These were -- I'm sorry, I don't understand.

9 Q. Well, did it -- what percentage of accounts did you --  
01:38:09 10 were you referring to when you referred to "any AG worth his  
11 weight would argue that we take customers who are heavily in  
12 debt and promise a reduction in payment only to pack  
13 insurance"?

14 A. It was a handful of accounts. As I said, at most, it  
01:38:23 15 would be one or two accounts in a branch in any one- or  
16 two-month period. We probably ran the campaign twice a year.  
17 So, we're talking at most five -- three to four thousand  
18 accounts.

19 Now, many of those accounts had insurance already.  
01:38:40 20 So, let's say -- I'll say -- we'll take the high number,  
21 5,000. Let's say that a third of those didn't have -- well,  
22 let's say 20 percent didn't have insurance. You're talking a  
23 thousand accounts. And of those thousand accounts, 60 --  
24 let's say 60 -- percent of that group got insurance now. So,  
01:39:02 25 we're talking 600 accounts in a year.

1 The issue in my mind was that, you know, it's a small  
2 number. You know, I think some of the people here when they

3 were quoting net written premiums, they were making the  
4 assumption we were going to run these campaigns every single  
01:39:21 5 month and they came up with a big number. We were not running  
6 these campaigns every single month. There wasn't a lot of  
7 accounts. And I didn't think it was worth the headline risk.  
8 So, that was basically the scenario in terms of  
9 accounts.

01:39:33 10 Q. Did you believe that the -- that there were employees or  
11 that there was a practice of packing insurance at Household?

12 MR. BURKHOLZ: Objection. Foundation.

13 THE COURT: Overruled.

14 BY THE WITNESS:

01:39:50 15 A. No, I don't believe the employees were packing insurance.

16 BY MR. SLOANE:

17 Q. Well, why would you write this note if it was only a  
18 handful of accounts, using your words? Why did you write  
19 this?

01:39:59 20 A. You know, the concept of headline risk is, is that you  
21 don't want something in a newspaper that sounds bad. And for  
22 this few number of accounts, I just thought we shouldn't be  
23 writing it. We sent out a letter that says, "Don't do it."  
24 There were errors being made. I wanted to elevate it.

01:40:19 25 And, so, unfortunately, I used the word "packing" in  
Rybak - cross

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1 caps to get everyone's attention. And I don't believe it was  
2 packing, but, you know, I just thought that it was -- for the  
3 number of accounts, it wasn't worth doing this. And, as a  
4 matter of fact, I don't think we ran a collection rewrite  
01:40:36 5 after this campaign was done.

6 Q. You say you wanted to apologize for the tone of this note  
7 ahead of time. Why did you feel it was necessary to apologize  
Page 2



8 for the tone of the note?

9 A. Well, actually, I don't recall why I said that.

01:40:51 10 Q. Fair enough.

11 Now, whatever this applied to, a handful of accounts  
12 or not, did it stop?

13 A. I don't believe -- we ran one more campaign. We ran this  
14 campaign that we're talking about. I don't believe we ran a  
01:41:10 15 campaign after that.

16 Q. I'm sorry, after that?

17 A. After this one. I'm not sure when this one ended. It  
18 ended in '02. I don't believe we ran another collection  
19 rewrite campaign after that.

01:41:23 20 MR. SLOANE: Nothing further, your Honor.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. BURKHOLZ:

24 Q. Do you have 1103 in front of you?

01:41:39 25 A. Yes.

□

# **TAB A-7**

Untitled

8 Let me ask you: Did there come a time that you

9 changed this 10-K?

03:54:21 10 A. Well, as --

11 THE COURT: When you say this 10-K, which one are you  
12 referring to?

13 MR. DOWD: I'm sorry, your Honor. We're referring to  
14 Defendants' 852. I apologize to the Court.

03:54:28 15 THE COURT: Which is for what year?

16 MR. DOWD: That's December 31, 2001.

17 BY THE WITNESS:

18 A. Say again, please.

19 BY MR. DOWD:

03:54:39 20 Q. Yes, sir.

21 Was there a time that you reissued this 10-K to  
22 correct or to amend this disclosure about your re-age  
23 practices?

24 A. Well, we already talked about the fact that in the summer

03:54:55 25 of 2002, we reissued the 10-K. And the language that was

□

Schoenholz - direct

1933

1 included in the first version and reviewed by our -- by Arthur

2 Andersen and the language included in the second version,

3 which was reviewed by KPMG, was the same language. I believe

Untitled

4 in 2003, the company revised the language in the 10-K in  
03:55:25 5 connection with the HSBC acquisition.

6 Q. Okay. Let me just ask you to back up a little bit.

7 You said the language was looked at by Arthur

8 Andersen. These aren't Arthur Anderson's financial

9 statements, right? They're your financial statements, aren't  
03:55:41 10 they, sir?

11 A. When I -- when I signed these financial statements --

12 Q. Sir, just answer my question. Are they your financial

13 statements, Household's, or Anderson's financial statements?

14 A. They're the financial statements of Household  
03:55:54 15 International.

16 Q. And Household International's financial statements are the  
17 responsibility of management of Household International to get  
18 it right; isn't that right?

19 A. In discharging -- yes. And in discharging that  
03:56:06 20 responsibility, I relied on business unit and corporate office  
21 financial people and credit risk people who had more detailed  
22 knowledge than I did; and I relied on their informed  
23 professional judgment. And I also relied on the fact that our  
24 auditors would have reviewed that language.

03:56:34 25 Q. Okay. Sir, but they were your responsibility? You were

□

1 the guy who signed them, right?

2 A. No question.

3 Q. Okay. Sir, I'll show you what's been marked as

4 Plaintiffs' Exhibit 1267. I'd ask you to take a look at that

03:56:48 5 if you would.

6 (Tendered.)

7 BY MR. DOWD:

8 Q. Sir, do you recognize Plaintiffs' Exhibit 1267 to be a

9 copy of a document entitled form 10-K/A for Household

03:57:25 10 International for the period ended December 31, 2001?

11 A. That's what it says.

12 Q. Okay.

13 MR. DOWD: Your Honor, I'd offer Plaintiffs' Exhibit

14 1267 if I could.

03:57:36 15 THE COURT: It will be admitted.

16 BY MR. DOWD:

17 Q. Okay. I just want to make sure I get this straight, sir.

18 You had filed Defendants' 852, a 10-K for the period that

19 ended December 31, 2001, you filed that in the regular course

03:57:49 20 in March of 2002; is that right?

21 A. Correct.

Untitled

22 Q. Okay. And then a year later, in March of 2003, you filed

23 an amended version of that 10-K; is that correct, sir?

24 A. Where does it say it was filed a year later?

03:58:07 25 Q. It's March of 2003, isn't it, sir?

□

Schoenholz - direct

1935

1 If you'd like, you can look at your signature on the

2 document on page 705, the very last page of the exhibit.

3 A. Yes.

4 Q. Okay. And so, first you signed Defendants' 852 in March

03:58:44 5 of 2002, right?

6 A. Correct.

7 Q. Then you signed a whole new version of that document for

8 the same period in March of 2003; is that right?

9 A. Correct.

03:58:55 10 Q. Let's take a look at what you said about your re-aging

11 policies in Plaintiffs' Exhibit 1267.

12 And I'd ask you to turn, sir, to the page that ends

13 with the Bates range TEL000552.

14 Do you have that page in front of you, sir?

03:59:32 15 A. I do.

16 Q. And this one says, Our account management policies and

Untitled

17 practices for consumer receivables include collection

18 strategies that permit us to reset the contractual delinquency

19 status of an account to current in certain circumstances; is

03:59:50 20 that right?

21 A. Correct.

22 Q. And you say, We are amending our disclosures of our

23 restructuring policies to include the following disclosures.

24 Do you see that?

03:59:59 25 A. I do.

□

Schoenholz - direct

1936

1 Q. When you said you were amending your disclosure, you meant

2 we're telling you something different from what we told you

3 back in March of 2002; isn't that right, sir?

4 A. That's what it says.

04:00:11 5 Q. Okay. And this time when you reported on these policies,

6 you say, In numerous instances, Household accepts one or zero

7 payments prior to resetting the delinquency status.

8 Do you see that?

9 A. I do.

04:00:25 10 Q. And that meant you were taking one or zero payments before

11 you'd re-age; isn't that right?

12 A. I think there were certain circumstances in which that was

Untitled

13 true.

14 Q. Okay. And you went on to say, In many instances, we

04:00:38 15 restructure delinquent accounts automatically.

16 Do you see that?

17 A. It does say that.

18 Q. It goes on to say, In the case of automatic restructures,

19 no prior contact is required with the customer to determine if

04:00:52 20 the cause of the delinquency has been cured; is that right?

21 A. That's correct.

22 Q. You go on to say, These account management policies and

23 practices vary from product to product and are continually

24 being tested and refined and may change from time to time and

04:01:10 25 period to period; is that right?

□

Schoenholz - direct

1937

1 A. Correct.

2 Q. And then you go on to describe certain account management

3 policies and practices, including but not limited to

4 restructure or re-aging of accounts, forbearance agreements,

04:01:22 5 extended payment plans, modification arrangements, consumer

6 credit counseling accommodations, loan rewrites and

7 deferments; is that right?



8 A. That's correct.

9 Q. So you conceded here in March of 2003 that what you had  
04:01:38 10 said about consecutive payments being required in March of  
11 2002 wasn't accurate; isn't that right?

12 MR. SLOANE: Objection, your Honor, argumentative.

13 THE COURT: Overruled.

14 BY THE WITNESS:

04:01:50 15 A. Say again, please.

16 BY MR. DOWD:

17 Q. You can answer.

18 A. Ask the question again, please.

19 Q. What I'm saying to you is, you admitted here in March of  
04:01:56 20 2003 that what you had said in March of 2002 about consecutive  
21 payments wasn't accurate; isn't that right?

22 A. Based on the information we had in 2002, I believe what  
23 was said in 2002 was materially correct.

24 Q. Okay. But still, you filed this new do-over version of  
04:02:20 25 the 10-K in March of 2003 where you said zero or one payment

□

Schoenholz - direct

1938

1 as opposed to consecutive; is that right?

2 A. That's what it says.

3 Q. And that is different from what you told people in March

Untitled

4 of 2002; isn't that right?

04:02:33 5 A. That is different.

6 Q. Okay. And it was, according to your controller of the

7 company, a significant accounting policy; is that right?

8 A. That's what he said.

9 Q. Okay. And then, sir, you went on to talk about this

04:02:44 10 automatic restructures or re-aging. And you said, in 2003,

11 that you didn't need -- there was no contact with the customer

12 required; is that right?

13 A. That's what it says.

14 Q. Okay. And, yet, in 2002, the first time you issued this

04:03:06 15 10-K, you said that you had to determine that the reason for

16 the delinquency had been cured; isn't that right?

17 A. That's not what we said. We said there was evidence.

18 Q. That the reason for the delinquency had been cured?

19 A. Correct.

04:03:18 20 Q. Okay. But then when you redid that same document a year

21 later, after the relevant time period in this case, you

22 said -- you admitted that no prior contact is required with

23 the customer to determine if the cause of the delinquency has

24 been cured; is that right?

04:03:39 25 A. That's what it says.

1 Mr. Makowski meant when he said headline risk?

2 A. Generally, the concept of headline risk was that the  
3 outside world, whether that could be analysts or regulators or  
4 community groups, could misinterpret policies that had

04:10:43 5 appropriate internal business purposes. And I think that's --  
6 I think that's what he would have meant by headline risk.

7 Q. That was your understanding at the time?

8 A. Correct.

9 Q. Okay. And what he was saying is, one of the policies that  
04:10:59 10 creates this risk is one-payment re-ages, right?

11 A. That's what it says.

12 Q. He's saying, if people find out about the one-payment  
13 re-ages, if the analysts find out about it, that could create  
14 headline risk; is that right?

04:11:13 15 A. That's what he's saying.

16 Q. And you received this in January 2002; is that right?

17 A. I did. It's dated January 2002, yes.

18 Q. You don't have any reason to doubt that you received it,  
19 do you, sir?

04:11:26 20 A. I don't.

21 Q. Okay. And, sir, despite what Mr. Makowski says here, two  
22 months later when you issued that 10-K for the period ended  
23 December 31, 2001, you didn't disclose the one-payment re-age,  
24 did you?

04:11:44 25 A. As I told you before -- no, we did not. And as I told you

1 before, I didn't think it was a material disclosure. I

2 thought it was materially correct. And I think my conclusion

3 that it wasn't a material disclosure was borne out  
4 subsequently by the facts.

04:12:03 5 Q. Okay. Sir, let me ask you this though: You might have  
6 thought that it wasn't material at the time, but Mr. Makowski  
7 thought that it created headline risk; isn't that right?

8 A. That's what his note says.

9 Q. So he thought if it got out, this one age repayment  
04:12:21 10 policy, that you could end up in the headlines about it; isn't  
11 that right?

12 A. I wouldn't say that. I think that's an overstatement of  
13 that.

14 Q. Sir, you talked a little bit about the fact that you were  
04:12:50 15 going to make certain additional disclosures in April of 2002;  
16 is that right?

17 A. That's correct.

18 Q. Okay. And were you specifically talking about there, sir,  
19 a financial relations conference that Household sponsored?

04:13:08 20 A. Yes.

21 Q. Okay. And that conference took place on or about April 9,  
22 2002; is that right, sir?

23 A. It was in early April. I don't remember the exact date.

24 Q. Okay. Let's take a look at a document and see if it  
04:13:22 25 helps.

1 you signed it; isn't that right?

2 A. That's correct.

3 Q. Now, Mr. Dowd showed you a document I'd like to put on the  
4 screen. It's Plaintiffs' Exhibit 1076 -- I'm sorry, it's 176.

01:46:40 5 MR. SLOANE: 176.

6 (Brief pause.)

7 BY MR. SLOANE:

8 Q. Now, this was a document, I think you testified, was  
9 something that was prepared -- when Mr. Dowd asked you -- I

01:46:50 10 think you said by Mr. McDonald?

11 A. It was a combination of Mr. McDonald and the outside  
12 auditors.

13 Q. Okay.

14 And Mr. McDonald --

01:46:59 15 MR. SLOANE: Going back to that chart, again, for a  
16 second, Brian.

17 (Brief pause.)

18 BY MR. SLOANE:

19 Q. -- Mr. McDonald, again, was one of the people who reviewed  
01:47:06 20 the final version of these public disclosures before they were  
21 issued to the public; isn't that right?

22 A. Without question.

23 Q. And that's him right there in the middle (indicating)?

24 MR. SLOANE: Brian, if you can highlight "Steve  
01:47:21 25 McDonald" right there (indicating) at the top. It's over

1 there in the middle.

2 Thank you.

3 BY MR. SLOANE:

4 Q. Now, Mr. Dowd showed you a couple of the pages -- one of  
01:47:31 5 the pages I don't think he showed you, but let me show you.  
6 It's Page 802018102.

7 Can you find that document?

8 I can give you another copy, but it's Plaintiffs'  
9 Exhibit 176. It's a November 13th, 2000, "Quality of  
01:47:52 10 Accounting Policies Applied in Financial Reporting"?

11 You can look actually on your screen there,  
12 Mr. Schoenholz, if it's easier.

13 A. Unfortunately, with my bifocals, I can't read that.

14 Q. Okay.

01:48:19 15 Let me hand you another copy of it.

16 MR. SLOANE: May I approach, your Honor?

17 THE COURT: Yes.

18 BY MR. SLOANE:

19 Q. Just ignore the highlighting of the front page. I'm not  
01:48:46 20 asking you about that.

21 A. Okay.

22 (Document tendered.)

23 BY MR. SLOANE:

24 Q. If you would turn to Page 8102.

01:49:07 25 Now, Mr. Dowd asked you about the top. It says,

1 "Below is a summary of the significant accounting policies  
2 which are applied in our financial reporting and will be

3 disclosed in Household's 2000 Annual Report."

4 Do you see that?

01:49:19 5 A. I do.

6 Q. And it refers to accounting -- "significant accounting  
7 policies" -- right?

8 A. (No response.)

9 Q. That first sentence.

01:49:27 10 A. Yes.

11 Q. And, then, later, the next sentence says, "For each of  
12 these policies, a Comment section is included to discuss  
13 specific items relating to the items covered by such policies,  
14 peer group comparisons and the level of judgment involved in  
01:49:44 15 carrying out those policies."

16 Do you see that?

17 A. I do.

18 Q. Now, would you turn to Page 8107.

19 I'm sorry, go to 8106 first.

01:50:08 20 A. Yes.

21 Q. Now, do you see there is -- at the top it says, "Provision  
22 and Credit Loss Reserves"?

23 A. Yes.

24 Q. And, then, it says "Comments."

01:50:19 25 Do you see that, right under it?

Schoenholz - cross

2115

1 A. I do.

2 Q. Now, if you go over to the next page.

3 MR. SLOANE: If you highlight the top part -- the top  
4 that starts, "Provision and credit loss reserves," Brian.

5 (Brief pause.)

6 BY MR. SLOANE:

7 Q. These are comments that are reflected in there -- in this  
Page 2

8 document -- isn't that right, sir?

9 A. That's correct.

01:50:44 10 Q. That's not the accounting policy -- that's not the  
11 significant accounting policy -- is it?

12 The accounting policy appears on the prior page.

13 A. That's correct.

14 Q. Now, in addition to these 10-Ks and 10-Qs --

01:51:06 15 MR. SLOANE: You can take that down, Brian.

16 (Brief pause.)

17 BY MR. SLOANE:

18 Q. In addition to these 10-Ks and 10-Qs, there are various  
19 other public statements and press releases issued by the  
01:51:16 20 company; is that right?

21 A. Yes.

22 Q. And did management -- I think we've heard some of it --  
23 interact regularly -- that is did you interact regularly --  
24 with investors?

01:51:28 25 A. I did.



1 Let's put on the board what Mr. Dowd showed you as  
2 Plaintiffs' Exhibit 188.

3 (Brief pause.)

4 BY MR. SLOANE:

02:47:20 5 Q. Can you see that or do you have it in --

6 A. Yeah, I'll do it this way.

7 Q. Let me hand you a clean copy, to make it easier for your  
8 eyes.

9 (Document tendered.)

10 BY THE WITNESS:

11 A. Thank you.

12 BY MR. SLOANE:

13 Q. Now, Mr. Dowd asked you about this. And can you walk us  
14 through this document and explain what this was?

02:47:55 15 First of all, is this something that you had or were  
16 aware of before you made a presentation to the FRC?

17 A. Absolutely not. This document -- well, if you go back and  
18 you remember that exhibit you had about post-June 30, 2002, I  
19 think it said.

02:48:19 20 Q. Yeah.

21 MR. SLOANE: Why don't we just put that up on the

22 board, the process by which disclosures --

23 (Brief pause.)

24 MR. SLOANE: Yes.

25 BY THE WITNESS:

□

Schoenholz - cross

2155

1 A. Right. That was the document.

2 And we talked about sub-certifications.

3 BY MR. SLOANE:

4 Q. Yes.

02:48:36 5 A. That's what this is.

6 And, so, this would have been received --

7 MR. SLOANE: Brian, let's put this back up now,

8 please.

9 (Brief pause.)

10 BY MR. SLOANE:

11 Q. Go ahead, please. I'm sorry.

12 A. It's not dated, but this would have been received in that

13 time frame of either July or August.

14 Q. July or August of what year?

02:48:56 15 A. 2002. Excuse me.

16 And in it, because we had people when they reviewed

17 the 10-K document or the 10-Q document, they had to certify

Untitled

18 that they were not aware of any errors or any misstatements or

19 anything else.

02:49:13 20 And, so, Mr. Makowski, I think -- because he knew

21 that the FR -- that the FRC presentation, this document --

22 Q. "This document" being -- for the record, being --

23 Plaintiffs' Exhibit 725?

24 A. I don't know what --

02:49:32 25 Q. It's the one with your handwriting on it?

□

Schoenholz - cross

2156

1 A. It's -- correct, that one (indicating).

2 Q. Okay.

3 A. That he knew that that had been filed with the SEC -- not

4 with my handwriting on it, of course, but the clean copy -- I

02:49:44 5 think he felt that he needed to certify the fact that there

6 was an error on this -- in this document.

7 Q. Who made the error?

8 A. A guy named Dan Pantelis.

9 Q. Did he admit to making the error?

02:49:58 10 A. Oh, yeah. Dan --

11 MR. DOWD: Objection.

12 Hearsay, your Honor.

13 MR. SLOANE: It's a little late, Judge.

14 MR. DOWD: It's not, your Honor.

02:50:10 15 THE COURT: Well, overruled. It's late. It's

16 overruled.

17 Proceed.

18 BY MR. SLOANE:

19 Q. Now --

02:50:22 20 A. Your question -- what was your question?

21 Q. Well, I asked you a question: Did he admit to making the

22 error? You said "Yes."

23 Let me move on to another issue.

24 Can you just explain to the jury what was the error

02:50:35 25 that Mr. Makowski is explaining had been made by Mr. Pantelis

□

Schoenholz - cross

2157

1 or by Mr. Makowski's group in this document, which is

2 Plaintiffs' Exhibit 188?

3 A. I'm not sure exactly how it arose, but what you can see is

4 that if you look at the "As Prepared" and "As Corrected" --

02:50:58 5 Q. Why don't you --

6 MR. SLOANE: Brian, maybe you can follow along and --

7 (Brief pause.)

8 BY THE WITNESS:

Untitled

9 A. If you look at those two columns and you go down to the  
02:51:06 10 row that says, "Re-Aged Multiple Times," what we told  
11 people -- what we disclosed based on what we thought was  
12 correct at the time, at the April 9th Financial Relations  
13 Conference -- was that 4.3 percent of the portfolio was  
14 re-aged more than one time. That's what we told people.

02:51:32 15 Conversely, what that would have meant is that 83  
16 percent of the people had never been re-aged.

17 You know, if you look, that's the difference  
18 between -- by the fact that it's 16.9 percent for the total.  
19 So, if you do the arithmetic, what that means is we told  
02:51:56 20 people that about 95 or 96 percent of the people had never  
21 been re-aged or had been re-aged one time. That's what we  
22 told people on April 9th.

23 What we found out, then, was that that was wrong;  
24 that the people who had been re-aged more than once was  
02:52:21 25 seven-and-a-half percent.

□

Schoenholz - cross

2158

1 So, said another way, that would have meant instead  
2 of 90 -- 96 -- percent of the people who had never been  
3 re-aged or re-aged once, it was only 90- -- about 93 --

4 percent.

02:52:40 5 Q. Mr. Pantelis made a mistake, right?

6 A. Yeah. He made a mistake.

7 Q. Go on.

8 A. That's really what it is. I mean --

9 Q. Did the 16.9 percent change?

02:52:53 10 A. That was --

11 Q. Total re-age?

12 A. That was all the same.

13 The two-plus delinquency was all the same; the

14 charge-offs were the same; our reserves were the same; our

02:53:08 15 reserve ratios were the same; and, so, we concluded that that

16 was not -- I mean, it was unfortunate. We certainly didn't

17 want it to happen. But it was an unintentional error on his

18 part and we concluded it wasn't -- wasn't -- material.

19 Q. You concluded it wasn't material. Is that a conclusion

02:53:29 20 you reached after the error was discovered?

21 A. Correct.

22 Q. And that was discussed internally?

23 A. We got everybody together -- this came to my attention

24 probably -- I don't remember exactly, but within weeks. I

02:53:46 25 knew about this long before Makowski did it in his

□

Untitled  
2159

- 1 certification. And we got all the right people together to
- 2 talk about it. And that was our conclusion -- is that it was
- 3 an error.

1 day when we ended this quarter, 4 percent of our loans were  
2 two-plus, right?  
3 A. It was a reported statistic.  
4 Q. Yeah. It wasn't a future prediction. It was a number  
03:53:17 5 saying this is where it is right now in terms of people that  
6 are two-plus delinquent, right?  
7 A. That's a statistic.  
8 Q. Right. It was current data, isn't that right, sir?  
9 A. Correct.  
03:53:27 10 Q. It wasn't a future prediction, was it?  
11 A. It's a statistic as of a point in time.  
12 Q. Right.  
13 Now, sir, you talked about this April 9, 2002  
14 investor conference, right? And we looked at these boards  
03:53:52 15 earlier today about some of the information that he gave to  
16 these 400 people in this room who followed Household, is that  
17 right, sir?  
18 A. We did.  
19 Q. Okay. And you said, oh, we gave them the wrong numbers,  
03:54:03 20 but I did it by mistake, is that right?  
21 A. That's what I said.  
22 Q. Okay. And you understood, sir, that, in fact, the number  
23 you gave for multiple re-ages was 4.3, and the actual number  
24 was 7.5, isn't that right?  
03:54:17 25 A. Not when I gave the presentation.

1 Q. No, but you later learned, within weeks, you said, is that  
2 right, sir?



3 A. That's what I said.

4 Q. Within weeks, you learned that the loans that had been  
03:54:27 5 re-aged multiple times wasn't 4.3 percent. It was  
6 7.5 percent, right?

7 A. Correct.

8 Q. Okay. You left out about \$3 billion in loans, isn't that  
9 right?

03:54:37 10 A. That's what that says.

11 Q. Okay. And that's what you learned from Mr. Makowski and  
12 Mr. Pantelis, is that right, sir?

13 A. Correct.

14 Q. Okay. So after giving those information, all that  
03:54:49 15 information to the investors on April 9, 2002, as soon as you  
16 found that out, within two weeks, you issued a big press  
17 release and corrected those numbers, right?

18 A. I told you we concluded they weren't material and we  
19 didn't correct them.

03:55:03 20 Q. Okay. So just so I understand, no press release went out  
21 saying, oh, boy, the numbers we gave you about multiple  
22 re-ages were wrong.

23 No press release like that went out, did it, sir?

24 A. That's correct.

03:55:14 25 Q. You didn't tell anybody about that mistake, did you, sir?

1 A. Yes.

2 Q. And did you speak to Mr. Makowski about this document?

3 A. Yes, I did.

4 Q. Okay. And then if you turn to page ending 723, there's a  
09:30:59 5 heading on that page, 723, that is entitled Re-age Policy  
6 Goals.

7 Do you see that?

8 A. Yes.

9 Q. And the first bullet point under Re-age Policy Goals says,  
09:31:11 10 Eliminate unnecessary re-ages; i.e., those to customers who  
11 can't/won't pay and those to customers who don't really need  
12 it.

13 Do you see that?

14 A. Yes.

09:31:22 15 Q. What do you understand that to mean?

16 A. Well, it's implicit that the re-ages were being made to  
17 customers who can't or won't pay because otherwise it wouldn't  
18 say eliminate them, and also to those customers who don't  
19 really need it. So they were -- and this was a corporate  
09:31:41 20 right initiative, not just pertinent to mortgage services.  
21 And so they were, again, at a corporate level, tightening up  
22 the policies for re-aging accounts.

23 Q. So at this time, were re-ages done for customers who  
24 couldn't or wouldn't pay?

09:32:00 25 A. Yes.

# **TAB A-8**

1 A. It was always my intent and my objective to be as accurate  
2 and responsive as I possibly could be.

3 Q. Was it also one of your duties to keep senior management  
4 informed about what the market was saying about the company?

01:56:25 5 A. Yes, sir.

6 Q. How did you do that?

7 A. In a number of ways. This investor relations report would  
8 be an example. But I would also do it in frequent daily  
9 conversations and just water fountain conversations. It was  
01:56:40 10 just part of what we did every day.

11 Q. Did you occasionally attend -- you used the word external  
12 a moment ago --

13 A. Yes, sir.

14 Q. -- in your answer.

01:56:46 15 Did you occasionally extend it -- did you  
16 occasionally attend external meetings with Mr. Aldinger, chief  
17 executive officer?

18 A. Could you be more specific as to the kind of external  
19 meetings?

01:57:00 20 Q. Analysts' meetings?

21 A. Absolutely.

22 Q. Meeting with investors?

23 A. That's a fundamental part of my job.

24 Q. How often did you and Mr. Aldinger meet with those groups?

01:57:07 25 A. I would say, apart from what we would call the quiet

1 brokerage account?

2 A. Absolutely.

3 Q. And at these meetings, did you listen when Mr. Schoenholz  
4 or Mr. Aldinger made these presentations?

02:00:05 5 A. Extremely closely.

6 Q. Did you ever hear either one of them lie to the analysts?

7 A. No, sir.

8 Q. Did you ever hear either of them attempt to deceive the  
9 analysts?

02:00:16 10 A. No, sir.

11 Q. Now, you mentioned -- you used the phrase "on the road."  
12 What do you mean by the phrase "on the road"?

13 A. Outside of the headquarters office.

14 Q. And you and Mr. Aldinger would go on trips?

02:00:27 15 A. Frequently.

16 Q. To visit whom?

17 A. To visit institutional investors in their own offices.

18 Q. For what purpose?

19 A. To talk to them about the fortunes and prospects of the  
02:00:36 20 company and provide feedback on recently-reported results and  
21 just make ourselves available, as many managements do.

22 Q. Is it common practice?

23 A. Yes, sir.

24 Q. And when you met with these institutional investors --  
02:00:47 25 give me the names of some of these institutional investors.

1 Q. Do you have any knowledge on that subject, sir?

2 A. I would -- not without looking back at a calendar; but  
3 certainly, it was -- as far as I'm concerned, for a CEO, it  
4 was very frequent.

02:08:21 5 Q. Now -- okay. I think we covered that.

6 Mr. Stroom, did anyone -- who did you report to at  
7 Household?

8 A. During the early part of my tenure, I reported to Dave  
9 Schoenholz. Subsequently, I reported to Bill Aldinger.

02:08:50 10 Subsequent to that, I reported to a gentleman named Colin  
11 Kelly. And then after --

12 Q. Keep in the time -- the time period we're talking about,  
13 sir, is 1999 through 2002. Any question I ask you is about  
14 that time period unless I tell you otherwise.

02:09:03 15 A. Got it.

16 Q. So you can confine your answers to that time period.

17 A. Sorry.

18 Q. Okay. During that time period, did Mr. Schoenholz or  
19 Mr. Aldinger ever tell you to conceal anything from the press,  
02:09:14 20 the analysts, the investors or anyone else?

21 A. No, sir.

22 Q. Did they ever tell you to mislead the press, the analysts  
23 or anyone else?

24 A. No, sir.

02:09:21 25 Q. Did they ever tell you to lie to the press, the analysts

□

1 or anyone else?

2 A. No, sir.

3 Q. Did they ever tell you something and say you had to keep  
4 it in the strictest confidence, other than in these window

02:09:32 5 periods, which you described?  
6 A. Just one exception to that. In addition to window  
7 periods, if we would have been involved or contemplating a  
8 transaction such as an acquisition and I would have been  
9 privileged to learn about it, that would have been another

02:09:43 10 exception.

11 Q. what would be the purpose of telling you you couldn't  
12 disclose anything to anyone during that period?

13 A. The purpose would be that -- to protect me from  
14 inadvertently disclosing material information.

02:09:55 15 Q. And what's a window period, sir?

16 A. A window period, as I began to describe, generally  
17 speaking, a company closes its books at the end of the  
18 quarter. And -- and there's a period of time from when we  
19 start to close the books, let's say, March 31 and we're going

02:10:11 20 to report the quarter on April 20, for argument's sake, so  
21 during that period of time, we're close enough to knowing what  
22 our results are going to be that it's just not considered safe  
23 practice to be entertaining discussions with investors or  
24 analysts.

02:10:26 25 Q. Now, you mentioned analyst reports. Did you ever review

□

Stroom - cross

1662

1 or revise a draft of an analyst report about Household before  
2 it was issued to the public?

3 A. No.

4 Q. would that be a proper practice?

02:10:37 5 A. It would be inappropriate to review such reports.

6 Q. Were you ever interviewed by news reporters and asked to  
7 make statements on behalf of the company?

8 A. Yes, sir.

9 Q. And did you do that, make statements?

02:10:57 10 A. Yes, sir.

11 Q. And when you made statements, where did you obtain the  
12 information that you conveyed to the reporters?

13 A. Generally by going to people in our business units who  
14 would have had expertise or knowledge of that particular  
02:11:09 15 subject.

16 Q. Did you have full and unfettered access to all such people  
17 at all times?

18 A. Yes.

19 Q. Did anyone ever refuse to answer your questions?

02:11:17 20 A. No.

21 Q. Did anyone in that process ever tell you something and  
22 say, but please be sure you conceal this from the press?

23 A. No.

24 Q. Did anyone ever, in that process, tell you to lie to the  
02:11:27 25 press?

Stream - redirect

1663

1 A. No.

2 Q. Did you ever lie to the press?

3 A. No, sir.

4 Q. Mr. Stroom, to the extent you made public statements on  
02:11:36 5 behalf of the company during the period 1999 to 2002, did you  
6 ever make a -- any statement whatsoever that you did not  
7 believe to be true at the time you made it?

8 A. No, I never made a statement that I did not believe to be  
9 true.

02:11:49 10 Q. Did you ever make a statement where you didn't have a clue  
11 whether it was true or not?

12 A. No.

13 Q. Did you ever make a statement where you thought to  
14 yourself, I shouldn't be out here saying this; I don't know



02:11:57 15 what I'm talking about?

16 A. No, sir.

17 MR. KAVALER: No further questions.

18 REDIRECT EXAMINATION

19 BY MR. BURKHOLZ:

02:12:03 20 Q. Do you have that St. Louis Dispatch article?

21 A. Yes.

22 Q. You were out making statements about credit life  
23 insurance, but you didn't know anything about how Household's  
24 salespeople were compensated on that, did you?

02:12:17 25 A. I did not know how the salespeople were compensated.

□

1 that were there that day, correct?

2 A. Yes.

3 Q. Provided slides regarding information regarding Household,  
4 right?

02:14:56 5 A. Yes.

6 Q. Now, you didn't review any of the backup material for any  
7 of those slides, did you?

8 All the information that went into those slides and  
9 that were presented to those investors that day, you didn't  
02:15:11 10 review that, did you?

11 A. I would not have reviewed all of the information that went  
12 into preparing those slides.

13 Q. So if Mr. Schoenholz made a statement on that day  
14 regarding Household's re-age policies, you wouldn't know the  
02:15:22 15 basis for the statement? You just believed he was telling the  
16 truth because you worked with him, right?

17 A. In general, that would be the case. But in other cases,  
18 there was information that I was aware of. So it would be  
19 both.

02:15:33 20 Q. But you wouldn't have all the information that  
21 Mr. Schoenholz had when he made a public statement like that,  
22 did you?

23 A. I'm not sure I could have had all of the information that  
24 anyone would have had.

02:15:41 25 Q. You just relied on the fact that you didn't think that he

□

# **TAB A-9**

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.2  
Eastern Division**

Lawrence E Jaffe, et al.

Plaintiff,

v.

Case No.: 1:02-cv-05893

Hon. Ronald A. Guzman

Household International Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, March 16, 2009:

MINUTE entry before the Honorable Ronald A. Guzman: Defendants' Motion to Exclude Allegedly False and Misleading Statements Not Identified by Plaintiffs in Discovery [doc. no. 1321] is denied. Defendants rely principally upon the Seventh Circuits decision in Tricontinental Industries, Ltd. v. PricewaterhouseCoopers, LLP 475 F.3d 824 (7th Cir. 2007). Tricontinental holds that plaintiff must prove it was the very facts about which the defendant lied which caused its injuries. The flaw in Tricontinentals effort was, as the district court found, that the loss which Tricontinental pled was attributable to the public exposure of a false statement made one year after the statement which Tricontinental alleged caused it to enter into the transaction. Tricontinental argued that the subsequent fraudulent statement was part of a scheme to defraud which included the previous statement the one alleged in its complaint – and that this was sufficient to allege loss causation. The Seventh Circuit disagreed. We are beyond the pleading stage in this case and the question now becomes what can plaintiffs prove. If they fail to prove a sufficient nexus between their losses and the untrue statements they allege, then they will not prevail. But that, of course, remains to be seen. The Court is convinced that the challenged statements were sufficiently identified by type and date and that defendants were sufficiently informed to allow for proper preparation for trial, including preparation of expert testimony regarding loss causation and other matters. Mailed notice (cjpg, )

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