

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

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. )		

**SUPPLEMENTAL APPENDIX OF TRANSCRIPT EXCERPTS IN SUPPORT OF DEFENDANTS’  
MOTIONS FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(b) OR, IN THE  
ALTERNATIVE, FOR A NEW TRIAL PURSUANT TO RULE 59**

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September 18, 2009

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**TAB 1**

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
4 others similarly situated, )  
Plaintiff, )  
5 vs. ) No. 02 C 5893  
6 HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
7 Defendants. ) March 26, 2009  
8 9:30 a.m.

9 VOLUME 8  
10 TRANSCRIPT OF PROCEEDINGS - PRETRIAL CONFERENCE  
11 BEFORE THE HONORABLE RONALD A. GUZMAN

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1 where they are. He's the one that they consulted with.

2 THE COURT: How is the chart going to be used?

3 MR. DOWD: I believe, your Honor, this chart -- it  
4 may be used in opening statements, just to give the jurors  
5 some feel for where these different people are. And it may  
6 also be used, I assume, in closing statement just -- closing  
7 arguments just to remind the jury of the different witnesses  
8 who appeared and testified.

9 THE COURT: Okay. I don't see what's objectionable  
10 here. If counsel wants to say in his opening statements that  
11 Mr. Kahr was really at the top of the corporate structure  
12 because he ran the whole show in terms of his proposals, and  
13 he wants to then argue that he proved that at the end of the  
14 trial, he can do that. This chart is nothing more than an  
15 extension of his argument. This is what he's going to argue  
16 the evidence will show. If he does it that way, it's  
17 appropriate.

18 If he attempts somehow to imply that this is an  
19 organizational chart that comes from Household International  
20 or that is accepted by Household International, then you have  
21 a problem. But if he's going to use it the way he described,  
22 I don't see a problem.

23 MR. HALL: Understood, your Honor. Thank you.

24 Your Honor, turning to plaintiffs' demonstrative  
25 No. 40, this is a document and -- this is a document, your

1 Honor, that relies -- and plaintiffs intend to use apparently  
2 with their expert, their accounting expert, Mr. Devor. The  
3 underlying documents here, your Honor, that support these  
4 numbers have both been excluded from evidence under Rule 408  
5 pursuant to one of defendants' motions in limine related to  
6 the settlement. Defendants don't believe it's appropriate for  
7 Mr. Devor then to --

8 THE COURT: I'm sorry. What numbers are you  
9 referring to?

10 MR. HALL: Your Honor, in the middle of the table on  
11 this exhibit, there are numbers that say amount attributable  
12 to improper lending practices. Those numbers their expert  
13 drew from two documents essentially, both of which have been  
14 excluded from evidence.

15 THE COURT: What documents are those?

16 MR. HALL: Your Honor, it's essentially the  
17 settlement agreement itself, the \$484 million, and a document  
18 that had previously been used in this case that was created by  
19 Carin Rodemoyer, who was an employee of the consumer lending  
20 business. And I can get your Honor the exhibit numbers in a  
21 moment.

22 MR. DOWD: Your Honor, I think this is a fairly  
23 straightforward issue. The defendants filed a Daubert motion  
24 on Harris Devor, our accounting expert. And the Court issued  
25 a two-page opinion on the 23rd of March. And what the

1 Court -- initially the Court had said that we couldn't use  
2 what's been called in this case Rodemoyer 17. I believe if  
3 the Court wants to look, it's actually Plaintiffs' Exhibit  
4 681. It was a calculation. And I have a copy if the Court  
5 wants or Mr. Hall needs it as well.

6 (Tendered.)

7 MR. DOWD: And essentially, your Honor, Mr. Devor in  
8 rendering his opinion -- and I have no dispute with counsel  
9 that the Court said we couldn't offer Rodemoyer 17, which is  
10 the Plaintiffs' Exhibit 681 that the Court is looking at. It  
11 was an internal calculation of potential refunds from improper  
12 lending practices that Ms. Rodemoyer prepared in the summer of  
13 2002.

14 As to Mr. Devor, he took Rodemoyer 17 and he took the  
15 bottom line number, the 484 million of the settlement, and  
16 what he said was, there are two ways that one could look to  
17 see how much money Household generated from improper lending  
18 practices. He says one way is look at the 484, the dollar  
19 amount of the settlement. That's one number you could put on  
20 it. He says the second number you could put on it is the  
21 internal calculations that the company did, which were  
22 performed by Ms. Rodemoyer. Defendants addressed both of  
23 those issues in their Daubert motion.

24 Ultimately, your Honor, in your opinion, you said  
25 that Mr. Devor could testify, could give his opinion about how

1 much of the revenue Household reported for 1999 through the  
2 second quarter of 2002 was attributable to predatory lending  
3 practices. And these are the documents -- this is the  
4 evidence that Mr. Devor relied on to give that opinion.

5 The Court goes on to say in the opinion, Defendants  
6 can explore on cross-examination the extent to which the  
7 documents on which Devor relies -- Household's estimate of the  
8 refunds it might have to make -- that's Rodemoyer 17 or  
9 Plaintiffs' Exhibit 681 -- or the multistate investigation  
10 settlement agreement -- which is the 484 -- are sufficient to  
11 support his opinion.

12 Here's my understanding of what the Court was telling  
13 me I could do: That doesn't allow me to go back and say the  
14 Court's earlier opinion that I can't put in Plaintiffs'  
15 Exhibit 681 is now overruled by the subsequent opinion. I  
16 will not offer Rodemoyer 17. What I'm going to have to do is  
17 ask Mr. Devor, Have you tried to quantify how much money was  
18 derived from these predatory lending practices? Yes, I have.  
19 And, sir, what is your opinion as to how much revenue was  
20 derived from predatory lending practices based on the  
21 documents you reviewed? He's got two choices. He can say 484  
22 for the jury; he can say the -- I think it adds up to 3.2  
23 billion, your Honor.

24 And at that point, the second part of the Court's  
25 order kicks it. It's up to the defendants then to figure out



1 how they want to cross him, how they want to do it, whether  
2 they want to use the document itself, whether they want to use  
3 Ms. Rodemoyer's deposition testimony, where, to a certain  
4 extent, she says, well, I think I was doing this or whatever  
5 that testimony may be that helps them. We think it helps us.  
6 Certainly they think it helps them. That's my understanding  
7 of what the Court is allowing us to do.

8 MR. HALL: Your Honor, to the extent Mr. Devor has an  
9 opinion about the amount of revenue that was attributable to  
10 these practices that's independent of documents the Court has  
11 excluded, defendants wouldn't seek to argue that he shouldn't  
12 be permitted to do that. But where here, these demonstrative  
13 exhibits are clearly indicating an effort of Mr. Devor to  
14 stand up and say I've relied now on the amount of the  
15 settlement, which the Court has explicitly held is out of this  
16 case, and the amount of this quantification that was part of  
17 the settlement negotiation process, which this Court has  
18 explicitly held is out of the case. Defendants think it's  
19 inappropriate to put up a demonstrative exhibit which  
20 essentially holds those numbers up for their truth.

21 MR. DOWD: Your Honor, I think in response to that,  
22 first of all, we don't think the Court has said the amount of  
23 the settlement is out. I mean, clearly it's going to be  
24 integral to the damages issues in this case. And Mr. Burkholz  
25 will address that when we get to it I take it.

1           Second, I mean, you look at 681, your Honor, and I'm  
2 not -- I don't want to reargue the old motions. I just don't  
3 think that's appropriate. However, this is what he based his  
4 opinion on. I mean, this is what his opinion was based on.  
5 So I assume that the Court understood that because the  
6 defendants probably spent 20 pages explaining it in their  
7 Daubert motion. So he's allowed to give his opinion. His  
8 opinion is based on those two things. That's the evidence  
9 that Household produced that would allow someone to quantify  
10 the amount attributable to predatory lending practices.

11           THE COURT: This is the problem we face with all of  
12 the exhibits and all of the information regarding the various  
13 settlements, the negotiations for settlements, the proposals  
14 to settle, the results of the settlements, et cetera. The  
15 rule against allowing these things into evidence as such is  
16 based upon the desire to promote settlement. Period.

17           But the law is also clear that if it's not being  
18 offered to prove liability or acceptance of liability or the  
19 types of things that will cause a litigant to not want to  
20 engage in settlement conferences because they're afraid that  
21 that will harm them further on down the line, if the evidence  
22 is being offered to prove other things, then it's admissible.

23           To the extent possible, I am trying to keep out any  
24 gratuitous presentation of the settlements, the amount of the  
25 settlements and negotiations. And I think my rulings reflect

1 that.

2           On the other hand, when experts rely upon this  
3 information and when the information becomes the best and  
4 maybe the only way to show damages in this case with respect  
5 to certain alleged improper acts, we have a countervailing  
6 interest. And to the extent that the information is used for  
7 that purpose, it's going to come in. To the extent that  
8 experts relied upon it -- properly relied upon it, used it in  
9 their calculations, it's going to be -- it's going to be  
10 coming in.

11           And the damages issue in this case really is a large  
12 factor to take into account in determining how much of this  
13 evidence comes before the jury. I've said that before. It's  
14 the only way to prove damages.

15           MR. HALL: May I respond briefly to that, your Honor?

16           THE COURT: Sure.

17           MR. HALL: I think that there are two issues. One is  
18 the issue that Mr. Dowd alluded to, including whether and to  
19 what extent plaintiffs' damages expert, their loss causation  
20 expert, Professor Fischel, will be allowed to rely on the  
21 terms of the settlement. And that's an issue that's not  
22 presented by this demonstrative.

23           Another issue is whether their accounting expert, who  
24 is here on the liability side of the case to prove falsity and  
25 the other elements of their 10(b) claim, is going to be

1 defendants.

2           And I believe the next proposed demonstrative at  
3 issue is fairly similar to the one that we discussed dealing  
4 with Mr. Devor's opinion. We're talking about No. 52.

5           I think an issue that we're going to have going  
6 forward on these similar types of exhibits is that based on  
7 your Honor's ruling on the Devor Daubert motion, he is not  
8 allowed to opine that the financial statements falsely report  
9 revenues. The title of this demonstrative is the impact of  
10 improper lending practices on Household's financial  
11 statements. How that doesn't fall squarely within the  
12 prohibition in your opinion is beyond me. And I think that  
13 that problem will be apparent every time he takes what he  
14 estimates as the amount attributable to improper lending  
15 practices and compares it to the financial statements. That's  
16 the only conclusion that he can be drawing from an opinion and  
17 a demonstrative such as this.

18           MR. DOWD: Your Honor, I think -- in response, your  
19 Honor, the Court says that Mr. Devor can give his opinion  
20 about how much of the revenue Household reported from '99  
21 through the second quarter of 2002 was attributable to  
22 predatory lending practices. And that's what we're doing in  
23 these demonstratives, is showing that.

24           What the Court has said is, relying on Sofamor Danek  
25 and some other cases, that Mr. Devor can't give his next

1 opinion, which is, when you do things that are illegal and you  
2 derive revenue from illegal practices, you shouldn't have  
3 booked it in the first instance. And we respect that part of  
4 the Court's opinion. We're not going to do it. We pulled the  
5 demonstratives that related to it. And -- but we are entitled  
6 to show what -- how much revenue Household reported for '99  
7 through the second quarter of '02 was attributable to  
8 predatory lending practices.

9 THE COURT: I agree with him. The objection is  
10 overruled.

11 MR. NEWVILLE: Your Honor, another issue that  
12 defendants have on these demonstratives purporting to show the  
13 impact of improper --

14 THE COURT: You're going to have to go exhibit by  
15 exhibit. There's no way I can rule on "these demonstratives"  
16 or exhibits that show X, Y or Z because nobody knows what I  
17 have ruled then.

18 MR. NEWVILLE: Yes, your Honor.

19 MR. DOWD: So we were talking about 52. And I assume  
20 we're done with that?

21 THE COURT: The objection is overruled, unless  
22 there's another objection to 52.

23 MR. NEWVILLE: Your Honor --

24 THE COURT: I didn't mean to cut you off there.

25 MR. NEWVILLE: The objection is that --

**TAB 2**

Ghiglieri - direct

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

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

7 You may proceed.

8 MR. DROSMAN: Thank you, your Honor.

9 BY MR. DROSMAN:

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

14 Did you prepare such an exhibit?

03:45:33 15 A. I did.

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

17 A. Yes, it would.

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

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

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

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

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

Ghiglieri - direct

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1 A. Yes. Household's rates were higher than its competitors.  
2 So in order for it to be able to make loans, they came up with  
3 a way of describing their rates as effective rates.

4 Basically what they would do is tell the customer,  
03:46:25 5 you can pay your mortgage payment -- half of your mortgage  
6 payment every two weeks instead of making your mortgage  
7 payment once a month. And in that way, you will pay it off  
8 faster. And that's true because you make 13 payments instead  
9 of 12 payments if you make a half of a payment every other  
03:46:48 10 week.

11 But what they would do is, they would then calculate  
12 what they called an effective rate and compare it to someone  
13 that's making their payment once a month for 30 years. And  
14 they would say, because you are paying less interest, you are  
03:47:02 15 paying a lower interest rate, which is not true.

16 If I took out a 30-year mortgage and I refinanced it  
17 somewhere else after two years, the amount of interest I would  
18 pay to the first lender would be less than if I would have  
19 stayed there for 30 years and paid it. But my interest rate  
03:47:20 20 didn't change.

21 So Household used what they called this effective  
22 rate. Sometimes they would call it equivalent rate.  
23 Sometimes they would call it comparative rate. But they would  
24 couch this, their higher rate, in terms of this biweekly  
03:47:37 25 payment plan and say, you know, your effect rate is lower. So



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1 this is an example.

2           Someone would come in, apply for a loan or refinance  
3 their current loan. Household would do this effective rate  
4 calculation based on the biweekly payment plan. And they  
03:47:55 5 would say, well, you currently have an 8 percent rate. But if  
6 you come and refinance with us, the effective rate would be  
7 7 percent. And the customer would say, oh, that's great; I am  
8 going to refinance. But really what would happen is, the  
9 interest rate would still be, you know, 12 and a half or  
03:48:11 10 13 percent.

11           So Household used this predatory lending practice to  
12 get people to come in and borrow from them, even though their  
13 rates were not competitive. If they would have said, if you  
14 pay your loan every two weeks on the current loan, the rate  
03:48:30 15 would be 4 percent, you know, as compared to our 7 percent.

16           So the reason why Regulation Z is in place, as I said  
17 this morning or earlier -- I am sorry -- this afternoon is  
18 lenders are required to only use the annual percentage rate so  
19 that customers can compare from lender to lender what the  
03:48:50 20 rates are so they can compare apples to apples. Regulation Z  
21 is violated when you come up with all these different sorts of  
22 rates to give to the customer. So that was the effective  
23 equivalent rate scam that Household was running during this  
24 1999-to-2002 time frame.

03:49:08 25 Q. Now, we have touched on the second practice, insurance

**TAB 3**

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

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

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

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Ghiglieri - direct

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

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

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

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

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

11:26:40 15 And, here, they're talking about it in Florida.

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

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

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

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

24 A. Yes, it is.

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

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1 opinion?

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

3 Q. You can just testify to it.

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

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

9 And several more like that.

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

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

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

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

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

4 Q. If you turn to page ending 080.

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

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

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

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

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

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

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

Ghiglieri - direct

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

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

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

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

14 And can you tell me what this document is?

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

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

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

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

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

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

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

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

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

18 Q. Could you turn to page ending 090.

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

21 A. Yes.

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

23 A. Yes.

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



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

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

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

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

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

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

7 material. Our branches had previously approved tax charts as

8 well as real estate master booklets that encouraged them to

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

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

11 this page.

12 Does that have any significance to your opinion?

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

14 was enforced from HFC training materials that existed at the

11:34:45 15 time.

16 Q. Why is that significant?

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

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

19 districts except the southwest, which had some separate

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

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

22 rates were competitive, when they were not.

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

24 given, what do you understand that to mean?

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

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

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

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

7 A. I do.

8 Q. And is this significant to your opinion?

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

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

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1 Q. Why is that significant to your opinion?

2 A. Because, once again, the annual percentage rate must have  
3 been 18 percent. And what they were trying to do was deceive  
4 the customer into thinking if you make your payment every  
11:37:15 5 other week -- half of your payment every other week, your  
6 effective rate will be 10.15 percent, when that's not true.

7 It was never going to be anything other than 18 percent.

8 Q. Now, we've talked about some training that Lew Walter  
9 provided in this case. Why don't I show you Plaintiffs'

11:37:43 10 Exhibit 899 for identification.

11 (Tendered.)

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

13 MR. DROSMAN: 899, your Honor.

14 THE COURT: Thank you.

11:38:08 15 BY MR. DROSMAN:

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

17 A. I do.

18 Q. What is it?

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

11:38:16 20 And this one says HFC northeastern division. They had

21 different ones, and it would have a different division; but

22 this one says northeastern division.

23 Q. And why do you recognize this?

24 A. I reviewed these training manuals in formulating my

11:38:32 25 opinions.

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1 MR. DROSMAN: Plaintiffs offer Exhibit 899 into  
2 evidence, your Honor.

3 THE COURT: It will be admitted.

4 BY MR. DROSMAN:

11:38:42 5 Q. If you go ahead and take a look at page ending 773 of  
6 Exhibit 899.

7 Well, before we do that, why don't we look at 740.  
8 And that's the second page of the document.

9 What does this show?

11:38:56 10 A. And this is what I just held up. This is the title of the  
11 training, First Mortgage Sales. And this one says HFC  
12 northeastern division. And they had different ones that I  
13 reviewed that would say, you know, northwestern division,  
14 other parts of the country. And this was the Lew Walter  
11:39:14 15 training on the effective rate.

16 Q. Is there a date on that document?

17 A. Well, there's a handwritten date here that says June/July  
18 1999.

19 Q. And then if you turn to page 773.

11:39:30 20 Can you tell us what this is?

21 A. This is an example of the effective rate calculation.  
22 This is how the employees were taught to actually calculate  
23 the effective rate. And here it's called equivalent rate, but  
24 they would use equivalent or effective or comparable. They  
11:39:53 25 would use all those terms for this sort of a calculation.

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1 Q. I know it's sort of -- the copy didn't come out so well,  
2 but does this say biweekly versus 30 years up at top?

3 A. Yes.

4 Q. And then tell us what this particular document was used  
11:40:08 5 for.

6 A. This was used to train the employees on how to calculate  
7 the effective rate. So how to, in effect, deceive people --  
8 get them in the door by thinking that their rate was lower  
9 than it really was because Household's rates were not  
11:40:25 10 competitive with their competitors.

11 Q. And the effective rate is something other than the APR  
12 interest rate that the loan has?

13 A. Right. The APR would -- all of the complaints and all the  
14 documentation that I saw would be higher than what the current  
11:40:45 15 rate was that the borrower had. And so what they would do is  
16 use this calculation to deceive the borrower into thinking  
17 that they had a lower rate than they were actually going to  
18 get because otherwise they never would have refinanced at  
19 Household because they had a lower -- they had an actual lower  
11:41:02 20 rate than Household's loan.

21 Q. I'm showing you what has been marked as Plaintiffs'  
22 Exhibit 900 for identification.

23 (Tendered.)

24 BY MR. DROSMAN:

11:41:31 25 Q. Do you recognize Plaintiffs' Exhibit 900?

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1 A. I do.

2 Q. What is it?

3 A. This is an e-mail from Ken Walker, who was the quality  
4 assurance manager, to Rob O'Han, dated May 5, 2001. And the  
11:41:45 5 subject is comparable/effective rate.

6 Q. Is it comparable/equivalent rate?

7 A. Oh, yes. I'm sorry. Comparable/equivalent rate.

8 Q. And why do you recognize Plaintiffs' 900?

9 A. This is one of the documents that I reviewed in  
11:42:00 10 formulating my opinions.

11 MR. DROSMAN: Plaintiffs offer Exhibit 900 into  
12 evidence.

13 THE COURT: It will be admitted.

14 BY MR. DROSMAN:

11:42:08 15 Q. Tell us what the significance of this document is to your  
16 opinion.

17 A. Well, in -- I'll read the first paragraph, if you could  
18 highlight that.

19 Q. Before you do that, why don't we back up for just one  
11:42:25 20 moment. You can tell us --

21 A. Sure.

22 Q. I know the author of this e-mail is a man named Ken  
23 Walker. Do you know who Ken Walker is?

24 A. Yes, he was the quality assurance manager.

11:42:34 25 Q. And what does that mean, quality assurance, at Household?

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1 A. Well, they were supposed to be looking at whether or not  
2 Household, you know, complied with various laws and with  
3 company policies.

4 But in 1999, they actually disbanded the field  
11:42:55 5 portion of the quality assurance and control division. And  
6 they gave that -- those duties to the people in the field who  
7 were responsible for meeting the sales goals of the company.  
8 And so it was -- the field quality assurance team was  
9 reinstated back in mid 2001.

11:43:20 10 But Ken Walker is looking into why they're having  
11 this issue with the comparable/equivalent rate. And he is  
12 reporting back to Rob O'Han some information that he found.

13 Q. And Rob O'Han, again, is the senior executive in the sales  
14 department --

11:43:38 15 A. Yes.

16 Q. -- in the consumer lending division?

17 A. Yes.

18 Q. Can you tell us why this is significant to your opinion?

19 A. Well, because it says, Spoke to Tom Schneider and he  
11:43:47 20 indicated we cannot quote the customer a comparable or  
21 equivalent interest rate. He did say you can verbally tell  
22 the customer due to the reduced term and interest, it would be  
23 like getting a lower interest rate; but we must stay away from  
24 quoting an actual lower rate other than the contract rate or  
11:44:05 25 APR the customer is to receive. He indicates that there have

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

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

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

12 A. Yes.

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

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

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

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

23 And I also looked at insurance training that they received.

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



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

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

9 (Tendered.)

11:46:11 10 BY MR. DROSMAN:

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

13 A. Yes, I watched this DVD.

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

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

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

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

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

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1 A. I did.

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

4 THE COURT: It will be admitted.

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

6 THE COURT: Sure.

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

9 THE COURT: Was there an objection?

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

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

14 MR. KAVALER: No, your Honor.

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

16 MR. KAVALER: Thank you, your Honor.

17 BY MR. DROSMAN:

18 Q. Approximately how long is this training video?

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

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

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

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

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1 case?

2 A. Yes. There are three excerpts that I would like to show.

3 Q. What is the first excerpt?

4 A. The first excerpt is Mr. Hueman discussing how Household's  
11:48:21 5 rates were not competitive with their competitors and what to  
6 do about that. It's approximately three minutes.

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

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

9 BY MR. DROSMAN:

11:52:14 10 Q. What's significant about what we just watched to your  
11 opinion?

12 A. Well, it just demonstrates that they had to come up with  
13 some way of making their rates look more competitive. And  
14 this is how they did it. They came up with this effective  
11:52:27 15 rate calculation so that they could show that their rates were  
16 equal to or less than the competition.

17 Q. Is there another clip that you'd like to show the jury to  
18 assist you in explaining the basis for your opinions?

19 A. Yes. The next one is where Mr. Hueman discusses what's  
11:52:45 20 known -- what he calls the trap sale. And this is about eight  
21 minutes, I believe.

22 Q. And is this an example of the effective rate in action?

23 A. Yes, on -- what they should do to tell the customer about  
24 it, how they should sell it.

11:53:00 25 Q. Why don't we play that clip.

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

2 BY MR. DROSMAN:

3 Q. This trap sale, the T bar, is that the effective rate  
4 presentation?

12:02:47 5 A. Yes, that's -- that's the effective rate presentation.

6 And that was in --

7 Q. Why is this clip that we've just watched significant to  
8 your opinion?

9 A. It's significant because the First Mortgage Sales training  
12:03:00 10 was developed in 1999 and launched around the country in mid  
11 1999. And two years later, Mr. Hueman develops this video  
12 that has the same concepts in it. It's, you know, verbal  
13 training rather than looking here, reading it. But it has the  
14 same concepts two years later that were in the First Mortgage  
12:03:30 15 Sales.

16 And in a lot of the complaints -- and some of the  
17 newspaper articles -- you would see that "if I could do that,  
18 would you be interested" language. So it -- it was -- it told  
19 me, by looking at everything, that it was pervasive, not this  
12:03:47 20 rogue officer or rogue branch as Household claimed that it  
21 was.

22 Q. Now, is what we just watched from Mr. Hueman, in your  
23 view, is that deceptive?

24 A. Yes. Because you're trying to deceive the customer into  
12:03:59 25 thinking that what they're going to get is actually lower than

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1 it is. And, you know, they had to do something in order to  
2 make their rates more competitive. As Mr. Hueman said, we  
3 charge 8 -- 11 percent; our competitors charge 8 percent.

4 They're never going to be able to book a loan with that unless  
12:04:17 5 they do something to deceive the customer into thinking that  
6 they could get a lower rate.

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

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

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

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

14 BY MR. DROSMAN:

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

17 A. Yes.

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

12:08:24 20 A. Yes.

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

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

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

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

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

11 A. Yes.

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

14 Can you tell us what this exhibit shows?

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

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

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

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1 A. Yes.

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

4 A. Yes.

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

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

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

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

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

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

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

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

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

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

23 We'll break for lunch, ladies and gentlemen. We'll  
24 resume the testimony at 1:15. Have a good lunch. We'll see  
12:10:56 25 you then.

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1 (Jury out.)

2 THE COURT: You may step down, ma'am.

3 THE WITNESS: Thank you.

4 THE COURT: Anything that you folks have for us to  
12:12:09 5 take up before we break for lunch?

6 MR. DROSMAN: Nothing from the plaintiffs, your  
7 Honor.

8 MR. KAVALER: Nothing for the defendants, your Honor.

9 THE COURT: Excuse me?

12:12:16 10 MR. KAVALER: Nothing from the defendants, your  
11 Honor.

12 THE COURT: I want to bring up two points. One is, I  
13 do have these two requests from the jurors. I'll read them to  
14 you now.

12:12:29 15 Your Honor, if possible could we please be excused at  
16 4:20 p.m.? I missed the 4:45 train yesterday. The next train  
17 leaves at 5:11. I still arrived home at 6:45 p.m. last night.

18 Second one: Judge, can you allow us to leave at 4:20  
19 p.m.? My train leaves at 4:50, and I just barely have enough  
12:13:01 20 time to catch this train. I live in Joliet. If I miss this  
21 4:50 p.m. train, the next train would be 5:25 p.m. I would  
22 arrive in Joliet at 6:25 p.m., then wait for the 7:10 bus. It  
23 takes me a half hour to walk home from where the bus stops, so  
24 I would get home at 8:00 p.m.

12:13:26 25 And we have one new note from the jurors, which is



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1 not signed. We'll make sure we get them signed from now on.

2 It's a question: Were training logs listing names, dates of

3 employees participating in these training sessions taken and

4 kept? Same question would apply to any other training

12:13:58 5 sessions and classes conducted and used as evidence in this

6 case.

7 So why don't you take the lunch period to think about

8 what your suggestions are for responding to these interesting

9 notes. And we'll see you all maybe just five minutes before

12:14:20 10 we start the evidence so we can discuss this.

11 MR. DOWD: About 1:10, your Honor?

12 THE COURT: Yes.

13 Have a good lunch.

14 MR. KAVALER: Thank you, your Honor.

15 (Trial recessed until 1:10 p.m. of the same day.)

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
4 on behalf of itself and all )  
5 others similarly situated, )  
6 Plaintiff, )  
7 vs. ) No. 02 C 5893  
8 HOUSEHOLD INTERNATIONAL, INC., )  
9 et al., ) Chicago, Illinois  
10 Defendants. ) April 1, 2009  
11 ) 1:25 o'clock p.m.

12 TRANSCRIPT OF TRIAL PROCEEDINGS  
13 BEFORE THE HONORABLE RONALD A. GUZMAN, AND A JURY

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1 THE CLERK: 02 C 5893, Jaffe vs. Household  
2 International.

3 THE COURT: Ready for the jury?

4 MR. KAVALER: Yes, your Honor.

01:22:02 5 MR. DOWD: Yes, your Honor.

6 THE COURT: Bring them out.

7 (Jury in.)

8 THE COURT: Welcome back, ladies and gentlemen.

9 We're ready to proceed.

01:23:14 10 MR. DROSMAN: Thank you, your Honor.

11 CATHERINE A. GHIGLIERI, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

12 DIRECT EXAMINATION - Resumed

13 BY MR. DROSMAN:

14 Q. Ms. Ghiglieri, before the lunch break, we spoke about

01:23:20 15 Household's training on the effective rate.

16 Did you review any additional documents in which you  
17 saw evidence that Household actually engaged in use of the  
18 effective rate scheme?

19 A. Other than what we've talked about today?

01:23:36 20 Q. Yes.

21 A. I may have. I can't think of any right now.

22 Q. Let me show you Plaintiffs' Exhibit 901 for  
23 identification.

24 (Document tendered.)

25 BY MR. DROSMAN:

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1 Q. Do you recognize Plaintiffs' Exhibit 901?

2 A. I do.

3 Q. What is it?

4 A. This is an e-mail memo regarding the effective rate.

01:24:16 5 Q. And what is the date of it?

6 A. The date is May 17th, 2001.

7 Q. And why do you recognize this document?

8 A. This is one of the documents I reviewed in formulating my  
9 opinions.

01:24:30 10 MR. DROSMAN: Plaintiffs offer Exhibit 901 into  
11 evidence, your Honor.

12 THE COURT: It will be admitted.

13 (Plaintiffs' Exhibit No. 901 received in evidence.)

14 BY MR. DROSMAN:

01:24:38 15 Q. Who is the author of this particular e-mail?

16 This is an e-mail string; is that correct?

17 A. It's an e-mail string.

18 The -- if you want to look at the bottom part first,  
19 it's from Phillip Swetz to Paul Pichoske -- if I'm saying his

01:24:58 20 name correctly -- dated May 17th, 2001. And the subject is:

21 "Effective Rate."

22 Q. And is there anything significant about that particular  
23 e-mail to your opinions?

24 A. Yes.

01:25:10 25 If -- and I'll read it because I don't know if they

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1 can see it.

2 It says, "HFC 30-year mortgage with Pay Right  
3 Rewards -- " and that's the -- well, let me start over.

4 "HFC 30-year mortgage with Pay Right Rewards at 11.05  
01:25:27 5 percent is equivalent to a 30-year mortgage at 8.89 percent.  
6 Why? Our 30-year mortgage with Pay Right Rewards pays off in  
7 25 years."

8 And, then, there's the calculation.

9 And, then, it says, "Find someone who goes 100  
01:25:44 10 percent loan to value, at 8.89 percent fixed, with a secured  
11 side of \$15,000. We have the best game in town."

12 Q. Okay.

13 "LTV," you said "Loan to Value." What's that?

14 A. "Loan to Value" is how much the mortgage loan is in  
01:26:05 15 relation to the value of the home.

16 So, if you have a hundred thousand dollar valued home  
17 and you have an \$80,000 mortgage, your loan to value -- or LTV  
18 -- would be 80 percent. So, that's what that means.

19 Q. Okay.

01:26:17 20 So, if you had a hundred percent LTV and a hundred  
21 thousand dollar home, what would your loan be?

22 A. Then your loan amount would be a hundred thousand.

23 If you have a 125 percent loan to value, your  
24 mortgage would be 125,000, but the value of your home would  
01:26:32 25 only be a hundred.

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1           So, you would have negative equity of \$25,000.

2           So, that's -- that's -- how that works with the loan  
3 to value ratios.

4 Q. And why is what you've just read to us significant to your  
01:26:45 5 opinion?

6 A. Well, because I think this demonstrates that once, again,  
7 Household had to use some method of showing that their  
8 interest rates were competitive with their competitors',  
9 because they were not.

01:27:00 10           And the fact is that, you know, they're saying, "We  
11 go to a hundred percent loan to value," which traps them at  
12 Household because no one would refinance since there was no  
13 equity there, "at 8.89 percent fixed" -- and, of course, we  
14 know that that's the equivalent rate -- "with a secured side."

01:27:20 15           And that's just another product that they did to go  
16 up to a hundred percent.

17           So, this is deceptive to the customer and it also  
18 traps them at Household because they can't refinance anywhere  
19 else.

01:27:30 20 Q. "The secured side at 15K," do you understand "15K" to be  
21 15,000?

22 A. \$15,000, yeah.

23 Q. And what does "the secured side of 15,000" refer to?

24 A. Well, I talked about yesterday about loan splitting. And,  
01:27:44 25 so, when they would come to the closing table, they would

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1 apply for a mortgage. And there would be not one loan there,  
2 but two loans. And they would split it into a secured side  
3 oftentimes because they would get up to, you know, whatever  
4 their level was of loan-to-value on the first mortgage,  
01:28:02 5 because they were adding so many points and fees and insurance  
6 premiums.

7 So, oftentimes, this second mortgage was actually the  
8 fees and the premiums that was put on the first. So, they  
9 would close both of these loans together, in effect, stripping  
01:28:16 10 away equity, trapping them at Household.

11 Q. Now, it looks like this e-mail we've just been talking to  
12 was forwarded to a man named Paul Pichoske above that.

13 Do you see that?

14 A. Yes.

01:28:28 15 So, then, Paul Pichoske is writing to Rob O'Han dated  
16 May 24th, 2001, "Effective Rate," again.

17 And it says, "Rob, this is a scenario that my group  
18 has been using. They have been terming it 'equivalent rate,'  
19 which I thought was okay. Should we discontinue this?

01:28:46 20 "Paul."

21 And this was May of 2001.

22 Q. And Paul Pichoske, he's a DSM; is that right?

23 A. Yes, in the northeast.

24 So, this is in, yet, another location where they were  
01:28:58 25 using this in the northeast.



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1 Q. And a "DSM" is a "Division Sales Manager"?

2 A. I think it's called "District Sales Manager."

3 Q. And Rob O'Han was a senior executive in the Sales

4 Department at Consumer Lending?

01:29:08 5 A. Yes.

6 I can't remember his exact title. "District General  
7 Manager," or something like that.

8 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
9 898 for identification.

10 (Document tendered.)

11 BY MR. DROSMAN:

12 Q. Do you recognize Plaintiffs' Exhibit 898?

13 A. I do.

14 Q. What is it?

01:29:45 15 A. This is the Insurance Training Manual that I referred to  
16 earlier, that I looked at in formulating my opinions.

17 Q. And is it a -- does it contain a cover memo?

18 A. Yes, it contains a cover memo.

19 Q. What is the date of the cover memo?

01:30:05 20 A. The cover memo date is May 12th, 2000.

21 Q. And to whom is the cover memo addressed?

22 A. "All HFC Branch Sales Managers."

23 Q. What's the subject?

24 A. "Insurance Service Staff Meeting."

01:30:17 25 MR. DROSMAN: Your Honor, Plaintiffs offer Exhibit

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1 898 into evidence.

2 THE COURT: It will be admitted.

3 (Plaintiffs' Exhibit No. 898 received in evidence.)

4 BY MR. DROSMAN:

01:30:24 5 Q. Now, we spoke about the effective rate. Let's turn to  
6 insurance, which we've also touched on.

7 Is this document significant to your opinions  
8 regarding -- or your conclusion -- that Household engaged in  
9 insurance packing?

01:30:38 10 A. Yes.

11 Q. Okay.

12 Let's take a look at the first page of the document.

13 Is there anything significant about that document or  
14 that page that's significant to your opinion?

01:30:46 15 A. Yes, a couple of things.

16 In the first paragraph, the last sentence, it says,  
17 "In addition, the company benefits from a profitability and  
18 growth standpoint; and, of course, you benefit from an  
19 incentive compensation standpoint."

01:31:04 20 Q. Why is that significant?

21 A. This is significant because part of the compensation  
22 program at HFC -- or, I'm sorry, at Household -- rewarded  
23 employees for packing on as much insurance as possible. And  
24 they're articulating that in the front of this training

01:31:21 25 manual.

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1 Q. What about the second to the last paragraph on this page?

2 A. Right.

3 The second to the last paragraph says, "To assist you  
4 in achieving these goals -- " oh, are you talking about -- oh,  
01:31:37 5 the second to last. Sorry.

6 Anyway, this was -- this particular document was --  
7 so that they could conduct training in their individual  
8 locations.

9 The second to the last paragraph that's highlighted  
01:31:48 10 up there says, "I look forward to you achieving 100  
11 percent-plus of your -- " and I don't know what that means  
12 "NWP" -- "goals in both credit and non-credit products, and to  
13 a 75 percent customer acceptance rate in all branches."

14 Q. And do you know what a "75 percent customer acceptance  
01:32:04 15 rate" refers to?

16 A. Yes. That was what, in regulatory parlance, we talk about  
17 as penetration ratios. And what they wanted was 75 percent of  
18 any loan that was made to have this insurance product added  
19 onto it. And we call that as -- in the regulatory field --  
01:32:21 20 "penetration ratio."

21 Q. And they were seeking a 75 percent penetration --

22 A. Yes.

23 Q. -- ratio?

24 A. Yes.

01:32:27 25 And, from a regulatory perspective, that's very, very

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1 high.

2 Whenever you -- and I used to go into banks and  
3 examine for this very thing, to see if Regulation Z was being  
4 complied with. Because if insurance is required, they have  
01:32:43 5 to disclose it in a separate location than if it's not  
6 required.

7 And, so, what we would look at is if the bank would  
8 say, "Oh, no, we don't require it," we would look at  
9 penetration ratios to determine if, in fact, they do require  
01:32:56 10 it, but they're just saying that.

11 And anything above 50 percent -- that was sort of our  
12 rule of thumb -- was considered very high and could be  
13 indications of insurance packing, and that insurance was  
14 required.

01:33:09 15 Q. Let me direct your attention to the page ending "493."

16 And if you could take a look at that page and let me  
17 know if there's anything on this page that appears to be part  
18 of a training manual for insurance that is significant to your  
19 opinion?

01:33:33 20 A. Yes.

21 Are they pulling it up?

22 Q. Yes. Just go ahead and testify.

23 A. In the second paragraph, it says -- they're talking about  
24 selling insurance: "A good way to do this is by using the  
01:33:46 25 assumptive close," and I've talked about that a couple times

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1 during my testimony. And that's where you assume that they're  
2 going to take it. And, so, you add it to the insurance  
3 papers.

4 "A good way to do this is by using the assumptive  
01:33:59 5 close that assumes the customer still has the intention of  
6 proceeding on the loan with the Income Protection Plan  
7 included. You might get started by saying something like  
8 this," and it trains them how to actually do the assumptive  
9 close.

01:34:14 10 Q. And, so, what is the assumptive close?

11 A. That's where the sales staff was taught to assume that  
12 the borrower was going to take the insurance and have it on  
13 the loan papers, so that either they wouldn't notice it was  
14 on there or, if they did question it, you could say -- they  
01:34:34 15 were trained to say -- "Well, you can cancel after 30 days";  
16 or, sometimes they would even tell them it was required.

17 Q. Okay.

18 Was there also a tactic where they would tell the  
19 customer they had to re-run all the loan papers and that would  
01:34:48 20 take a few days to do?

21 A. Yes.

22 I mean, that would be another thing they would say  
23 to try and dissuade them from taking it off the loan  
24 documents.

01:34:56 25 Q. How would that work?

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1 A. Well, you know how you have so many loan documents when  
2 you're closing on a home loan? And they would say, "Sorry,  
3 we're going to have to run all these, again. You'll have to  
4 come back," or "You'll have to sit here and wait a couple  
01:35:10 5 hours or whatever." Anything to dissuade them from taking the  
6 premium off. Because, remember, Household's goal was growth.  
7 And the insurance premium was considered, you know, an  
8 increase in the loan portfolio of Household.

9 So, this is something that was important to them.

01:35:28 10 Q. Let's turn to the subject of prepayment penalties.

11 We talked earlier about your opinion that Household  
12 used prepayment penalties as part of their overall predatory  
13 lending practice.

14 Did you review additional evidence that Household  
01:35:43 15 engaged or used prepayment penalties?

16 A. Yes.

17 Q. Let me show you what's been marked as Plaintiffs' Exhibit  
18 965 for identification?

19 (Document tendered.)

20 BY MR. DROSMAN:

21 Q. Go ahead and take a look at Exhibit 965.

22 Do you recognize this document?

23 A. I do.

24 Q. What is it?

01:36:28 25 A. This is an e-mail string regarding AMTPA, which is the

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1 Parity Act that I talked about previously, and it's dated  
2 November 27th, '01, from Tom Schneider to Robin Allcock, and  
3 others.

4 Q. Why do you recognize this document?

01:36:48 5 A. This is one of the documents that I looked at in  
6 formulating my opinions.

7 MR. DROSMAN: Plaintiffs move Exhibit 965 into  
8 evidence.

9 THE COURT: Admitted.

10 (Plaintiffs' Exhibit No. 965 received in evidence.)

11 BY MR. DROSMAN:

12 Q. Can you tell us the significance of Plaintiffs' Exhibit  
13 965 to your opinions regarding the use of prepayment  
14 penalties?

01:37:08 15 A. Yes.

16 If you look at the bottom paragraph that starts with  
17 "Robin," it says, "The following list encompasses those states  
18 that at one time or another have strongly questioned our  
19 ability to assess prepayment penalties" -- that's what "PPP"

01:37:22 20 stands for -- "under AMTPA," which is the Alternative Mortgage  
21 Protection -- well, actually, that's not spelled right.

22 It's the Alternative Mortgage Transaction Parity Act.

23 Sorry.

24 That says "AMTPA" and that's how everybody says it;  
01:37:41 25 but, actually, that's not spelled correctly.

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1           And back to the e-mail, it says, "Typically they  
2     have argued that our Pay Right Reward Program is not a  
3     variable rate loan and thereby does not qualify, of the  
4     federal preemption, or that our fixed rate RL loans don't  
01:37:59 5     qualify."

6     Q.   Okay.

7           First, let's talk -- what's the Pay Rights Rewards  
8     Program that's referred to in that case?

9     A.   The Pay Right Reward Program was their performance-based  
01:38:11 10    program, where -- I talked about this previously -- if a  
11    borrower paid 36 months of timely payments either on time or  
12    within the grace period, that they would reduce the interest  
13    rate 50 basis points, or a half a percent; and, then, if they  
14    would do it again 12 months later, they would reduce their  
01:38:31 15    interest rate.

16           So, Household developed this product in order to make  
17    it look like it's a variable rate loan.

18           This is one of the things that you can offer to  
19    qualify for the Parity Act; and, what that allows a state  
01:38:47 20    licensed lender to do is to charge fees and prepayment  
21    penalties and other things that are otherwise prohibited by  
22    state law.

23           So, this was an attempt by Household to comply with  
24    the federal law allowing them to circumvent state law.

01:39:03 25    Q.   And was this one of the initiatives that Andrew Kahr came



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1 up with?

2 A. Yes.

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

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

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

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

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

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

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

19 A. Yes.

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

22 (Document tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Plaintiffs' Exhibit 964?

01:40:29 25 A. I do.

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1 Q. What is it?

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

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

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

6 Q. And to whom is it addressed?

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

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

9 A. Yes.

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

12 Q. And why do you recognize this document?

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

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

17 THE COURT: It will be admitted.

18 (Plaintiff' Exhibit 964 received in evidence.)

19 BY MR. DROSMAN:

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

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

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

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1 of New Jersey had with Household's practices.

2 Q. Okay.

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

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

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

9 A. Yes.

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

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

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

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

01:42:27 20 A. Yes.

21 This document it says, "Official Examination."

22 Q. Okay.

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

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

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1 that page?

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

4 Q. And, specifically, the first criticism?

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

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

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

18 A. Yes.

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

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

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

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1 qualifies under AMTPA.

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

4 A. Yes.

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

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

14 Q. Okay.

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

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

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

22 (Document tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Exhibit 324?

01:45:09 25 A. I do.

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1 Q. What is it?

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

4 Q. Why do you recognize this document?

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

7 Q. And was this an Examination --

8 A. Yes.

9 Q. -- Report?

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

11 A. It was actually a compliance examination.

12 And the date -- let's see.

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

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

18 Q. And to whom was it sent?

19 A. To the Board of Directors of Household.

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

21 A. Mr. Schneider.

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

23 A. Yes.

24 Q. The Director of Policy and Compliance?

01:46:05 25 A. Yes.

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1 MR. DROSMAN: Plaintiffs move Exhibit --

2 BY MR. DROSMAN:

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

01:46:14 5 A. I did.

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

8 THE COURT: It will be admitted.

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

10 BY MR. DROSMAN:

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

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

14 A. Yes.

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

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

01:47:06 20 Do you see that?

21 A. Yes.

22 Q. Is that significant to your opinion?

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

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

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

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

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

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

01:48:02 10 A. Yes.

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

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

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

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

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



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

2 A. 079, the same thing.

3 The first one, Mr. Gray, was charged -- the range was  
4 disclosed on the good-faith estimate, of from zero to 4912;  
01:49:20 5 and, he was actually charged 9,349, which is a 90 percent  
6 above the range.

7 And, remember, the range of closing costs must be  
8 given to the applicant three days after the completed  
9 application is accepted by the lender. They're supposed to  
01:49:37 10 give this good-faith estimate, so that the borrower has three  
11 days to consider whether they want to do the loan.

12 Q. Now, this document that they're provided is called a  
13 "Good-Faith Estimate," correct?

14 A. Yes.

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

16 A. "GFE."

17 Q. Is it your opinion that when you give somebody a range of  
18 zero to \$11,000, that that's a good-faith estimate of their  
19 closing costs?

01:49:57 20 A. No.

21 In fact, if, on a large percentage basis, during a  
22 compliance exam that I would do as a bank examiner, if I would  
23 see that the good-faith estimate was always either at the very  
24 top of the range or above the range, then that would tell me  
01:50:12 25 that there wasn't good faith in giving this estimate.

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

3 (Document tendered.)

4 BY MR. DROSMAN:

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

7 A. I do.

8 Q. And what is this document?

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

11 Q. What's the date on it?

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

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

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

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

16 A. Yes.

17 Q. Why do you recognize this document?

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

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

22 THE COURT: It will be admitted.

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

24 BY MR. DROSMAN:

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

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

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

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

7 A. That's right.

8 Q. Okay.

9 Is that significant to your opinion?

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

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

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

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

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

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

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

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

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1 to your opinion at all?

2 A. Yes.

3 On this one, it says, "Licensee failed to disclose  
4 points charged to borrower on the good-faith estimate  
01:53:06 5 disclosure."

6 So, this is where they didn't disclose them at all.  
7 And, as I said yesterday, there were many failure-to-disclose  
8 issues. I only talked about the range of good-faith estimate  
9 closing costs and prepayment penalties, but there were  
01:53:21 10 instances that I noted where they didn't disclose the good-  
11 faith estimate at all.

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

13 A. And on this one it says, "Licensee failed to disclose a  
14 reasonable estimate of the points charged." This is the range  
01:53:36 15 issue.

16 The points charged were 6,930 -- I'm sorry, 6,393;  
17 and, the points disclosed, the range was -- or in this one it  
18 wasn't actually a range. They actually disclosed one dollar  
19 amount and they disclosed 3,522.

01:53:52 20 Q. So, they told this customer Ayers that they were going to  
21 charge \$3500 in points, and how much did they actually charge?

22 A. 6,393.

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

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

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

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

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

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

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

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

15 (Document tendered.)

16 BY MR. DROSMAN:

17 Q. Do you recognize Plaintiffs' Exhibit 956?

18 A. I do.

19 Q. What is it?

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

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

22 A. Yes.

23 Q. And what does that show?

24 To whom was it sent?

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

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1 The date, July 25th, 2002.

2 Q. And are these both Household employees?

3 A. Yes.

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

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

7 Q. And what is the date of this particular examination on

8 Page 184?

9 A. Yeah.

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

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

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

16 A. Yes.

17 Q. -- second paragraph.

18 A. It says -- excuse me -- "HUD," which is the Housing and  
19 Urban Development -- "believes that a pattern or practice of

01:57:02 20 quoting GFE" -- good-faith estimate -- "amounts that are lower  
21 than the corresponding amounts later shown on the settlement  
22 statements, may serve as evidence that the disclosures were  
23 not made in good faith."

24 Q. So, still on the page ending "192," tell me what that

01:57:19 25 means.

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1 A. On the sentence that I just read?

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

3 A. Yeah.

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

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

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

18 A. Yes.

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

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

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

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

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

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

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

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

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

19 THE COURT: It will be admitted.

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

21 BY MR. DROSMAN:

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

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



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1 Did you also evaluate Household's compensation practices  
2 during the 1999 to 2002 time frame?

3 A. I did.

4 Q. And what sources did you use to evaluate Household's  
02:00:03 5 compensation practices?

6 A. I looked at the compensation plans for each of those years  
7 and various internal memos and e-mails concerning those  
8 compensation plans.

9 Q. Why did you evaluate Household's compensation plan?

02:00:17 10 A. Well, one of the things that I regularly did, as an  
11 examiner -- and, of course, as a senior official at the OCC  
12 and as the Texas Banking Commissioner -- you wanted to see  
13 what was driving the behavior at a particular institution.

14 And there are two places to look for that. One is  
02:00:36 15 their compensation plan and one is their training. Because if  
16 the employees are told, "We want you to meet these targets and  
17 you're going to be compensated if you do or if you go over  
18 those targets," then that's what's going to drive their  
19 behavior.

02:00:50 20 And, so, as a regular routine, we would look at the  
21 compensation plans to see how people were being rewarded for  
22 what type of behavior.

23 And, so, when I was looking at this whole file for  
24 Household, I particularly was interested in their compensation  
02:01:07 25 plans.

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1 Q. Did you draw any conclusions from your examination of  
2 Household's compensation practices during the '99 to 2002 time  
3 frame?

4 A. Yes.

02:01:15 5 Q. What conclusions did you draw?

6 A. My conclusions, based on how the employees were rewarded  
7 and what they were rewarded for, was that they were being  
8 rewarded for predatory lending practices that I've described  
9 so far.

02:01:27 10 Q. I'm going to show you Exhibit -- Plaintiffs' Exhibit --  
11 269 for identification.

12 (Document tendered.)

13 BY MR. DROSMAN:

14 Q. Do you recognize Plaintiffs' Exhibit 269?

02:01:53 15 A. I do.

16 Q. What is it?

17 A. This is the compensation plan for 2000 --

18 Q. For what --

19 A. -- for Household.

02:02:01 20 Q. -- entity?

21 A. For their sales staff.

22 Q. Is this for HFC, in particular?

23 A. That's what this is entitled, yes.

24 Q. And did you review another plan for Beneficial?

02:02:09 25 A. Yes. I reviewed all the plans that were produced in these

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1 years, 1999 to 202.

2 Q. And this is for HFC for the year 19- -- or 2000; is that  
3 correct?

4 A. Yes.

02:02:23 5 Q. And you considered this in reaching your conclusions in  
6 this case?

7 A. I did.

8 MR. DROSMAN: Plaintiffs move Exhibit 269 into  
9 evidence.

02:02:34 10 THE COURT: It will be admitted.

11 (Plaintiffs' Exhibit No. 269 received in evidence.)

12 BY MR. DROSMAN:

13 Q. Can you tell me the significance -- now, it looks like  
14 there's various components set forth in this plan; is that  
02:02:41 15 right?

16 A. Yes. There are five components to the Household plan.  
17 And let me just tell you what those are first, before we go  
18 through each one of them.

19 The first one is the "New Money Component." The  
02:02:58 20 second one is the "Loan Volume Component." The third one is  
21 the "Loan Account Gain Component." The fourth one is the  
22 "Margin Component." And the fifth one is the "Insurance  
23 Component."

24 And, so, we can go through them each.

02:03:14 25 Q. Let's take them one at a time.

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1 A. Okay.

2 Q. You talked about -- you spoke about -- the "New Money  
3 Component"?

4 A. Yes.

02:03:19 5 Q. And that's a component of the compensation plan for the  
6 sales staff at HFC?

7 A. Yes.

8 And, basically, what this rewards the sales staff for  
9 doing is booking as many loans as possible. And they are  
02:03:33 10 rewarded based on the amount of new money that is booked.

11 And, so, for example, if someone comes in and makes a  
12 new loan, that goes towards the "New Money Component."

13 If it's refinance, only the amount of fees and points  
14 and insurance they can pack on there goes into this "New Money  
02:03:50 15 Component."

16 So, that's what it is. The amount of new money  
17 that's booked.

18 Q. The "Loan Volume Component," that's what's that?

19 A. The "Loan Volume Component" -- and there's various  
02:04:04 20 iterations of this, but, basically, the employees were  
21 rewarded for how many loans they booked. And, so, if you just  
22 think about loan splitting, if they were being rewarded for  
23 how many loans they were being booked, booking two loans was  
24 going to reward them more than booking one. So, this is the  
02:04:23 25 component that rewarded them for how many loans they were

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1 booking.

2 Q. So, all other things being equal, if a salesperson at  
3 Household books two loans for a hundred thousand dollars --  
4 say, an 80,000 and a \$20,000 loan -- versus one \$100,000 loan,  
02:04:40 5 is he or she compensated more --

6 A. Yes.

7 Q. -- on one or the other?

8 A. Using certain calculations, yes. There is a minimum  
9 amount that they had to get over first; but, basically, yes.

02:04:50 10 Q. Which would they be compensated more for booking?

11 A. Well, over- - in certain years, they were compensated the  
12 most for booking, which up there you can see "PHLs," which  
13 were personal home loans. And these were loans that, you  
14 know, they could charge the high interest -- the 25 percent.

02:05:10 15 They were compensated three points.

16 The real estate secured, they were compensated one.

17 So, if they split that loan into two, with the first  
18 mortgage and the PHL -- the personal home loan -- as a second  
19 loan, they could get five points right there.

02:05:25 20 And I believe they had to get nine points to start  
21 this compensation.

22 I can't see it right off the bat, but I believe  
23 that's right. I think -- oh, yeah, they had to get nine  
24 points to start off with.

02:05:39 25 So, if they only split a few of those loans, they

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1 could get that nine points pretty fast.

2 They made some changes to this component in the  
3 different years; but, basically, the thrust was the more the  
4 number of loans that you booked, the more you were going to be  
02:05:56 5 compensated.

6 Q. The next component on the page ending "226" is the "Net  
7 Loan Account Gain Component"?

8 A. Yes.

9 Q. And what's that?

02:06:05 10 A. This rewards the employees for low attrition. And we  
11 talked about yesterday "attrition" means that people are  
12 coming in to pay off their loans, or they're paying more down  
13 on their loans than the payment amount.

14 And, so, they wanted to halt attrition. They wanted  
02:06:25 15 their loan portfolio to grow instead of go down.

16 And, so, the sales staff was rewarded for keeping  
17 those loans on the books. And, of course, we talked about  
18 various ways of doing that: Going up to a hundred percent  
19 loan to value; adding on the prepayment penalty; packing it  
02:06:44 20 full of fees and insurance premiums and stripping away the  
21 equity.

22 So, there's a variety of practices that they could  
23 engage in to be rewarded for loan account gain.

24 Q. The next page -- the page ending "227" -- has at the top a  
02:07:04 25 component called the "Margin Component"?

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1 A. Right.

2 Q. Can you tell us what that is?

3 A. Yes.

4 Household had a matrix that, basically, took into  
02:07:18 5 consideration the credit quality of the borrower. And just  
6 like we all have a credit score, Household had a variety of  
7 credit scoring devices that they would assign a score to each  
8 individual borrower.

9 And they would come up with a benchmark rate below  
02:07:34 10 which they would not want to make this loan to that person.

11 So, the employees were rewarded for how much they  
12 could increase that benchmark rate. And that's what this  
13 "Margin Component" is.

14 And, so, the higher that they could go with the  
02:07:50 15 interest rate, the more that they were rewarded.

16 Q. Now, you mentioned a "benchmark rate." Was the benchmark  
17 rate -- you said it was some sort of matrix, where they'd  
18 calculate what the appropriate interest rate should be for a  
19 particular customer?

02:08:04 20 A. Right.

21 So --

22 Q. And that was based on all the risks and so forth --

23 A. Yes.

24 Q. -- that that customer might pose?

02:08:11 25 A. Yes.

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1 That's like your credit score is just a good example.

2 I know that Household had a variety of credit-scoring  
3 mechanisms, which all lenders do; and, they would set a rate  
4 below which they would not want to go, based on the risk of  
02:08:26 5 the borrower.

6 And, then, if you can highlight the first paragraph  
7 there (indicating), it says, "Part of your incentive is  
8 derived from the combination of rate and points that you  
9 sell," so anything that they could do to increase that  
02:08:39 10 benchmark rate with interest rate and points, they got  
11 rewarded for.

12 Q. Now, so, this benchmark rate -- which was the appropriate  
13 rate that should be charged to a customer -- were salespeople  
14 compensated for going above the benchmark rate?

02:08:53 15 A. That's right.

16 So, how much ever -- you know, they knew what the  
17 benchmark rate was and they knew they couldn't make the loan  
18 below that. So, anything that they could add-on to that, they  
19 would be compensated for.

02:09:04 20 Q. And the benchmark rate was the fair rate for the customer;  
21 is that right?

22 A. Well, that's the rate that was based on the risk of the  
23 borrower.

24 Q. If you turn to the next component, it's on "228."

02:09:20 25 I think it says, "Insurance Component" toward the



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1 bottom of the page there?

2 A. Right, "Insurance."

3 I found this component to be particularly interesting  
4 because not only did it reward the individual salesperson for  
02:09:32 5 packing on insurance of a variety of kinds -- credit life,  
6 single premium credit, accident and health; you know,  
7 whatever -- but there was a portion of the incentive went into  
8 a pool for all branch employees.

9 So, it helped produce peer pressure for the branch  
02:09:57 10 for everyone to do this particular practice. So, this  
11 component I found particularly interesting.

12 Q. What is this? Were they offered additional compensation  
13 for the more insurance they sold?

14 A. Yes.

02:10:10 15 And the branch was, too, if they met certain goals.

16 Remember the penetration ratio that they wanted in  
17 that other document was 75 percent. So, they wanted 75  
18 percent of all the loans that they made to have some sort of  
19 insurance packed on there.

02:10:23 20 Q. Now, did you prepare a demonstrative exhibit to assist you  
21 in explaining how Household's compensation practices  
22 encouraged predatory lending practices?

23 A. Yes.

24 Q. I'm showing you what has been marked as Plaintiffs'  
02:10:37 25 Demonstrative Exhibit 32 for identification.

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1 Can you tell us what this exhibit shows?

2 A. What this exhibit shows is the various incentives on the  
3 left. We talked about "New Money Volume," "Loan Account  
4 Gain" -- I should use my clicker here -- "Margin and  
02:11:02 5 Insurance."

6 And these are the predatory lending practices that  
7 they encouraged. So, let's just take them one at a time or --  
8 is that okay?

9 Q. Sure. That's fine.

02:11:19 10 Why don't we take the first one, "New Money  
11 Incentive." Tell us what practices that encouraged?

12 A. Okay. "New Money Incentive," so here we have -- remember,  
13 this is an incentive based on how much new money is booked.

14 And, so, what it encouraged was loan flipping because  
02:11:35 15 each time they did these rapid refinances or continual  
16 refinances, they would add on points, they would add on  
17 insurance premiums and they would add on fees.

18 So, it encouraged loan flipping; it encouraged equity  
19 stripping, because every time they added on points and fees  
02:11:50 20 and insurance premiums, of course, it stripped off the equity;  
21 it encouraged insurance packing, because insurance was part of  
22 the new money; and, it encouraged putting maximum points on,  
23 because that was also part of the new money.

24 The second one is "Loan" -- is "Volume" -- "Loan  
02:12:11 25 Volume Incentive." And these are the number of loans,

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1 remember. And, so, that encouraged loan flipping and loan  
2 splitting. Because for each new loan that they booked, they  
3 got a certain number of points.

4 If they split it into two, they got more points. And  
02:12:26 5 when they split it into certain kinds of loans, they got even  
6 more points. And that kind of changed over the course of  
7 time.

8 The third one -- "Loan Account Gain" -- that  
9 encouraged -- remember, now, this is the attrition. This is  
02:12:39 10 -- if the overall book of business goes down, you don't get  
11 your incentives. So, they were trying to prevent attrition,  
12 trying to prevent anybody from paying off their loan too fast.

13 And this encouraged loan flipping because every time  
14 that, you know, the loan needed to be refinanced or whatever,  
02:13:03 15 it kept the loan balances going up with the extra products and  
16 points and everything being added on.

17 Of course, equity stripping, because when all that  
18 was added on, it stripped away equity; and, insurance packing,  
19 because that added to the loan balances.

02:13:21 20 So, "Loan Account Gain" encouraged those types of  
21 predatory lending practices.

22 For "Margin Incentive," we talked about that.  
23 Everyone -- every applicant -- that came to Household had a  
24 benchmark rate that was calculated based on the  
02:13:35 25 creditworthiness of the borrower.

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1           And the sales executives were incentivized by  
2    increasing that as much as possible. So, at the highest rate  
3    possible, adding on as many points as possible.

4           And, then, the last one: "Insurance Packing" --

02:13:54 5    "Insurance Incentive." Not only were the individuals  
6    rewarded, but they could be rewarded based on sort of the peer  
7    pressure of the branch, and that encouraged insurance packing.

8    Q. All right.

9           As a regulator now, let's talk about -- we talked a  
02:14:10 10   little bit about the Quality Assurance and Control Department  
11   at Household?

12   A. Yes.

13   Q. Often abbreviated as the "QAC" Department.

14           Are you familiar with Quality and Assurance Control  
02:14:22 15   Departments at various lenders that you've examined over the  
16   years?

17   A. Yes.

18   Q. And what are the purpose of these QAC Departments,  
19   generally?

02:14:28 20   A. Well, generally, the purpose is to make sure that the  
21   lender is complying with various laws; and, you would need  
22   someone to go and look at the loan files to determine that.

23           And, then, the second thing would be to make sure  
24   that they're complying with Household's policies or the  
02:14:47 25   company's policies.

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1           So, it's a multi-prong review that your Quality  
2 Assurance folks would do.

3 Q. And how did these Quality Assurance -- or QAC -- people  
4 operate? How do they make sure that things are working the  
02:15:01 5 way they're supposed to work?

6 A. Well, there's almost no way to do it unless they go into  
7 the branchs. And, so -- and pull loan files and look at the  
8 closing documents, to make sure that Regulation Z and RESPA  
9 and all of the regulations are being complied with.

02:15:18 10           And, then, they also need to determine if company  
11 policies are being complied with -- the issuances that the  
12 headquarters office is making.

13           So, it would be a dual function, if you will.

14 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
02:15:37 15 717 for identification.

16           (Document tendered.)

17 BY MR. DROSMAN:

18 Q. Do you recognize Exhibit 717?

19 A. I do.

02:16:00 20 Q. What is it?

21 A. This is the 1999 Consolidated Internal Audit Plan for  
22 Household.

23 Q. And what's an Internal Audit Plan?

24 A. Every, especially publicly-traded companies, have a  
02:16:13 25 Internal Audit Department that will audit the various areas of

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1 the company. And they'll formulate an Internal Audit Plan  
2 that will be approved by the Board of Directors.

3 And I looked at all the Audit Plans for the time  
4 period and the one I have in my hand is for 1999.

02:16:29 5 Q. Okay.

6 Did you review this document in coming to the  
7 conclusions in this case?

8 A. I did.

9 MR. DROSMAN: I move Exhibit 717 into evidence.

02:16:40 10 THE COURT: Admitted without objection.

11 (Plaintiffs' Exhibit No. 717 received in evidence.)

12 BY MR. DROSMAN:

13 Q. If you'd turn to the page ending "759," it looks like the  
14 heading at the top of the page says, "Audit Plan Overview";

02:16:55 15 and, then, there's a couple of bullet points on the page.

16 Is the second bullet point on that page of any  
17 significance to your opinion in this case?

18 A. Can you ask me that, again? I'm sorry.

19 Q. Sure.

02:17:07 20 Is the second bullet point of any significance to  
21 your opinion in this case?

22 A. Yes.

23 Q. What is the significance of the second bullet point to  
24 your opinion?

02:17:15 25 A. This is discussing the transfer of the QAC Field Staff to

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1 the District Sales Managers.

2 And I should say it this way: The functions that the  
3 QAC staff perform was being transferred in 1999, in the first  
4 quarter, to the District Sales Managers. And these are the  
02:17:39 5 people that the branch personnel reported up to.

6 Q. Why does that matter?

7 A. Well, when you give responsibility for compliance and for  
8 checking to make sure things are right, to the very people  
9 that you're looking to, to increase sales, it's like asking  
02:18:01 10 the fox to guard the hen house-type thing.

11 This is not considered a good thing to do from a  
12 regulatory standpoint, from an auditing standpoint, really  
13 from any standpoint.

14 And I think even here the internal auditor said --  
02:18:17 15 the second sentence -- well, the first sentence first: "The  
16 1999 Internal Audit Plan incorporates three additional  
17 auditors to address the increase in risk resulting from  
18 changes being made in the HFC and Beneficial branch network.  
19 During the first quarter of 1999, HFC will transfer branch  
02:18:36 20 audit and training responsibilities to the District Sales  
21 Managers from the Quality Assurance and Control QAC  
22 Department. QAC had performed these functions for HFC since  
23 1996, to allow HFC DSMs to focus on the sales-related  
24 functions."

02:18:54 25 Q. Who are the DSMs?

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1 A. So, those are the people that the branch sales staff  
2 reported up to.

3 Q. Okay.

4 Now, you read a part about "Increase in Risk." What  
02:19:05 5 do you understand that to mean?

6 A. Well, it's always an increase in risk when you're asking  
7 the very people that are making the loans to do the checking  
8 on themselves. So, you know that you're going to increase  
9 risk because if -- they're being asked to do two things that  
02:19:21 10 are at odds. They're being asked to increase the loan volume  
11 and they're being asked to comply with the law. And they're  
12 being compensated for increasing the sale -- the loan --  
13 volume.

14 So, which are they going to do? That's what the risk  
02:19:35 15 is when you ask people to do an audit of themselves.

16 Q. If you look at the next paragraph, the first sentence, is  
17 that of any significance to your opinion in this case?

18 A. Yes.

19 And I think this might be more articulate than I just  
02:19:47 20 said: "The transfer of these audit responsibilities back to  
21 the DSMs creates additional risk, as aggressive 1999 loan  
22 growth objectives can operate in direct contrast to loan  
23 quality objectives."

24 Q. Explain what that means.

02:20:06 25 A. So, that means you're giving the sales staff two competing



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

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

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

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

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

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

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

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

9 reviewed, have you seen any customer complaints that suggest

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

11 during the 1999 to 2002 time frame?

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

13 Q. Let's look at a couple.

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

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

16 (Document tendered.)

17 BY MR. DROSMAN:

18 Q. Do you recognize Plaintiffs' Exhibit 276?

19 A. I do.

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

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

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

23 looked at in formulating my opinions.

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

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

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

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

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

6 MR. DROSMAN: Thank you, your Honor.

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

8 BY MR. DROSMAN:

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

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

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

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

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

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1 regulated entity, what's that?

2 A. Well, the regulator's not going to just take this  
3 complaint and say, "Everything in here is true." They want to  
4 get the regulated entity's side of the story; and, then,

02:23:13 5 they'll take the two and figure out if a violation has  
6 occurred or not.

7 Q. What is the regulated entity?

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

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

11 Q. So, whatever --

12 A. Whatever your jurisdiction is.

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

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

18 Q. This particular complaint is filed by a man named José  
19 Nanez; is that right?

02:23:49 20 A. Yes.

21 Q. And let's take a look at the first entry he has -- or the  
22 first number on his complaint.

23 A. This person lives in Phoenix, Arizona, and he's Hispanic,  
24 he says, and his primary language is Spanish. And his

02:24:08 25 daughter was serving as interpreter.

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1           And he says, "Our home was purchased in February,  
2 1997, and financed with a 30-year home loan at a 7 percent  
3 fixed interest rate."

4 Q. And No. 2, what's his --

02:24:25 5 A. And, then, he received a solicitation from Household with  
6 a \$5,000 check, which they later cashed; and, then, they  
7 called Household about refinancing.

8 Q. And what does No. 3 indicate?

9 A. No. 3 indicates that they went to talk to Household and:  
02:24:43 10 "Beulah Jordan, a Household sales representative, told us that  
11 Household had a special loan program under which we could  
12 consolidate all our bills into one loan; get the cash we  
13 wanted; and, save a lot of money in paying off our bills.  
14 Jordan gave us a quote for Household's biweekly payment (or EZ  
02:25:00 15 Payment Plus) plan.

16           "Under this plan, Jordan said that if we made  
17 payments every two weeks, our loan would be paid out like a  
18 7.58 percent 30-year loan, only we would get to pay it off  
19 much sooner than 30 years.

02:25:14 20           "She also told us that we could get single premium  
21 credit insurance in order to get the loan."

22 Q. Is there a --

23 A. I'm sorry, I misspoke.

24           She said, "We had to get single premium credit  
02:25:28 25 insurance in order to get the loan."

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1 Q. Now, is there anything significant about that complaint to  
2 your opinions in this case?

3 A. Well, what I found interesting about this complaint was,  
4 first of all, non-English speakers, if you remember the OCCs  
02:25:46 5 issuance, it talked about sometimes you have non-English  
6 speakers, and that's a particular class that can be taken  
7 advantage of.

8 And here we have the Hispanic non-English speaker,  
9 the daughter serving as an interpreter. So, that kind of  
02:26:03 10 perks your ears up for possible predatory lending.

11 And, then, of course, again, we've got the biweekly  
12 payment plan with the EZ Pay. This is in Phoenix, Arizona.

13 You know, we've seen these in different places around  
14 the country. And, you know, the effective rate presentation,  
02:26:20 15 again.

16 Q. Why do you think that this is the effective rate  
17 presentation?

18 A. Because they're talking about, "If you pay off your loan  
19 every two weeks, it will pay out like a 7.58 percent 30-year  
02:26:32 20 loan, only you pay it off much sooner."

21 The one thing that's missing here from the  
22 presentation is how many years sooner is it paid off? 18?  
23 17? Whatever.

24 And, then, they talk about single premium credit  
02:26:44 25 insurance, which is a particularly predatory product because,

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1 remember, it tacks on to your 30-year loan, but it goes away  
2 in five years. And, so, that's been prohibited by a lot of  
3 states.

4 Q. So, they were told that they would have this 7.58 percent  
02:27:04 5 interest rate with their loan?

6 A. Yes.

7 Q. Turn to the next page, the page ending "765".

8 A. The first sentence says, "Respondents did not tell us  
9 their biweekly payment quote did not include transaction fees,  
02:27:21 10 property taxes or homeowners insurance on their home."

11 That's something I saw in a lot of the complaints --  
12 and we haven't really talked about that -- but when you're  
13 making a comparison of apples to apples, you want to make sure  
14 that your mortgage payment, in fact, is the same -- contains  
02:27:33 15 the same -- things as your current mortgage payment.

16 And this was a complaint that a lot of consumers had,  
17 was that Household would not include their taxes and  
18 insurance, and that's what their current one included.

19 So, when they were saying, "We'll give you a smaller  
02:27:50 20 payment," that wasn't true.

21 And, then, the second sentence says, "Respondents  
22 also did not explain that our loan included substantial loan  
23 origination fees, substantial upfront insurance premiums and  
24 an actual interest rate of 11.79 percent, a prepayment penalty  
02:28:08 25 if we tried to pay off our loan before five years."

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1 Q. So, what predatory practices were employed by Household  
2 with respect to this person, José Nanez?

3 A. Well, they have the effective rate presentation given to  
4 them. They had single premium insurance being required -- and  
02:28:25 5 that's particularly predatory. They had failure to disclose  
6 the -- that the insurance and taxes were not in the new  
7 payment, as were on the old, so they could compare. And they  
8 didn't -- failure to disclose the prepayment penalty.

9 Q. And what does the last sentence of this complaint say?

02:28:46 10 A. The last sentence says, "We believe the respondents  
11 targeted us for predatory loans due to our national origin:  
12 Hispanic. As a result of their predatory lending, respondents  
13 have stripped away part of our loan equity and we are in  
14 danger of losing our home."

02:29:00 15 So, that's the equity stripping, again, that we  
16 talked about.

17 Q. Why don't I show you what's been marked as Plaintiffs'  
18 Exhibit 1096 for identification.

19 (Document tendered.)

02:29:30 20 BY MR. DROSMAN:

21 Q. Do you recognize Plaintiffs' Exhibit 1096?

22 A. I do.

23 Q. What is it?

24 A. This is a complaint from Amy Adams in New Cumberland,  
02:29:39 25 Pennsylvania. It's dated September 10th, 2002, and it's

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1 addressed to Household.

2 Q. And why do you recognize 1096?

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

02:29:51 5 MR. DROSMAN: Plaintiffs offer Plaintiffs' Exhibit  
6 1096 into evidence.

7 MR. KAVALER: Your Honor, this is another one of  
8 those limited documents.

9 THE COURT: Okay.

02:29:59 10 It will be admitted.

11 MR. DROSMAN: Thank you, your Honor.

12 THE COURT: The jury has been instructed on the  
13 documents.

14 MR. KAVALER: Thank you, your Honor.

15 (Plaintiffs' Exhibit No. 1096 received in evidence.)

16 BY MR. DROSMAN:

17 Q. Let's take a look at the first page of the document. You  
18 said that this document was sent to Household.

19 What was the date it was sent to Household?

02:30:15 20 A. September 10th, 2002.

21 Q. If you look at the second paragraph of the letter, what --

22 A. Now, this is a complaint that's not on the complaint form,  
23 that -- she actually wrote this letter herself.

24 Q. And if you look at the last page of the letter -- the page  
02:30:34 25 ending "448" -- why don't we look at the page ending "448" of



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1 the letter? It's the third page in.

2 Can you tell me: Did she it to anybody in particular  
3 at Household?

4 A. Yes. She sent it to Mr. Aldinger, Mr. Gilmer,  
02:30:52 5 Mr. Schoenholz and Mr. Stroom.

6 Q. She cc'd all those people?

7 A. Yes.

8 Q. Why don't we take a look again at the first page of 1096,  
9 the second paragraph, and tell us if that's of any  
02:31:09 10 significance to your opinion.

11 A. Yes.

12 This is a case where she questioned the prepayment  
13 penalty at the time of the closing. And she says, "The  
14 salesman who was handling our refinance very nonchalantly  
02:31:23 15 glossed over this issue and communicated to my husband and me  
16 that this would typically be about a \$3,000 fee, given our 6  
17 percent interest rate, which really turned out to be 9.49  
18 percent -- more on this later -- and that these fees can be  
19 waived for job-related relocations. As we are now facing  
02:31:39 20 selling our house due to relocation, I have since found this  
21 not to be the case."

22 Q. What does that mean?

23 A. Well, this is the failure to disclose what's going on with  
24 the prepayment penalty.

02:31:51 25 Here's someone that sees the prepayment penalty,

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1 asked about it and they say, "We can waive it." And this  
2 was -- I saw this in other complaints -- this very action.

3 Q. Why don't we take a look at the next page, the page ending  
4 "447."

02:32:10 5 And if you look at the first non-indented paragraph,  
6 it begins, "To add insult to injury," can you tell us if  
7 there's any significance of that information to your opinion?

8 A. Yes.

9 And this says, "To add insult to injury, the salesman  
02:32:26 10 who sold us this deal capitalized on the fact that we were  
11 receiving a 6 percent interest rate by participating in the  
12 biweekly EZ Pay Program.

13 "When I questioned the 9.49 percent rate listed on  
14 our contract at the signing, I was told that was the rate for  
02:32:40 15 people not participating in the biweekly payment program.

16 When I asked where the 6 percent interest rate was quoted in  
17 the agreement, I was told it was assumed in the EZ Pay  
18 Program, so that was why I wouldn't find it in the contract."

19 So, this is the whole effective rate presentation,  
02:32:58 20 where the customers were being deceived into thinking it was  
21 lower rate than they were actually getting.

22 Here was a customer questioning, you know: "Why is  
23 this different than my contract rate," and the employee's  
24 telling them from Pennsylvania that, "Don't worry. That's for  
02:33:16 25 people that aren't participating in this biweekly payment

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1 program."

2 Q. Then it looks like there's a series of bullet points on  
3 that page and, then, another paragraph underneath that.

4 Can you take a look at that?

02:33:27 5 A. Yes.

6 Q. It begins --

7 A. "I am responsible -- "

8 Q. "I am a responsible consumer."

9 A. "I'm a responsible consumer with good credit who was duped  
02:33:38 10 through your slick sales techniques into refinancing a 7  
11 percent FHA mortgage to your 9.49 percent unconventional loan,  
12 losing \$12,000 equity I had built up in my home and now I am  
13 facing being further penalized for selling my home to support  
14 a job move."

02:33:57 15 Q. What significance is that to your opinion?

16 A. So, she had a 7 percent mortgage. She was told that she  
17 could get a 6 percent interest rate through the biweekly  
18 payment program; and, in fact, it turns out to be 9.49  
19 percent. And that's a typical --

02:34:14 20 Q. She went from a 7 percent loan to a 9-point-something  
21 percent loan?

22 A. Yes, 9.49 percent.

23 Q. And why does she say she did that?

24 Why would anybody go from a lower rate loan to a  
02:34:25 25 higher rate loan?

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1 A. You wouldn't do it.

2 Plus, she had an FHA mortgage and now she has an  
3 unconventional. And the FHA would be more attractive.

4 So -- well, you wouldn't do it. You wouldn't  
02:34:37 5 willingly pay more money on your loan. I mean, for, what?  
6 What would be the point of that?

7 Q. Does this support your opinion that this woman, Ms. Adams,  
8 was deceived by Household?

9 A. Yes.

02:34:48 10 Q. What predatory lending practices do you see reflected in  
11 this complaint?

12 A. Well, the non-disclosure or the -- discussing that the  
13 prepayment penalty would be waived, that's one. And, then,  
14 the effective rate presentation would be two. Equity  
02:35:03 15 stripping would be three.

16 Q. And did Ms. Adams attach anything to this complaint that  
17 she sent to Mr. Aldinger and Mr. Gilmer and Mr. Schoenholz?

18 A. Yes.

19 She attached a newspaper article -- actually, a  
02:35:17 20 magazine article -- from Forbes entitled, "Home Wrecker" and  
21 it's dated September 2nd, 2002.

22 Q. Have you reviewed this article?

23 A. Yes.

24 I actually reviewed this article separate from this  
02:35:33 25 complaint because I was taking the -- I was canvassing

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1 everything that was out there regarding predatory lending  
2 during the 1999/2002 time frame. And I came across this  
3 myself.

4 But she goes through and highlights some things in  
02:35:44 5 here that are similar to what I found in looking at this file.

6 Q. And the first thing that she highlights in the "Home  
7 Wrecker" article in Forbes Magazine, what's that?

8 A. Well, she's talking about a William Meyers, a borrower,  
9 paid off his credit card debt by refinancing his loan with  
02:36:07 10 Household.

11 "He says his new lender, Household International,  
12 charged him 11 percent interest, not the 7.2 percent interest  
13 as promised. Then it added 14,400 in fees and insurance to  
14 his \$80,100 loan, and stuck him with a \$15,000 second mortgage  
02:36:23 15 at 20 percent. He didn't notice it until the first bill," a  
16 lot of the issues we've been talking about yesterday and  
17 today.

18 Q. What about, in particular, in Ms. Adams' complaint? Is  
19 there any similarities between Ms. Adams' complaint and this  
02:36:37 20 information in Forbes Magazine; specifically, with the 11  
21 percent interest --

22 A. Yeah.

23 Q. -- promised?

24 A. Right.

02:36:44 25 Q. I'm sorry, the 7.25 percent interest promised, when it's

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1 really an 11 percent interest rate?

2 A. Yes.

3 This was the effective rate presentation, where  
4 they're trying to make their rates look more competitive.

02:36:56 5 And, so, they're saying, "If you pay half of your mortgage  
6 every other week, your rate's going to be 7.2," but really it  
7 was 11 percent.

8 Q. Let's look at the next spot. I think it's the fourth  
9 paragraph in the article that Ms. Meyers highlighted,  
02:37:11 10 apparently to show similarities.

11 Can you tell us what that says?

12 A. It's the one up above that.

13 Q. The fourth paragraph down?

14 A. Yeah.

02:37:19 15 There you go.

16 Now, this is what happened -- this is what she claims  
17 happened -- to her. "Household is under fire for myriad  
18 tactics. In addition to the bait-and-switch on interest  
19 rates, it charges high prepayment penalties and service fees.  
02:37:36 20 It lures clients with proposals showing monthly savings that,  
21 at times, fail to materialize."

22 So, she's talking about the high -- or this article  
23 is talking about the high -- prepayment penalties; and, then,  
24 the effective rate presentation, which she talks about, too.

02:37:54 25 Q. The next spot in the article -- the Forbes article -- that

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1 Ms. Adams highlighted, can you tell us about that?

2 A. Actually, the last part of that sentence also is things  
3 that we were talking about today, too, if you'd go back to  
4 that.

02:38:08 5 And it says, "And it structures mortgages to include  
6 last-minute second loans that make it difficult for borrowers  
7 to defect and get refinancing elsewhere. Household agents  
8 call it 'Closing the Back Door.'"

9 So, that's -- we've been talking about closing the  
02:38:21 10 back door here.

11 Q. Did you call it "Blocking the Back Door"?

12 A. "Blocking the Back Door," yes.

13 Q. Is there a difference between "Blocking the Back Door" and  
14 "Closing the Back Door"?

02:38:29 15 A. No, it's the same thing.

16 Q. Take a look at the next paragraph that Ms. Adams  
17 highlighted.

18 A. In this -- this -- is something else that we've been  
19 talking about: "But Household's questionable practices seem  
02:38:40 20 to be in far wider use than that. For one thing, Meyers lives  
21 in Dayton, Ohio, not Bellingham, Washington."

22 And this refers to the paragraph above which says,  
23 "Household says such complaints represent a minuscule fraction  
24 of its 100 billion in outstanding loans."

02:38:59 25 It also says, "Gripes about the interest-rate-trick

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1 that fooled Meyers are largely confined to its office in  
2 Bellingham, Washington."

3 Q. So, that's the few-bad-apple argument?

4 A. The rogue branch, rogue employee.

02:39:10 5 If you go down, then -- going back to what's  
6 highlighted here -- "The Household pitch was so effective, it  
7 even lured customers with good credit, including Meyers.  
8 Customers and some ex-employees tell of the same interest rate  
9 trick in a dozen states."

02:39:24 10 So, Ms. Adams has good credit and, so, she's  
11 highlighting this because it says, "Even some people with good  
12 credit are being lured by this."

13 Q. The next sentence, I think, is a quote from a regulator in  
14 Minnesota. What does he have to say about the few-bad-apple

02:39:44 15 argument that Household made?

16 A. The Commissioner in Minnesota -- the Commerce Commissioner  
17 -- says, "Household encourages -- or at least tolerates --  
18 these abuses. It's not just an occasional rogue loan officer  
19 or rogue office. It has to do with corporate culture."

02:40:05 20 Q. Is that consistent with or different from the conclusions  
21 you drew in this case?

22 A. No, it's consistent.

23 Q. Okay.

24 Let's look at the next page, the page ending "450."

02:40:18 25 And, then, it looks like Ms. Adams has highlighted



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1 some more paragraphs from the Forbes article on that page.

2 Let's talk about the first one.

3 A. Okay.

4 This one says, "Household also began EZ Pay Plus, a  
02:40:32 5 program under which many borrowers, like Meyers, were lured  
6 with lower interest rates, but were really charged higher  
7 ones. EZ Pay Plus also quotes Karina Galindo, a Teacher's  
8 Assistant in Phoenix.

9 "In April, 2000, Household offered to replace her  
02:40:49 10 \$67,300 mortgage -- a Chase Manhattan Bank loan at 8.5  
11 percent -- with a bigger, but seemingly cheaper one: \$86,300  
12 at an effective rate of 7.6 percent, enough to pay off the old  
13 mortgage, and a \$12,200 personal loan she was paying off at  
14 15.7 percent. At least this is how she read a worksheet from  
02:41:11 15 a Household loan officer.

16 "Galindo signed up. Four days later, she says she  
17 got nervous and reviewed the 80-page agreement, signed and  
18 initialed in two dozen places, and spotted the real interest  
19 rate: 12.2 percent.

02:41:25 20 "How did it happen? Galindo says her agent, José  
21 Avila, handed her the worksheet entitled 'Biweekly Payment  
22 Quote" with this sentence at the bottom: 'If I can put  
23 together a loan that pays out like a 7.579 percent a year  
24 loan, but has a total term of 18.63 years, would you be  
02:41:45 25 interested?"

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1 Q. Let me stop you there.

2 That language that you just read, do you recognize  
3 that language?

4 A. That's from the Dennis Hueman video.

02:41:55 5 Q. Okay.

6 And what is this article talking about? What's the  
7 passage you just read?

8 A. This is the effective rate presentation on how Household,  
9 in trying to make their mortgages look for competitive, would  
02:42:09 10 do this effective rate presentation and lure these people in,  
11 thinking they were going to get a lower interest rate. Then  
12 they find out that they have, in fact, a higher interest rate.

13 And here, you know, there's more interest and fees  
14 and premiums tacked on. So, it strips out your equity; it  
02:42:25 15 keeps you there because no one else will refinance you, so  
16 that the back door is blocked.

17 So, this paragraph goes to a lot of the things that  
18 we've been talking about today.

19 Q. Now, in your evaluation of Household's lending practices,  
02:42:40 20 did you also review Reports of Examinations written by state  
21 and federal regulators?

22 A. I did.

23 Q. Why did you review Reports of Examinations by regulators?

24 A. Well, I wanted to see what the regulators thought. I  
02:42:55 25 looked at the documentation and I wanted to see if they -- if

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1 their findings supported my opinions.

2 Q. Which regulators issued Reports of Examination that you  
3 reviewed?

4 A. I reviewed the OTS reports for the Federal Thrift that  
02:43:11 5 Household had -- Household Bank FSB -- and, then, I reviewed  
6 the State Examination Reports from the finance company.

7 And I also reviewed -- FDIC did a separate exam and,  
8 then, I think they did a joint one with the OTS.

9 So, I reviewed any of the examination reports that  
02:43:35 10 were available.

11 Q. And how many State Examination Reports did you review  
12 approximately?

13 A. I would say maybe 30.

14 I'm not sure. I know at one point I reviewed some  
02:43:46 15 and, then, had to send some back. So, I'm not exactly sure  
16 how many. Maybe 30.

17 Q. And from what different states did these Examination  
18 Reports come?

19 A. New Jersey, Virginia, Kansas, Washington, Minnesota -- all  
02:44:03 20 over the country.

21 Q. Other states you haven't mentioned?

22 A. Yes, uh-huh.

23 Q. Why don't I show you what's been marked as Plaintiffs'  
24 Exhibit 1205 for identification.

25 (Document tendered.)

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1 BY MR. DROSMAN:

2 Q. Do you recognize Plaintiffs' Exhibit 1205?

3 A. I do.

4 Q. And what is 1205?

02:44:47 5 A. This is the Special Compliance Examination that was  
6 performed by the Office of Thrift Supervision, which is the  
7 regulator of the Federal Thrift, dated January 16th, 2003.

8 Q. And did this examination also examine the finance company  
9 at Household?

02:45:06 10 A. Yes.

11 Q. So, it examined both the Thrift and the Finance Company?

12 A. That's right.

13 Q. And why do you recognize this document?

14 A. This was one of the documents that I reviewed in  
02:45:16 15 formulating my opinions.

16 Q. And who authored the document?

17 A. The Office of Thrift Supervision.

18 MR. DROSMAN: Plaintiffs offer Exhibit 1205 into  
19 evidence.

02:45:27 20 THE COURT: It will be admitted.

21 (Plaintiffs' Exhibit 1205 received in evidence.)

22 BY MR. DROSMAN:

23 Q. So, why don't we take a look at the first page. It  
24 indicates that the subject concerns both the bank and the

02:45:39 25 finance company; is that right?

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1 A. Yes.

2 If you look at the bottom, it says, "Household Bank,  
3 FSB," that's the Federal Thrift, and, then, "Household Finance  
4 Corporation."

02:45:47 5 This is a Special Compliance Exam and the federal  
6 regulators have the authority to go beyond the entity that  
7 they regulate, if it's affiliated with the regulate -- the  
8 entity that they regulate.

9 And the OTS decided to do that in this case because  
02:46:03 10 of concerns that they had.

11 Q. So, even though they wouldn't ordinarily regulate the  
12 finance company, they decided to do a special examination of  
13 Household Finance Company in this case?

14 A. That's right.

02:46:14 15 And we used to do that at the OCC if we were worried  
16 about an affiliate. We would go on and examine that  
17 affiliate.

18 Q. Go ahead, if you would, and turn to the page ending "063."

19 It looks like the heading on that page is, "Special  
02:46:31 20 Compliance Examination."

21 And, then, the date is June 3rd, 2002?

22 A. Yes.

23 Q. Does the first sentence of that document have any  
24 significance to your opinion?

02:46:41 25 A. "A Special Compliance Examination of Household Bank FSB

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1 commenced on June 3rd, 2002"? That sentence?

2 Q. Right.

3 Does this tell you when the actual examination took  
4 place?

02:46:54 5 A. Yes.

6 Q. When was that?

7 A. June 3rd, 2002.

8 Q. So, in the middle of 2002, they performed this  
9 examination?

02:47:01 10 A. Yes.

11 Q. And when did they issue their report, then?

12 Does the first page indicate January 16th, 2003?

13 A. Yes, January 16th, 2003.

14 Q. Okay.

02:47:20 15 If you could go down to the bottom of the page ending  
16 "063," where it talks about the "overall findings for the  
17 exam," and look at the first arrow there.

18 A. Yes.

19 And, first, the second sentence of the first  
02:47:33 20 paragraph at the top of the page says, "The focus of this  
21 Special Examination was a variety of predatory lending and  
22 insurance sales issues."

23 And, so, they're articulating what the scope of their  
24 Special Compliance Examination was.

02:47:49 25 Q. And what was the scope?

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1 A. The scope is: "The focus of this Special Examination was  
2 a variety of predatory lending and insurance sales issues."

3 Q. Okay.

4 If you take a look, then, at the bottom of that first  
02:48:02 5 page, under, "Overall Examination Summary and Findings."

6 A. Okay.

7 So, the first one is: "There is evidence of  
8 insurance packing. HFC" -- and "HB" is Household Bank. So,  
9 that's the Federal Thrift.

02:48:16 10 "HFC/HB sold insurance products, personal property,  
11 disability, life and involuntary unemployment to a very high  
12 percentage of borrowers for both real estate and non-real  
13 estate-secured lending. There -- " I think that's the wrong  
14 word. It should be "T-h-e-i-r."

02:48:36 15 But, anyway, "There most egregious issue is sales of  
16 personal property insurance for, essentially, unsecured  
17 non-real estate loans."

18 Q. Does that text that you just read have any significance to  
19 your opinions in this case?

02:48:47 20 A. Well, yes.

21 My conclusion is that Household engaged in insurance  
22 packing. And this is what the OTS is saying, also.

23 Q. Okay.

24 If you'd turn to the page ending "065."

02:49:02 25 It looks like the second arrow on that page indicates

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1 that, "Some of the most significant concerns"; is that right?

2 A. (No response.)

3 Q. The second arrow on Page --

4 A. Yes.

02:49:14 5 Q. -- 065?

6 A. And, then, they're articulated here.

7 Q. So, let's talk about some of the most significant concerns

8 that the federal regulator -- in this case, the Office of

9 Thrift Supervision -- found.

02:49:28 10 A. Okay -- excuse me.

11 So, the first box -- they have little boxes on this

12 side -- "Many cases of multiple -- " the first box there

13 (indicating) -- "Many cases of multiple and frequent

14 refinancing/debt consolidations in short time frames."

02:49:46 15 So, this would be loan flipping.

16 Q. What's the next box or bullet that they have indicated?

17 A. "Routine payment of high levels of loan fees associated

18 with frequent refinancings.

19 "In many instances, refinances offered marginal

02:50:02 20 benefit."

21 That would be to the borrower. This is another issue

22 about loan flipping and charging the high level of loan fees.

23 Q. This talks about -- the next one -- the next bullet on

24 that page -- what is that?

02:50:16 25 A. This is on insurance. It says, "Aggressive sales



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1 practices, with frequent sales of single payment credit life  
2 insurance."

3 And, remember, that was the one that got tacked onto  
4 your loan for 30 years, but it ran out after five years, in  
02:50:31 5 terms of the term of it. And you were still paying for the  
6 next 25.

7 It says, "Also, frequent sales of personal property  
8 insurance, involuntary unemployment insurance and disability  
9 insurance. Loans commonly rolled into new or additional loans  
02:50:44 10 with credit insurance routinely included. The credit life  
11 insurance was typically for a maximum of five years, with a  
12 single payment fee collected up front."

13 And, of course, tacked on the loan and amortized over  
14 the 30 years.

02:50:58 15 Q. And these are all OTS' significant concerns; is that  
16 right?

17 A. Yes.

18 Q. What's the next significant concern that the OTS had?

19 A. The next one is: "High Loan to Value Lending. Household  
02:51:07 20 offered loans well in excess of a hundred percent of the  
21 underlying collateral."

22 And that's, of course, equity stripping, where the  
23 value of your house is a hundred thousand and they would lend  
24 up to a hundred percent of the value of your house.

02:51:23 25 So, you would have no equity when you walked out of

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1 there.

2 Q. And is that a predatory lending practice?

3 A. Yes.

4 Q. Is that also known as equity stripping?

02:51:33 5 A. Equity stripping.

6 Q. What's the next significant concern that the OTS had?

7 A. The next one is: "Cases of significantly declining home  
8 equity due to increasing consumer debt."

9 And that's, basically, equity stripping, again.

02:51:47 10 Q. Tell us what that means.

11 A. It means that if you are consolidating your loans or if  
12 you go to Household and you refinance your loan and they add  
13 on points and fees and premiums to your loan, and you walk out  
14 of there with a hundred percent loan to value, you've,

02:52:05 15 essentially, stripped away any equity that you had in your  
16 house.

17 Q. Turn to the next page -- the page ending "066" -- and look  
18 at -- there's a "Significant Concern" in the box at the top of  
19 the page?

02:52:17 20 A. "Use of Household's EZ Pay Plus electronic payment product  
21 through Fort Knox National Bank as a means of misinforming  
22 applicants about the realities/benefits of increased biweekly  
23 payments."

24 This is the effective rate presentation.

02:52:38 25 Q. And that was a significant concern of the OTS?

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1 A. Yes.

2 Q. If you'd turn to the page ending "091," it looks like that  
3 page indicates, "Examination Summary and Findings"; and, then,  
4 there's some summary of the findings that were provided to

02:52:57 5 HFC, the finance company.

6 Can you look at the first arrow on Page 091 and tell  
7 me whether that's significant to your opinion?

8 A. It says, "There is evidence of insurance packing. This is  
9 based on loan file reviews, as well as analysis of data

02:53:14 10 relating to insurance sales. HFC sold insurance products,

11 personal property, disability, life and involuntary

12 unemployment at its HFC/Beneficial offices to a very high

13 percentage of eligible borrowers for both real estate and

14 non-real estate secured lending. There is a major concern

02:53:33 15 with the practice of selling personal property insurance on

16 what are, essentially, unsecured loans."

17 Q. Why is that significant to your opinion?

18 A. It just -- it supports my opinion that they engaged in  
19 insurance packing.

02:53:47 20 Q. If you turn to the page ending "093," on the third arrow

21 on that page, if you can tell me whether that's significant to  
22 your opinion?

23 A. Yes. This concerns the good-faith estimate issues that  
24 we've been talking about.

02:54:04 25 "A review of various loan files found that good-faith

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1 estimates often disclosed a very wide range of costs when  
2 estimating the potential charges to the borrower. The use of  
3 such wide ranges easily led to confusion for the applicants.  
4 The examiners believe that the regular use of wide ranges for  
02:54:21 5 loan cost estimates is an unfair and deceptive practice. A  
6 recent policy change at Household should correct this  
7 situation."

8 Q. Okay.

9 And why is that significant to your opinion?

02:54:32 10 A. Because this supports my opinions that Household used the  
11 wide range to mislead the borrowers and, then, charged them at  
12 the high end of the range or above the range.

13 Q. If you'd turn to the page ending "095," it looks like, in  
14 this case, the federal regulators are listing a number of  
02:54:59 15 different civil complaints and state investigations, and  
16 they're set forth in the arrows?

17 A. Yes.

18 Q. Do those -- are those relevant to your opinions?

19 A. Yes. And these are many of the same things that we've  
02:55:10 20 been talking about here.

21 Q. Let's look at the first arrow.

22 A. "Many cases of multiple and frequent refinancings, debt  
23 consolidations in short time frames."

24 That's loan flipping.

02:55:21 25 Q. And what are all these things?

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1 A. These are concerns that various civil complaints and state  
2 regulators -- they're summarizing what their concerns are.

3 Q. So, the OTS has looked at the various complaints in the  
4 state investigations and they're sort of summarizing what they  
02:55:39 5 found?

6 A. Yes.

7 Q. And what's the next thing they summarize?

8 A. "Routine payment of high levels of loan fees associated  
9 with frequent refinancings."

02:55:47 10 Q. What is that?

11 A. And that's where you pack on points and fees and insurance  
12 premiums every time you flip the loan.

13 So, it's what we've been talking about today: Equity  
14 stripping and loan flipping, insurance packing.

02:56:04 15 Q. So, the frequent refinancings, that's the loan flipping  
16 that you've been speaking --

17 A. Loan flipping, yes.

18 Q. What's the next arrow on the page?

19 A. "Borrowers paying a high price for frequent refinancings.

02:56:16 20 In many instances, refinances offered marginal or  
21 insignificant benefit."

22 And that's the loan flipping; and, every time you  
23 flip it, adding on -- or every time Household would flip the  
24 loan, they would add on -- insurance, points and high fees.

02:56:29 25 Q. And was that -- did that benefit the borrower -- these

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1 frequent refinancings?

2 A. No.

3 Q. What's the next arrow?

4 A. "Aggressive Sales Practices."

02:56:41 5 Q. And the next one?

6 A. "Loans commonly rolled into new or additional loans and  
7 credit insurance routinely included with the loan product."

8 So, this would be insurance packing every time the  
9 loan was flipped.

02:56:52 10 Q. And the next concern that the federal regulators found  
11 when they were looking at all the different state  
12 investigations, what's that?

13 A. This is: "Frequent sales of single payment credit life  
14 insurance. Also, frequent sales of personal property

02:57:07 15 insurance, unemployment insurance and disability insurance."

16 So, this is the egregious practice of selling that  
17 single payment credit life insurance, which many states have  
18 outlawed; and, then, insurance packing.

19 Q. And the next arrow?

02:57:21 20 A. "The credit life insurance was typically for a maximum of  
21 five years, with a single payment collected upfront."

22 That's what they said before of what they found; and,  
23 of course, that's the egregious part of this product.

24 Q. The next summarized concern from all the state

02:57:36 25 investigations, what is that?

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1 A. "High Loan to Value Lending. Household offered loans well  
2 in excess of a hundred percent of the underlying collateral."

3 Of course, we talked about that -- stripping away the  
4 equity. Even -- they even offered one that went above a  
02:57:51 5 hundred percent.

6 Q. And, then, the next summarized concern from all the state  
7 investigations?

8 A. "Cases of declining home equity because of increasing  
9 consumer debt."

02:58:05 10 That's equity stripping.

11 Q. What is that?

12 A. Pulling out the equity because of adding on high points in  
13 insurance premiums and other closing costs.

14 Q. And, then, if you look at -- we'll skip a few of them.

02:58:23 15 If you look at the bottom arrow -- I know there's  
16 many -- what is that bottom arrow:

17 A. This is that good-faith estimate issue: "Use of wide  
18 ranges on good-faith estimate disclosures."

19 This practice was determined to be an unfair and  
02:58:37 20 deceptive practice.

21 Q. And the "GFE" in that sentence refers to, what?

22 A. "Good-faith estimate."

23 Q. And the state investigations found that --

24 A. That's what they concluded, yes.

02:58:45 25 Q. If you could turn to the page ending "120."

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1 And it looks like there's a heading, No. 5:

2 "Examiner Review of Real Estate Secured Lending: High Loan  
3 Fees."

4 Can you tell me what the last paragraph on that page

02:59:07 5 -- "120" -- shows?

6 A. I'm sorry, I'm on the wrong place. Let me get it.

7 Q. "120."

8 A. Can you tell me what -- where -- you're directing me?

9 I --

02:59:22 10 Q. Sure. If you'd look at the page ending "120"?

11 A. Okay.

12 Q. And, then, there's a heading on that page: "Examiner  
13 Review of Real Estate Secured Lending"?

14 A. Oh, okay.

02:59:31 15 Q. "High Loan Fees."

16 A. Yes.

17 Q. Is the last paragraph on that page of any significance to  
18 your opinion?

19 A. The last paragraph says, "The distinguishable pattern from  
02:59:48 20 this sample is the high number of loans, 15 of 21 -- or 71.4  
21 percent -- with origination fees of 7 percent or more. Loan  
22 fees of 7 percent are considered extremely high and are  
23 indicative of a high fee structure."

24 Q. Can you tell us what because that means?

03:00:05 25 A. Yes.



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1           Now, we talked about Household charging discount  
2 points, and that would normally be a negotiation between the  
3 borrower and the lender, and the borrower may decide to pay  
4 one discount point to lower the discount rate, say, 25 basis  
03:00:24 5 points.

6           Household would charge -- the majority of their loans  
7 were charged at the high end of what state law would allow.  
8 Usually, either 5 percent or 7 to 7-and-a-half percent. And  
9 what the regulators are saying here -- the OTS is saying  
03:00:39 10 here -- is that they consider loan fees of 7 percent to be  
11 extremely high and indicative of a high fee structure.

12           So, just to put it in perspective.

13 Q. So, if you had loan fees of 7 percent on a \$100,000 loan,  
14 what would your fee be?

03:00:56 15 A. \$7,000.

16           So, a discount point is one percent of the loan  
17 balance.

18 Q. And the regulators considered that to be, in their words,  
19 extremely high?

03:01:06 20 A. Extremely high.

21 Q. If you turn to the next page, the page ending "121," take  
22 a look at the top -- the heading at the top.

23           No. 6 is: "Deceptive Acts." Do you see that?

24 A. Yes.

03:01:20 25 Q. And, then, if you look down into that paragraph under

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1 "Deceptive Acts," the second paragraph -- the second sentence  
2 of that paragraph -- is that of any significance to your  
3 opinion?

4 A. The second sentence says, "However, examiners believe that  
03:01:38 5 HFC has engaged in unfair and deceptive acts, as described in  
6 Section 3, relating to insurance sales."

7 Q. What about the next sentence?

8 A. "Also, although not a technical RESPA violation, the  
9 examiners believe that the wide ranges for good-faith  
03:01:54 10 estimates was also a deceptive act."

11 Q. Is this significant -- this information significant -- to  
12 your opinions in this case?

13 A. Yes.

14 Q. How?

03:02:01 15 A. It supports my opinions that not only were they engaged in  
16 insurance packing; but, also, that they -- the range, the wide  
17 range that they -- gave borrowers, and, then, charged either  
18 at the high end of the range or in excess of the range --  
19 which would be a violation of RESPA -- supports my opinions.

03:02:22 20 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
21 1333 for identification.

22 (Document tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Plaintiffs' Exhibit 1333?

03:02:57 25 A. I do.

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1 Q. What is it?

2 A. This is a letter from the Washington Department of  
3 Financial Institutions to Household dated May 17th, 2002.

4 Q. Why do you recognize it?

03:03:07 5 A. This is one of the documents that I looked at in  
6 formulating my opinions.

7 MR. DROSMAN: Plaintiffs move Exhibit 1333 into  
8 evidence.

9 THE COURT: It will be admitted.

10 (Plaintiffs' Exhibit No. 1333 received in evidence.)

11 BY MR. DROSMAN:

12 Q. Let's take a look at this document.

13 To whom was the letter addressed?

14 A. To Tom Schneider.

03:03:27 15 Q. And what's the subject of the letter?

16 A. "Expanded Report of Examination."

17 Q. And who is Mr. Schneider?

18 A. He is in charge of Policy and Compliance for Household.

19 Q. What is Policy and Compliance?

03:03:38 20 A. My understanding was that he -- his area coordinated  
21 Household's activities with the regulators.

22 And, then, it also at one point he would look at some  
23 of the complaints from the Better Business Bureau and the AG's  
24 office and things like that.

03:03:55 25 Q. And, then, if you look at the second paragraph of the

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1 letter, is that significant to your opinion?

2 A. Yes.

3 Q. Tell me why.

4 A. It says, "This report identifies significant patterns and  
03:04:11 5 practices that the Department finds unacceptable. The report  
6 also carries serious allegations of wrongdoing with Washington  
7 consumers.

8 "Contrary to Household's prior explanations, the  
9 Department has found that the patterns, practices and alleged  
03:04:25 10 harmful acts are not isolated to an individual office in  
11 Washington.

12 "Further, the patterns and practices discussed in the  
13 report appear to occur from Household offices across the  
14 country."

03:04:38 15 Q. This paragraph that you just read, is this relevant to  
16 your conclusion that this wasn't one or two bad apples at  
17 Household?

18 A. Yes. It supports my opinion that Household engaged in  
19 predatory lending practices company-wide, nation-wide, and it  
03:04:55 20 was a systemic practice -- a systemic issue.

21 Q. Now, the subject here is: "Expanded Report of  
22 Investigation" -- or "Examination," I apologize.

23 And the letter indicates that there's an enclosure.

24 Did you review the expanded Report of Examination  
03:05:11 25 from the Department of Financial Institutions at Washington?

1 A. Yes.

2 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
3 290 for identification.

4 (Document tendered.)

03:05:32 5 THE COURT: I think that probably at this point,  
6 before we get into the new exhibit, it might be a good time to  
7 take our afternoon break. We're five minutes past 3:00  
8 o'clock. So, we'll do that at this time.

9 We will take a 20-minute break, ladies and gentlemen,  
03:05:43 10 and resume at 25 after.

11 (Jury out.)

12 THE COURT: Before we break, I think it's a good time  
13 to ask if the attorneys have any suggestions with respect to  
14 the outstanding timing issues with the jurors, and the one  
03:06:37 15 question regarding training logs, et cetera.

16 MR. DOWD: I think, your Honor, it sounded like the  
17 Court was inclined to break a little early today, anyway. But  
18 if we're going to break earlier for the jurors, then I think  
19 it would make sense to start earlier.

03:06:57 20 And I think one time, when you were speaking to the  
21 jury this morning, you said, "We're going to start at 10:30."  
22 I think you just misspoke.

23 THE COURT: I misspoke. It should have been "10:00  
24 o'clock," if I said that.

03:07:06 25 MR. DOWD: I understood that. I just think we should

1 remind them, especially after this morning.

2 THE COURT: Yes, I think I better.

3 (Laughter.)

4 MR. KAVALER: Your Honor, I agree with Mr. Dowd on  
03:07:17 5 both those points.

6 THE COURT: Well, I guess my inclination, frankly, is  
7 not to quit any earlier. I really -- I don't know how we'd do  
8 it.

9 We already have one juror -- who is on, I guess,  
03:07:39 10 probationary status for the week -- complaining about having  
11 to get here as early as she has to get here, because of her  
12 duties with her son, and so on.

13 If we start asking them to come earlier at this  
14 point, we may get a whole new series of objections that we  
03:07:56 15 haven't even thought about.

16 I'm inclined to tell them that these are the hours  
17 and that's the way it's going to have to stay, unless they all  
18 agree that they're willing to stay here for six to eight weeks  
19 instead of four to six weeks, which I don't think is realistic  
03:08:16 20 for anyone.

21 And I think with all due respect to your suggestions,  
22 that's what I'm going to do. I think that's what we have to  
23 do at this point.

24 It may be actually necessary at some point in time to  
03:08:27 25 start earlier, but to keep the same closing time. That would

1 have been my preference down the road; but, at this point in  
2 time, I don't think it's -- I'd hate to open up that can of  
3 worms.

4 It leaves us with the intriguing query about the logs  
03:08:49 5 and names of employees participating in training sessions.

6 Do you want me to read it, again, to you?

7 MR. DOWD: I have it in mind. I'm sure Mr. --

8 MR. KAVALER: As do I, your Honor.

9 THE COURT: Okay.

03:09:03 10 Suggestions?

11 MR. DOWD: Well, your Honor, I think ultimately -- if  
12 I remember correctly from the jury instructions -- the Court's  
13 probably going to instruct the jurors on, you know, both what  
14 is evidence, what is not evidence, absence of evidence,  
03:09:15 15 parties producing evidence.

16 You know, I don't think that the jurors get to see  
17 that type of evidence that they're asking for, based on my  
18 review of the exhibits in the case, on both our exhibit list  
19 and defendants' exhibit list.

03:09:30 20 THE COURT: All true, but what should I tell the  
21 jury? What's your suggestion?

22 MR. DOWD: I think I would just tell the jurors that  
23 they should decide the case on the evidence that's presented,  
24 and the Court will instruct them later on evidence that they  
03:09:42 25 may not see.

1 THE COURT: Am I going to tell them something on  
2 evidence they may not see?

3 MR. DOWD: I think there is an instruction on absence  
4 of evidence or, you know, parties putting forth evidence.

03:09:54 5 Maybe I'm wrong. I don't have any instructions with  
6 me, unfortunately, your Honor.

7 THE COURT: No, I think actually, you're correct.  
8 There is an instruction that no party is required to produce  
9 all of the documents or all of the exhibits or witnesses,  
03:10:08 10 which sort of touches on that.

11 Okay.

12 MR. KAVALER: Let me address it in two parts, your  
13 Honor. Let me start by telling you what I believe the  
14 evidence will show, whether or not there are documents.

03:10:20 15 First, with regard to the Hueman videotape, as I  
16 told them in the opening, no one was ever trained using that  
17 tape because the tape never made it to the field.

18 Mr. Detelich found out about it promptly after  
19 Mr. Hueman made it. The evidence will be that it was  
03:10:35 20 unauthorized. The evidence will be that Mr. Detelich was  
21 outraged. The evidence will be that Mr. Detelich caused all  
22 copies to be retrieved and destroyed.

23 And there's no person -- notwithstanding the bootless  
24 testimony of this witness, who was trained on that tape --  
03:10:50 25 that's the issue I was talking about this morning, your Honor:



1 The jury will find that out later, from Mr. Detelich, or  
2 perhaps in the cross-examination of this witness.

3 Secondly, as to authorized training, there might be  
4 testimony as to what the practices and policies were with  
03:11:05 5 regard to authorized training -- whether people were required  
6 to sign anything in connection with the receipt of their  
7 training; whether those lists were -- those signed documents  
8 were -- maintained, where they're maintained, et cetera.

9 So, the evidence will be what the evidence of will  
03:11:20 10 be.

11 Now, those are the facts I'm simply --

12 THE COURT: It's usually the case.

13 MR. DOWD: Can I say something, your Honor? That had  
14 nothing to do with the question.

03:11:27 15 But as Mr. Hueman said on the videotape, they've been  
16 trained that way for years.

17 THE COURT: You know, if you want me to be the jury,  
18 I will an happy to hear this argument, all the evidence and  
19 decide the case.

03:11:36 20 Otherwise, let's get to the bottom line. What I want  
21 to know is what you want me to tell the jury, not what you  
22 think the evidence is going to show and why your client's  
23 going to win.

24 MR. KAVALER: Well, your Honor, I think you should  
03:11:45 25 tell the jury that you received their question and the lawyers

1 have told you that there will be further evidence in the case  
2 bearing on that issue and they should wait for it.

3 THE COURT: You think I should interject my opinion  
4 that there will be further evidence?

03:12:00 5 MR. KAVALER: You can say you've been told there will  
6 be.

7 THE COURT: I'm sorry?

8 MR. KAVALER: You can say you've been told by the  
9 lawyers or one lawyer -- however you want to put it.

03:12:07 10 I mean, the problem, your Honor, is twofold, I think.  
11 You don't want to encourage a plethora of such questions.

12 On the other hand, you don't want to discourage the  
13 person who submitted this one.

14 THE COURT: Well, I don't think I'm going to tell the  
03:12:24 15 jurors what the lawyers believe the evidence will be. You've  
16 already done that. I think it's called opening statements.

17 I am going to tell this juror that he should decide  
18 the evidence -- the case -- based on the evidence that he  
19 hears; and, that I cannot answer for him questions about  
03:12:43 20 evidence that is or is not presented during the course of the  
21 trial -- that that's a consideration he should take into the  
22 jury room with him when he deliberates.

23 Any objection to that?

24 MR. DOWD: None, your Honor.

03:12:57 25 MR. KAVALER: It sounds fine.

1 THE COURT: Okay. That's what we'll do.

2 See you folks in about 15 minutes.

3 MR. KAVALER: Thank you, your Honor.

4 MR. DOWD: Thank you, your Honor.

03:13:04 5 (Brief recess.)

6 THE COURT: Please bring the jury out.

7 (Jury in.)

8 THE COURT: Before we commence, ladies and gentlemen,  
9 there is one question that I received from you earlier that I  
03:36:19 10 would like to answer. I'll read the question so that you all  
11 know what it is.

12 It states: Were training logs listing names, dates  
13 of employees participating in these training sessions taken  
14 and kept? Same question would apply to any other training  
03:36:40 15 sessions and classes conducted and used as evidence in this  
16 case.

17 The answer to that question is this, ladies and  
18 gentlemen: I cannot answer for you questions about what the  
19 evidence is, what evidence has been presented or what evidence  
03:36:58 20 has not been presented. The lawyers will take care of  
21 presenting the evidence. And it is for you to decide the case  
22 after all the evidence has been heard based on the evidence  
23 that's been presented to you and your deliberations with your  
24 fellow jurors. The evidence that you will consider will be  
03:37:17 25 the evidence that is actually presented by the lawyers. And

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1 based upon that, you must make your determination.

2 Proceed.

3 MR. DROSMAN: Thank you, your Honor.

4 BY MR. DROSMAN:

03:37:27 5 Q. When we broke, I had provided you with Plaintiffs' Exhibit  
6 290 for identification.

7 Do you recognize Plaintiffs' Exhibit 290?

8 A. I do.

9 Q. And what is this?

03:37:37 10 A. This is the Washington Department of Financial  
11 Institutions expanded report of examination, dated as of April  
12 30, 2002.

13 Q. We saw a cover letter a moment ago, Plaintiffs' Exhibit  
14 1333. Is this the report of -- expanded report of examination  
03:38:00 15 that the cover letter, 1333, referred to?

16 A. Yes.

17 Q. And why do you recognize Plaintiffs' Exhibit 290?

18 A. This was a document that I considered in formulating my  
19 opinion.

03:38:14 20 MR. DROSMAN: Plaintiffs offer Exhibit 290 into  
21 evidence.

22 MR. KAVALER: This is another one of those limited  
23 documents, your Honor.

24 MR. DROSMAN: Actually it isn't, your Honor. There's  
03:38:22 25 no objection to this document, your Honor.

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1 MR. KAVALER: I believe it's covered by limiting  
2 instruction No. 2, your Honor.

3 THE COURT: Let's take a look.

4 MR. DROSMAN: Withdrawn, your Honor. There's another  
03:38:43 5 exhibit that's identical to this to which there was no  
6 objection. So that's my mistake. This one, however, has a  
7 limiting instruction.

8 THE COURT: Very well. The jury has been instructed  
9 on the limited use of evidence as to certain documents. The  
03:38:55 10 document will be admitted with that instruction.

11 BY MR. DROSMAN:

12 Q. Now, let's look at the first page of Exhibit 290.

13 What is an expanded report of investigation?

14 A. Well, in this case, instead of just doing a regular  
03:39:14 15 examination, they expanded it to take into consideration  
16 certain things that they were interested in looking at.

17 Q. And what was the date that they conducted this  
18 examination?

19 A. It says it's dated April 30, 2002.

03:39:29 20 Q. And if you turn to -- we'll take a look inside the  
21 expanded report of examination. If you take a look at the  
22 page ending 668, the first paragraph on that page.

23 Is that significant to your opinions in this case?

24 A. Yes. Is it the first -- my copy doesn't show -- the first  
03:40:01 25 full paragraph starts with, While the misrepresentation.

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1 Q. Yes, the first partial paragraph.

2 A. Okay.

3 Q. Is that significant to your opinion in this case?

4 A. Yes.

03:40:16 5 Q. Can you tell us why?

6 A. Well, it says -- let's see if we can --

7 Q. The sentence there begins, After reviewing the complaints.

8 A. Yeah, I was just looking at the previous sentence here.

9 After reviewing the complaints, HFC's responses to  
03:40:39 10 the complaints and documents relative to the complaints, the  
11 Department believes that HFC representatives have employed  
12 sales tactics intended to mislead, misdirect or confuse the  
13 borrower. As discussed below, this belief is supported by the  
14 Department's own test originations of loans at three different  
03:40:56 15 HFC branches in Washington.

16 Q. What about the first sentence that you read, why is that  
17 supportive of your opinion in this case?

18 A. After reviewing the complaints, because the -- my opinions  
19 go to misleading, misdirecting or confusing the borrower; and  
03:41:17 20 so this would support my opinions.

21 Q. And did the Washington Department of Financial  
22 Institutions come to that same conclusion?

23 A. Yes.

24 Q. What about the second sentence that you read?

03:41:27 25 A. Well, the second sentence is very unusual. The Department

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1 in Washington State actually went out and did mystery  
2 shopping, if you know what that is, where you go into the  
3 store to see if -- you know, how the sales staff treats you  
4 and report back to the company. They were getting so many  
03:41:47 5 complaints, they decided to go out and do some mystery  
6 shopping themselves. But when you do this as an examiner, you  
7 actually apply for a loan. And it actually makes your credit  
8 rating go down. So this is a very extreme step to take as a  
9 regulator. We did it at the OCC a handful of times in the 18  
03:42:05 10 years I was there.

11 And so this is what they did. That's what this  
12 sentence means, As discussed below, this belief is supported  
13 by the Department's own test originations of loans at three  
14 different HFC branches in Washington.

03:42:19 15 So they went a really extra step in actually applying  
16 for loans at three different branches to see what their sales  
17 techniques were going to be.

18 Q. And what did they conclude when they went and engaged in  
19 this mystery shopping?

03:42:32 20 A. Well, in some respects, the disclosures that were supposed  
21 to be given to them were not given to them. Or in another  
22 respect, somebody put their arm over the disclosures. But  
23 they found many of the same practices that we've discussed  
24 here in the last couple of days.

03:42:49 25 Q. Did they conclude when they engaged in this mystery

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1 shopping that the Household/HFC sales representatives engaged  
2 in sales tactics intended to mislead, misdirect or confuse the  
3 borrower?

4 A. Yes.

03:43:03 5 Q. If you take a look down at the heading number two,  
6 confusion over rates, points and fees.

7 A. Yes.

8 Q. Does that have any bearing on your opinion in this case?

9 A. It does. And it says, Consumers complain that they were  
03:43:18 10 somehow confused or misled about the rates, points or fees  
11 offered by HFC. Some consumers apparently believed that their  
12 rate would either be lower than what it was or that somehow  
13 the effective rate would be lower due to the payment  
14 structure. Other consumers were alarmed at the amount of fees  
03:43:35 15 they were required to pay in the transaction, indicating that  
16 they must have somehow been confused about the fees they would  
17 pay.

18 Q. So why is that supportive of your opinion?

19 A. Well, because this whole effective rate scheme was  
03:43:52 20 developed to make -- so that Household could compare their  
21 otherwise high interest rate loan with a competitor's lower  
22 interest rate loan. And we've seen examples of effective rate  
23 presentations being made around the country. So it further  
24 supports my opinions that Household engaged in systemic  
03:44:13 25 predatory practices.



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1 Q. Did it bear on your opinion that the predatory practice  
2 specifically in this case, the use of effective rate or  
3 equivalent rate, was widespread?

4 A. Yes.

03:44:25 5 Q. And how does it support -- in what way does it support  
6 your opinion?

7 A. Well, they went -- they actually went and did tests  
8 themselves to see if what the complaints that they were  
9 receiving about this effective rate presentation were true.

03:44:40 10 And they've concluded that, in fact, that the way that  
11 Household was structuring their rates were intended to  
12 mislead, misdirect and confuse the borrower or deceptive sales  
13 practices, which is part of the definition of predatory -- or  
14 covers -- the predatory lending term covers deceptive sales  
03:45:04 15 practices.

16 Q. If you look at the next paragraph, third sentence in, it  
17 begins, A subpattern of this pattern of confusion.

18 A. Yes.

19 Q. Does that have any bearing on your conclusions in this  
03:45:16 20 case?

21 A. It does. It says, A subpattern of this pattern of  
22 confusion has been identified by the Department in HFC's  
23 misuse of the good faith estimate and what appears to be  
24 intentional confusion about discount points charged on certain  
03:45:30 25 loans. This subpattern of confusion has been identified by

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1 the Department in over half of the recent complaints and is  
2 discussed in greater depth below.

3 Q. How does that bear on your opinion in this case?

4 A. Well, my opinion is that they used the good faith estimate  
03:45:45 5 to confuse the borrower by showing a wide range of closing  
6 costs when, in fact, they were going to be charged at the  
7 higher rate or possibly greater than the range. And this  
8 supports my opinion.

9 Q. If you could turn to page ending 670. And I guess the  
03:46:03 10 first -- the second full paragraph on that page. It begins,  
11 The Department has also identified three additional concerns.

12 Does that have any significance to your opinions in  
13 this case?

14 A. Yes.

03:46:18 15 Q. Why?

16 A. This says that, The Department has identified three  
17 additional concerns resulting from borrower confusion over the  
18 biweekly and bimonthly program. One, borrowers have been told  
19 that by accepting the biweekly payment program, they can  
03:46:32 20 effectively reduce the interest rate on their loan from  
21 approximately 14 percent down to 7 percent. The Department  
22 has encountered reference to this 14 to 7 percent statement a  
23 number of times and addressed the problem directly with HFC  
24 management in mid 2001. HFC informed the Department that the  
03:46:50 25 practice was isolated to a single branch in Washington and

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1 that the matter was not a corporate practice. However, the  
2 Department has identified the practice to other branches in  
3 Washington and has received reports from other regulators in  
4 other states concerning the practice. Contrary to HFC's  
03:47:06 5 claims, the Department does not believe the practice is  
6 isolated.

7 Q. How is that relevant or significant to your opinions in  
8 this case?

9 A. They're concluding that this effective rate presentation  
03:47:18 10 is cropping up in other than just the Bellingham, Washington,  
11 office, which is what HF- -- Household would always say that's  
12 the rogue office, Bellingham, Washington; and that they're  
13 hearing from regulators around the country that this is  
14 cropping up there too. And that supports my opinion that  
03:47:35 15 Household engaged in systemic and companywide predatory  
16 lending practices.

17 Q. If you turn to the page ending 671. It's a continuation  
18 of identify patterns that the Department of Financial  
19 Institutions in Washington has observed. If you look at  
03:47:55 20 number five on that page. It's the second paragraph there.  
21 It's entitled prepayment penalty.

22 A. Yes.

23 Q. The first sentence of that paragraph, does that support  
24 your opinion in this case?

03:48:06 25 A. Yes. It says, Consumers complained that they were unaware

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1 of a prepayment penalty or that they were told they did not  
2 have a prepayment penalty. However, their loans did contain a  
3 prepayment penalty.

4 Q. And if you take a look at the next page, page ending 672.

03:48:26 5 The heading number six indicates an insurance packing. Do you  
6 see that?

7 A. Yes.

8 Q. Did the Washington DFI or Department of Financial  
9 Institutions also find indications of insurance packing?

03:48:40 10 A. Yes.

11 Q. And if you take a look down at seven, upselling loans.

12 A. Yes.

13 Q. The first sentence under seven, upselling loans, does that  
14 support your opinion in this case?

03:48:53 15 A. It does. And this is basically the loan splitting. The  
16 Department found that HFC attempts to provide both a first and  
17 a second mortgage to borrowers regardless of the borrower's  
18 desire or need for two loans.

19 And that's the loan splitting that we talked about.

03:49:10 20 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
21 445 for identification.

22 (Tendered.)

23 BY MR. DROSMAN:

24 Q. Do you recognize Plaintiffs' Exhibit 445?

03:49:38 25 A. I do.

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1 Q. What is it?

2 A. This is a memo. It's been -- it's an attachment to an  
3 e-mail from Stephen Hicks to a variety of people at Household.  
4 And the subject is Meeting with Michigan regulators. And it's  
03:49:58 5 dated June 18, 2002.

6 Q. Why do you recognize this document?

7 A. This was a document that I looked at in formulating my  
8 opinions.

9 MR. DROSMAN: Plaintiffs offer Exhibit 455 in  
03:50:14 10 evidence.

11 THE COURT: It will be admitted.

12 BY MR. DROSMAN:

13 Q. And, specifically, this particular document, this was sent  
14 by Stephen Hicks, it indicates?

03:50:24 15 A. Yes.

16 Q. And if you look at the page ending 592, it appears to be a  
17 memo that Mr. Hicks sent?

18 A. Yes.

19 Q. Who is Mr. Hicks?

03:50:34 20 A. He was an official at Household.

21 Q. And was he in the policy and compliance department?

22 A. I believe so.

23 Q. And that's the department that interfaces with the  
24 regulators?

03:50:44 25 A. Yes, Mr. Schneider's department.

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1 Q. And the subject indicates Meeting with Michigan  
2 regulators?

3 A. Yes.

4 Q. On what date was the meeting with the Michigan regulators?

03:50:53 5 A. June 7, 2002, it says.

6 Q. And if you look at the second to last sentence of the  
7 first paragraph, were there two significant issues for the  
8 Michigan regulators?

9 A. Yes. They talked about the good faith estimate and proper  
03:51:10 10 disclosure, and they talked about prepayment penalties.

11 Q. The first significant issue for the Michigan regulators  
12 reads GFE and proper disclosure there?

13 A. Yes.

14 Q. Can you tell us whether that's significant to your  
03:51:25 15 opinion?

16 A. It's similar findings to what I saw in other states. And  
17 it says, The examiners -- and this is Michigan regulators now.  
18 The examiners reviewed approximately 60 loan files and  
19 identified six where the GFE was missing, fees were not  
03:51:41 20 disclosed or the difference in fees disclosed versus the  
21 HUD-1 -- which is the good faith estimate -- or which is  
22 the -- the HUD-1 is your closing document -- was significant.  
23 So let me read that again.

24 The examiners reviewed 60 loan files and identified  
03:51:56 25 six where the GFE -- which is the good faith estimate given

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1 three days after the completed application -- was missing,  
2 fees were not disclosed or the difference in the fees  
3 disclosed versus the HUD-1 -- which is the closing document --  
4 was significant.

03:52:11 5 Q. What does the next sentence say?

6 A. With a 10 percent error rate, they indicated that they  
7 would require corrective action.

8 Q. And why is this significant to your opinion?

9 A. Because this is the type of activity that I saw in other  
03:52:26 10 states to draw the conclusion that Household engaged in  
11 systemic and companywide predatory lending practices.

12 Q. And in this case, specifically, with failure to disclose  
13 and the good faith estimate?

14 A. Yes.

03:52:40 15 Q. Can you look at the last full paragraph on that page. It  
16 begins, This repeat examination issue.

17 A. This repeat examination issue was also noted in their  
18 March 2000 examination. The examiners expressed concern over  
19 our lack of action in getting this issue resolved.

03:52:57 20 Q. Is that significant to your opinion in this case?

21 A. Yes. Examiners expect -- and regulators expect if they  
22 find something, that it's going to be corrected at the next  
23 examination. And here, this is a repeat examination, which  
24 can lead to an enforcement action, anywhere from a cease and

03:53:16 25 desist order, requiring refunds, civil money penalties or even

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1 change in management.

2 Q. So a year earlier, they found the same things, is that  
3 essentially what these people are saying?

4 A. Yes.

03:53:31 5 Q. If you could turn to the next page, page ending 593. One  
6 of the concerns that the Michigan regulators expressed -- it's  
7 the third one on the page -- is credit insurance  
8 cancellations?

9 A. Yes. It says, The examiners indicated that they are  
03:53:44 10 alarmed with significant numbers of cancellations of mortgage  
11 insurance. They indicated that the cancellation rate  
12 suggested our sales practices may be inappropriate. They  
13 indicated that the rate was much higher than any of their  
14 other regulated lenders. They estimated that our cancellation  
03:53:59 15 rate was 50 percent within the first three months of the loan.  
16 They asked us to look into it.

17 Q. How is that significant?

18 A. If you remember, the free look that the Household sales  
19 staff was trained to do -- so, in other words, if -- assume  
03:54:16 20 that the customer wants the insurance, the insurance would be  
21 put on the loan documents. When the borrower would look at it  
22 and say, well, what is that? Is that credit insurance? I  
23 don't want that; they were trained to say, don't worry, you  
24 can keep it for 30 days and then cancel it.

03:54:34 25 So what as a regulator you're trained to do is you



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1 look at the penetration ratios to see if insurance is  
2 required; and, that is, how many loans that were booked in a  
3 given time frame had insurance. Or you look to see if there's  
4 an excessive number of cancellations. And that's what they  
03:54:52 5 did in Michigan. They noticed that there's an excessive  
6 number of cancellations, and that could be indicative that  
7 there's insurance packing going on and these people are  
8 canceling it.

9 Q. And then the next item there, prepayment penalties?

03:55:06 10 A. Prepayment penalties. It says here, The examiners  
11 indicated that based on a review of our complaints, we need to  
12 better disclose to our customers the terms of the loan. They  
13 indicated that there seems to be a lot of confusion among our  
14 customers regarding terms. They indicate that several  
03:55:21 15 complaints mention that our branch personnel make many  
16 inappropriate comments when questioned about prepayment  
17 penalties. For example, it was noted that our branch  
18 personnel say, Don't worry about the penalty.

19 And I've seen that in other places where they say

03:55:36 20 don't worry, it will be waived. And we saw that in one of the  
21 complaints from Ms. Adams, that she was told it would be  
22 waived for a job relocation.

23 Q. And Ms. Adams was from Pennsylvania, right?

24 A. I believe so.

03:55:49 25 Q. And this is the Michigan regulators?

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1 A. This is Michigan.

2 Q. Identifying the same practice --

3 A. Yes.

4 Q. -- that Ms. Adams complained about?

03:55:55 5 A. That's right.

6 Q. I'll show you what has been marked as Plaintiffs' Exhibit

7 19 for identification.

8 (Tendered.)

9 BY MR. DROSMAN:

03:56:24 10 Q. Do you recognize Plaintiffs' Exhibit 19?

11 A. Yes.

12 Q. And what is it?

13 A. This is an FDIC/OTS concurrent examination report.

14 Q. What's the date of it?

03:56:35 15 A. August 27, 2001.

16 Q. Why do you recognize it?

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

19 MR. DROSMAN: Your Honor, plaintiffs offer Exhibit 19  
03:56:47 20 into evidence.

21 THE COURT: It will be admitted.

22 BY MR. DROSMAN:

23 Q. Let's take a look at the first page.

24 What does the FDIC stand for?

03:56:56 25 A. The FDIC is the Federal Deposit Insurance Corporation.

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1 And they are the federal agency that insures the deposits of  
2 depository institutions in the United States.

3 Q. And then if you look below -- apparently that's their  
4 seal?

03:57:16 5 A. Yes.

6 Q. If you look below the seal, it says FDIC review concurrent  
7 with OTS exam?

8 A. That's right.

9 Q. What does that mean?

03:57:22 10 A. That means that the FDIC has backup regulatory authority  
11 for any entity that they are insuring the deposits. In this  
12 case Household's bank, FSB stands for Federal Savings Bank.  
13 And so the FDIC went in concurrently with the OTS to do a  
14 joint examination.

03:57:42 15 Q. And concurrently means at the same time?

16 A. At the same time.

17 Q. If you turn to page ending 689. There looks like there  
18 have been some portions of this document which have been  
19 redacted or deleted. But if you look at the bottom portion of

03:58:00 20 the document, the first two sentences there, is that  
21 significant to your opinion?

22 A. Yes. It says, The thrift appears to be involved in -- to  
23 some extent in predatory lending. Further, a consumer  
24 advocacy group has named Household organization the 2001

03:58:19 25 predatory shark lender of the year.

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1 Q. And then if you go ahead and turn to page ending 699. And  
2 there's a small section of text on that page. I think the  
3 rest has been deleted or redacted.

4 Can you tell me whether that's significant to your  
03:58:38 5 opinion?

6 A. The OTS and the FDIC examiners believe that insurance  
7 sales practices are predatory. Community affairs specialist  
8 Glenn Brewer is currently reviewing practices and will be  
9 preparing a memo. The penetration rate of insurance sales of  
03:58:54 10 property, credit, life, unemployment and disability insurance  
11 are all considered high, as illustrated in the table below.

12 Q. And unfortunately we don't have that table. But what does  
13 the OTS refer to in that sentence?

14 A. That's the Office of Thrift Supervision. That's the  
03:59:10 15 primary federal regulator of the Federal Savings Bank.

16 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
17 550 for identification.

18 (Tendered.)

19 BY MR. DROSMAN:

03:59:43 20 Q. Do you recognize Exhibit 550?

21 A. I do.

22 Q. What is it?

23 A. It is a document attached to an e-mail. The e-mail is  
24 dated August 15, 2002. It's from David Huey, which is -- he's  
04:00:08 25 at the Washington State AG's office, to Kathleen Curtin and

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1 others. And it's -- the subject is multistate working group  
2 reply to HFC.

3 Q. Why do you recognize this document?

4 A. This is one of the documents I reviewed in formulating my  
04:00:26 5 opinions.

6 MR. DROSMAN: Plaintiffs offer Exhibit 550 into  
7 evidence.

8 THE COURT: It will be admitted.

9 BY MR. DROSMAN:

04:00:34 10 Q. Let's take a look at the first page. You said that it was  
11 from David Huey from the Washington State AG. What does AG  
12 stand for?

13 A. Attorney general.

14 Q. And it looks like on the right there to Mr. Huey's name,  
04:00:47 15 there's a cc to a number of other people. Do you see that?

16 A. Yes.

17 Q. Who are those other people?

18 A. I think those are all of the other members of the  
19 multistate working group, it looks like to me.

04:01:03 20 Q. Are those others attorneys general?

21 A. Yes.

22 Q. And you mentioned a multistate working group. Can you  
23 tell us what that is?

24 A. Well, in the case -- in this case, the attorneys general  
04:01:18 25 from various states got together because they were all

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1 receiving this -- similar complaints regarding Household. And  
2 they got together to discuss what they needed to do. And so  
3 this is part of that discussion with Household on the  
4 complaints and the regulatory issues that they were seeing in  
04:01:38 5 various states.

6 Q. So the right-hand column there lists the names and e-mail  
7 addresses of different attorneys generals from states all  
8 across the United States?

9 A. Yes.

04:01:50 10 Q. Iowa is there; is that right?

11 A. Iowa, New York, Michigan, Ohio, New Mexico, California,  
12 Florida, Minnesota, Michigan.

13 Q. And then if you take a look, it appears that the e-mail  
14 attaches a memo, is that correct, on page ending 756?

04:02:24 15 A. Yes.

16 Q. And this memo was addressed to Kathleen Curtin; is that  
17 right?

18 A. Yes.

19 Q. Who is Kathleen Curtin?

04:02:32 20 A. She was the lawyer for -- general counsel for the consumer  
21 finance section of Household. It says HFC/Beneficial.

22 Q. So she's the vice president and general counsel of HFC?

23 A. Yes.

24 Q. And what was the date of the memo?

04:02:52 25 A. The date is -- August 15 is the e-mail. And the memo is

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1 August 14 --

2 Q. And --

3 A. -- 2002.

4 Q. And who is writing this particular memo?

04:03:06 5 A. And the memo is being written by David Huey on behalf of  
6 the multistate working group.

7 Q. And David Huey was the assistant attorney general from the  
8 State of Washington?

9 A. Right, from Washington State.

04:03:20 10 Q. And he was sort of the representative of all the different  
11 attorneys generals across the United States?

12 A. Right.

13 Q. And if you take a look at the second -- third paragraph on  
14 that page, it's the third sentence in, can you tell us whether  
04:03:38 15 that has any significance to your opinions in this case?

16 A. It says, Household's hope that the states would reconsider  
17 their position that some of Household's practices are  
18 problematic is understandable. However, we believe that your  
19 company may have underestimated our understanding of how its  
04:03:55 20 practices are actually implemented where it counts, at the  
21 interface with your customers.

22 The explanations and rationales Household articulated  
23 on July 9 and in the July 17 letter have not given us any  
24 reason to reconsider our position that the practices we

04:04:11 25 earlier identified present serious problems under a variety of

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1 consumer protection and regulatory laws.

2 Further, the responses provided no information which

3 has led us to change our position that those identified

4 practices warrant changes in the future and relief for

04:04:27 5 Household's customers who suffered from them in the past.

6 Q. Is that significant to your opinion in this case?

7 A. Yes.

8 Q. Why?

9 A. Because my opinions are that Household engaged in systemic

04:04:41 10 and companywide predatory lending. And that's what they were

11 saying, it's more pervasive than Household wants to admit.

12 Q. If you could turn to the page ending 757 and take a look

13 at the fourth paragraph on that page.

14 A. And it begins with what? I want --

04:05:08 15 Q. We had hoped for the -- that the July 17 letter would have

16 been more responsive.

17 A. We had hoped that the July 17 letter would have been more

18 responsive to the proposed framework for settlement rather

19 than purely defensive. Indeed, the letter seems to indicate a

04:05:23 20 continued denial concerning what we have found to be

21 nationwide common practices. While Household might like to

22 maintain the belief that these are isolated instances with

23 rogue offices and loan officers, the coast-to-coast usage of

24 common forms and sales techniques belie any such position.

04:05:41 25 Q. Tell us why that's significant to your opinion.



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1 A. And it supports my position -- my opinions that Household  
2 engaged in companywide and systemic predatory lending; that  
3 the excuse that it's a rogue officer or a rogue branch in  
4 Bellingham, Washington, for example, doesn't hold water when  
04:06:02 5 you look at the sum total of the documentation.

6 Q. So this is essentially the multistate AGs, the attorneys  
7 generals from all across the United States, rejecting  
8 Household's explanation that it was just a few bad apples?

9 A. Yes.

04:06:17 10 Q. Then if you could turn to the next page, page ending 758,  
11 and look at the first paragraph there. It's a partial  
12 paragraph. It begins, These figures are, to put it mildly,  
13 large.

14 Can you tell us whether the rest of that paragraph  
04:06:33 15 supports your opinion in this case?

16 A. Yes. We note that several of the most insidiously  
17 deceptive sales practices, which attracted regulatory  
18 attention to Household practices at the outset, relate to  
19 products and practices initiated by Household in 1999.

04:06:48 20 Industry figures indicate that since 1999, Household's  
21 originations have nearly doubled. Almost assuredly the  
22 misleading sales practices the states have identified have  
23 contributed to that growth. Ultimately the value of  
24 restitution and reformation must be viewed against that  
04:07:12 25 backdrop.

Ghiglieri - direct

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1 Q. Why does this particular information support your opinion  
2 in this case?

3 A. Well, because my opinions outline that when Gary Gilmer  
4 came to Household in 1998, the focus turned to growth; and  
04:07:31 5 that for 1999, there was an obsession about growth. And they  
6 hired Andrew Kahr. They developed these predatory products  
7 and services, which they implemented. And they did grow. As  
8 it shows here, Household's originations nearly doubled. And  
9 the conclusion of the regulators supports my conclusion that  
04:07:56 10 they engaged in predatory lending practices and that they were  
11 systemic and companywide.

12 Q. This growth that you said, that they doubled their loan  
13 originations, right? What are loan originations?

14 A. Those are new loans that they booked. And we talked about  
04:08:10 15 how the employees were being compensated for booking more  
16 loans and for booking more dollars. And that's what they're  
17 talking about. The number of new loans, the dollar amount of  
18 new loans that they booked doubled and -- since 1999. And the  
19 date of this was August of 2002.

04:08:27 20 Q. And what does the Washington State attorneys generals  
21 attribute that huge doubling of loan originations to?

22 A. To these deceptive sales practices that have -- that they  
23 implemented and that they were using.

24 Q. And is that consistent with your opinion in this case?

04:08:45 25 A. Yes.

Ghiglieri - direct

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1 Q. I'll show you what has been marked as 1013 for  
2 identification.

3 (Tendered.)

4 BY MR. DROSMAN:

04:09:20 5 Q. Before we turn to Exhibit 1013, we've just looked at a  
6 host of regulatory examination reports. What was Household's  
7 response to these regulatory reports?

8 A. Their response was that it was a rogue employee or a rogue  
9 office. And I can remember reading Chuck Cross' deposition  
04:09:45 10 where he said, they would say that even to Washington State.

11 Or they had just dealt with them on the very same issue in  
12 another branch. And they were in denial. They just kept  
13 saying that over and over to all these different regulators.

14 But the regulators then got together and compared notes and  
04:10:05 15 realized that, in fact, it was occurring all over the country.

16 Q. And you mentioned a guy named Chuck Cross?

17 A. Yes.

18 Q. Who is that?

19 A. He was -- in one of these documents that we looked at, he  
04:10:14 20 was an investigator for the Washington State Department of  
21 Financial Institutions; and he specialized in predatory  
22 lending investigations.

23 Q. And you considered Household's responses to the regulatory  
24 reports of examinations in coming to your conclusions in this

04:10:31 25 case?

Ghiglieri - direct

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1 A. I did.

2 Q. Why don't we take a look at Exhibit 1013.

3 Do you recognize this document?

4 A. I do.

04:10:39 5 Q. What is it?

6 A. This is an e-mail from Stephen Hicks to officials at  
7 Household regarding the Minnesota examination. And it's dated  
8 June 24, 2002.

9 Q. Why do you recognize it?

04:10:58 10 A. This is one of the documents I reviewed in formulating my  
11 opinions.

12 MR. DROSMAN: Plaintiffs offer Exhibit 1013 into  
13 evidence.

14 THE COURT: It will be admitted.

04:11:07 15 BY MR. DROSMAN:

16 Q. Who is Mr. Hicks?

17 A. He was in policy and compliance.

18 Q. Is that at Household?

19 A. At Household, yes.

04:11:16 20 Q. And policy and compliance, was that the department that  
21 interfaced with the regulators?

22 A. Yes.

23 Q. Why is this particular document, Plaintiffs' Exhibit 1013,  
24 significant to your opinions?

04:11:30 25 A. It's significant in two ways. The first thing that's

Ghiglieri - direct

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1 significant is he says, This has to be one of the worst  
2 examinations we've ever had.

3 And that's really saying something because we've seen  
4 some examinations that had a lot of criticism.

04:11:45 5 In the last sentence, he says, We need to think long  
6 and hard about how we want to respond. I'm sorry, second to  
7 last sentence.

8 And the last sentence says, We either need to spin  
9 these problems differently, provide no response or admit we  
04:12:01 10 had a problem.

11 And this is typical of some of the responses that I  
12 saw from Household, of just trying to spin consumer  
13 complaints, for example, to say, you know, they had -- they  
14 had to misunderstand; but it was never Household's fault.

04:12:21 15 Q. So the director here of policy and compliance from  
16 Household, he's discussing ways in which to respond to this  
17 Minnesota examination; is that right?

18 A. Right. We need to spin these problems differently,  
19 provide no response or admit we had a problem.

04:12:35 20 Q. And one of his suggestions is spin these problems  
21 differently. Do you have an understanding as to what that  
22 means?

23 A. Well, just talk about them differently to make Household  
24 look better than they really are.

04:12:48 25 Q. And why is this significant to your opinion?

Ghiglieri - direct

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1 A. Because when I looked at the responses that Household gave  
2 to the regulators, they would -- they were not always truthful  
3 with what they were saying. And this documents for me that  
4 they're not beyond spinning their responses, which, you know,  
04:13:11 5 are not necessarily truthful responses. Regulators really  
6 frown upon that, if they realize that the regulated entity is  
7 spinning one of their responses.

8 Q. The regulated entity in this case is Household, right?

9 A. Yes.

04:13:25 10 Q. And the regulators expect Household to provide forthright,  
11 truthful responses, right?

12 A. That's what they expect.

13 Q. And not spin the responses, correct?

14 A. That's right.

04:13:35 15 Q. I'm going to show you what's been marked as Plaintiffs'  
16 Exhibit 499.

17 (Tendered.)

18 BY MR. DROSMAN:

19 Q. Do you recognize Exhibit 499?

04:13:59 20 A. I do.

21 Q. What is it?

22 A. This is an outline for a board meeting that Bill Aldinger  
23 sent to Dave Schoenholz, David Schoenholz, on January 3, 2001.

24 Q. Do you have it backwards? Did David Schoenholz send this  
04:14:22 25 to Bill Aldinger?

Ghiglieri - direct

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1 A. Maybe I do have it backwards. Yes, I think I do.

2 Q. And you said the date was January 3, 2001?

3 A. Yes.

4 Q. Why do you recognize this document?

04:14:32 5 A. This document was one of the documents that I looked at in  
6 formulating my opinions.

7 MR. DROSMAN: Your Honor, plaintiffs move Exhibit 499  
8 into evidence.

9 THE COURT: It will be admitted.

04:14:42 10 BY MR. DROSMAN:

11 Q. And if you look at the first page, you said it looks like  
12 it's David Schoenholz -- he's one of the defendants in this  
13 case -- sending a document to Bill Aldinger; is that correct?

14 A. Yes.

04:14:57 15 Q. And if you flip to the next page of the document, the  
16 heading there is plan issues. Do you see that?

17 A. Yes.

18 Q. What do you understand that to mean?

19 A. I think the board of directors was looking over these --  
04:15:12 20 this listing of issues to -- for their planning purposes for  
21 2001.

22 Q. And if you go down, there's a heading five down on the  
23 page, which reads "managing predatory lending issues." Do you  
24 see that?

04:15:30 25 A. Yes.

Ghiglieri - direct

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1 Q. So what was Household's response to the predatory lending  
2 issues in this case?

3 A. Well, they always would say that they didn't engage in  
4 predatory lending. I saw document after document that talked  
04:15:42 5 about, you know, other people engaged in predatory lending,  
6 but not us. And here, at the board meeting, at the board  
7 level, they were discussing managing predatory lending issues,  
8 such as single premium life insurance, which is prohibited by  
9 a lot of states and really frowned upon by the regulators;  
04:16:03 10 maintaining pricing; and the impact of disclosures on volume.

11 Q. You talked about single premium life insurance.

12 Maintaining pricing, what do you understand that to  
13 mean?

14 A. Well, my understanding of it, based on everything I've  
04:16:18 15 seen, is that Household's pricing was higher than its  
16 competitors. And they had to figure out a way to maintain  
17 that pricing while still maintaining growth.

18 Q. And then impact of disclosures on volume.

19 A. Yes. If you remember some of the Andrew Kahr memos and  
04:16:36 20 the newspaper report on how he disdained disclosure, he talked  
21 about when you actually make the proper disclosure, it has an  
22 effect on volume because people don't like the rate or they  
23 don't like the fact that there's a prepayment penalty, so  
24 you're not able to book as many loans. And I believe that  
04:16:57 25 that's what that means.



Ghiglieri - direct

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1 Q. So volume, you believe, refers to volume of loans?

2 A. Loan volume, yes.

3 Q. The greater the volume, the more loans you're selling?

4 A. The greater the volume, the more loans will be on your  
04:17:10 5 books. The more loans on your books, the more money you make.

6 Q. And they're looking at the impact of disclosures on how  
7 many loans they can sell?

8 A. Yes.

9 Q. What do you understand disclosures to mean in that  
04:17:19 10 context?

11 A. Disclosure of the existence of a prepayment penalty,  
12 instead of being buried in really fine print somewhere;  
13 disclosure of the actual closing costs, instead of the wide  
14 range of the good faith estimate; disclosure of the actual  
04:17:35 15 annual percentage rate, rather than the effective rate. Those  
16 types of disclosures. And the impact that they would have on  
17 loan volume, which would be negative if they were actually  
18 disclosed.

19 Q. Explain that to me. What's the relationship between  
04:17:49 20 disclosure and selling more loans or loan volume?

21 A. Well, if you -- if you're a lender that has high rates and  
22 you properly disclose your high rates and borrowers can  
23 otherwise find another lender that's going to give them a  
24 lower rate, it has a negative effect on volume. You can't  
04:18:06 25 book as many loans because people aren't going to agree to it.

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1           Or if you properly disclose that you have a  
2     prepayment penalty, that if you pay your loan within the first  
3     five years, it's going to be six months' worth of interest as  
4     a penalty and the borrower can go down the street and get  
04:18:25 5     some -- a loan that doesn't have a prepayment penalty, where  
6     are they going to go?

7           Same with the closing costs. If you disclose what  
8     you actually think the closing costs are going to be, which is  
9     what the regulation requires, rather than a wide range when  
04:18:40 10    you know you're going to charge at the top or above the range,  
11    people are not going to agree to take a loan out with you.

12           And so there's an inverse relationship, if you're  
13    that kind of a lender, to proper disclosure and how many loans  
14    you'll be able to book.

04:18:57 15    Q. And then if you take a look at page ending 391, in the  
16    same document. This is, again, from Mr. Schoenholz to  
17    Mr. Aldinger.

18           Does this information have any significance to you?

19    A. Well, it just tells me that they were talking at the board  
04:19:16 20    level, at the very highest level of Household, about predatory  
21    lending in 2001.

22    Q. And what did they view -- the heading up there says major  
23    issues and obstacles. What did they view predatory lending  
24    as?

04:19:30 25    A. I'm assuming they viewed it as --

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1 MR. KAVALER: Objection, your Honor.

2 THE COURT: Sustained.

3 BY MR. DROSMAN:

4 Q. What's your understanding as to how major issues and  
04:19:37 5 obstacles relates to predatory lending on that page?

6 A. They were listing the major issues and obstacles to their  
7 loan growth and their profitability. And so they have several  
8 listed here, and one of them is predatory lending.

9 Q. So they highlighted that as a major issue and obstacle to  
04:19:58 10 loan growth?

11 A. Or to their operating plan, what their goals were for  
12 2001.

13 Q. Let's talk a little bit about ways in which you went about  
14 reaching your conclusions in this case.

04:20:19 15 Did you ever look at, for example, the total number  
16 of Household's loans, on the one hand, and then the number of  
17 complaints on the other and try to calculate some sort of  
18 complaint-to-open-loan ratio or percentage?

19 A. No.

04:20:35 20 Q. Why not?

21 A. Because that ratio is meaningless. Regulators look at  
22 complaints on a complaint-by-complaint basis because it's very  
23 difficult for people to file a complaint. It takes a lot of  
24 energy. They have to put something in writing. They have to  
04:20:52 25 get all their documentation together. And so when someone

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1 complains, the regulators take it seriously. Even if there's  
2 a handful of complaints, the regulators take them seriously.

3 They look at each complaint. They get the response  
4 from the lender, in this case Household. And they come to  
04:21:12 5 some conclusion whether laws had been violated or deceptive  
6 practices have been foisted on the borrower, whatever the  
7 issue might be. And so the -- the complaint framework and the  
8 complaint-based review of a lender does not lend itself to a  
9 ratio analysis of complaints to open loans. It's -- that's  
04:21:41 10 not meaningful.

11 Q. Now, when you were -- you were a lender for 25 -- I mean  
12 you were a regulator for 25 years; is that right?

13 A. Yes.

14 Q. And first you were a regulator with the OCC, the federal  
04:21:52 15 government; is that right?

16 A. That's right, the regulator of national banks.

17 Q. And then a regulator for the Texas State Banking  
18 Commission; is that right?

19 A. Right. I was the Texas banking commissioner.

04:22:02 20 Q. You headed that department?

21 A. Yes.

22 Q. Did you ever calculate this ratio of complaints to open  
23 loans during your 25 years of regulatory experience?

24 A. No.

04:22:12 25 Q. Did you ever have anybody underneath you say calculate

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1 this ratio?

2 A. No.

3 Q. When you were a regulator for 25 years, did you ever see  
4 this ratio being calculated?

04:22:23 5 A. No, because it's not meaningful. It's not a meaningful  
6 ratio to calculate.

7 Q. What did you look at as a regulator?

8 A. Well, what you would do -- and we had some very large  
9 banks that we regulated, you know, like Sun Trust. When I was  
04:22:36 10 a field examiner, we regulated Continental, Illinois National  
11 Bank, First National Bank of Chicago. We regulated Exchange  
12 National Bank. And, of course, they would have more  
13 complaints than the smaller banks just in terms of number.  
14 But it doesn't mean that we would look at the smaller banks or  
04:22:55 15 the larger banks any differently.

16 We would look at the nature of the complaints. We  
17 would look at geographic dispersion, especially for a bank --  
18 when I was in Atlanta, for example -- that operated in  
19 multiple states to see how widespread the practice was. We  
04:23:13 20 would look at the -- not only the nature and the geographic  
21 dispersion, but just how common it was, how many complaints we  
22 were getting in a particular area. And then we would give the  
23 information to the examiners so that they could widen their  
24 scope in that particular area.

04:23:32 25 So it's something that's taken very seriously and is

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1 looked on a complaint-by-complaint basis.

2 Q. And when you said you would look at the nature of the  
3 complaints, you would look at whether they were very serious  
4 complaints or not so serious complaints?

04:23:47 5 A. Yes. You would look at -- I mean, just using Household as  
6 a example, you know, I thought I was going to get a low  
7 interest rate loan, but really I have a high interest loan.  
8 And so you would look at how many of those complaints are you  
9 getting, where are they coming from, what law does that

04:24:04 10 violate, you know, and how serious do you view that. People  
11 being deceived is viewed more seriously than a typo in a loan  
12 document, for example. So, you know, we would weigh how  
13 serious it was, of course, taking into consideration the  
14 response from the lender.

04:24:24 15 Q. So not all complaints are viewed equally, correct?

16 A. That's right.

17 Q. And when you say geographic dispersion, you look at --  
18 what do you mean by that, geographic dispersion?

19 A. Like, for example, we didn't have branch banking in  
04:24:36 20 Illinois when I was a field examiner. But when I was in  
21 Atlanta at the OCC, we had banks operating in five states. So  
22 we would look to see if it was isolated to a particular state  
23 because state laws vary, you know, depending on what the issue  
24 was; or was it a companywide issue that we had to deal with at  
04:24:55 25 the headquarters office. So just how widely dispersed are the

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1 complaints and are the issues.

2 THE COURT: Let me interrupt you here. We're five  
3 minutes from 4:30, and I want to have just a minute or two to  
4 talk to the jury. So you may step down at this point, ma'am.

04:25:18 5 Folks, I've talked this over with the attorneys and I  
6 have calculated and recalculated the number of hours in a day  
7 and the amount of work we have to get done. And it does not  
8 appear to me that we can quit before 4:30 on a regular basis  
9 unless we can start before 10:00 o'clock. If all of you are  
04:25:39 10 in agreement that we can start before 10:00 o'clock, we can  
11 quit a little bit earlier; otherwise in order to get this case  
12 finished within the time period that we quoted to you in the  
13 notice we sent out, we have to go to at least 4:30 every day;  
14 and that's pushing the limit.

04:25:58 15 So let me put the question to you: Is there anyone  
16 who would be adverse to coming in and starting at, say, 9:45  
17 instead of 10:00 o'clock?

18 Are you all in agreement with that? Give me a show  
19 of hands if you cannot do that.

04:26:22 20 So we'll try it one more time just to make sure.

21 Anybody that cannot do that?

22 All right. Then let's start tomorrow at -- we'll try  
23 it tomorrow and see if everyone can get here on time and we  
24 can actually get started. At 9:45, we will commence with the  
04:26:38 25 evidence and we will quit at -- I think you folks wanted to

**TAB 4**



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

3	LAWRENCE E. JAFFE PENSION PLAN, )	
	on behalf of itself and all )	
4	others similarly situated, )	
	)	
5	Plaintiff, )	
	)	
6	vs. )	No. 02 C 5893
	)	
7	HOUSEHOLD INTERNATIONAL, INC., )	
	et al., )	Chicago, Illinois
8	)	April 2, 2009
	Defendants. )	9:45 a.m.

9   VOLUME 4  
10    TRANSCRIPT OF PROCEEDINGS – TRIAL  
11    BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

12    APPEARANCES:

13	For the Plaintiff:	COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
14		BY: MR. LAWRENCE A. ABEL
		MR. SPENCER A. BURKHOLZ
15		MR. MICHAEL J. DOWD
		MR. DANIEL S. DROSMAN
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24		(415) 288-4545
25		

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1 put me on a straight shift, left paren, no Saturday, Sunday,  
2 right paren. I regret that I'm making this request of you,  
3 but I must.

4 Your thoughts.

09:52:21 5 MR. DOWD: It's a tough one, your Honor. Maybe I  
6 could talk to Mr. Kavalier over the break and see if there's  
7 something that we could agree on.

8 MR. KAVALER: I'm certainly happy to talk to  
9 Mr. Dowd.

09:52:36 10 THE COURT: All right. We'll postpone the issue  
11 until the break.

12 Carole, let's bring the jury out, please.

13 (Jury in.)

14 THE COURT: Good morning, ladies and gentlemen.  
09:55:00 15 Welcome back. We're ready to proceed.

16 Counsel.

17 MR. DROSMAN: Thank you, your Honor.

18 CATHERINE GHIGLIERI, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

19 DIRECT EXAMINATION (Resumed)

20 BY MR. DROSMAN:

21 Q. Good morning, Ms. Ghiglieri.

22 A. Good morning.

23 Q. When we broke for the day yesterday, we were talking about  
24 why you didn't think it made sense -- you had never seen  
09:55:16 25 anybody calculate a ratio or a percentage of complaints to

Ghiglieri - direct

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1 open loans.

2 Do you recall that?

3 A. I do.

4 Q. And you talked about the fact that you looked at the  
09:55:30 5 seriousness of the allegations, the geographic dispersion or  
6 spread of those allegations.

7 Did you look at anything else when assessing  
8 complaints, customer complaints?

9 A. Well, in the Household case or just as a regulator?

09:55:45 10 Q. As a regulator.

11 A. As a regulator, I would look at the nature of the  
12 complaint, what type of a complaint was it, what were the  
13 allegations in terms of violations of law; and, of course,  
14 then how widespread was it in the particular lender, how  
09:56:00 15 serious was it, what was the response of the company. So you  
16 try and take everything into consideration.

17 Q. Did you also look at the trend of complaints, whether they  
18 were increasing or decreasing over time?

19 A. Yes.

09:56:12 20 Q. And why did you do that?

21 A. Well, because if -- whenever a complaint would come in, we  
22 would always send it to the regulated entity. In the case --  
23 in my case, that would be national banks or state banks. And  
24 we would ask, you know, how -- what do you think about this  
09:56:29 25 complaint; and if it's valid, how are you going to resolve it.

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1 And so you would expect if it was a legitimate issue, for it  
2 to be corrected. So if we continued to see complaints of the  
3 same nature, you know, then we might send an examiner out to  
4 do a special investigation, for example. Or we would

09:56:49 5 definitely send the complaints to the examiners in case they  
6 wanted to expand the scope of their examination.

7 Q. And in this particular case, when you were examining the  
8 documents to arrive at your conclusions, did you look at all  
9 three of these issues with respect to the complaints that

09:57:07 10 customers made about Household?

11 A. Yes.

12 Q. Are there other reasons that a ratio of complaints to open  
13 loans wouldn't provide you with useful information?

14 A. Well, it doesn't lend itself to a ratio analysis, such as  
09:57:27 15 looking at how many loans in a loan portfolio are past due,  
16 because people who have been taken advantage of often don't  
17 know they've been taken advantage of so they don't know to  
18 complain. And a lot of people that are mad about something,  
19 for example, I've been taken advantage of, won't go to the  
09:57:44 20 effort to write it down and send it in. And that's what we've  
21 known over the course of time. So it's just not something  
22 that lends itself to a ratio analysis.

23 You have to take every complaint seriously. You have  
24 to analyze every complaint. And you have to get the  
09:58:00 25 explanation from the lender to find out why are we getting

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1 these complaints as a regulator, why -- do they continue to  
2 come, why are they escalating or whatever.

3 Q. So if a person were deceived by Household, say, by the  
4 effective rate scheme or insurance was packed on, and they  
09:58:18 5 never realized they were deceived, would you expect that  
6 person to complain?

7 A. No, because --

8 MR. KAVALER: Objection, your Honor.

9 THE COURT: Basis of the objection?

09:58:26 10 MR. KAVALER: Requires a state of mind of customers,  
11 other people who might or might not -- do or do not -- it's  
12 hard to understand what expertise she has that enables her to  
13 do this.

14 THE COURT: Sustained.

09:58:40 15 BY MR. DROSMAN:

16 Q. Why is it that -- based on your expert experience, would  
17 you expect or -- a person who had been deceived, did you see  
18 those people and they never recognized that they had been  
19 deceived when you were an expert, did you see those people  
09:58:54 20 file complaints?

21 MR. KAVALER: Objection, your Honor.

22 THE COURT: Sustained.

23 BY MR. DROSMAN:

24 Q. Let's talk about Household in particular. Were all the  
09:59:05 25 complaints that customers filed at Household, were those all

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1 logged?

2 A. No. The complaints that were filed with the field, the  
3 branch sales staff, were not logged into the system for a long  
4 time, I should say. I think they tried to log some of those  
09:59:24 5 in later on at the end of 2002. But in the beginning of the  
6 time period that I was looking at, 1999 to mid 2002, anything  
7 that was filed -- any complaint that was filed with the  
8 branches was not logged. It was only the ones that weren't  
9 resolved at the branches that made it into the general log  
09:59:46 10 system.

11 And I might add, there were some issues about people  
12 not logging even those in. There were a lot of e-mails back  
13 and forth with some senior management officials saying, you  
14 know, we've noticed that in this particular area, the  
10:00:02 15 complaints aren't being logged. And that went on throughout  
16 almost the whole time period I was looking at.

17 Q. I'll show you what we'll mark as Plaintiffs' Exhibit 1148  
18 for identification.

19 (Tendered.)

10:00:22 20 BY MR. DROSMAN:

21 Q. Do you recognize Plaintiffs' Exhibit 1148?

22 A. I do.

23 Q. And what is this document?

24 A. This is a document that discusses the logging of  
10:00:45 25 complaints. And it's an e-mail string. The last e-mail is

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1 dated August 28, 2002.

2 Q. And who sent this e-mail string, the bottom one?

3 A. The bottom one is sent from Stephen Hicks of Household to  
4 Tom Detelich, Robin Allcock, James Kauffman and others.

10:01:04 5 Q. Why do you recognize Plaintiffs' Exhibit 1148?

6 A. This is one of the e-mails that I saw that talked about  
7 their inability to be able to get all of the complaints  
8 logged.

9 MR. DROSMAN: Plaintiffs offer Exhibit 1148 into  
10:01:19 10 evidence.

11 THE COURT: It will be admitted.

12 BY MR. DROSMAN:

13 Q. Let's go ahead and take a look at Plaintiffs' Exhibit  
14 1148.

10:01:26 15 And you spoke about the e-mail from Mr. Hicks. Who  
16 is Mr. Hicks?

17 A. He's an official at Household.

18 Q. The director of policy and compliance there?

19 A. Yes.

10:01:36 20 Q. And it was his job to interface with the regulators?

21 A. Yes.

22 Q. And then is -- the first paragraph there in the e-mail  
23 that Mr. Hicks sent, it's entitled complaints. Do you see  
24 that?

10:01:49 25 A. I do.

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1 Q. Is there any significance to that paragraph to your  
2 opinion?

3 A. Yes. This is what I was talking about. It says, I spoke  
4 at length with the clerk and the manager of the rapid response  
10:01:59 5 team regarding unlogged complaints. The clerk admitted that  
6 she might not have communicated the complete context of her  
7 conversation with Mike Pinto. She indicates that on several  
8 occasions, Mike has forwarded complaints to her which he has  
9 worked but not resolved. In those instances, she has asked  
10:02:16 10 him if he had logged them into the database and he has  
11 indicated no. She and others in the department speculated on  
12 the number of unlogged complaints he might be holding and  
13 whether the ones he resolved were ever logged in. It was also  
14 speculation as to the reasons why he might not log them in. I  
10:02:31 15 apologize for this confusion.

16 Q. What's the date of this e-mail?

17 A. August 28, 2002.

18 Q. Why is this significant to your opinion?

19 A. Because this is at about the end of the time frame that I  
10:02:45 20 looked at. And this is one of the criticisms in my report,  
21 was that Household didn't know the sum total of the complaints  
22 that they had on any given topic because they weren't being  
23 logged. The ones that were in the branches were not being  
24 logged if they were resolved at the branches. And so there  
10:03:05 25 was no way for Household really to understand what the



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1 magnitude of the complaints were.

2 Q. And if you take a look at the next page, page ending 201.

3 And the first paragraph, fourth sentence begins Jada Howard,

4 manager of the RRT.

10:03:25 5 Do you see that?

6 A. Yes, I do.

7 Q. Can you tell me whether that's significant to your opinion

8 in this case?

9 A. It is because it says Ms. Howard, manager of the RRT --

10:03:34 10 which is rapid response team -- indicates that Mike is not the

11 only DMG -- which is the district general manager -- who does

12 not log in complaints when they are received. She indicates

13 that on many occasions, she receives complaints from other

14 district general managers that have been worked but not

10:03:51 15 resolved which have not been logged into the complaint

16 tracking database.

17 Q. Is there significance to that?

18 A. Yes. Household continued to tell the regulators in the

19 documents that I looked at that this was an isolated instance,

10:04:07 20 whatever the complaint was. It was a rogue employee. It was

21 a rogue branch. And this demonstrates that they did not have

22 an idea of the magnitude of the complaints on any given issue.

23 Q. Now, yesterday we spoke about compensation, various

24 components of the compensation plan that you said encouraged

10:04:30 25 certain predatory lending practices. Do you recall that

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1 discussion?

2 A. Yes.

3 Q. And did you prepare a demonstrative that showed the  
4 percentage of compensation in which an employee could expect  
10:04:40 5 to receive through incentive compensation?

6 A. I did.

7 Q. I'll show you what has been marked as Plaintiffs'  
8 Demonstrative Exhibit 33 for identification.

9 What does this exhibit show?

10:05:02 10 A. What this is, it shows that the sales staff received 60  
11 percent base salary and then 40 percent incentive. And so the  
12 base salary, they would get regardless. The incentive portion  
13 of this, they would receive based on the insurance incentive,  
14 the margin incentive, the loan account incentive, the loan  
10:05:29 15 volume incentive and the loan dollar -- I can't remember what  
16 the first one was -- incentive. And so during the 1992 -- I'm  
17 going to try this to see if I can get it to work. During the  
18 1992 --

19 Q. Do you mean 1999?

10:05:48 20 A. I'm sorry. 1999 to 2002 time frame, the average incentive  
21 award was between \$1,000 and \$2,500 per month. And that's  
22 significant because on the left-hand side, you'll see the base  
23 salary for account executives, and this was the frontline  
24 sales staff, was only \$2,000 a month. So they could either  
10:06:11 25 increase their salary or compensation by between 50 percent

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1 and 150 percent depending on if they met these targets. So  
2 they could receive a significant amount of compensation for  
3 engaging in those predatory lending practices that we talked  
4 about.

10:06:33 5 Q. And was one of the ways that they could more than double  
6 their base monthly salary by packing insurance on?

7 A. Right, and meeting the insurance incentive.

8 Q. Now, we also spoke about the difference between an  
9 examination and an investigation. And we looked at some  
10:06:53 10 reports of examinations yesterday.

11 Did you also see instances in which states instituted  
12 investigations of Household?

13 A. Yes.

14 Q. Did you prepare a demonstrative to show a timeline of the  
10:07:05 15 investigations that states engaged in?

16 A. I did.

17 Q. I'll show you what has been marked as Plaintiffs'  
18 Demonstrative Exhibit 30 for identification.

19 And these are fairly small bubbles. Can you tell us  
10:07:20 20 what this demonstrative shows?

21 A. Yes. Let me just read -- I'll read from the -- let's see  
22 if I can get this to work.

23 I'll read from the top left-hand box because they're  
24 very difficult to read. That one says May -- oh, good. May  
10:07:39 25 21, 2001, Washington State provides Household with a summary

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1 of complaint investigation.

2 So this -- they did a special investigation because  
3 of the number of complaints that they received regarding these  
4 predatory lending practices. And this is where they provided  
10:07:58 5 Household with the summary information.

6 The next one is September 25, 2001. And that is  
7 coming from Minnesota where they issued a subpoena for records  
8 regarding these practices.

9 Q. Can you tell me what that means, issues a subpoena for  
10:08:17 10 records?

11 A. It's not often done by a regulator because normally they  
12 can get information from the regulated entity. But in this  
13 case, Minnesota felt like they weren't getting what they  
14 needed, and so they issued a subpoena requiring Household to  
10:08:31 15 give them certain information.

16 Q. And a subpoena commands or compels Household to turn over  
17 documents?

18 A. Yes.

19 The next one is November 14, 2001. And the State of  
10:08:46 20 California sues Household for various practices that they  
21 deemed were predatory and in violation of their laws.

22 The next one, December 4, 2001. Minnesota is now  
23 providing Household with a summary of its investigation, and  
24 that would include the documents that they looked at under the  
10:09:07 25 subpoena.

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1           The next one is January 18, 2002. And this is where  
2 the State of Illinois writes to Household concerning their  
3 open-end loans.

4 Q. What does that mean?

10:09:19 5 A. And that means -- we haven't talked very much about this.  
6 But when the borrower would go to the closing table and  
7 instead of having one loan and there would be two loans -- and  
8 I described that as loan splitting -- oftentimes that second  
9 loan was an open-end loan. And that's where it's a line of  
10:09:37 10 credit and there's no maturity at the end. And they were  
11 doing this so they could escape some of the disclosure  
12 provisions regarding HOPA, which is another federal law.

13           The next one, February 22, 2002. The State of  
14 Washington issues a subpoena for certain records regarding  
10:10:02 15 Household's lending practices.

16           And the next one is March 5, 2002. Florida issues a  
17 subpoena for certain records regarding Household's lending  
18 practices.

19 Q. And these are all initiations of investigations --

10:10:18 20 A. Yes.

21 Q. -- by these different states?

22           What's the next one?

23 A. This is April 30, 2002. The State of Washington issues an  
24 expanded report of examination in which they detail widespread  
10:10:33 25 predatory lending practices.

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1 Q. Is that the expanded report of investigation that we  
2 looked at yesterday?

3 A. Yes.

4 Q. It's been admitted into evidence.

10:10:40 5 What's the next one?

6 A. The next one, and the last one I have on this chart, is  
7 May 23, 2002. This was a meeting between Household and the  
8 State of Washington. And at this meeting, the State of  
9 Washington informs Household that there is a multistate group  
10:10:56 10 of attorneys general that's investigating Household. And  
11 based on the information that I looked at, it looks like this  
12 is the first time that they realized that they were up against  
13 more than just sort of isolated states, that the states had  
14 gotten together and were investigating Household's lending  
10:11:13 15 practices.

16 Q. Now, during your review and examination of the boxes and  
17 boxes of documents that you looked at about Household in  
18 coming to your conclusions, did you come across any instances  
19 in which Household would deny allegations of predatory  
10:11:41 20 lending?

21 A. Yes. They would -- most often, they would say, We don't  
22 condone predatory lending. It's a rogue officer. It's a  
23 rogue branch. That's not how we do business. That was often  
24 their response.

10:11:56 25 Q. And did you consider those documents in reaching your

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1 conclusions in this case?

2 A. Yes, I did.

3 Q. And did Household's denials of predatory lending, did that  
4 alter or change your view that Household engaged in widespread  
10:12:10 5 systemic predatory lending practices?

6 A. Well, I looked at the documents prior to formulating my  
7 opinions. I took all of the information into consideration in  
8 formulating my opinions. And the more documents that I looked  
9 at, the less persuasive that argument became in my mind. And  
10:12:31 10 I concluded at the end of looking at all the information that  
11 Household engaged in widespread and systemic and companywide  
12 predatory lending, notwithstanding their claims that it was --  
13 you know, that they didn't or that it was a rogue employee or  
14 a rogue branch.

10:12:49 15 Q. Why didn't the Household's denials that they engaged in  
16 predatory lending, why didn't that change your view that they  
17 did, in fact, engage in widespread, systemic predatory lending  
18 practices?

19 A. Well, there were several reasons why that didn't change my  
10:13:07 20 view. The first one is because, as these complaints started  
21 to escalate, I didn't see from Household any attempt at trying  
22 to identify the root causes of these complaints. I would see  
23 an issuance here or an e-mail there that would say we don't  
24 engage in predatory lending or everyone else in the industry  
10:13:29 25 engages in it but us.

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1           And there was no attempt to look at how compensation  
2 was driving the behavior of the employees. There was no  
3 attempt to look at the fact that they trained their employees  
4 to engage in predatory lending practices and change that.

10:13:46 5       There was no attempt to change the compensation plans.

6           And so when I looked at everything all together, it  
7 just didn't seem to me that they were serious about addressing  
8 the root causes. They were more interested in just spinning  
9 what their responses were to the regulators and just denying  
10:14:05 10       that they were engaged in predatory lending.

11       Q. Did you consider Household's denial or response that  
12 predatory lending practices were a result of a few bad apples  
13 in various branches?

14       A. I did.

10:14:19 15       Q. Did that change your view that Household engaged in  
16 widespread, systemic predatory lending?

17       A. No, because the more documents that I looked at and the  
18 more I could see the complaints coming from different places  
19 around the country -- and they would have similar issues; and  
10:14:33 20       oftentimes they would use similar words; and no one gives an  
21 effective rate or a comparable rate or a comparative rate as  
22 the interest rate on the loan. And so when you see this in  
23 the complaints, it makes you realize -- or it made me realize  
24 that the employees were telling the potential borrowers this,  
10:14:59 25       not the borrowers making this up out of their own -- you know,



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1 out of whole cloth because they wouldn't know to say these  
2 words. And the similarity of complaints in various parts of  
3 the country told me that this was a widespread issue.

4 And as I looked at the training and as I looked at  
10:15:18 5 the compensation, how they were being compensated and how much  
6 money they could make, it offset any of Household's policy  
7 that says we're ethical, we believe in ethical lending. It  
8 offset any of the e-mails that I saw that said we don't engage  
9 in predatory lending or this is a rogue officer.

10:15:39 10 Q. Did you consider Household's response that it did not  
11 engage in insurance packing, for example, because the  
12 insurance penetration rates were incorrectly calculated?

13 A. Well, they would say that they don't require insurance.  
14 And they would say we don't require insurance, see, look at  
10:15:58 15 our policies that say we don't require insurance or look at  
16 this document that we're having the consumer sign that says we  
17 don't require insurance.

18 But what regulators do when they go in to look at a  
19 lender is they look at the penetration ratios. There was one  
10:16:16 20 piece of correspondence that I saw where Household was trying  
21 to persuade the regulator to use ineligible borrowers as part  
22 of the calculation. And what that is, is a person who doesn't  
23 qualify for insurance. And so if you're calculating a  
24 penetration ratio, you can't use ineligible borrowers because  
10:16:38 25 that gives you an unrealistic penetration ratio.

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1           So there were a lot of things. And I just kind of  
2 attribute that to maybe a little spin. But there were a lot  
3 of things that regulators do to make sure that what the  
4 lenders are telling them is valid. And in the case of

10:16:55 5 insurance packing, the regulators will look at the penetration  
6 ratios.

7 Q. Did you consider Household's response that the range of  
8 fees and points in a good faith estimate were actually  
9 reasonable?

10:17:08 10 A. Did I -- say --

11 Q. Consider Household's explanation that the range of fees  
12 and points that they provided in the good faith estimate were  
13 actually reasonable?

14 A. No. I mean, it's unreasonable because, as the Housing and  
10:17:24 15 Urban Development agency opined, when you see borrowers being  
16 charged at the high end of the range or even in excess of the  
17 range, which is a violation of RESPA, it gives you the  
18 impression that there's not good faith there with how they're  
19 disclosing to the borrower what their closing costs are going  
10:17:46 20 to be. So that explanation, that closing costs in that wide  
21 of a range from zero to, you know, \$8,500 was reasonable, was  
22 not persuasive.

23 Q. Did you consider Household's response that it launched a  
24 full investigation of complaints regarding effective rate?

10:18:04 25 A. I did consider that.

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1 Q. And did that explanation change your view that Household  
2 engaged in widespread, systemic predatory lending practices?

3 A. No, for several reasons. If you recall, complaints are  
4 not logged at the branches. That's one problem. So all the  
10:18:21 5 effective rate complaints, they would have no way of knowing  
6 what the magnitude of that is.

7 Also, in May of 2001, they went on a document  
8 destruction binge where they said, if there's anything in the  
9 file regarding effective rate, we want it to be destroyed. So  
10:18:40 10 there was no way for them to know how many borrowers' files  
11 had had that effective rate presentation taken out.

12 And I had one other point, but I lost it.

13 Q. Did you see instances, for example, where Household went  
14 out and tried to reach out to all of the people who had been  
10:19:04 15 scammed by the effective rate?

16 A. Well, there was no way for them to know that because they  
17 didn't do a full investigation of looking at the compensation,  
18 looking at the training. The documents in this particular  
19 area were purged. And there was just no way for them to know  
10:19:23 20 who had been affected.

21 From the documents that I saw, the branches in  
22 handling the complaints -- there was no central office  
23 compliance review person that would actually reach out to the  
24 customers. So there was never a confirmation that these folks  
10:19:42 25 were being taken advantage of on the effective rate. They

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1 were relying on the branch folks for that. And --

2 Q. You said that the documents were purged. What do you mean  
3 by that?

4 A. There were some documents that I looked at, some e-mails  
10:19:58 5 that went out and said if we have anything regarding effective  
6 rates, we want to get that out of the files. And there were  
7 some documents to indicate that it wasn't just the blank forms  
8 that were destroyed, but actual information in the loan files  
9 if there was an effective rate presentation. That's why if  
10:20:18 10 they went back and looked at who was taken advantage of  
11 regarding the effective rate, there was -- would be no way for  
12 them to know the universe of those people.

13 The other thing is they did look at -- in mid 2002  
14 when they were dealing with the states attorneys general, they  
10:20:47 15 did look at the effective rate. And they came up with I  
16 believe it was 46 complaints out of -- you know, I don't know  
17 how many they were looking at. But this was late in the game,  
18 and all these other things had taken place; so there was no  
19 way that that study was effective in my opinion.

10:21:07 20 Q. The study you're talking about, these are people who had  
21 complained about the effective rate?

22 A. Yes.

23 Q. Were people who had been scammed by the effective rate but  
24 didn't realize they had been scammed, were they included in  
10:21:18 25 that study?

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1 MR. KAVALER: Objection, your Honor.

2 THE COURT: Basis?

3 MR. KAVALER: How could she possibly know what people  
4 who weren't included in the study did or didn't think or do.

10:21:26 5 This is the same problem as before, she's reading the minds of  
6 the people who made no objective --

7 THE COURT: You can just make a legal objection.

8 MR. KAVALER: Speculation.

9 THE COURT: Sustained.

10:21:36 10 MR. KAVALER: Thank you, your Honor.

11 BY MR. DROSMAN:

12 Q. Did you see any evidence as to whether people who had been  
13 scammed by the effective rate but didn't realize that they had  
14 been scammed, that they were included in this study?

10:21:47 15 MR. KAVALER: Same objection, your Honor.

16 THE COURT: Sustained.

17 BY MR. DROSMAN:

18 Q. One of the things that you mentioned before that you  
19 thought made any sort of ratio of complaints to open loans  
10:22:07 20 nonsensical in terms of reviewing was that people who had been  
21 scammed but never realized they had been scammed wouldn't file  
22 complaints. Can you explain what you mean by that?

23 A. Right. It takes a lot of energy to file a complaint in  
24 the first place. So even people that know they've been taken  
10:22:24 25 advantage of often don't file a complaint.

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1           The effective rate presentation was very difficult to  
2 understand. It looks great on the surface if you don't  
3 realize that that lower rate is not what you're going to pay.  
4 The interest rate never changes. And so this particular scam  
10:22:40 5 was difficult to understand that you were being scammed. And  
6 also it was -- it appeared favorable to the borrowers.

7           So my thought is -- just based on managing complaints  
8 over 25 years at the OCC and at the Department of Banking --  
9 is that there are going to be people out there that don't  
10:23:00 10 realize that they've been scammed, and so they never were able  
11 to make a complaint.

12 Q. Let's talk a little bit about your compensation in this  
13 case.

14           When were you retained by the plaintiffs?

10:23:11 15 A. I was retained in March of 2006.

16 Q. How many hours have you worked on the case since you were  
17 retained?

18 A. Close to a thousand.

19 Q. And are you being compensated for your work as an expert?

10:23:24 20 A. I am.

21 Q. How much are you being compensated?

22 A. I charge 375 for non-testimony time and \$475 for testimony  
23 time.

24 Q. Is your compensation in this case dependent in any way on  
10:23:41 25 the opinions that you express?

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1 A. No.

2 Q. Is your compensation in this case dependent in any way on  
3 the outcome of this trial?

4 A. No.

10:23:49 5 Q. Have you ever been named as a defendant in any civil  
6 action?

7 A. I have.

8 Q. In what case were you named a defendant?

9 A. Net Bank.

10:24:04 10 Q. And are you still a defendant in that case?

11 A. No, I was dismissed.

12 Q. How long after you were named as a defendant were you  
13 dismissed?

14 A. Well, I found out about it in mid June, and I was  
10:24:14 15 dismissed by the beginning of September. So seven or eight  
16 weeks, I guess.

17 Q. Let's change gears now and talk about your second opinion,  
18 your opinion regarding the credit -- or the quality of the  
19 loans that Household gave.

10:24:33 20 Can you explain to the jury what loan -- the phrase  
21 loan quality means?

22 A. Loan quality means how sound the loans are. And that  
23 means how many of the loans in the loan portfolio are paying  
24 on time. So if you have a large percentage of loans that are  
10:25:01 25 past due, in that, the borrowers haven't paid them in a timely

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1 manner, then you would have poor loan quality. If only a very  
2 small percentage of those loans are past due, then the loan  
3 portfolio would be good quality.

4 Q. And as a regulator when examining a lending institution,  
10:25:19 5 were you concerned with a lender's loan quality?

6 A. Yes, very much concerned.

7 Q. Why?

8 A. Because the loan quality -- first of all, remember the  
9 loan portfolio is the largest asset of a bank and of a finance  
10:25:35 10 company, generally the largest asset of any lender. And so  
11 the loan quality is a predictor of future health of the  
12 lender. And it's also an indication of the current health.  
13 And so that's one of the first things that as a regulator we  
14 would look at, even to develop the scope of the exam.

10:25:59 15 So if we had a bank that had a very high percentage  
16 of past due loans, we would send in more examiners, we would  
17 spend more time there because we knew that probably we were  
18 going to end up having to do some sort of enforcement action.  
19 Banks that have low percentage of past due, we wouldn't send  
10:26:16 20 as many examiners there and we wouldn't spend as much time on  
21 the bank.

22 Q. What are some of the indicators of loan quality that are  
23 significant to regulators?

24 A. Well, two of the main indicators are the percent of loans  
10:26:29 25 past due or delinquencies is an omnibus term that we use. And



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1 then we would also look at charged-off loans. And those would  
2 be loans that would have not paid for so long that the lender  
3 just doesn't think they're ever going to get paid, and so  
4 they're actually taken off the books; so those would be called  
10:26:48 5 charged-off loans.

6 Q. What is a delinquent loan?

7 A. A delinquent loan is a loan that has not paid in  
8 accordance with its terms. And Household used a term that  
9 other lenders use and it's called a two-plus delinquencies,  
10:27:03 10 and that's a loan that hasn't been paid for two months or 60  
11 days.

12 Q. And that's the two-plus delinquency number that you're  
13 referring to --

14 A. Yes.

10:27:14 15 Q. -- at Household?

16 Did Household report the amount or the number of  
17 two-plus delinquent loans or the percentage of two-plus  
18 delinquent loans?

19 A. Yes.

10:27:25 20 Q. What does it mean for a loan to be two-plus delinquent?

21 A. It means that the borrower hasn't paid for two months or  
22 60 days.

23 Q. What if the borrower hasn't paid for three months or 90  
24 days, would the loan be two-plus delinquent then?

10:27:43 25 A. Right. It means two months delinquent or more basically.

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1 Q. So did Household report this as a percentage, this  
2 two-plus delinquency number?

3 A. Yes.

4 Q. And if Household reported that its two-plus delinquency  
10:27:56 5 percentage was, for example, 4.5 percent, what did that mean?

6 A. That meant that 4 percent of the loans in the portfolio  
7 were greater than 60 days past due or two months past due.

8 Q. What is the significance of a lender reporting its  
9 two-plus delinquency number statistic?

10:28:13 10 A. This is -- this is a vital statistic that lenders report  
11 because it's a predictor of future financial health and also  
12 gives you an indication of the current condition of the  
13 lender.

14 Q. And you mentioned the charge-off as another indicator of  
10:28:29 15 loan quality?

16 A. Yes.

17 Q. What is that?

18 A. That's where the loan becomes so far past due that the  
19 lender says we're just not going to get paid on this loan, so  
10:28:39 20 they'll actually take it off the books. They'll charge it off  
21 the books.

22 Q. Did you prepare a demonstrative exhibit to assist you in  
23 explaining how loans go from being current to being two-plus  
24 delinquent to being charged off?

10:28:52 25 A. I did.

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1 Q. I'll show you what's been marked as Plaintiffs'  
2 Demonstrative Exhibit 36 for identification.

3 Can you tell us what this exhibit shows?

4 A. Right. So if you look at the current bucket here -- we'll  
10:29:09 5 just call these buckets. That's what Household called them.  
6 And you have all the current loans here. As a regulator, this  
7 is where you hope all their loans are, but realistically you  
8 know they're going to have some that aren't going to pay.

9 So when a person doesn't pay two months' worth of  
10:29:25 10 payments, it goes into the second bucket, which is the  
11 two-plus bucket. And that's missing payments for 60 days or  
12 two months.

13 And then as time goes on and they keep missing more  
14 and more payments, at some point, it will fall into the  
10:29:42 15 charge-off bucket when the lender has no expectation of  
16 further collection.

17 Q. Is there a relationship between two-plus delinquency  
18 numbers and loan quality?

19 A. Yes. There's a direct correlation between the two-plus  
10:29:57 20 numbers and loan quality. The higher the two-plus number, the  
21 worse the loan quality. So the more delinquencies that a  
22 lender has, the worse their loan quality.

23 Q. Now, did Household report these two-plus delinquency  
24 numbers in its form 10-K annual report?

10:30:13 25 A. Yes.

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1 Q. Can you explain for the jury what it means to re-age a  
2 loan?

3 A. Re-aging a loan means you do something to the loan to take  
4 it from being delinquent to putting it back on a current  
10:30:26 5 basis. It could be a variety of things. If a person has  
6 gotten sick and now they're back to work, you have a  
7 discussion with them as a lender and you say, okay, well, why  
8 don't we sort of start fresh. And there's a variety of ways  
9 to do it. But you can start fresh, and they can start paying  
10:30:47 10 again after not paying for a certain time; and that would be  
11 re-age. There would be a memo in the file discussing why the  
12 loan was re-aged, and it would be something done on a  
13 case-by-case basis.

14 Q. Was there -- did Household re-age loans?

10:31:04 15 A. Yes. Household re-aged loans in a variety of ways and  
16 didn't have individual discussions. Some of them were -- they  
17 would re-age whole portfolios automatically. They engaged in  
18 a variety of things.

19 Q. When you said they would re-age whole portfolios  
10:31:23 20 automatically, did they engage in this sort of call to the  
21 borrower and ask them whether they're back on their feet and  
22 maybe we can give you a break; was that how Household did it?

23 A. No. They would engage in a variety of practices where  
24 they would automatically re-age. They would send the  
10:31:38 25 borrowers an offer that said we'll let you skip the next

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1 payment. If we don't hear from you, we'll take that as a yes.

2 And then, you know, it allowed them to re-age whole

3 portfolios.

4 Q. Did Household engage in automatic re-aging?

10:31:58 5 A. Yes.

6 Q. What is automatic re-aging?

7 A. Automatic re-aging is -- what Household did is if a loan

8 met a certain criteria, they would re-age the whole entire

9 portfolio; and the borrowers wouldn't even know they had been

10:32:08 10 re-aged.

11 Q. So the borrower might be 60, 90 days delinquent; and all

12 of a sudden, they were current?

13 A. Yes.

14 Q. And Household just did that automatically?

10:32:19 15 A. Yes.

16 Q. Now, is there a relationship between re-aging loans and

17 two-plus delinquencies?

18 A. Yes. There's a direct correlation between the two.

19 Q. Did you prepare a demonstrative to show you the

10:32:32 20 relationship between two-plus delinquency and re-aging loans?

21 A. I did.

22 Q. I'll show you what's been marked as Plaintiffs'

23 Demonstrative Exhibits 26 and 27 for identification.

24 26 and 27.

10:33:01 25 Can you tell us what this demonstrative shows?

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1 A. So as re-aging goes up, as loans are re-aged, which is  
2 taken out of the two-plus bucket and put back in current, the  
3 number of two-plus delinquencies goes down. So this is taking  
4 loans from the two-plus bucket and putting them over into the  
10:33:30 5 current bucket. So there's an inverse relationship between  
6 re-aging and delinquent -- two-plus delinquencies.

7 Q. What if two-plus delinquencies go up instead of down, what  
8 is the effect on re-aging?

9 A. Well, if they -- if Household stopped re-aging, for  
10:33:48 10 example, or diminished the amount of their re-aging, the  
11 re-aging would go down and the delinquencies would go up  
12 because then the -- there was no way to make those loans  
13 current. So here re-aging is going down and the two-plus  
14 numbers are going up, so it's a direct inverse relationship.

10:34:05 15 Q. And is re-aging of loans significant to a regulator?

16 A. Yes. When I was a field examiner, this is one of the  
17 things that we looked at in particular to determine if a  
18 lender was masking their delinquencies. We would look at a  
19 variety of tactics that they could use, for example, rewriting  
10:34:27 20 the loan, forbearance, a variety of things. And we would look  
21 to see how prevalent that was in the loan portfolio because  
22 the more they were doing that, the more it would lead us to  
23 conclude that they were masking delinquencies.

24 Q. Now, during your reviews as an expert in this case, did  
10:34:47 25 you determine whether Household used re-aging to manipulate

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1 its two-plus delinquency number?

2 A. Yes, that was one of my conclusions, was that Household  
3 used various re-aging tactics and practices to mask their  
4 delinquencies.

10:35:02 5 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
6 1387 for identification.

7 (Tendered.)

8 BY MR. DROSMAN:

9 Q. Do you recognize Plaintiffs' Exhibit 1387?

10:35:34 10 A. I do.

11 Q. What is it?

12 A. This is an e-mail from Elaine Markell to Rich Peters and  
13 others at Household -- she was at Household -- regarding the  
14 Re-aging Fitch Servicer Presentation Slides, dated November  
10:35:48 15 12, 2002.

16 Q. Why do you recognize this document?

17 A. This was one of the documents that I looked at in  
18 formulating my opinions on the re-aging issues.

19 MR. DROSMAN: Plaintiffs move Exhibit 1387 into  
10:36:02 20 evidence.

21 THE COURT: It will be admitted.

22 BY MR. DROSMAN:

23 Q. Why don't we start at the bottom e-mail, I guess, the  
24 first in the string. And can you tell us, first, who Elaine

10:36:12 25 Markell is in this e-mail?

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1 A. Elaine Markell is a woman who worked in the mortgage  
2 services division, which was kind of the sister division of  
3 consumer lending.

4 Q. And was she the vice president of default services in that  
10:36:29 5 mortgage services business unit?

6 A. Yes.

7 Q. And it looks like she's sending an e-mail to Rich Peters.  
8 Was he the vice president of credit risk for Household  
9 mortgage services?

10:36:40 10 A. Yes.

11 Q. What's significant to you about this e-mail that  
12 Ms. Markell is sending?

13 A. Well, if the -- if you could highlight this -- the  
14 paragraph here. It says, Rich, you need to change the slides  
10:36:56 15 for the presentation.

16 And this is for the presentation to Fitch.

17 First of all, what you have on the slides does not  
18 represent the policies in place since September 27 when I was  
19 directed to add back EZ pay restructures and restructures on  
10:37:13 20 bankruptcies 13.

21 That means Chapter 13 bankruptcies.

22 The bankruptcy 13 restructures were done upon receipt  
23 of the plan without the payment of funds. In addition to  
24 that, restructures were done on any Chapter 13 where one  
10:37:29 25 payment was made in the past 60 days. Since there was no



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1 other reason for the implementation of these restructure  
2 policies other than to make the predetermined delinquency  
3 number, you must take the bullet point out that restructures  
4 are not done to defer loss recognition since it clearly does.

10:37:47 5 Presenting the true facts about restructures to Fitch is  
6 equally as important as stating the true and unadjusted  
7 delinquency which we have discussed before.

8 Q. One of the sentences you read there said, Since there's no  
9 other reason for the implementation of these restructure

10:38:06 10 policies other than to make the predetermined delinquency  
11 number.

12 What's the difference between restructuring and  
13 re-aging?

14 A. Household used them interchangeably.

10:38:15 15 Q. So why is that significant to you, that Ms. Markell  
16 thought that there was no other reason for the implementation  
17 of these re-aging or restructuring policies other than to make  
18 the predetermined delinquency number?

19 A. Because Household was trying to hit a delinquency target.

10:38:31 20 Because at this point in time, in November 2002, they were  
21 reporting certain delinquency numbers and certain of their  
22 policies. And Fitch is a reporting agency that was coming in  
23 to give them a more fuller investigation.

24 Q. Does this suggest or support your opinion that Household  
10:38:56 25 was using re-aging to manipulate its two-plus delinquency

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1 number?

2 A. Yes.

3 Q. How does it do that?

4 A. Well, because she's saying here there's no other reason

10:39:03 5 for us to be doing these restructures with Chapter 13

6 bankruptcy accounts and doing all these shenanigans if it

7 wasn't to make a certain number.

8 Q. And the delinquency number in this case, is that the

9 two-plus delinquency number?

10:39:20 10 A. Yes.

11 Q. I'll show you what has been marked as Plaintiffs' Exhibit

12 77 for identification.

13 (Tendered.)

14 BY MR. DROSMAN:

10:39:49 15 Q. Do you recognize Exhibit 77?

16 A. I do.

17 Q. What is it?

18 A. This is an e-mail string regarding the re-aging, on how

19 many loans had been re-aged one time versus multiple times,

10:40:01 20 with a chart attached showing that very thing.

21 Q. What's the date of the e-mail?

22 A. The date is September 11, 2002.

23 Q. And why do you recognize this document?

24 A. This is one of the documents that I looked at to analyze

10:40:19 25 and formulate my opinions regarding re-aging.

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1 MR. DROSMAN: Plaintiffs offer Exhibit 77 into  
2 evidence.

3 THE COURT: It's admitted.

4 BY MR. DROSMAN:

10:40:30 5 Q. Why don't we take a look -- you said it's two pages, an  
6 e-mail with an attachment. Why don't we look at the e-mail.

7 Can you tell us the significance of the e-mail to  
8 your opinion?

9 A. Yes. The bottom says, For your information.

10:40:44 10 Mr. Schoenholz asked for a ratio -- and that should say of --  
11 domestic multiple re-ages as a percentage of total re-age.  
12 The question came to me via Gary -- which I assume is  
13 Gilmer -- and we provided Mr. Schoenholz with the ratio of  
14 47.9 percent over the phone.

10:41:02 15 And then if you look at the second page and look at  
16 the bottom line. If you could highlight the very bottom line,  
17 you can see -- let's see if -- okay. This line right here  
18 shows total re-age loans of \$15 billion of a total portfolio  
19 of \$98 billion.

10:41:35 20 Q. What does that mean?

21 A. Or 47.9 percent of these loans have been re-aged multiple  
22 times. So of the re-age section -- let me start all over  
23 again.

24 Of the loans that Household had that had been  
10:41:56 25 re-aged, 47.9 percent of them had been re-aged more than one

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1 time.

2 Q. So let's start -- starting in this \$98 billion number,  
3 this signifies all of the loans that Household had at that  
4 time?

10:42:09 5 A. Yes.

6 Q. And then what does this \$15.9 billion number signify?

7 A. And that signifies how many had been re-aged. And that  
8 would have been 16 percent of their whole portfolio had been  
9 re-aged.

10:42:23 10 Q. And then this 47.9 percent number, what does that mean?

11 A. Of the 15 billion, 47.9 percent had been re-aged, almost  
12 half of the 15 billion had been re-aged multiple times.

13 Q. And what does that mean, re-aged multiple times?

14 A. Well, it's really -- when you re-age something, you know,  
10:42:44 15 you're taking it out of the delinquency and you're putting it  
16 into the current bucket. And then they're not paying again,  
17 and then you re-age it again and you re-age it again. And so  
18 you are, in effect, masking your past due because there's no  
19 way for the customer -- the customer is not paying. You're  
10:43:02 20 just re-aging it to take it out of the delinquency bucket.

21 And that's what Household was doing.

22 Q. So re-aging multiple times means you've re-aged a loan  
23 once already, you're re-aging it again, perhaps again and  
24 again --

10:43:14 25 A. Right.

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1 Q. -- just to take it out of the delinquent bucket repeatedly  
2 and put it back in the current?

3 A. Right. And the time frame is, it's in the two-plus bucket  
4 and you re-age so it goes back to current. So it takes a  
10:43:26 5 number of months. It takes two months to get it back in the  
6 two-plus bucket. Then you re-age it and it goes into the  
7 current. Then it takes a couple of months to get back there.  
8 So once they re-age, they have a little bit of time before  
9 they have to deal with it again.

10:43:41 10 Q. And who is asking for this information, this ratio of how  
11 many loans had been re-aged multiple times?

12 A. It says Mr. Schoenholz is asking for it.

13 Q. And that's David Schoenholz, the CFO of the company?

14 A. Yes.

10:43:58 15 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
16 654 for identification.

17 (Tendered.)

18 BY MR. DROSMAN:

19 Q. Do you recognize Plaintiffs' Exhibit 654?

10:44:28 20 A. I do.

21 Q. And what is this?

22 A. This is an e-mail from Dave Stockdale to various managers  
23 or senior -- senior managers at Household. And the subject is  
24 retail services re-age policy. And the date is September 4,  
10:44:51 25 2001.

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1 Q. And why do you recognize this document?

2 A. This is one of the documents I looked at in formulating my  
3 opinions.

4 MR. DROSMAN: Plaintiffs offer Exhibit 654 into  
10:45:03 5 evidence.

6 THE COURT: It's admitted.

7 BY MR. DROSMAN:

8 Q. Why don't we take a look at this. The bottom e-mail  
9 appears to be from Dave Stockdale; is that right?

10:45:15 10 A. It looks like it's from Dave Stockdale to Paul  
11 "Markawitz."

12 Q. Paul Makowski?

13 A. I'm sorry. I'm mispronouncing his name. Makowski, yes.

14 Q. Mr. Makowski was the chief credit officer; is that  
10:45:30 15 correct?

16 A. Yes.

17 Q. If you take a look at the second paragraph of the e-mail,  
18 does that have any significance to your opinion?

19 A. Yes. This is what I was talking about. This says, For  
10:45:41 20 maximum benefit to year-end, retail sales should perform the  
21 re-age between the customer cycle date and the month-end with  
22 a sweep at month-end. This will ensure that all September  
23 re-ages will be unable to reach two-plus by year-end.

24 In other words, they're going to take all of them at  
10:45:57 25 a certain time because then it would prevent them from

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1 progressing back to the two-plus number by year-end when they  
2 have to report it on their 10-K.

3 Q. So is this significant to your opinion that Household  
4 manipulated its two-plus delinquency number through the use of  
10:46:13 5 re-aging?

6 A. Yes.

7 Q. Why?

8 A. Well, because they're discussing how they're going to  
9 manipulate their delinquency number by using the re-age  
10:46:21 10 practice at a certain -- and they're even planning when  
11 they're going to use it so that these loans won't then become  
12 delinquent and show up again in the two-plus bucket at  
13 year-end.

14 Q. Then the last sentence there says, This will ensure that  
10:46:36 15 all September re-ages will be unable to reach two-plus at  
16 year-end.

17 A. Yes.

18 Q. Do you see that?

19 What do you understand that to mean?

10:46:44 20 A. Well, they were timing the re-ages so that they could  
21 prevent the ones in this particular category from becoming  
22 delinquent again, such that it reaches that two-plus bucket at  
23 year-end so they don't have to disclose it as delinquent.

24 Q. They have to disclose all the delinquent loans at the  
10:47:03 25 year-end in their form 10-K, their annual report?

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1 A. Yes.

2 Q. And so what's your conclusion about why -- what this means  
3 here?

4 A. So they're timing these re-ages so that this group of  
10:47:12 5 loans will not show up as two-plus delinquent at year-end.

6 Q. And they do that by re-aging those loans?

7 A. Yes, at a certain time. They're timing it because they  
8 know that the progression will be that it will go to 30 days  
9 past due, then 60 days past due, in which case it's going to  
10:47:29 10 end up in the two-plus bucket. So they're timing it so that  
11 doesn't happen until January so they don't have to disclose  
12 it.

13 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
14 454 for identification.

10:47:47 15 (Tendered.)

16 BY MR. DROSMAN:

17 Q. Before we actually get to 454, there was one issue on that  
18 last exhibit that we were talking about that I wanted to  
19 discuss with you.

10:48:01 20 If we can put back up 654, the first page.

21 And this is the example of the timing of the re-ages  
22 so that they wouldn't be delinquent at year-end. If you look  
23 at the top e-mail, it looks like it was forwarded by  
24 Mr. Makowski?

10:48:21 25 A. Yes.



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1 Q. And was it forwarded to Mr. Schoenholz?

2 A. Yes. He was cc'd on it.

3 Q. Perhaps we can zoom in on that so we can see whether it  
4 was forwarded to Mr. Schoenholz.

10:48:35 5 So you said Mr. Schoenholz received a copy of this  
6 e-mail?

7 A. Yes.

8 Q. Why don't we turn now to Plaintiffs' Exhibit 454 for  
9 identification.

10:48:52 10 Do you recognize Plaintiffs' Exhibit 454?

11 A. I do.

12 Q. What is it?

13 A. This is a document. It's an e-mail string. And it's got  
14 some handwritten notes and then a chart attached to it.

10:49:08 15 Q. And the e-mail string that you talked about, who is the  
16 e-mail from?

17 A. Well, there are several e-mails, but some of them are from  
18 Gary Gilmer.

19 Q. And what are the dates?

10:49:22 20 A. The date of the bottom e-mail is February 22, 2000.

21 Q. And what's the subject of the e-mail?

22 A. And the subject is "cut."

23 Q. Why do you recognize Plaintiffs' Exhibit 454?

24 A. This was one of the documents that I looked at in  
10:49:39 25 formulating my opinions.

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1 MR. DROSMAN: Plaintiffs offer Exhibit 454 into  
2 evidence.

3 THE COURT: It will be admitted.

4 BY MR. DROSMAN:

10:49:50 5 Q. Let's take a look at the bottom e-mail on page ending 417  
6 that you said is entitled "cut."

7 That's from Dick Schaffer; is that right?

8 A. Yes, and he's sending this to Gary Gilmer.

9 Q. And that's the defendant in this case?

10:50:06 10 A. Yes.

11 Q. And Dick Schaffer is the managing director of operations  
12 for the consumer lending division; is that correct?

13 A. Yes.

14 Q. Can you tell me what's significant about the text of that  
10:50:18 15 e-mail?

16 A. Well, he's saying here, I just revisited the two-plus  
17 forecast with each of my guys. Bottom line looks like a \$25  
18 million cut without the magic, parentheses, grace period, and  
19 75,000 with it. We are a little afraid of the 29-day month so  
10:50:32 20 we aren't being overly aggressive with this forecast. It  
21 looks pretty solid.

22 Q. Let's just focus on the first two sentences of that  
23 e-mail. Bottom line looks like a \$25 million cut without the  
24 magic, parens, grace period, and \$75 million with it.

10:50:57 25 Is he talking about the two-plus delinquency number

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1 in this case?

2 A. Yes.

3 Q. And is he talking about a cut to the two-plus delinquency  
4 number?

10:51:04 5 A. Yes.

6 Q. So what do you understand this to mean here?

7 A. Well, what Household did is they would give their  
8 borrowers 15 days after the date that the payment was due as a  
9 grace period to make their payment. And so, unlike other  
10:51:19 10 lenders who just report delinquencies straight up, what they  
11 would do is, say, for example, a loan was 74 days past due,  
12 they would deduct 15 days from that and that would bring it  
13 back down to 59 days and so they wouldn't report that as a  
14 two-plus number, a loan that's in the two-plus bucket.

10:51:40 15 So they would use grace periods as a way to mask past  
16 due by deducting 15 days from how many ever days the loans  
17 were past due in the two-plus bucket and bringing them back  
18 into the current bucket.

19 And so what he's saying here is that without the  
10:51:56 20 magic of the grace period, they would not be -- it would look  
21 like their delinquencies would be cut 25 million; but with  
22 using this grace period tactic, they would be able to cut  
23 two-plus numbers 75 million.

24 Q. So they could cut \$50 million from their two-plus numbers  
10:52:17 25 by using the magic of the grace period; is that right?

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1 A. Yes, yes.

2 Q. And does this -- is this significant to your opinion that  
3 Household used re-aging practices like the grace period to  
4 manipulate its two-plus numbers?

10:52:31 5 A. Yes. I mean, there's no reason to do that unless you were  
6 manipulating your delinquencies.

7 Q. Who is receiving this particular e-mail?

8 A. Mr. Schaffer was sending it to Gary Gilmer.

9 Q. I'll show you what has been marked as Plaintiffs' Exhibit  
10:52:53 10 262 for identification.

11 (Tendered.)

12 BY MR. DROSMAN:

13 Q. Do you recognize Plaintiffs' Exhibit 262?

14 A. I do.

10:53:17 15 Q. And what is Plaintiffs' Exhibit 262?

16 A. This is a series of e-mails that describes the cut in  
17 delinquencies using this tactic for the grace periods, of  
18 deducting the 15 days and pushing it back into the current  
19 bucket. And they're quantifying it from a dollar perspective  
10:53:39 20 each month. There's a series of them.

21 Q. And who is the recipient of these e-mails?

22 A. Let's see here. It looks like Douglas Friedrich.

23 Q. And he's the managing director, the head honcho, of  
24 mortgage services at Household; is that right?

10:54:00 25 A. Yes.

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1 Q. And why do you recognize Plaintiffs' Exhibit 262?

2 A. This is one of the documents that I reviewed in  
3 formulating my opinions.

4 MR. DROSMAN: Plaintiffs offer Exhibit 262 into  
10:54:12 5 evidence.

6 THE COURT: Admitted.

7 BY MR. DROSMAN:

8 Q. Why don't we take a look at the first page of this series  
9 of e-mails.

10:54:19 10 What's the title of the e-mail?

11 A. So the title of the e-mail is two-plus reconciliation.

12 Q. And what does this particular e-mail show?

13 A. It shows that the adjustment for the 15-day grace period  
14 was \$19 million in this case for this month, the month of --  
10:54:42 15 it would be the prior month, so January 2001.

16 Q. So that the re-aged number was actually 431, is that  
17 right, according to Sarah's figure?

18 A. Yes.

19 Q. And then they're deducting or lowering that re-age number  
10:54:56 20 by 19.7 million; is that right?

21 A. Actually the number is the two-plus number and so then  
22 they're taking out the 15-day grace period. So they're  
23 adjusting the two-plus number.

24 Q. And what are the parens around the 19.7 million?

10:55:11 25 A. That means they're taking it out. It's negative.

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1 Q. The final two-plus delinquency number that they come up  
2 with after taking out the grace period is what?

3 A. 418 million.

4 Q. And you said that this e-mail was sent on 2/6/01, so it  
10:55:24 5 would be for the month of January, right?

6 A. Right.

7 Q. Let's look at the next page, page ending 842.

8 And this e-mail was sent on March 7, 2001; is that  
9 right?

10:55:40 10 A. Yes.

11 Q. Again, sent to Doug Friedrich, the head of Household's  
12 mortgage services unit; is that right?

13 A. Right.

14 Q. And what's this showing here?

10:55:48 15 A. And this is the two-plus reconciliation again. So it  
16 shows that the two-plus numbers for the grace period  
17 adjustment were being reduced by 16 million.

18 Q. Again, lowering the two-plus numbers by 16.1 million  
19 for --

10:56:04 20 A. Right, for that month.

21 Q. For that month.

22 What about the next page?

23 A. This is similar. These are all these same sort of  
24 reconciliations. So here the grace period adjustment is

10:56:17 25 17,483,000. So two-plus numbers are being reduced by this

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1 grace period adjustment.

2 Q. And what's the date of this e-mail?

3 A. August 7, 2001. So this would be for July.

4 Q. And do the rest of the e-mails show the same thing?

10:56:36 5 A. Yes.

6 Q. Does this -- is this significant to your opinion that

7 Household used re-aging tactics like the use of the grace

8 period to manipulate its two-plus delinquency numbers?

9 A. Yes.

10:56:48 10 Q. Why?

11 A. Well, because there's no reason to make this kind of

12 adjustment. Other lenders just do a straight-up deal. Here,

13 what they were doing is using their grace period to move loans

14 from the two-plus bucket back to current. And the pass --

10:57:03 15 these sorts of delinquency numbers are very important to

16 regulators and others because it shows the condition of the

17 loan portfolio.

18 Q. Is this grace period right here, is this the same grace

19 period we heard referred to earlier in an earlier e-mail as

10:57:21 20 the magic?

21 A. Yes.

22 Q. Now, is there a relationship between predatory lending on

23 the one hand -- we talked quite a bit about that yesterday --

24 and the use of practices like re-aging to hide the true

10:57:34 25 quality of Household's loans on the other?

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1 A. Yes, there is a relationship.

2 Q. Did you prepare a demonstrative to assist you in  
3 explaining the relationship between predatory lending  
4 practices on the one hand and hiding the quality of

10:57:46 5 Household's loans on the other?

6 A. I did.

7 Q. I'll show you what has been marked as Plaintiffs'  
8 Demonstrative Exhibit 31 for identification.

9 Can you tell us what this exhibit shows?

10:58:05 10 A. Yes. Household starts out making a predatory loan. And  
11 remember, they're packing on fees and insurance premiums and  
12 stripping away the equity. And what happens is, the borrower  
13 cannot pay the loan. It's too large for the borrower to pay.

14 So Household has one of two choices. They can either  
10:58:26 15 re-age it so that it's not showing up on their two-plus  
16 bucket. Or they can refinance it or rewrite it down below,  
17 which is flipping it, adding more insurance, adding more fees  
18 to it.

19 And then --

10:58:39 20 Q. Let me just pause there. To refinance it or rewrite it,  
21 does that take it out of the two-plus bucket as well?

22 A. Right. And it brings it back to current. So they can  
23 either re-age it using some sort of tactic that we've already  
24 talked about or they can actually rewrite it and make a new  
10:58:56 25 loan and start over.



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1 Q. Okay.

2 A. And then, no matter what, the borrower still can't pay  
3 because the loan is so packed full of products, premiums and  
4 fees and can't go anywhere else because the equity has been  
10:59:11 5 stripped and the loan to value is too high so they're stuck.  
6 And Household then has one of two choices. They can either  
7 rewrite it on the top, which is flip it again and add more  
8 fees and premiums, insurance premiums to it, or they can  
9 re-age it using one of the tactics, like the grace period or  
10:59:30 10 one of their other tactics.

11 Q. So if they rewrite it right here, does that -- again, that  
12 takes it out of the delinquent bucket; now all of a sudden  
13 they have a brand new loan so it's current again?

14 A. Yes. So whether they re-age it or they rewrite it, that's  
10:59:47 15 going to bring it to the current bucket. But rewriting it  
16 allows them to pack on more fees and insurance premiums. So  
17 they can do -- they can either re-age it or rewrite it.

18 Q. And you talked -- is there a predatory lending practice  
19 that this implicates right here?

11:00:02 20 A. Yes. I mean, it implicates all sorts of predatory lending  
21 practices, loan flipping because they're re-aging it multiple  
22 times, insurance packing, equity stripping. If they rewrite  
23 it into two loans, that would be loan splitting. You know,  
24 originally they're reeling them in with the effective rate, as  
11:00:22 25 Dennis Hueman would say, and blocking the back door with the

Ghiglieri - cross

700

1 prepayment penalty so that -- and because they've stripped out  
2 the equity, there's nowhere for them to go to refinance.

3 Q. So what's the last step?

4 A. So the borrower still can't pay, and the cycle starts over  
11:00:39 5 again and go on one of two paths. So there's a correlation  
6 between predatory lending practices and the need for Household  
7 to re-age and mask their delinquencies.

8 Q. Thank you, Ms. Ghiglieri.

9 MR. DROSMAN: I have no further questions at this  
11:00:57 10 time.

11 THE COURT: You may cross-examine.

12 MR. KAVALER: Thank you.

13 CROSS-EXAMINATION

14 BY MR. KAVALER:

11:01:22 15 Q. Good morning, Ms. Ghiglieri.

16 As you know, I'm Tom Kavalier, and I represent the  
17 defendants. And we've met before, correct?

18 A. Yes.

19 Q. Okay. I'm going to ask you a few questions today about  
11:02:07 20 the same subject matter you've been talking about for the past  
21 couple of days. And my time is sort of limited, so I'm going  
22 to try and ask you questions that can be answered yes or no.  
23 If I do that, will you answer them yes or no?

24 A. If I can answer them with a yes or a no.

11:02:20 25 Q. Perfect. Thank you.

Ghiglieri - cross

701

1 Now, it's correct that you never worked at Household  
2 International?

3 A. Correct.

4 Q. And, in fact, you've never worked at any company in the  
11:02:32 5 private sector, only in the government?

6 A. Incorrect.

7 Q. Okay. Where did you work in the private sector?

8 A. Well, I launched Rate Genius, which is a company that  
9 refinances automobile loans. And I also worked at our family  
11:02:49 10 bank when I was in high school and college.

11 Q. Okay. And you were never a customer of Household  
12 International?

13 A. That's correct.

14 Q. And when you were the head of the Texas Department of  
11:03:05 15 Banking, you didn't personally regulate Household; someone  
16 else did that, correct?

17 A. A sister agency regulated it, the Consumer Credit  
18 Commissioner.

19 Q. Right. And am I correct that you never met Bill Aldinger  
11:03:20 20 or Gary Gilmer or Dave Schoenholz personally?

21 A. That's correct.

22 Q. And you never met Tom Detelich or Lisa Sodeika either?

23 A. That's correct.

24 Q. You never met or spoke with anyone else whom you  
11:03:38 25 understood to be an employee of Household at the time you were

Ghiglieri - cross

837

1 testimony yesterday.

2 MR. KAVALER: I am having difficulty with the  
3 transcript.

4 BY MR. KAVALER:

03:42:29 5 Q. Let me do it this way: This document, 1080, is headed  
6 "Optional Credit Insurance Disclosure."

7 Do you see that?

8 A. I see that.

9 Q. And first thing it says after the name of the creditor,  
03:42:37 10 the name of the borrowers and some boxes with some amounts in  
11 it, is a sentence that begins in capital letters, "No credit  
12 insurance is required to obtain this loan."

13 Do you see that?

14 A. I do.

03:42:46 15 Q. All right.

16 And this is the document signed by the borrowers --  
17 the Nanezes -- on the next page, correct?

18 A. Yes.

19 Q. So, they received a written disclosure from Household  
03:42:58 20 which says on the top, it's an "Optional Credit Insurance  
21 Agreement" and says in the beginning of the text in capital  
22 letters, "No credit insurance is required to obtain this  
23 loan."

24 Do you see that?

03:43:10 25 A. I see it.

Ghiglieri - cross

838

1 Q. Okay.

2 And that would alert them to the fact this credit  
3 insurance is both optional and not required to obtain the  
4 loan, correct?

03:43:18 5 A. If they spoke English. They're Spanish speakers.

6 Q. Do you know that for a fact or you just assuming that?

7 A. Well, I'm reading it from the complaints. I pulled the  
8 complaint out.

9 Q. Okay.

03:43:30 10 A. "We are Hispanic and our primary language is Spanish."

11 Q. Okay.

12 And your point is: This document is in English?

13 A. It is in English.

14 Q. Okay.

03:43:38 15 So, as a regulator, what would you like to see?

16 Would you like to see Household provided them with a  
17 disclosure in Spanish?

18 A. Well, there are a couple things.

19 One, if you are lending money to someone that doesn't  
03:43:55 20 speak English, at least I know -- from the bank's

21 standpoint -- they've got forms. All of their documents are  
22 in all the different languages of the clients that they serve.

23 The second thing is Household always claimed that  
24 their insurance was optional; but, if you remember, I talked

03:44:12 25 about the penetration ratios.

Ghiglieri - cross

839

1           When you look at how many loans were made and how  
2 many insurance policies were written on those loans, if it  
3 gets above 50 percent, the regulators think that credit  
4 insurance is actually required.

03:44:29 5           In this complaint, it actually says that: "The  
6 Household's representative told us that we had to get single  
7 premium credit insurance."

8           So, it conflicts with the language in this document,  
9 which, if they spoke English, they would have been able to  
03:44:47 10 read and maybe ask a question about.

11           But, notwithstanding that, this is symptomatic of  
12 insurance packing that was complained of in various states  
13 around the country.

14 Q. All right.

03:44:59 15           So, part of the problem is the document is in English  
16 and you believe they spoke Spanish?

17 A. Well, they said they spoke Spanish. I'm just looking at  
18 their complaint.

19           I don't know them personally.

03:45:10 20 Q. Understood.

21           So, let's look at the other document in the loan  
22 file, which is the Loan Payment and Security Agreement.

23           We'll mark this as Defendants' 1081 for  
24 identification.

25           (Document tendered.)

**TAB 5**

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
  on behalf of itself and all      )  
4 others similarly situated,       )  
                                  )  
5                          Plaintiff,                      )  
                                  )  
6          vs.                          )  No. 02 C 5893  
                                  )  
7 HOUSEHOLD INTERNATIONAL, INC., )  
  et al.,                              )  Chicago, Illinois  
8                                  )  April 8, 2009  
                          Defendants.          )  9:45 a.m.

9  VOLUME 7  
10                          TRANSCRIPT OF PROCEEDINGS - TRIAL  
11                          BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

12 APPEARANCES:

13 For the Plaintiff:              COUGHLIN STOIA GELLER RUDMAN &  
  ROBBINS LLP  
14  BY: MR. LAWRENCE A. ABEL  
  MR. SPENCER A. BURKHOLZ  
15  MR. MICHAEL J. DOWD  
  MR. DANIEL S. DROSMAN  
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21  MR. JASON C. DAVIS  
  MS. AZRA Z. MEHDI  
22  100 Pine Street  
  Suite 2600  
23  San Francisco, California 94111  
  (415) 288-4545



Gilmer - redirect

1424

1 14th, 2000; is that right, sir?

2 A. I'm sure there's a date on it, Mr. Dowd.

3 Q. It's on the second page, sir, right next to your  
4 electronic signature.

11:48:05 5 A. Okay. It says February 14, 2000.

6 Q. Okay. So that's a Form 4 that you're required to file  
7 with the Securities and Exchange Commission; is that right?

8 A. I believe -- I'm not a lawyer, obviously, but I think  
9 these are required.

11:48:18 10 Q. And you did file them during this relevant time period,  
11 didn't you, sir?

12 A. I'm sure that I did.

13 Q. 758 is one of them; am I right?

14 A. I'm sorry?

11:48:26 15 Q. And 758 is one of those; is that right, sir?

16 A. It appears to be.

17 MR. DOWD: And I'd offer 758, your Honor.

18 THE COURT: It will be admitted.

19 BY MR. DOWD:

11:48:46 20 Q. Sir, I'll show you what's been marked as Defendants'  
21 Exhibit 759 and ask you to take a look at that.

22 (Tendered.)

23 BY MR. DOWD:

24 Q. And do you recognize Exhibit 759 to be another Form 4  
11:49:04 25 signed by you on October the 19th, 2000, sir?

Gilmer - redirect

1425

1 A. It does appear to be.

2 Q. And, again, you were required to file this by the SEC; is  
3 that right?

4 A. I believe that is correct.

11:49:16 5 Q. Doesn't it, sir, show you that on October 18, 2000, you  
6 exercised options at a strike price of \$11.12 to buy 16,500  
7 shares; is that right, sir?

8 A. That is correct.

9 Q. And then later that same day apparently, you acquired  
11:49:36 10 through an option exercise at a price of \$13.62 another 33,500  
11 shares; is that right?

12 A. I believe that is correct.

13 Q. Okay. So you bought -- you exercised options -- old  
14 options, is that right, sir, from before the relevant time  
11:49:55 15 period?

16 A. I don't know when these options were granted, Mr. --  
17 Mr. Dowd.

18 Q. Come on, sir. You're not going to tell me that you think  
19 that sometime after June 30, '99, your stock was trading at 11  
11:50:10 20 bucks?

21 A. No, I did -- did I say that, Mr. Dowd?

22 Q. I don't know. Maybe I just misunderstood.

23 A. Maybe you did, so let me explain what I said. I said I'm  
24 not sure when these options were granted. That's all I said.

11:50:22 25 Q. Okay. It was sometime prior to June 30, 1999, right, sir?

Gilmer - redirect

1426

1 A. I believe it probably would have been, yes.

2 Q. Okay. So on that day, October 18, 2000, when you  
3 exercised your rights to buy this stock using options that had  
4 been granted to you in the past, 50,000 shares, you paid

11:50:39 5 \$11.12 and \$13.62; is that right, sir?

6 A. That's what that says, yes, it does.

7 Q. Okay. And then when you sold those shares that same  
8 day -- because you sold 50,000, right?

9 You bought 50 and you sold 50, right?

11:50:56 10 A. That appears to be correct.

11 Q. Okay. When you sold them that same day, you sold them at  
12 \$47 and \$50 a share, is that right, on the 18th and 19th?

13 A. That is exactly right. That's the way a stock option  
14 works.

11:51:11 15 Q. Right. So, in other words, when my clients were paying  
16 \$47 or \$50 on those two days to buy those shares, you were  
17 buying them for 11 and 12 and 13 bucks; is that right?

18 A. No. I was granted these shares, as you pointed out  
19 correctly, years before. So I wasn't buying in the market any  
11:51:32 20 shares. I would have paid the \$47 and \$50 respectively in the  
21 market on that day, exactly like your clients would have.

22 Q. But you didn't, sir?

23 A. That's right, I did not buy stock in the open market on  
24 that day.

11:51:47 25 Q. You just exercised your options and bought it at 11 and

Gilmer - redirect

1427

1 13; is that right?

2 A. That's what I've been trying to tell you, Mr. Dowd.

3 That's the way a stock option works.

4 Q. Right. No, I understand that. It's just that your  
11:51:56 5 counsel asked you today something about me asking about you  
6 exercising that 11 bucks. I just want to make sure we  
7 understand that's exactly what you did during the relevant  
8 time period, right, sir?

9 MR. KAVALER: Objection to the form, your Honor.

11:52:07 10 THE COURT: I'll sustain the objection as to the form  
11 of the question.

12 BY MR. DOWD:

13 Q. Mr. Gilmer, let me show you one more. I'll show you  
14 what's been marked as Defendants' Exhibit 763.

15 (Tendered.)

16 BY MR. DOWD:

17 Q. And is that again, sir, a Form 4 that you filed with the  
18 SEC?

19 A. Yes, sir, it is.

11:52:48 20 Q. Okay. And that's your signature there on the second page?

21 A. It is.

22 Q. Okay. And you were required to file these forms with the  
23 SEC? This one too, right?

24 A. As I've said, I believe it is a requirement, yes.

11:53:03 25 Q. And, sir, on July 18, 2001, you exercised some more

Gilmer - redirect

1428

1 options at 17 -- for 17,500 shares and, again, for 7,500  
2 shares; is that right, sir?

3 A. That is correct.

4 Q. And you were paying \$13.62 for the 17,500 shares and then  
11:53:25 5 \$19.87 for the 7,500 shares; is that right, sir?

6 A. That -- that is the strike price on the -- on the stock  
7 options that I exercised.

8 Q. That's what you paid, right?

9 A. That's the way a stock option works, yes.

11:53:39 10 Q. And when you sold those shares that same day, you got  
11 \$68.84, \$69 and \$69; is that right, sir?

12 A. That's right. That's how much the stock had gone up since  
13 I was granted the options. And so that's what I was able to  
14 sell them for in the open market on that day, that's true.

11:53:59 15 Q. In other words, that's what my clients paid when they  
16 bought them on that day, right?

17 A. Which is exactly the same I would have paid if I had been  
18 in the open market on that day.

19 Q. Right. But you weren't in the open market; you were  
11:54:09 20 exercising options, right, sir?

21 A. On that particular day. I had been in the open market  
22 since 1972.

23 Q. I'm not asking about what you did in 1972, sir. I'm  
24 asking you what you did on July 18, 2001.

11:54:20 25 A. That document actually -- accurately describes what I did

**TAB 6**



Schoenholz - cross

2106

1 Q. Now, counsel asked you about a big stack of documents that  
2 are piled up here (indicating) on the table -- various 10-Ks  
3 and 10-Qs and other public filings. Do you recall that?

4 A. I do.

01:37:39 5 Q. Now, would you explain to the jury and to the Court the  
6 process by which --

7 MR. SLOANE: Let me withdraw that.

8 BY MR. SLOANE:

9 Q. Did you write those documents?

01:37:52 10 A. I did not.

11 Q. Would you explain to the Court and to the jury what was  
12 the process by which those documents were created?

13 A. Let me start with the 10-K document because that's a more  
14 comprehensive document.

01:38:10 15 Q. Let me interrupt you one second.

16 MR. SLOANE: Your Honor, we have a demonstrative  
17 exhibit, 802-01. May we publish that on the board, please?

18 I don't believe there's any objection to it.

19 THE COURT: If there's no objection, yes.

20 BY MR. SLOANE:

21 Q. Perhaps this can serve as an aid to the jury and to you,  
22 Mr. Schoenholz.

23 So, why don't you walk us through this document, if  
24 you would.

01:38:38 25 A. Okay.



Schoenholz - cross

2107

1 Well, in this time frame, what it means is that the  
2 10-K draft would have been initially prepared, generated by  
3 the Corporate Controller's group with input from Investor  
4 Relations, from the Treasury Department, from the Credit Risk  
01:38:59 5 Department, clearly on the types of disclosures we've been  
6 talking about would be drafted by the Credit Risk people; and,  
7 also, would include initial input from the external auditors.

8 It would then be reviewed, after it was actually  
9 drafted, by other people in the Corporate Controller's group.  
01:39:17 10 I think that says "Internal Audit."

11 A draft would then go to Mr. McDonald, who was the  
12 Chief Accounting Officer.

13 Q. Mr. McDonald was the person that Mr. Dowd asked you about  
14 in connection with certain of the exhibits you saw this  
01:39:32 15 morning?

16 A. Yes, sir.

17 He would then review the draft thoroughly, provide  
18 his input, his comments, his direction, at which time he would  
19 then circulate a 10-K document to all of those people listed:  
01:39:46 20 Basically, senior business unit, operating managers, as well  
21 as financial managers and functional heads within the  
22 corporate office.

23 They were charged with reviewing the 10-K,  
24 particularly as it related to disclosures that they had  
01:40:07 25 specific informed knowledge on. They provided their input

Schoenholz - cross

2108

1 back to what we had was called a Disclosure Committee. And  
2 that Disclosure Committee consisted -- my recollection is it  
3 consisted -- of McDonald; the treasurer; representatives of  
4 the legal group that were, like, the SEC experts; as well as  
01:40:32 5 some people -- a couple business unit financial people -- I  
6 believe.

7 They would take it, digest it, come up with a draft  
8 that they were happy with. There would be then kind of a  
9 summary meeting with Aldinger, myself, McDonald, and that says  
01:40:51 10 Schwartz, who was kind of the SEC counsel in this time frame,  
11 to talk about any issues, anything that we needed to revolve  
12 at a higher level.

13 KPMG, the auditors, would then review that draft.  
14 Although they had provided input at the very beginning part of  
01:41:10 15 the process, but they would review it and, in essence, sign  
16 off on that as part of their audit processes. That would  
17 include reviewing the MD&A and all those types of disclosures,  
18 as well.

19 I would then get a draft and I'd review it very  
01:41:27 20 carefully; generally, kind of in the late December time frame  
21 and, then, probably updated in the late January time frame.

22 It would go to Mr. Aldinger. Mr. Aldinger would take  
23 and review it and provide whatever comments he had. Then we  
24 provided a draft of the 10-K to the Audit Committee generally  
01:41:52 25 at the end of January for a meeting when the auditors would

Schoenholz - cross

2109

1 present the results of their audit.

2 Mr. McDonald would take and talk about the financial  
3 statements.

4 Prior to the meeting with the Audit Committee, we had  
01:42:10 5 a separate advanced meeting -- this is pre-Audit Committee  
6 meeting -- with Mr. Levy, who was the Chairman of the of Audit  
7 Committee.

8 Mr. Levy was a retired senior technical partner with  
9 KPMG and was a very -- truly an expert in this area of  
01:42:29 10 financial reporting and disclosures.

11 He wanted to have a -- he wanted to have a -- private  
12 advanced meeting with myself, McDonald, the internal auditors,  
13 the external auditors. And then he would meet privately just  
14 with the internal auditors and privately just with the  
01:42:48 15 external auditors, would get his input and then present it to  
16 the Audit Committee and then get their input.

17 Q. Let me be sure I understand this.

18 Did all of the 10-Ks and 10-Qs, after July 30, 2002,  
19 go through this same process?

01:43:11 20 A. That's correct.

21 Q. Now, what was the process -- what's the significance of  
22 the July 30, 2002, date, in your mind?

23 A. That was when Sarbanes-Oxley came in.

24 Q. What does that mean?

01:43:23 25 A. Sarbanes-Oxley was legislation introduced on creating a

Schoenholz - cross

2110

1 requirement for the Senior Chief Executive Officer and  
2 principal Financial Officer. So, in essence, certify  
3 financial statements that were filed with the SEC.

4 And in response to that requirement to have that  
01:43:47 5 certification, we created a sub-certification process that, in  
6 essence, that had everybody in the business -- and there were,  
7 I don't know, 40 or 50 people -- had to certify, in essence,  
8 to Mr. Aldinger and myself the same things that we would have  
9 to certify to the outside world.

01:44:10 10 That's why July -- that's the significance of July  
11 30.

12 Q. So, that was after July 30th, after this law got passed;  
13 is that right?

14 A. Right.

01:44:19 15 Q. What was the process like before this law got passed?

16 A. It was, essentially, the same process. The difference  
17 would be there wasn't a formal certification process and we  
18 didn't have a formal disclosure committee. So, it was more  
19 like McDonald -- it would be the same where he would send it  
01:44:38 20 out to the different business units and the functional heads,  
21 but he would get the input back himself and working with his  
22 department, giving it to KPMG; and, then, really are the rest  
23 of the process was the same.

24 Q. Now, when you signed these documents -- these 10-Ks or  
01:44:59 25 10-Qs that Mr. Dowd showed you -- did you draw any comfort or

**TAB 7**



Devor - direct

2411

1 BY MR. DOWD:

2 Q. You can answer.

3 THE COURT: Well, we're going to have a sidebar.

4 Counsel's asked for a sidebar.

02:41:33 5 MR. DOWD: Oh.

6 (Proceedings had at sidebar:)

7 THE COURT: Yes?

8 MS. BUCKLEY: Your Honor, I thought we had gone  
9 through this yesterday morning in the context of commenting on  
02:42:05 10 counsel's questions to Mr. Schoenholz. We pointed out that by  
11 comparing this number of what they claim was gathered by  
12 Household through the use of alleged predatory lending  
13 practices to financial statements is exactly what they're  
14 doing in making a revenue recognition comparison, when they  
02:42:28 15 put it up against the financial statements.

16 If he wants to make some broad argument about what he  
17 thinks predatory lending brought into Household's --

18 THE COURT: Let me just interrupt you for a second.

19 What was the question you just asked? Maybe I  
02:42:43 20 misunderstood it.

21 MR. DOWD: I think what I asked, your Honor, was  
22 something along the lines of: Did you look at the 3.2 billion  
23 compared to the revenue for 1999 through the first two  
24 quarters percentage-wise?

02:42:54 25 MS. BUCKLEY: And I thought --

Devor - direct

2412

1 THE COURT: Compared to the entire revenue?

2 MR. DOWD: I think that's what I asked, yes.

3 THE COURT: All right. Give me just a second.

4 (Brief pause.)

02:43:12 5 THE COURT: Yeah, I don't think that's -- I don't  
6 think that's -- inappropriate. What's inappropriate is any  
7 question that might imply that because a total number -- the  
8 total amount -- of revenue included revenue allegedly  
9 attributable to predatory lending practices, that the  
02:43:33 10 statement that's a total amount of revenue is false. That  
11 type of an implication I've said cannot be made.

12 But he can point out to what degree predatory lending  
13 practices were engaged in by quantifying the amount of the  
14 total revenue that was attributable to predatory lending  
02:43:57 15 practices and a comparison to the total amount of revenue that  
16 was reported.

17 That goes to the issue of how pervasive the practices  
18 were, not to whether the revenues were falsely reported.

19 MS. BUCKLEY: As your Honor said yesterday, it's one  
02:44:16 20 thing to ask him how much of the money was attributable to  
21 predatory lending, but it's another to ask him to put in the  
22 10-K that this amount of money was attributable to predatory  
23 lending. Those are two different things.

24 I'm quoting the Court by making that last question --  
02:44:31 25 by asking that question -- "How much of the 10-K was



**TAB 8**



Devor - cross

2544

1 whether the payments were appropriate and, you know, they  
2 agreed to the agreement. That kind of thing. But I don't  
3 think -- I think they were silent on the issue of whether the  
4 revenue recognition by Kessler was actually appropriate. I  
11:21:03 5 don't recall seeing anything where they actually touched on  
6 that. I could be wrong -- and please refresh my memory with a  
7 document -- but I don't believe they went to the revenue  
8 recognition issue.

9 Q. So you're not entirely clear as to where AA was on this;  
11:21:17 10 is that fair?

11 A. On "this"? What do you mean?

12 Q. Kessler.

13 A. It looks like it's an issue that Andersen missed or  
14 just -- you know, flew by Andersen. It doesn't look like they  
11:21:32 15 looked at the revenue recognition issue that ultimately  
16 resulted in the company restating.

17 Q. You understand that Arthur Andersen looked at this  
18 transaction at the time; do you not?

19 A. Vague recollection, yes.

11:21:46 20 Q. And you understand that Arthur Andersen approved  
21 Household's accounting treatment for this contract at the  
22 time, correct?

23 A. Again, I don't specifically recall that they did and  
24 looked at the revenue recognition issue. I don't recall them  
11:22:00 25 overtly doing that.

Devor - cross

2564

1 Q. You don't think it was important when presenting the issue  
2 of Wells Fargo acquisition that the -- your opinion also  
3 include the notion that there was a different regulatory  
4 environment?

11:48:26 5 A. I was not commenting on the need to book anything that the  
6 company had with respect to -- first of all, I wasn't talking  
7 about reserves. I was talking about the fact that their  
8 re-aging was so significant and aggressive, which I think they  
9 say. And, secondly, I wasn't taking issue with the regulatory  
11:48:50 10 requirements. So why would I comment on it? I wasn't at all  
11 taking issue with that.

12 Q. You just mentioned reserves, Mr. Devor. You'll agree,  
13 will you not, that Household's loan loss reserves were not  
14 inadequate during this period, correct?

11:49:07 15 A. I would not -- I would not agree with that statement. I  
16 would not agree with that statement at all.

17 Q. You don't agree that Household's loan loss reserves were  
18 not inadequate during the relevant period?

19 A. I believe I concluded in my report that the method that  
11:49:27 20 the company used to estimate its reserves, to come up with its  
21 reserve number, was unreliable. And, furthermore, there were  
22 significant indications in the record that it was also  
23 understated. So when you asked me if I would agree that it  
24 was fine, of course, I wouldn't agree that it's fine.

11:49:48 25 Q. You have not offered an opinion in this case that

Devor - cross

2565

1 Household's loan loss reserves are inadequate, have you?

2 A. I just gave my opinion. The answer is no, I have not  
3 given that opinion. Instead I've said it's unreliable the way  
4 they did, and there are indications that it is understated. I  
11:50:04 5 can't quantify it because I don't have enough information.

6 Q. As a matter of fact, you told us, didn't you, Mr. Devor,  
7 that the issue of Household's loan loss reserves was way  
8 beyond the scope of your retention in this case, right?

9 A. I -- if you're referring to deposition testimony, you  
11:50:22 10 know, it was a year and a half ago. I don't remember if I  
11 said that or not.

12 Q. Was --

13 A. Again, the focus of my attention was on the reporting of  
14 the two-plus delinquency numbers, the improper lending and the  
11:50:34 15 revenue issues with respect to that and the restatement.  
16 Those are my opinions.

17 Q. I understand your opinions, Mr. Devor. I'm asking if the  
18 issue of the adequacy of Household's loan loss reserves was  
19 way beyond the scope of your engagement in this case, yes or  
11:50:57 20 no?

21 A. I don't -- I mean, I would think you would not mislead the  
22 Court by saying that I said that without me saying it. So I'm  
23 sure if I looked at my testimony, I may have said it. But,  
24 again, it doesn't --

11:51:07 25 Q. Is it true or false, Mr. Devor?

Devor - cross

2566

1 A. Well, it doesn't -- it doesn't enter into any of my  
2 conclusions. We looked at it. And in my report, it is very  
3 apparent that we looked at it. And it was part of the scope  
4 because we comment on it for pages and pages in my report. I  
11:51:23 5 commented on it.

6 Q. Was the adequacy of Household's loan loss reserves way  
7 beyond the scope of your report, yes or no, please?

8 MR. DOWD: Objection, your Honor, asked and answered.

9 THE COURT: Overruled. You can answer that yes or  
11:51:38 10 no.

11 BY THE WITNESS:

12 A. The answer is, it wasn't beyond the scope because I didn't  
13 look at it. And I -- and I actually gave conclusions in my  
14 report on it. In the end, did it impact my decisions and  
11:51:53 15 conclusions surrounding those three items that I indicated  
16 were my conclusions? The answer is, it didn't have any impact  
17 on those.

18 BY MS. BUCKLEY:

19 Q. Let's play --

20 A. I --

21 Q. I'm sorry. I thought you were finished.

22 A. So, I mean, obviously if you look at my report, my report  
23 indicates that, of course, I looked at it. You know, whether  
24 it was within the scope or not, it ended up -- I ended up  
11:52:17 25 looking at it, of course. I opined -- I have a lot of

**TAB 9**

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

LAWRENCE E. JAFFE PENSION PLAN,	)	
on behalf of itself and all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 02 C 5893
	)	
HOUSEHOLD INTERNATIONAL, INC.,	)	
et al.,	)	Chicago, Illinois
	)	April 17, 2009
Defendants.	)	1:25 o'clock p.m.

VOLUME 13  
TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiff:	COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
	BY: MR. SPENCER A. BURKHOLZ MR. MICHAEL J. DOWD MR. DANIEL S. DROSMAN MS. MAUREEN E. MUELLER
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	COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
	BY: MR. DAVID CAMERON BAKER MR. LUKE O. BROOKS MR. JASON C. DAVIS MS. AZRA Z. MEHDI
	100 Pine Street Suite 2600 San Francisco, California 94111 (415) 288-4545



2723

1 bootstrap the prior press statements and other statements into  
2 that 10-Q and say that those trigger a requirement in the 10-Q  
3 to make statements that wouldn't otherwise be required.

4 MR. DOWD: When I talked about puffery, your Honor,  
01:59:31 5 that's what the Galati court, itself, said.

6 THE COURT: I know.

7 MR. DOWD: Oh, sorry.

8 THE COURT: I've got it here in front of me, too.  
9 That's what they said. I'm telling you I'm not sure I would  
01:59:39 10 have found that one statement to be puffery. I think that,  
11 given all the circumstances, I don't know that that statement  
12 would have been puffery in this case.

13 But, at any rate, what I'm telling you is that where  
14 you've made those statements -- where those statements have  
02:00:02 15 been made here -- in the two occasions that I find them, I  
16 find them to be not puffery, but actual statements which could  
17 trigger the requirement for full disclosure.

18 And I think once you have that, then your expert's  
19 testimony with regard to the use of the GAAP -- that is, how  
02:00:20 20 they disclose what they have a duty to disclose -- becomes  
21 applicable.

22 If they didn't disclose it the way the GAAP  
23 principles would require them to, in a meaningful way, then --  
24 and you can convince the jury of that -- then I think you've  
02:00:35 25 got a cause of action there.

1 THE COURT: I think that I don't quarrel with  
2 anything you said, if they can't establish the basic  
3 predicates then.

4 But when we talk about how we're going to instruct  
02:11:32 5 the jury, you know, we have to instruct them in terms of,  
6 "What happens if you find these things." At what point is  
7 there liability?

8 They, then, are free to determine whether they found  
9 those elements or not, but I think we have to give them the  
02:11:44 10 appropriate instructions.

11 And, as it turns out -- luckily for your client --  
12 it's my impression at this point -- it's my opinion -- that  
13 with respect to all but two of the 10-K filings, that there  
14 was no -- 10-K or 10-Q filings; that there was no --  
02:12:14 15 explanation of predatory lending practices, assuming such  
16 existed and assuming your clients knew about them, is not an  
17 issue that's even going to get to the jury because I don't  
18 believe there was a duty in regard to those 10-Ks -- the other  
19 10-Ks -- and 10-Qs for them to disclose those facts, even if  
02:12:40 20 it existed and even if they knew about it.

21 MR. KAVALER: And, your Honor, just so you don't look  
22 book at the transcript later and say, "Mr. Kavalier had a duty  
23 to speak at this point," let me echo something Mr. Dowd said.

24 I'm very reluctant to say what I'm thinking right now  
25 because we're still in the middle of the plaintiffs' case.

1 THE COURT REPORTER: Slow down.

2 MR. KAVALER: I'm sorry.

3 I'm very reluctant to say what I'm thinking, which  
4 would only encourage you to think what you are thinking,  
02:13:00 5 because we're still in the middle of the plaintiffs' case, and  
6 we are letting them put on their case as they wish and we will  
7 respond.

8 But there is a -- there are, we think, fatal defects  
9 in this case, which we will point out to your Honor once  
02:13:13 10 they've rested.

11 Rule 50 talks about when a party --

12 THE COURT: You have been telling me that for a  
13 while. I know.

14 MR. KAVALER: Your Honor, I believe we're there. I  
02:13:19 15 believe we're going to be there. But I could be wrong.

16 But all I'm saying is I don't want you to read this  
17 transcript later and say, "Well, why didn't you say that  
18 then?"

19 I mean -- because it's not the right time to say  
02:13:29 20 that, your Honor. But I do agree it's a question of  
21 instructing the jury. I think, however -- much as I think  
22 it's a great idea to have this conference today -- the  
23 instructions conference -- some things will not be clear until  
24 closer to the end of the plaintiffs' case, as to what the  
02:13:44 25 instruction needs to be.

**TAB 10**

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
4 others similarly situated, )  
Plaintiff, )  
5 vs. ) No. 02 C 5893  
HOUSEHOLD INTERNATIONAL, INC., )  
6 et al., ) Chicago, Illinois  
7 Defendants. ) April 20, 2009  
8 9:00 a.m.

9 VOLUME 14  
10 TRANSCRIPT OF PROCEEDINGS - TRIAL  
11 BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

12 APPEARANCES:

13 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
14 BY: MR. LAWRENCE A. ABEL  
MR. SPENCER A. BURKHOLZ  
15 MR. MICHAEL J. DOWD  
MR. DANIEL S. DROSMAN  
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20 BY: MR. DAVID CAMERON BAKER  
MR. LUKE O. BROOKS  
21 MR. JASON C. DAVIS  
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22 100 Pine Street  
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(415) 288-4545  
24  
25

Fischel - cross

2936

1 (Document tendered.)

2 MR. KAVALER: Now, let's do 154.

3 Copies, please.

4 (Brief pause.)

02:35:15 5 MR. KAVALER: Let the record reflect I'm handing the  
6 witness 154.

7 THE WITNESS: Thank you.

8 MR. KAVALER: And a copy for counsel.

9 (Document tendered.)

10 BY MR. KAVALER:

11 Q. The same series of questions, Professor Fischel.

12 Once again, the horizontal axis shows at the extreme  
13 left-hand end July 30, 1999, correct?

14 A. Correct, sir.

02:35:36 15 Q. And you go up that axis, you see a blue line (indicating),  
16 which is the true value; a red line (indicating), which is  
17 price; and, a pink -- it looks blue up there (indicating) --  
18 whatever color it is, the area between the lines is shaded in?

19 A. Yeah.

02:35:54 20 That corresponds precisely to the table that we were  
21 just looking at on the amount of inflation. So -- well, since  
22 we haven't talked about this yet, if you just put the other  
23 one up on the screen for a second?

24 Q. Okay. Sure.

02:36:23 25 Go back to 151.

Fischel - cross

2937

1 (Brief pause.)

2 BY THE WITNESS:

3 A. So, what the -- the red line is the actual price, and you  
4 can see what it was relative to -- the level of the price  
02:36:24 5 relative to -- the vertical axis on price.

6 And the blue line is the true value.

7 So, what this predicts is that the price fluctuates  
8 every day; but, the true value, based on my calculations, is  
9 \$7.97 lower than the actual price until November 15th of 2001;  
02:36:53 10 and, then, it gets more or less than -- the inflations  
11 increases or decreases based on the specific disclosure.

12 BY MR. KAVALER:

13 Q. I hear you. None of that is my question.

14 I want to go back to -- I put up 151 because you  
02:37:03 15 wanted me to. I want to go to 154 for a minute.

16 A. I apologize.

17 Okay. Thank you.

18 Q. 154, my only question is: You prepared this chart?

19 A. I did.

02:37:11 20 Q. Okay.

21 On this chart, as on the other one, the blue line,  
22 the red line and the shaded-in space all butt right up against  
23 July 30, 1999, correct?

24 A. Correct, for the reasons I've stated.

02:37:24 25 MR. KAVALER: Your Honor, I offer Plaintiffs'

**TAB 11**



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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
4 others similarly situated, )  
Plaintiff, )  
5 vs. ) No. 02 C 5893  
6 HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
7 Defendants. ) April 21, 2009  
8 ) 9:00 a.m.

9 VOLUME 15  
10 TRANSCRIPT OF PROCEEDINGS - TRIAL  
11 BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

12 APPEARANCES:

13 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
14 BY: MR. LAWRENCE A. ABEL  
MR. SPENCER A. BURKHOLZ  
15 MR. MICHAEL J. DOWD  
MR. DANIEL S. DROSMAN  
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ROBBINS LLP  
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(415) 288-4545  
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Aldinger - direct

3072

1           That wasn't what the stock was trading in the open  
2 market on that day, was it?

3   A. No, that's -- that's right. This was several years later.

4   Q. That's what you paid for it that day, correct?

10:48:56 5   A. That's correct.

6   Q. So, you paid \$12.68 for 250 shares, right?

7   A. That's right.

8   Q. Okay.

9           MR. KAVALER: Objection, your Honor. I think the  
10:49:06 10 number is 250,000 shares.

11           MR. DROSMAN: That's correct.

12 BY MR. DROSMAN:

13 Q. 250,000 shares, right?

14 A. That's correct.

10:49:11 15 Q. Okay.

16           So, when you paid \$12.68 for 250,000 shares, you  
17 spent about \$3 million, didn't you?

18 A. Yeah, that's about right. Yes.

19 Q. And, then, you sold shares, didn't you?

10:49:27 20 A. Yes.

21 Q. You sold shares over the following week, correct?

22 A. That's correct.

23 Q. And you sold shares at between \$48 and \$46 a share,  
24 correct?

10:49:37 25 A. That's right.

Aldinger - direct

3073

1 Q. So, on each share of stock that you sold, you got between  
2 34 and \$36 per share, correct?

3 A. That's correct. That's the way options work.

4 Q. And you bought 250,000 shares, correct?

10:49:51 5 A. Yes.

6 Q. And you sold 246,000 shares, correct?

7 A. That's correct.

8 Q. Okay.

9 And when you sold your shares of stock, you sold  
10:50:01 10 those for about \$11.8 million, didn't you?

11 A. I don't remember the exact number, but it's a \$36 spread,  
12 whatever it is, approximately.

13 Q. Okay.

14 So, if you sold for \$11.8 million and you bought for  
10:50:14 15 \$3 million, it stands to reason that you made \$7.8 million in  
16 cash --

17 A. That sounds right.

18 Q. -- on that date, correct?

19 A. That sounds right, yeah.

10:50:23 20 Q. Okay.

21 A. We should point out that the way options work --

22 Q. I don't think there's a question pending, sir.

23 A. -- shareholders made about 15 billion during that period.

24 Q. I'll show you what's been marked as Defendants' Exhibit  
10:50:36 25 775 for identification.

Aldinger - direct

3074

1 (Document tendered to counsel and the witness.)

2 BY MR. DROSMAN:

3 Q. Let's talk more about the cash that you made during 1999  
4 to 2000, okay?

10:51:04 5 A. Yes.

6 Q. And Plaintiffs' Exhibit 7- -- or Defendants' Exhibit 775  
7 is another Form 4, right?

8 A. Yes.

9 Q. Okay.

10:51:14 10 MR. DROSMAN: Plaintiffs move 775 into evidence.

11 THE COURT: Admitted.

12 (Defendants' Exhibit No. 775 received in evidence.)

13 BY MR. DROSMAN:

14 Q. And if you look at the second page of Exhibit 775, you see  
10:51:23 15 that you signed it, correct?

16 A. Yes.

17 Q. And you signed it on January 19th, 2001; is that right?

18 A. Yes.

19 Q. Okay.

10:51:29 20 And, once again, you were exercising stock options,  
21 correct?

22 A. That's correct.

23 Q. And, in this case, you exercised 300,000 stock options,  
24 correct?

10:51:39 25 A. That's right.

Aldinger - direct

3075

1 Q. And that was on January 17th, 2001?

2 A. That's right.

3 Q. And, then, you turned around and you sold options, didn't  
4 you?

10:51:48 5 A. That's right.

6 Q. In fact, you sold 289,947, correct?

7 A. I think that's right.

8 Q. Okay.

9 And, so, when -- you were purchasing options at about  
10:52:02 10 \$12.68 on that day, correct?

11 A. That's correct.

12 Q. That wasn't the price the stock was trading for on the  
13 open market?

14 A. No. That's the way options work. We value them at the  
10:52:12 15 front end as compensation and, then, later on, if the stock  
16 goes up, you can make money; and, if the stock stays the same,  
17 you don't make any money; and, if the stock goes down, you  
18 make nothing.

19 In this case, the fact that I made money,  
10:52:26 20 shareholders made approximately \$15 billion in incremental  
21 value during this period.

22 Q. Let me just make sure I understand.

23 When shareholders purchased stock on January 17th,  
24 2001, they weren't purchasing it for \$12.68 a share, were  
10:52:43 25 they?

Aldinger - cross

3208

1 Q. Mr. Drosman was using an example this morning, I think, of  
2 48 or 58 or \$68. I forget which. If you had bought some of  
3 your \$2 million worth of stock on that day, what price would  
4 you have paid?

5 A. I would have paid those prices.

6 Q. Okay. Now, have we prepared a demonstrative to help you  
7 explain what your holdings were at various times in the class  
8 period?

9 A. I believe we have.

10 Q. Can we see DDX 189-04.

11 Mr. Aldinger, what does this chart show us?

12 First of all, what's the time period here?

13 A. It's '99 through 2002.

14 Q. Okay. And at the beginning -- withdrawn.

15 The left-hand axis is labeled William Aldinger's  
16 total holdings quarter-end.

17 Do you see that?

18 A. Yes.

19 Q. What does total holdings include?

20 A. Well, in this case it means shares actually owned as well  
21 as options, I believe, that are in the money.

22 Q. What does in the money mean?

23 A. I'm sorry. Vested options, I believe.

24 Q. What does vested mean?

25 A. It means that you've covered your three-year period to

Aldinger - cross

3209

1 vest. And I could be wrong on that. This could include just  
2 all options and my direct shares.

3 Q. Why would you include options in a schedule of your  
4 holdings?

5 A. I think because that's the way it would appear in the  
6 proxy.

7 Q. In other words, you were talking to Mr. Drosman this  
8 morning and he was showing you the bottom line with that 25  
9 million dollar number --

10 A. Yes.

11 Q. -- and you said something about that's theoretical value?

12 A. Right, that's right.

13 Q. The proxy is organized the same way you just told us,  
14 salary and bonus and options?

15 A. That's right.

16 Q. And the bottom line number adds them all up?

17 A. That's correct.

18 Q. But you don't actually get the cash for the options then?

19 A. No, you don't.

20 Q. But this tracks the proxy statements?

21 A. That's correct.

22 Q. Now, Mr. Aldinger, plaintiffs in this case claim that you,  
23 Mr. Gilmer, Mr. Schoenholz made fraudulent statements about  
24 the company, drove up the price of the stock, I seem to recall  
25 from the opening, et cetera, and was unsustainable and

Aldinger - cross

3210

1 eventually it would come crumbling down.

2 Do you understand that to be their theory of the  
3 case?

4 A. I do.

5 Q. If that were true, Mr. Aldinger, if you knew that was  
6 going on and you were a rational economic actor, what would  
7 you have done with all of your stock, all of your options that  
8 you were free to sell, everything else that you held during  
9 this time period?

10 A. You would have sold as much as you could.

11 Q. Did you sell as much as you could, Mr. Aldinger?

12 A. I sure didn't.

13 Q. Look at the right-hand side of this chart, October 11,  
14 2002. Can you tell us roughly how much in available stock and  
15 options you had at the end of the period that you did not sell  
16 at a time when the plaintiffs say you knew that fraudulent  
17 statements being made by you and Gary and Dave were propping  
18 up the price of this stock which would inevitably crash?

19 A. Well, this chart talks about four and a half million  
20 shares, which is largely options and some shares I owned. But  
21 my recollection is that at the end of 2001, that I had 400,000  
22 shares I owned that I kept and about \$70 million in gains that  
23 I didn't sell, most of which I lost during the same period the  
24 investors did.

25 Q. In other words, when the price declined for the investors,



Aldinger - cross

3211

1 it declined for you as well?

2 A. In a big way, in a very big way.

3 Q. If you had known that that was going to happen,

4 Mr. Aldinger, what would you have done?

5 A. I guess I would have been smart enough to sell, but --

6 Q. Did you sell?

7 A. I did not.

8 Q. Did you know?

9 A. I didn't know. I believed in the company.

10 Q. Mr. Aldinger, was there a requirement of the board of

11 directors that officers own a certain amount of Household

12 stock?

13 A. Yes, there was. The board wanted us to each own some

14 increment of salary. I think mine was five times salary.

15 Q. So you had to own shares equal in value to five times your

16 annual compensation?

17 A. Yes, and keep at least that much, yes.

18 Q. Were those shares that you could purchase through the

19 option program or did you have to buy those for cash?

20 A. You could purchase them any way you wanted.

21 Q. So in your case, you satisfied that requirement?

22 A. Many times over.

23 Q. And that also was contained in the annual proxy sent to

24 all shareholders?

25 A. Yes, it is.

**TAB 12**

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

LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
others similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 02 C 5893  
 )  
HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
 ) April 22, 2009  
Defendants. ) 9:10 a.m.

VOLUME 16  
TRANSCRIPT OF PROCEEDINGS - TRIAL  
BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

APPEARANCES:

For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. LAWRENCE A. ABEL  
MR. SPENCER A. BURKHOLZ  
MR. MICHAEL J. DOWD  
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COUGHLIN STOIA GELLER RUDMAN &  
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100 Pine Street  
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San Francisco, California 94111  
(415) 288-4545

Aldinger - cross

3345

1 Household stock price per share.

2 Do you see that?

3 A. Yes, I do.

4 Q. And what does this show us?

10:29:30 5 A. Well, this shows the stock price going up over a two-day  
6 period.

7 Q. What do you understand those two days to be?

8 A. One was, I think, the day before we announced, but the  
9 leak was out, and the second was after we announced.

10:29:42 10 Q. And by how much did the stock price go up over those two  
11 days?

12 A. The value -- well, the stock price went from 28 -- \$21 to  
13 28.20, but the value of the company went up by over \$3  
14 billion, \$3.2 billion.

10:29:59 15 Q. First of all, tell me what percentage increase that is  
16 from 21 to 28.

17 A. Well, it's about a 30 percent increase plus, a third.

18 Q. And do you know whether that was a significant increase  
19 for Household?

10:30:14 20 A. That may have been the biggest increase I ever saw in my  
21 eight years as CEO in any two-day period.

22 Q. Secondly, you told us the value of Household increased by  
23 in excess of \$3 billion?

24 A. That's correct.

10:30:27 25 Q. Tell us how you got to that calculation.

Aldinger - cross

3346

1 A. Well, we had 500 million shares, so basically it was north  
2 of \$3 billion.

3 Q. It's the basically part that I'm not getting. Do the math  
4 for me.

10:30:38 5 A. Well, if you've got 500 million shares and your stock goes  
6 up by about \$7, I was understating it. It's about 3.5 billion  
7 incremental value.

8 Q. To all the shareholders?

9 A. To all the shareholders.

10:30:51 10 Q. Including you?

11 A. Absolutely.

12 Q. Including the plaintiffs?

13 A. Yes.

14 Q. And how much did Household -- withdrawn.

10:31:01 15 Is that the result you were anticipating and hoping  
16 for?

17 A. It is.

18 Q. Is that the result you were working to achieve?

19 A. Yes.

10:31:13 20 Q. How much did Household pay the attorneys general to  
21 achieve this increase in value for all the shareholders,  
22 including yourself, and the plaintiffs of \$3-1/2 billion?

23 A. \$484 million.

24 Q. Were you satisfied that that was a good deal,

10:31:31 25 Mr. Aldinger?



**TAB 13**

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

LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
others similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 02 C 5893  
 )  
HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
 ) April 24, 2009  
Defendants. ) 11:00 o'clock a.m.

VOLUME 18  
TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. SPENCER A. BURKHOLZ  
MR. MICHAEL J. DOWD  
MR. DANIEL S. DROSMAN  
MS. MAUREEN E. MUELLER  
655 West Broadway  
Suite 1900  
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COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. DAVID CAMERON BAKER  
MR. LUKE O. BROOKS  
MR. JASON C. DAVIS  
MS. AZRA Z. MEHDI  
100 Pine Street  
Suite 2600  
San Francisco, California 94111  
(415) 288-4545



3961

1 MR. BURKHOLZ: 40. We've put in evidence of 40.

2 THE COURT: 40. Those 40. But only in the form that  
3 they're in in the chart that we used to make our rulings -- no  
4 additions. I suppose you can delete things if you want that  
04:42:41 5 you don't want the jury to consider. But no additions, just  
6 that verbiage -- in a form that will be useful for the jury so  
7 that they can make a determination as to whether each  
8 defendant violated Rule 10(b), 10b-5, Section 10(b) with  
9 respect to that statement or not. And, if so, if yes, whether  
04:43:17 10 the violation was -- whether the finding of a violation was  
11 based upon the issue regarding predatory lending, re-aging or  
12 restatement.

13 And -- I guess the Xerox machine is working. I'll  
14 give you each a copy.

04:44:11 15 (Tendered.)

16 THE COURT: That verdict form does not reflect the  
17 need to differentiate between predatory lending, re-aging or  
18 restatement.

19 And Table B is the -- let me see where that comes in.

04:45:31 20 Table B is the table of dates, which essentially, I  
21 think, we already have; but it may have to be tweaked a little  
22 bit to be useful to the jury in the verdict form.

23 And I think that we have after today's argument by  
24 the defense on the question of calculating -- the need to  
04:46:05 25 calculate the cap on possible damages, we also need to have a

**TAB 14**

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

3 LAWRENCE E. JAFFE PENSION PLAN, )  
4 on behalf of itself and all )  
5 others similarly situated, )  
6 Plaintiff, )  
7 vs. ) No. 02 C 5893  
8 HOUSEHOLD INTERNATIONAL, INC., )  
9 et al., ) Chicago, Illinois  
Defendants. ) April 27, 2009  
1:25 p.m.

10 VOLUME 19  
11 TRANSCRIPT OF PROCEEDINGS - TRIAL  
12 BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

13 APPEARANCES:

13 For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
14 ROBBINS LLP  
15 BY: MR. LAWRENCE A. ABEL  
16 MR. SPENCER A. BURKHOLZ  
17 MR. MICHAEL J. DOWD  
18 MR. DANIEL S. DROSMAN  
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21 ROBBINS LLP  
22 BY: MR. DAVID CAMERON BAKER  
23 MR. LUKE O. BROOKS  
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25 MS. AZRA Z. MEHDI  
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San Francisco, California 94111  
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1 able to find that.

2 (Recess taken.)

3 THE COURT: Well, I was only partially successful in  
4 finding my marked-up version.

03:11:47 5 So what's the plaintiffs' response to defendants'  
6 proposed false or misleading statement instruction?

7 MR. BROOKS: Judge, we think the instruction that --

8 THE COURT: Look up, speak loudly.

9 MR. BROOKS: We think the instruction, your Honor,  
03:12:14 10 that has been edited by plaintiffs and submitted is proper.

11 There's a lot in here in defendants' instruction  
12 especially on the duty and reiterating the instruction that  
13 the Court has already given once to the jury about Mr. Devor's  
14 testimony is completely improper, both legally, you know, from  
03:12:37 15 a duty standpoint and also improper in the way that it's  
16 phrased for a jury instruction. Essentially they're telling  
17 the jury what to find on duty, which, of course, is not  
18 correct.

19 So we object wholesale, Judge, to this substitution  
03:12:53 20 instruction and advance our edits that I believe are the  
21 result of the discussion last week to instruction -- former  
22 instruction 23 on false and misleading.

23 MS. BEER: The two instructions, your Honor, are  
24 really not all that different; and I believe in a case that  
03:13:25 25 principally relies on alleged omissions, it is important for

1 the jury to receive clear instructions on when a duty to  
2 disclose arises.

3 We've already had some confusion on that, and that's  
4 the reason for the instruction concerning Mr. Devor's  
03:13:43 5 testimony. That's the reason for repeating the instruction on  
6 Mr. Devor's testimony in the final instructions that are given  
7 to the jury to ensure that it's an instruction that they will  
8 remember.

9 The edits that are incorporated in the version that  
03:14:00 10 plaintiffs circulated last night include actually one sentence  
11 that's completely backwards and the statement that an omission  
12 is misleading only if the defendant has a duty to disclose the  
13 omitted fact.

14 We've twisted and teased this language so much that  
03:14:19 15 we've just gotten it completely backwards. The omission is  
16 not misleading if there's a duty. There is a duty if the  
17 statement with the omission is misleading.

18 Much of the rest of the instruction on the --  
19 Household is required to file with the SEC, Household is  
03:14:44 20 required to prepare its financial statements regarding GAAP,  
21 the two instructions really don't differ very much on those,  
22 if at all.

23 MR. BURKHOLZ: I'll just point out that defendants'  
24 instruction also took out what the Court had worked up as a  
03:15:09 25 sentence, but each defendant has a duty to disclose a fact if

4049

1 MR. DROSMAN: I don't think we object to that, your  
2 Honor.

3 THE COURT: Does that satisfy you?

4 MS. BEER: That's fine.

04:24:17 5 THE COURT: Is that a yes?

6 MR. OWEN: Yes.

7 THE COURT: Okay. All right.

8 Okay. Next is Court's Number 31, previously Court's  
9 29, the Section 20(a) elements.

04:25:14 10 MS. BEER: No objection from the defendants, your  
11 Honor.

12 THE COURT: Okay. Next is Court's 32, previously  
13 Court's 30, controlling person, two-part test.

14 MR. BURKHOLZ: I incorporated defendants' language  
04:25:54 15 into that instruction.

16 MS. BEER: We have no objection, your Honor.

17 THE COURT: Very well.

18 Court's Number 33, previously 31, selection of  
19 presiding juror, verdict form.

04:26:30 20 MS. BEER: I believe, your Honor, this is going to  
21 depend a lot on what the verdict form is.

22 THE COURT: Well, this language won't. This is  
23 language I'll use no matter what the verdict form is. Whether  
24 it's long, short, in Greek, it won't matter. I'm going to

04:26:45 25 tell them, hey, we prepared a verdict form for you, here it

4068

1 you have a lively discussion, let's just hypothetically say on  
2 statement number one.

3 THE COURT: Question number three is?

4 MR. DROSMAN: Question number three is check all that  
04:56:58 5 apply. For each of the statements to which you answered yes,  
6 why was the statement false or misleading? Check each that  
7 applies.

8 So then you've got statement number one, predatory  
9 lending, two-plus delinquency or restatement. And you could  
04:57:09 10 imagine a scenario where the jurors go back there and five  
11 feel very strongly that it was false and misleading for all  
12 three of those reasons, and five feel very strongly that it's  
13 false and misleading for only one of the reasons, and then you  
14 have a hung jury over an issue that isn't even a requirement  
04:57:27 15 under the statute, and that's the concern.

16 THE COURT: Well, let me tell you why we need to do  
17 that because you just brought it up.

18 Statement number one includes how many different  
19 issues as to which the jury you could find that the statement  
04:57:38 20 was false?

21 MR. DROSMAN: Three.

22 THE COURT: How do we know which one? How could we  
23 know that all of them agreed to one?

24 MR. DROSMAN: We don't.

04:57:46 25 THE COURT: Maybe two agreed to delinquency

1 restatements and eight agreed -- disagreed with that.

2 MR. DROSMAN: Right.

3 THE COURT: And agreed to predatory lending, and we  
4 have no unanimity of a finding.

04:57:59 5 MR. DROSMAN: But we do. We have unanimity.

6 THE COURT: No, we don't.

7 MR. DROSMAN: What you have is you have unanimity  
8 that they made a materially false and misleading statement.  
9 You don't need unanimity as to the reason that that statement  
04:58:13 10 was false and misleading.

11 THE COURT: I disagree, period. I disagree.

12 MS. BEER: The other danger, your Honor --

13 THE COURT: I think that's a formula for reversal.

14 MR. DROSMAN: I'm sorry?

04:58:19 15 THE COURT: I think that's a formula for reversal.

16 MR. DROSMAN: I searched the cases. There's nothing  
17 I could find that talked about that issue.

18 THE COURT: How many cases did you find that talk  
19 about it at all?

04:58:30 20 MR. DROSMAN: 36 discuss -- you know, had something  
21 to do with the issue.

22 THE COURT: And how many made findings and how many  
23 went up and were either confirmed or reversed?

24 MR. DROSMAN: Yeah, I mean there's no case on point.  
04:58:43 25 I freely admit that.



4070

1 THE COURT: That's right. That's right.

2 You want to break out each one of these statements  
3 and make it 80 statements or 120, otherwise, we're going to  
4 check as to what -- which statement and why. I think it's the  
04:59:01 5 only way to do it. I just think it's the only way to do it.

6 Will we be through tomorrow with the evidence?

7 MR. KAVALER: Your Honor, we, as I mentioned earlier,  
8 we're calling one more witness. We've told them who it is,  
9 Professor Bajaj. There's no secret about it. Then we're  
04:59:21 10 going to rest.

11 I understand they may or may not call Professor  
12 Fischel. It's my expectation we'll be through with all the  
13 evidence tomorrow, as far as we imagine either one of our  
14 times, Professor Bajaj won't take any more than that.

04:59:33 15 THE COURT: Okay. Well, then, if that's the case, I  
16 suspect that we're going to have to give the jury a day off  
17 while we finalize the instructions and then bring them back on  
18 one day for closing arguments and instructions.

19 MR. KAVALER: I'm sorry. Today is Monday, so if we  
04:59:46 20 finish the evidence tomorrow, give them a day off, it will be  
21 Thursday.

22 MR. BURKHOLZ: That makes sense, your Honor.

23 MR. KAVALER: Okay.

24 THE COURT: Yeah, it will be. I mean if you think  
04:59:56 25 that we can finish the instructions --

**TAB 15**



1 respect to the false statements. I think plaintiffs'  
2 motions -- or defendants' motions are essentially requests for  
3 rulings on these false statements as a matter of law.

4 And I have reviewed the submissions of the  
03:00:20 5 plaintiffs, specifically the submission regarding all of the  
6 statements and evidence that the Court should take into  
7 account in determining whether the 10-Q and 10-K financial  
8 statements reporting net income and EPS should be included in  
9 the alleged false statements submitted to the jury.

03:00:50 10 And essentially I'll tell you now the determination  
11 that we've come to is that with the exception of the two  
12 statements that we previously identified, 10-Q and 10-K  
13 statements that we previously identified, I don't find that  
14 there's a basis for submitting any of the other statements of  
03:01:17 15 reported net income and EPS to the jury as false statements.

16 The submission on behalf of the plaintiffs regarding  
17 these 10-Q and 10-K statements of net income and EPS were  
18 other statements, for the most part, other statements  
19 contained in the 10-Qs and 10-Ks themselves regarding growth,  
03:01:45 20 almost exclusively regarding growth figures and the basis for  
21 growth in the company. And, essentially, the Court finds,  
22 first, that these statements don't relate to the alleged false  
23 statement of net income and EPS. Statements of net income and  
24 EPS are just that. They're not statements as to growth. With  
03:02:14 25 the two exceptions that we previously noted, they don't

1 include any explanation as to growth or the basis for the net  
2 income or the EPS being reported.

3 Those statements in and of themselves are not  
4 inaccurate and, frankly, it seems to me pretty clear that the  
03:02:36 5 statements being submitted by the plaintiffs to bolster their  
6 argument that this statement of earnings or EPS in the 10-Qs  
7 and 10-Ks is misleading, those statements are the ones that  
8 ought to have been cited by the plaintiff as misleading or  
9 false statements. Why they weren't, I don't know, but they  
03:02:56 10 weren't. They weren't included.

11 And to allow them to now come in as an argument that  
12 because of these other statements, the statements that were  
13 designated are false and misleading, seems to me just to be  
14 trying to get in the back door statements that were never  
03:03:16 15 properly identified as misleading and false statements.

16 So, for example, Statement No. 1 in the Table A  
17 entitled Household 10-Q, the statement that reads, "Household  
18 10-Q for quarter ending 6-30-99: Household reported net  
19 income of 326.9 million for the quarter ended June 30, 1999,  
03:03:48 20 and EPS of 67¢." That statement is disallowed.

21 MR. BROOKS: Judge, we had this conversation, I  
22 think, last time we talked about this, and I just want to make  
23 it clear for the record that when you're saying the statement  
24 is disallowed, you're talking as to the predatory lending  
03:04:10 25 allegations.

**TAB 16**

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

LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
others similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 02 C 5893  
 )  
HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
 ) April 30, 2009  
Defendants. ) 8:41 a.m.

VOLUME 22

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

APPEARANCES:

For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. LAWRENCE A. ABEL  
MR. SPENCER A. BURKHOLZ  
MR. MICHAEL J. DOWD  
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COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. DAVID CAMERON BAKER  
MR. LUKE O. BROOKS  
MR. JASON C. DAVIS  
MS. AZRA Z. MEHDI  
100 Pine Street  
Suite 2600  
San Francisco, California 94111  
(415) 288-4545

Dowd - closing

4523

1 credit card accounting, I'd be talking to you about damages if  
2 I were them, too. Okay? But we'll come back to it in  
3 rebuttal, ladies and gentlemen, and talk to you about it some  
4 more.

11:24:53 5 The last thing I want to talk to you a little bit  
6 about is the verdict form. And the Judge is going to walk you  
7 through the verdict form. But when you look at it, you're  
8 going to see -- and I think it's near final, but what you're  
9 going to see -- is you're going to be asked a series of  
11:25:05 10 questions. And this thing is long. You're going to have  
11 to -- you've got a tough job. You always have a tough job,  
12 but the verdict form is going to be a tougher job, too. And  
13 really you're going to be asked, you know, statement by  
14 statement -- there's, like, 40 different statements that we  
11:25:19 15 allege, okay -- over this entire relevant time period. And  
16 you're going to be asked, Statement No. 1, and then you've got  
17 to go to this table, I think it's Table A. It's Table A for  
18 the false statements.

19 So, you're going to have to look at the False  
11:25:33 20 Statement Table and then go back to the front and say, "Okay,  
21 that's Statement One, the one on August 16th, 1999."

22 And, then, you've got to answer for each of the four  
23 statements: "Did plaintiffs prove the Rule 10b-5, Household,  
24 Schoenholz, Gilmer, Aldinger?"

11:25:48 25 And, then, you're going to be asked: "Why was the



Dowd - closing

4524

1 statement false? Was it false because of two-plus delinquency  
2 and re-aging or was it false because of the restatement?" And  
3 on some occasions you're going to be asked, "Was it false  
4 because of the predatory lending?" Okay?

11:25:58 5 And you're going to have to make that determination,  
6 as well.

7 And, then, the last question is knowingly vs.  
8 Recklessly, which is really just an issue that you have to  
9 decide based on what you're going to hear about the  
11:26:09 10 definitions of "knowing" versus "reckless." All right?

11 But let's take a look at a couple of these  
12 statements, just to give you an example, just so you  
13 understand, you know, why we say it false.

14 I'm pretty sure you got a pretty good idea what we're  
11:26:24 15 saying; but, just to make sure, can we turn to the August  
16 16th, '99, statement in Table A.

17 Okay. This Table A, that identifies the false  
18 statements, is going to look just like that (indicating).  
19 Okay?

11:26:40 20 And this one is the statements made on August 16th,  
21 1999. Okay? It's a Household 10-Q. We gave you the exhibit  
22 number, so you can go find it, and you'll have this back in  
23 the jury room so you can look up exactly what they say. And  
24 it even has those Bates numbers. Those are those numbers in  
11:26:56 25 the bottom right-hand corner of all the exhibits. Like, you

**TAB 17**

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

LAWRENCE E. JAFFE PENSION PLAN, )  
on behalf of itself and all )  
others similarly situated, )  
Plaintiff, )  
vs. ) No. 02 C 5893  
HOUSEHOLD INTERNATIONAL, INC., )  
et al., ) Chicago, Illinois  
Defendants. ) May 1, 2009  
1:20 p.m.

VOLUME 23  
TRANSCRIPT OF PROCEEDINGS - JURY INSTRUCTIONS CONFERENCE  
BEFORE THE HONORABLE RONALD A. GUZMAN

APPEARANCES:

For the Plaintiff: COUGHLIN STOIA GELLER RUDMAN &  
ROBBINS LLP  
BY: MR. LAWRENCE A. ABEL  
MR. SPENCER A. BURKHOLZ  
MR. MICHAEL J. DOWD  
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1 for 10b-5; it's an element of the 10b-5 claim. It's going to  
2 be read to them as an element of the 10b-5 claim. And then  
3 they're going to be deciding what the reasonable amount of  
4 loss per share is. And that's what that thing in the back is.

01:32:18 5 Now, what Mr. Kavalier is saying is that he wants to  
6 them decide this loss causation question twice, I guess. I  
7 don't understand exactly where he's going with this.

8 THE COURT: I think it's a slightly different  
9 concept, but I don't think it requires a change -- the change  
01:32:30 10 Mr. Kavalier is arguing for.

11 In any tort, one of the elements of the tort is harm  
12 to the plaintiff; something the jury has to find before they  
13 determine the damages. The damages is a quantification of the  
14 harm. That's all. And this is a similar situation. Part of  
01:32:51 15 the damages calculation is inflation. That's what we're doing  
16 here. We're calculating that portion of the damages.

17 MR. KAVALER: Just to be clear --

18 THE COURT: But the harm has to be found as one of  
19 the elements, and that's the loss causation. There's no harm  
01:33:05 20 if there's no loss causation.

21 MR. KAVALER: I agree with that, your Honor. I  
22 disagree with Mr. Brooks when he said then they're going to  
23 calculate damages. They're not going to calculate damages.  
24 That's the second phase.

01:33:14 25 THE COURT: Well, I think that they're going to

1 calculate an element of damages.

2 MR. KAVALER: Your Honor, they're going to calculate  
3 inflation.

4 THE COURT: You can call it an inflation element of  
01:33:23 5 damages or you can just call it damages for the sake of this  
6 jury. They don't know the difference, and it won't make any  
7 difference to them. The calculation they're being asked to  
8 make will serve our purposes in the next round.

9 MR. KAVALER: It may serve some purpose, your Honor.  
01:33:34 10 It will not serve the purpose of either accuracy of the law or  
11 fairness. Those are my concerns.

12 THE COURT: Well, I don't think --

13 MR. KAVALER: I believe it's unfair, and I believe  
14 it's inaccurate. I believe it's error. And I respectfully  
01:33:45 15 ask you to reconsider. And if the only argument against it is  
16 retying a portion of the charge, you know, we'll do what we  
17 can to alleviate the burden. We're not trying to make work  
18 for you.

19 THE COURT: I understand. It's not merely a question  
01:33:58 20 of retying a few words, as you know. Everything has a  
21 trickle effect in these instructions. Everything. We would  
22 have to review the entire set of instructions. And we'd have  
23 to consider whether the language you're asking us to use  
24 comports with the language that was used during the course of  
01:34:13 25 the trial. And I'm not sure that it does. I think the term

4696

1 read through portions of the charge. And you can have two  
2 different versions, one with numbers and one without numbers.

3 THE COURT: Are you contemplating making other  
4 objections you haven't already made?

02:03:42 5 MR. KAVALER: No, your Honor. I believe we have to  
6 do that to preserve our record. I believe after you give the  
7 instructions, we need to object to the inclusion of things  
8 that we didn't want you to include and the exclusion of things  
9 that you --

02:03:50 10 THE COURT: No, you don't have to do that. The  
11 record will reflect that you've made those objections, and  
12 they're preserved. They're preserved without your having to  
13 object after I read them.

14 Does the plaintiff have any problem with that  
02:04:05 15 concept?

16 MR. BURKHOLZ: No, your Honor.

17 MR. DOWD: No, your Honor. That's always --

18 THE COURT: Do you waive any objection you would have  
19 to them not having objected after the instructions were  
02:04:13 20 actually read?

21 MR. DOWD: Yes, your Honor, that's fine.

22 THE COURT: Okay.

23 MR. KAVALER: I'm simply referring to Rule 51(a) --  
24 I'm sorry, (b)(2), which I believe imposes a duty on us, which  
02:04:23 25 I guess your Honor can relieve us of and I gather has relieved

4697

1 us of with the plaintiffs' consent. I want to be clear, I  
2 don't want to hear later from the plaintiffs or anyone else  
3 that there's some defect in the procedure because I'm quite  
4 willing to comply with the rule. The rule says the Court must  
02:04:37 5 give the parties an opportunity to object on the record and  
6 out of the jury's hearing before the instructions and  
7 arguments are delivered. And then it says in (c), objections,  
8 how to make, a party who objects to an instruction or failure  
9 to give an instruction must do so on the record stating  
02:04:59 10 distinctly the matter objected to and the grounds for the  
11 objection.

12 My understanding, your Honor, is that we have to  
13 actually listen to the charge that you give and then go to the  
14 sidebar and lodge those objections. If you're telling me we  
02:05:10 15 don't have to do that and if the plaintiffs are agreeing that  
16 our failure to do that either at that point or elsewhere is  
17 not any kind of an omission on our part or a waiver, I'll take  
18 that into account. But absent that, I believe we have to do  
19 it.

02:05:22 20 THE COURT: As a preliminary matter, you certainly  
21 won't hear if from me. I never object to my procedures. I  
22 think they're almost always right.

23 But let's just be clear. I mean, if I deviate from  
24 the instructions that I've given you prior to reading them to  
02:05:40 25 the jury when I read them and you find that deviation

1 objectionable, that objection you have to make after I give  
2 the instruction.

3 But if I give the instructions as I've given them to  
4 you -- and one of the reasons we have the final pretrial  
02:05:52 5 conference is so you can make your record -- or the final jury  
6 instruction conference is so you can make your record. And  
7 you've made your record as to the instructions that I've  
8 indicated I'm going to give, and you don't need to make your  
9 record again after I give them. In fact, given the number of  
02:06:07 10 objections, we might be here a long time if you want to object  
11 to all of them.

12 MR. KAVALER: That's why I wanted to do it by number,  
13 your Honor, given the amount of error.

14 THE COURT: Okay. We'll relieve you of that  
02:06:19 15 responsibility or pleasure, whichever it may be.

16 MR. KAVALER: Unfortunately it's a burden, your  
17 Honor, but I appreciate you relieving me of it.

18 THE COURT: Okay.

19 Is there anything else anyone wishes to bring up?

02:06:42 20 MR. DOWD: No, your Honor.

21 MR. KAVALER: No, your Honor.

22 THE COURT: Okay. Then Monday at 9:00 o'clock, we  
23 will read the jury the instructions and send them back to  
24 deliberate.

02:06:54 25 Oh, do you want to have prepared whatever exhibits --



**TAB 18**

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

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

9    VOLUME 26  
 10                       TRANSCRIPT OF PROCEEDINGS - TRIAL  
 11                       BEFORE THE HONORABLE RONALD A. GUZMAN, and a jury

12 APPEARANCES:

13 For the Plaintiff:                    COUGHLIN STOIA GELLER RUDMAN &  
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 14 BY: MR. LAWRENCE A. ABEL  
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24  
 25

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1 THE CLERK: 02 C 5893, Jaffe v. Household  
2 International, Incorporated.

3 THE COURT: Folks, we have a note from the verdict --  
4 from the jury, which I just gave away. The jury has reached a  
02:09:17 5 verdict.

6 Generally speaking, I now ask you if there's any  
7 reason why we shouldn't bring the jury out to return the  
8 verdict. In this situation, I might also ask another  
9 question, which is, after the jury returns the verdict in open  
02:09:34 10 court, it may be desirable to have them retire to the jury  
11 room while the Court reviews the verdict and allows -- raises  
12 with the attorneys any inconsistencies or improprieties that  
13 the Court finds, rather than having the jury sit out here.  
14 Then we can call them back in and announce the verdict to the  
02:09:59 15 court.

16 Does anybody have an objection to that process?

17 MR. DOWD: Not from the plaintiffs, your Honor. We  
18 agree.

19 MR. KAVALER: I'm not sure I understood it, your  
02:10:08 20 Honor. You're going to review the verdict without showing it  
21 to us and you're going to decide --

22 THE COURT: Well, I always review the verdict without  
23 showing it to the attorneys. The question is do we do it with  
24 the jury sitting here in the jury box or do we let them retire  
02:10:20 25 back to the jury room.

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1           MR. KAVALER: Certainly have them retire. I'm simply  
2 suggesting you may need a second round of the same thing after  
3 you show it to us because depending on what it says, it may or  
4 may not be immediately apparent to us if we have a response to  
02:10:30 5 make on either side or we may need a few minutes to review it  
6 and caucus ourselves, during which time it probably would be  
7 advisable to keep the jury but -- send them back to the jury  
8 room while counsel review the verdict form.

9           THE COURT: At the risk of making complicated  
02:10:47 10 something that ought not to be, here's what I envision the  
11 process will be: I'll call the jury out, ensure that they  
12 have, in fact, reached a verdict, take the verdict from them,  
13 ask them to retire to the jury room, review the verdict,  
14 announce to you folks whether I find any problems or  
02:11:05 15 improprieties. If not, I will ask the jury to come back. I  
16 will then publish the verdict to the jury. And at that point,  
17 after it's been published, I will, as usual, ask you folks if  
18 you have any motions to make before I discharge the jury.

19           MR. KAVALER: All I'm saying, your Honor, is  
02:11:20 20 depending on what you publish to us, at that point, we may  
21 need a few minutes to figure out what to say.

22           THE COURT: Okay. If you feel you need that, you can  
23 ask for it and then we can, I guess, ask the jury to retire  
24 back to the jury room while you do that.

02:11:35 25           MR. KAVALER: That was all I was suggesting, your

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1 Honor. Thank you.

2 THE COURT: All right. Very well.

3 Let's bring the jury out.

4 (Jury in.)

02:12:27 5 THE COURT: Good afternoon, ladies and gentlemen.

6 Let me inquire: Who speaks for the jury?

7 JUROR MATONIK: I do.

8 THE COURT: And you are Ms. Matonik?

9 JUROR MATONIK: Gail Matonik, yes.

02:13:39 10 THE COURT: Ms. Matonik, has the jury reached a

11 verdict?

12 JUROR MATONIK: Yes, we have.

13 THE COURT: And is the verdict unanimous?

14 JUROR MATONIK: Yes, it is.

02:13:45 15 THE COURT: Will you please hand the verdict forms to  
16 the Court Security Officer.

17 (Tendered.)

18 (Brief pause.)

19 THE COURT: Ladies and gentlemen, ordinarily I  
02:14:38 20 announce the verdict to the court. But because I have to  
21 review the verdict form first, and it's such a long one, I'm  
22 going to ask you folks just to retire back to the jury room to  
23 give me a few minutes to do that. And then we will call you  
24 right back out again. All right.

02:14:57 25 (Jury out.)

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1 THE COURT: Be seated, folks.

2 (Brief pause.)

3 THE COURT: Okay. I have reviewed the verdict form.

4 I find that it is filled out consistently and completely and  
02:19:34 5 that it is signed and dated by all of the jurors. It's my  
6 intention now to call the jury back and publish the verdict to  
7 the court.

8 Bring the jury out.

9 (Jury in.)

02:20:56 10 THE COURT: Be seated.

11 Ladies and gentlemen, I have reviewed the verdict  
12 form, and I have concluded that the verdict form is  
13 appropriately filled out with respect to all of the questions  
14 with the exception of question number four regarding damages.

02:21:56 15 So I'm not going to publish the verdict form at this time.

16 I'm going to ask you to retire to the jury room. I'm going to  
17 consult with the attorneys about a specific instruction to you  
18 with regard to that question. And after we have done that, we  
19 will ask you with respect to that question to continue your

02:22:14 20 deliberations.

21 Please retire to the jury room.

22 (Jury out.)

23 THE COURT: Folks, the verdict form has been filled  
24 out correctly -- you may be seated -- with respect to all of

02:22:54 25 the issues except the direction under question number four,

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1 which requires the jury to write the amount of loss per share,  
2 if any, that, according to the model you have chosen, any  
3 defendant's conduct caused plaintiffs to suffer on each of the  
4 dates set forth in Table B.

02:23:25 5 In that regard, it's the Court's opinion that the  
6 amounts filled in by the jurors do not correspond to the  
7 amounts in plaintiffs' exhibit which corresponds to the model  
8 that they have indicated they have chosen to follow.

9 So there is an instruction needed to the jury  
02:24:02 10 instructing them specifically how to correlate the -- how to  
11 use the plaintiffs' exhibit that corresponds to the model of  
12 damages that they have chosen.

13 I'm open to suggestions.

14 MR. KAVALER: Your Honor, may we inquire: Have they  
02:24:25 15 checked any of the boxes under question four or none? Or is  
16 your point that there's a discrepancy --

17 THE COURT: No, they have selected a model of  
18 damages. They have applied it to each and every date in  
19 verdict form Table B. But the amounts that they have filled  
02:24:47 20 in does not appear to correspond to the amounts on the  
21 plaintiffs' exhibit which corresponds to that particular  
22 damages model.

23 Does that answer your question?

24 MR. KAVALER: Yes, it does your Honor. Thank you.

02:25:46 25 MR. DOWD: Your Honor, our suggestion would be that

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1 the jurors be told if they've selected one of the two  
2 plaintiffs' models of damages, that they should fill in the  
3 amounts from the artificial inflation column in either 1397 or  
4 1395. I think there used to be language like that in question  
02:26:09 5 four, and it was taken out; and maybe they got confused by the  
6 columns.

7 THE COURT: I think you might be right. I did not  
8 bring out here with me the two plaintiffs' exhibits that  
9 correspond. Do you have copies?

02:26:22 10 MR. DOWD: I have one copy, your Honor.

11 THE COURT: Okay. All I have is partial exhibits.

12 (Tendered.)

13 MR. DOWD: And they're not stapled.

14 (Brief pause.)

02:27:50 15 THE COURT: Okay. Well, it appears that the jury may  
16 have understood the verdict form better than I did. No, this  
17 can be reconciled. Folks, I'm going to bring them out and  
18 announce the verdict.

19 Bring them out.

02:28:16 20 (Jury in.)

21 THE COURT: Upon further review of the verdict form,  
22 ladies and gentlemen, I feel that it is appropriately filled  
23 out and I need only publish it now.

24 Please listen carefully as I publish your verdict to  
02:29:43 25 the court.



1 MR. KAVALER: Your Honor, I'm waiting to hear if  
2 Mr. Dowd has anything to say.  
3 MR. DOWD: Not at this time, your Honor. Did you  
ask  
4 for a date for motions?  
03:05:16 5 THE COURT: Motions, yes.  
6 MR. KAVALER: Your Honor, we will be making formal  
7 motions. But at this time, I want to renew the 50(a)  
motion.  
8 And specifically I want to observe to the Court that --  
9 there's a couple of points. Professor -- the jury has  
03:05:35 10 selected Professor Fischel's more dubious by far, legally  
and  
11 economically, damage model to the exclusion of anything  
else.  
12 So we renew the motion on that ground since that model, in  
our  
13 view, is not legally permissible and cannot sustain a  
14 judgment.  
03:05:48 15 Secondly --  
16 THE COURT: Let me ask you to -- I mean, the record  
17 will reflect that you have reserved -- I'm ruling that  
you're  
18 reserving any issues you wish to raise in a written motion.  
19 So how much time do you want to file a motion? That's  
really  
03:06:04 20 what we need to --  
21 MR. KAVALER: Your Honor, let me say this: I won't  
22 repeat everything I've said previously. And I appreciate  
your  
23 Honor's comment.  
24 To the extent the jury has found against the  
03:06:14 25 defendant Gilmer on restatement, I believe the record  
contains